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Work Plan for Activities Listed in the November 9, 2010 Stipulation of Discontinuance, Attachments Exhibit B and "Supplemental Work to Complete the RI"

Harbor Isle
7 Washington Avenue
Harbor Island, NY

Prepared for
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Farmingdale, NY 11735

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Work Plan for Activities Listed in the November 9, 2010 Stipulation of Discontinuance, Attachments Exhibit B and "Supplemental Work to Complete the RI"

Harbor Isle
7 Washington Avenue
Harbor Island, NY

A. Introduction

This work plan has been prepared for Posillico Development Company at Harbor Isle (PDC) to accomplish the activities deemed necessary by the New York State Department of Environmental Conservation (DEC) to complete the remedial investigation (RI) at the former Cibro Brothers Petroleum Terminal located at 7 Washington Avenue, Harbor Island, NY (Site). The work plan and procedures described herein follow the DEC remediation and guidance document DER-10.

Blue Island purchased the Site in November 2000 after all petroleum related operations had ceased. Blue Island entered into a contract with PDC in 2005, who decided to conduct the remediation of the Site through the DEC's recently-enacted statutory Brownfield Cleanup Program (BCP).

1. Activities Covered In This Work Plan

The activities listed below were agreed to by the DEC and PDC in an agreement dated November 9, 2010 (Appendix A). They are:

1. Install 5 temporary wells to fill gaps in the groundwater monitoring network.
2. Measure free product in all wells and, if oil is found, sample it instead of the groundwater.
3. Collect groundwater samples from wells that don't have free product: max 10 samples.
4. Collect sediment and groundwater samples from below the peat at three locations.
5. Collect surficial soil samples in a 100-ft grid in only the accessible and undisturbed areas. Analyze the indicated percent of collected samples for the following constituents: 100% lead, 20% PCBs, 30% RCRA metals. Sample inaccessible areas during remediation if samples from adjacent areas show excessive levels of tested constituents.
6. Collect five 0.5-2 ft deep soil samples in the area previously delineated as clean that will be analyzed by Methods 8260+10 and 8270+20 for VOCs and SVOCs, respectively.
7. Identify sources by analyzing soil samples for Methods 8260+10 and 8270+30 VOCs and SVOCs, respectively and use the following criteria to identify sources which either:
    a. Exceed the NYCRR Part 375-6.8 Track 2 list of VOCs, SVOCs;
    b. Meet the definition of 6NYCRR375-1.2(u);
    c. Exceed a total TIC content of 100 PPM (for 30 SVOC TICs and/or 10 PPM for 10 VOC TICs; or
    d. Exceed a PID meter reading of 250 PPM.
8. Any soil meeting the criteria mentioned above will be deemed to require excavation and treatment.

2. Site Location

The Site is located at the southern terminus of Washington Avenue on Harbor Island, Nassau County, New York (Figure 1). According to Nassau County tax maps, the Site is identified as

Block 381, Lots 35, 36, 102, 314 and 323. Surface water bodies border the Site on three sides: Island Park Canal to the east; Wreck Lead Channel to the south; and Simmons Hassock Creek to the west. As noted above, residential properties border the site to the north and northwest, and an operating marina borders the site to the southwest. The property was zoned Y Industrial District at the beginning of this BCP Project. In 2007 PDC received a zoning change from Y-Industrial to CA-Residential.

3. Site History

Oil Products Inc. (OPI) began operating a bulk fuel storage and distribution facility on the Site as early as the 1940s. In 1973, OPI sold the Site to Cibro Petroleum (Cibro), which continued to operate the facility until approximately 1988, but continued to own and conduct limited operations after they declared bankruptcy as a debtor in possession at this facility and its Albany terminal. No operations were being conducted at the Site, other than maintaining an oil boom, when Blue Island first visited it in the late 1990's.

Based on facility records and Site maps, the Site contained 14 above-ground storage tanks (ASTs) with a total storage capacity of 17,675,000 gallons and one 3,000-gallon underground storage tank (UST), all of which were used to store various petroleum products, including fuel oil, kerosene and gasoline. Historical use of the Site as a petroleum bulk storage facility resulted in releases of stored materials that impacted soil, groundwater and surface water quality. Under OPI's ownership a spill of #4 fuel oil took place in the 1960's, and another spill occurred in 1979 into Wreck Lead Channel. However, details about the nature and extent of these earlier releases are not well documented. In 1988, DEC Spill Number 88-05691 was opened to address a new spill and the historic releases. However, this was the same year that Cibro filed for bankruptcy.

Blue Island purchased the Site in November 2000 after all petroleum related operations had ceased on the Site. Prior to this date, Cibro had demolished and removed from the Site all the ASTs, with the exception of the tanks' concrete bases. According to reports prepared by prior consultants, the 3,000 gallon UST had been removed from the property prior to Cibro taking ownership. On November 17, 2000, Blue Island entered into a Stipulation Agreement with DEC to remediate the property. Following a series of investigations to better establish the nature and extent of environmental impacts, Blue Island entered into a contract with PDC, who decided to conduct the remediation of the Site through the DEC's recently-enacted statutory Brownfield Cleanup Program (BCP). An application to the BCP was prepared by PDC, and submitted to DEC on March 23, 2005. It was approved and a Brownfield Cleanup Agreement (BCA) was executed by DEC on April 14, 2006.

In November 2006 through July 2007 a pilot test to examine the efficacy of several treatment technologies was conducted. The results of these tests along with the previously-collected data were used to prepare the "Final Remediation Investigation Report" (RI) submitted to the DEC on May 23, 2008.

The DEC deemed the RI was incomplete and specified additional information that was needed to characterize the Site. After several rounds of meetings and discussions to clarify the standards agreement was reached on the additional activities needed to complete the RI and how the

endpoint would be defined for both delineating the uncontaminated soil and determining when remediation had reached the cleanup objectives for the reuse of the property.

The agreement and additional activities are contained in the November 9, 2010 Stipulation of Discontinuance, Attachments: Exhibit B, and "Supplemental Work to Complete the RI" (Appendix A).

4. Physical Setting

The Site layout is shown on Figure 2. With the exception of a small building to the south and several concrete bases used to support above-ground storage tanks (ASTs) that are no longer on the property, all above-grade structures were removed prior to Blue Island's purchase. Most of the Site is covered by vegetation, soil stockpiles, recycled concrete aggregate stockpiles or exposed soil, with the remainder covered by asphalt-paved roadways and the previously-mentioned concrete tank bases. Most of the shoreline is supported by a bulkhead, except for a portion to the west, which is at sea level and contains a mapped wetland as defined under Article 25 of the NYS Environmental Conservation Law.

The Site topography is relatively flat. According to the United States Geological Survey (USGS) 7.5-minute series topographic map (Lawrence, New York quadrangle) the Site is approximately seven feet above mean sea level. Surface water bodies, consisting of Island Park Canal, Wreck Lead Channel, and Simmons Hassock Creek, border the property to the east, south and west, respectively. Stormwater percolates through the soil or ponds on land surface during heavy storm events.

5. Geology and Hydrogeology

The Site is underlain by Cretaceous and Quaternary sediments, which rest unconformably on weathered Precambrian-aged biotite schist and gneissic bedrock. Depth to bedrock in the Long Island area ranges between 200 and 1,800 feet below grade. The late Cretaceous deposits are predominately associated with the Raritan and Magothy Formations, consisting of interbedded sand, gravel, silt and clay. Quaternary sediments of Pleistocene and younger age form the surficial deposits throughout the region and consist of sand, gravel, glacial till and associated outwash.

Site-specific hydrogeologic conditions consist of a tidally influenced, unconfined aquifer within the shallow fill and glacial fluvial deposits underlying the property. Prior investigations encountered a peat layer approximately nine feet below grade. Depth to the watertable varies as a result of tidal effects, but is approximately four to six feet below grade. Groundwater flows from the northwest corner of the property towards the east-southeast, and diffuses into the adjacent saltwater bodies.

6. Previous Investigations

Historical investigations of the Site and the Remedial Investigation (RI) include:

- Subsurface Investigations, Inc (SI) draft RI/FS, August 1993.
- First comprehensive studies were done by LawGibb in 2000.
- Gannett Fleming completed a more comprehensive investigation in 2007.

a) Subsurface Investigations, Inc. (SI) Study

As summarized in the BCP application, SI evaluated soil and groundwater conditions and issued a draft Remedial Investigation/Feasibility Study report in 1993, and a supplemental soils and groundwater cover letter on June 21, 1994. PDC was not able to locate the SI RI/FS Report referred to in the June 21, 1994 cover letter. However, the letter summarized the investigation and presented the conclusions, the results of prior environmental investigations and its own investigations, and presented recommendations for remedial actions. The investigation finding summary indicated that releases of petroleum hydrocarbons from historical site operations resulted in impacts to soil and groundwater quality.

b) Remedial Investigation and Proposed Cleanup Plan- LawGibb Group (LAW)

LAW performed two comprehensive studies, the results of which were contained in the following reports: Cleanup Plan for Soil and Groundwater at the Former Cibro Island Park Site, February 2001; and Results of Supplemental Soil and Groundwater Investigation, Former Cibro Petroleum Terminal, August 6, 2001. Both reports are part of PDC's BCP application.

The February 2001 study used the results of total petroleum hydrocarbon (TPH) analyses to map the concentration of total hydrocarbon constituents in three dimensions. The 500-PPM iso-concentration contour line was used to delineate the boundary of the affected area. LAW also characterized groundwater quality under the Site.

As noted in the third bullet of Exhibit B of the 2010 Stipulation, the DEC have accepted the TPH data.

After reviewing the February 2001 LAW report, the DEC wanted additional work done to confirm that the area outside of the 500-PPM TPH boundary shown in the report was not affected by the petroleum releases. In addition, the DEC specified that the soil samples were to be analyzed for individual VOCs and SVOCs, not merely TPH content. The results of that investigation are contained in the August 2001 report, where the VOC and SVOC results generally verified the former conclusions. However, the area delineated in the February 2001 report using the TPH results was not analyzed at that time for the individual VOC/SVOC chemicals.

c) Gannett Fleming (GF) Supplemental Remedial Investigation and Pilot Test Program

The investigation done by GF in 2006 – 2007, included the following:

- Characterize the VOC and SVOC chemicals in the area previously delineated by TPH;
- Determine the VOC and SVOC content in the groundwater;
- Collect soil vapor data on the northern property boundary near the residential area;
- Evaluate the potential risks posed by petroleum hydrocarbons in soil and groundwater to soil vapor, human health and ecological receptors; and
- Conduct pilot tests for soil and groundwater treatment technologies.

A work plan submitted to the DEC in May 2006 and modified in October 2006 described the technical approach and scope for a pilot test program that would be used to develop information needed to evaluate ex situ oxidation, biopile and land farming soil treatment technologies for subsequent remedial action at the Site. The Pilot Test also tested an in-situ bioremediation

technology for groundwater. It consisted of adding dissolved nitrate in the form of lawn fertilizer to the groundwater to increase the indigenous microbial degradation of the dissolved petroleum constituents.

The soil and groundwater pilot tests and associated site investigation work were performed by GF from October 2006 through July 2007. The supplemental investigation included analyzing soil samples in the area formerly delineated only by TPH for the individual VOC and SVOC constituents. The new data would then be compared to the Track One site cleanup objectives (SCOs) in NYCRR Part 375-6.8 to determine the level of cleanup needed for the intended use of the property.
The New York State Department of Health (DOH) also requested a soil vapor study be conducted along the northern property boundary adjacent to the residential area. In May 2006, the DOH and DEC approved the *Supplemental Data Collection Addendum to the Pilot Test Work Plan,* which was implemented by GF in 2006.

i. Soil Treatment Pilot Test Results

None of the technologies (biopile, land farming and ex situ oxidation) were able to eliminate all of the petroleum-based contamination. However, they were able to reduce the concentration of SVOCs and VOCs in soil to less than the Track 1 SCOs, especially when combined with mechanical screening and homogenization of the soil before the oxidizer was mixed in. Of the three soil pilot test technologies, ex situ oxidation produced the most reliable results in the shortest amount of time. The biopile and land farming technologies were also successful in reducing the concentration of individual SVOC constituents to levels less than the Track 1 SCOs, but both technologies were time consuming and did not provide consistent or better results compared to the more aggressive ex situ chemical oxidation process.

ii. Groundwater Pilot Test Results

Post treatment groundwater sampling indicated that the application of nitrate compounds to groundwater was successful in enhancing biodegradation, and in reducing the concentration of SVOCs and VOCs.

iii. Soil Vapor Study Results

Soil vapor sampling performed in 2006 along the northeast property boundary, where the nearest residential homes are located, did not reveal the presence of constituents at concentrations exceeding the selected comparison criteria (United States Environmental Protection Agency Region III Risk-Based Concentrations for Ambient Air and the New Jersey Department of Environmental Protection Vapor Intrusion Guidance).

B. Work Plan

This section identifies the activities that will be done at the Site and how they will be implemented.

1. Prepare Site

Prior to collecting any samples the integrity of existing wells will be determined and the locations of any wells needed to replace defunct wells and fill in the monitoring well network will be identified.

The locations will be marked out where the various surficial and vertical soil samples will be collected. All locations will be tied into a site wide 100-ft grid for mapping and future operations requirements.

a) Inspect Existing Wells

Existing wells were installed in generally three time periods: early 1990's, 2000, and 2006. During this period the viability of the wells has deteriorated and some of the wells have been destroyed. Therefore, the wells will need to be found and tested to see if they can be used for this event.

i. Locate existing wells

Available data will be used to locate existing wells. Those that cannot be found will be replaced as best as possible.

ii. Inspect the integrity of the existing wells and redevelop usable wells

Those wells that are found will be inspected to confirm the integrity of their casings. They will then be redeveloped using a suction pump to insure they are well-connected to the saturated zone and to remove any sediment that has accumulated in the casing.

b) Survey locations

A grid will be established to identify the sampling locations so that the chemical results and field observations can be assigned to a precise location for future reference and remedial planning.

i. Set up 100-ft grid

The proposed sampling locations will be surveyed on a 100-ft grid as shown on Figure 3. This grid will also be used to locate the replacement and new wells.

ii. Identify multiple objective locations

Some of the locations will be used for multiple field objectives, such as shallow and deep wells, sub-peat sediment sampling, contaminated area boundary samples, surficial soil samples, etc

iii. Identify areas that will need to be cleared

Some of the locations may either be overgrown or inaccessible due to stockpiled soil and fill that has been brought to the site or created by crushing some of the former tank concrete foundations. These impediments may need to be removed at certain critical sampling locations. Once the grid is established any locations with poor access will be identified.

iv. Identify the boundary of the clean area and mark out five locations

The boundary of the clean area will need to be marked out and five one-half ft to two-ft deep samples will need to be collected at predetermined locations.

c) Prepare access for sampling and well drilling equipment

Using the results of the work done in Section 2.b.3, access will be improved for the identified areas.

2. Install Wells and Collect Soil and Sediment Samples

Gaps in the groundwater monitoring well network will be filled by new wells prior to a site wide groundwater sampling event. Once all sampling sites have been identified and access created soil and groundwater samples will be collected. The data will be used to determine whether surficial

soil has been affected by storage tank maintenance and weathering, delineate approximate areal and vertical dimensions of the contaminated soil zone, determine sediment quality below the peat layer, and determine whether the shallow and deeper groundwater has been affected by the historical petroleum releases.

The proposed sampling locations for each of these objectives are shown on Figure 3; and the proposed plan for collecting the samples is explained ahead.

a) Surficial Soil Samples

During this sampling event surficial samples will be collected at all nodes on the 100-ft grid where the surficial soil is accessible and hasn't been disturbed (as specified in the Stipulation). Sampling will not occur where stockpiles, pits, and reworked surface areas are present, as these areas will not represent the surficial soil quality. All of the 100-ft nodes that meet these requirements will be sampled from land surface to six-inches deep. All of the soil samples will be analyzed for Lead; thirty percent of these samples will be analyzed for the list of RCRA metals; and twenty percent of the samples will be analyzed for PCBs.

If the surficial sampling data suggests the soil has been affected by metals associated with tank maintenance, additional sampling may occur during the remediation phase.

b) Delineate The Soil Zone That Exceeds the Action Levels

The volume of soil that exceeds the action levels in the subject stipulation (Exhibit B, second bullet) and its boundary will be determined from soil samples collected at 3-ft, 6-ft (from former land surface) and just above the peat layer from twenty-five to thirty borings in the area delineated by the 500 PPM TPH (total petroleum hydrocarbon) contour delineated in the February 2001 LawGibb report (Figure 3). The samples will be collected at the same 100-ft grid mentioned in Section B.2.a using a continuous core, push sampling drilling rig. They will be analyzed for Method 8260 VOCs+10 TICs and Method 8270 SVOCs+30 TICs. The analytical results will be compared to the action levels to obtain a preliminary volume calculation and soil quality characterization.

c) Confirm the Quality of Soil in the Clean Area

Figure 3 shows the five locations where samples will be collected from one-half foot to two-ft deep to confirm the quality in that area. In addition samples will also be collected at 6-ft bls and just above the peat layer to characterize the deeper sediment quality. The samples will be analyzed for Method 8260 VOCs+10 TICs and Method 8270 SVOCs+30 TICs.

d) Determine the Quality of Sediment below the Peat Layer

Sediment samples from below the peat layer will be collected at three locations as shown on Figure 3. At these locations the push-sampling rig will be advanced through the peat into the underlying sediment and a sample will be collected for laboratory analysis. The samples will be analyzed for Method 8260 VOCs+10 TICs and Method 8270 SVOCs+30 TICs to determine if the historical petroleum releases have affected this zone.

e) Soil Sampling Procedures

Soil samples will be collected generally from 0 to 6-inches below land surface (bls), 0.5 to 2-feet bls and from deeper zones below the peat layer. Each type of sample will be collected using different procedures as described ahead.

i. Surficial Samples

Surficial samples will be collected from land surface (ls) to six-inches bls. The field person will use new surgical latex (or similar) gloves at each location, The sample will be collected with a clean trowel, homogenized in a clean bowl and then directly deposited into laboratory-supplied bottles. The trowel will be washed with a detergent and rinsed with potable water between each sample.

The samples will be labeled and stored in a cooler with a cold pack to keep temperature at 50 degrees or less until delivered to the laboratory. Samples will be dropped off at the laboratory at the end of each day.

ii. One-Half Foot to Two-Feet BLS

Soil samples will be collected from 0.5 to 2-ft bls in the clean area. Each sample will be collected using a steel hand auger that has an approximately 12-inch long core barrel and 5-ft long extension and tee handle that is turned into the ground to the target depth. The soil moves into the barrel as it advances. As the barrel fills up, the soil will be removed and deposited onto a clean polyethylene sheet where the entire soil column will be homogenized prior to placing a portion of it into the laboratory-supplied sampling bottle. A trowel will be used to handle the collected soil.

The auger and trowel will be cleaned with a detergent wash and potable water rinse between sampling locations. The field person will wear clean surgical-quality gloves between locations.

The samples will be labeled and stored in a cooler with a cold pack to keep temperature at 50 degrees or less until delivered to the laboratory. Samples will be dropped off at the laboratory at the end of each day.

iii. Deeper Samples

Deeper samples (three and six-ft bls, above the peat layer, and below the peat layer) will be collected using a dual-tube, push-type rig with continuous coring technology and fresh, clean, plastic disposable core tubes. The cores will be collected from land surface to the desired depth. The portion of the core at the sampling interval will be removed from the core tube with a trowel and deposited directly into the laboratory-supplied sampling bottles.

The outer drill casing and trowel will be cleaned with a detergent wash and bottled water rinse between sampling locations. The field person will wear clean surgical gloves between locations.

The samples will be labeled and stored in a cooler with a cold pack to keep the temperature at 50 degrees or less until delivered to the laboratory. Samples will be dropped off at the laboratory at the end of each day.

All of the boreholes will be backfilled with bentonite to land surface to prevent any vertical groundwater movement through the borehole

f) Install Wells

Wells will be installed through a hollow-stem auger at depths determined during the soil sampling phase of the project described above. The wells will be 2-in diameter and extend to the appropriate depth as described ahead. Once installed, each well will be pumped to remove suspended solids and prepare the well for sampling.

i. Shallow wells

Shallow, temporary wells will be installed to three-ft below the watertable. A 2-in diameter well constructed of threaded PVC pipe, will be installed into the annulus of the auger. The well will consist of a 5-ft long screen and solid riser that will extend approximately 2.5-ft above land surface (ls). The screen will bridge the watertable with approximately 3-ft below and 2-ft above it. A locking protective casing will be cemented into place from one-ft bls to land surface. The annulus will be backfilled with clean gravel up to 6-in above the screen and then cemented to ls.

ii. Wells below the Peat Layer

These wells will be installed similarly to the shallow wells. However, the 5-ft long screen will be installed so that its top is at least one-ft below the bottom of the peat layer. The remainder of the well will consist of solid riser pipe extending to approximately 2.5-ft above ls.

Clean gravel will surround the screen and 0.5-ft of the riser pipe. Bentonite pellets will be placed above the gravel pack to one-ft above the peat layer. Drill cuttings will be used to fill the borehole to two-ft bls, after which cement will seal the borehole and the protective cover in place.

3. Collect Groundwater Samples

Waterlevel measuring points will be established on all functioning wells either prior to, or after they are sampled. A clean (washed in detergent and rinsed with potable water) waterlevel sensing device will be used to measure the waterlevels; and new equipment will be used to collect the samples.

Prior to sampling the volume of water in the well will be calculated and three casing volumes of water will be removed from the well using a clean bailer and string to purge any stale water from the casing. After purging is done, the bailer will be used to collect the samples and deposit them directly into the laboratory-supplied sample bottles.

The samples will be stored in a chilled freezer chest and delivered to the laboratory the same day as collected.

C. Quality Assurance Protocol Plan (QAPP)

A QAPP will be used to insure the integrity of the data. The QAPP addresses the procedures that will be used to collect the samples and transport them to the laboratory.

In addition, Environmental Testing Laboratories (ETL) is currently being considered for the project and will supply complete data quality packages (Category B data package) so that the laboratory procedures can be evaluated by a third party to make sure it can be used to determine conditions at the Site.

1. Sampling Equipment

Individual QA/QC measures will be implemented for each of the types of equipment, field screening instruments, sample containers, etc used in the sampling program.

a) Geoprobe/Push Drill Rig

Prior to arrival on the subject property and between sample locations, the rig will be decontaminated by physically washing it with a detergent (Alconox) and potable water solution.

b) Bottles

All sample bottles will be certified new and will be supplied by the NYSDOH-ELAP Certified Commercial Laboratory mentioned above. Samples being analyzed for media potentially containing VOCs will be placed in Teflon-lined containers. All samples will be preserved by cooling them in an iced freezer chest.

2. Sample Documentation

To establish and maintain proper sample documentation control, the following sample identification and chain-of custody procedures will be followed.

a) Sample Identification

Sample will be identified by a sample tag, log book and chain-of-custody form. The documentation will contain the following information: 1) the project code; 2) the sample laboratory number; 3) the sample preservation; 4) the date the sample was secured from the source media; 5) the time the sample was secured from the source media; and 6) the person who secured the sample from the source media.

b) Chain-of Custody Procedures

Due to the evidentiary nature of samples, possession will be traceable from the time the samples are collected until they are received by the testing laboratory. A sample will be considered under custody if it: was in a person's possession; it was in a person's view, after being in possession; if it was in a person's possession and they locked it up; or, it was in a designated secure area. When transferring custody, the individuals relinquishing and receiving the samples will sign, date and note the time on a Chain-of-Custody Form.

c) Laboratory-Custody Procedures

A designated sample custodian will accept custody of the delivered samples and verify that the information on the sample tags matches that on the Chain-of-Custody Record. Pertinent information as to delivery, pick-up, courier, etc., will be entered in the "remarks" section. The custodian will enter the sample tag data into a bound logbook. The laboratory custodian will use the sample tag number, or assign a unique laboratory number to each sample tag, and assure that all samples will be transferred to the proper analyst or stored in the appropriate source area. The laboratory custodian ill distribute samples to the appropriate analysts. Laboratory personnel will

then be responsible for the care and custody of samples, from the time they were received, until the sample was exhausted or returned to the sample custodian. All identifying data sheets and laboratory records will be retained as part of the permanent documentation. Samples received by the laboratory will be retained until after analysis and quality assurance checks were completed.

3. Data Usability Study Report

The results and Category B data package will be examined by a third party to insure the proper procedures were followed by the laboratory. The third party will prepare a report with the findings.

D. Personnel

The project will be managed by Ellis Koch, Consulting Director of Posillico Consulting. He is a Certified Professional Geologist that has bee practicing hydrogeology since 1967. His resume is in Appendix B.

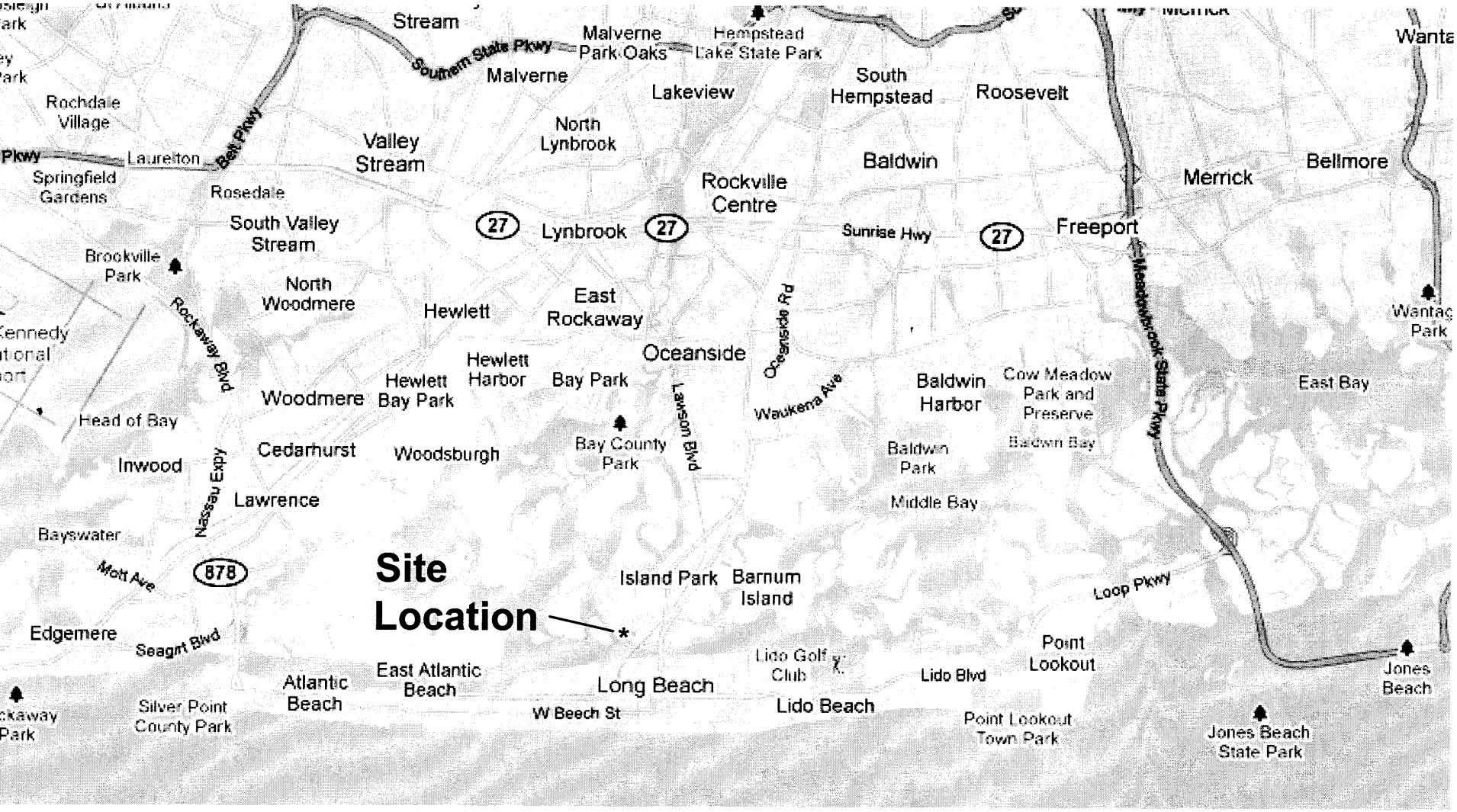
Mr. Koch will also supervise the field work and any field personnel used to assist with sample collection.

A New York State ELAP-certified laboratory will be used to perform the chemical analyses.

The DUSR will be performed by a person who has experience doing this kind of analysis.

Figures

Figure 1: Location Map
Figure 2: Site Layout
Figure 3: Proposed sampling locations and 100-ft Grid



es	
	Description

FIGURE 1: Location Map

PDC AT HARBOR ISLE, LLC.
FORMER CIBRO PETROLEUM FACILITY
ISLAND PARK, NEW YORK

DWN. BY: JB	CHK'D BY: EK	DATE: 1-6-11

Posillico | We know how.™

Posillico Consulting
1750 New Highway
Farmingdale, NY 11735
(631) 249-1872

Revisions/Issues			
No	Date	By	Description

FIGURE 2: Site Layout

PDC AT HARBOR ISLE, LLC.
FORMER CIBRO PETROLEUM FACILITY
ISLAND PARK, NEW YORK

DWN. BY: JB	CHK'D BY: EK	DATE: 1-6-11

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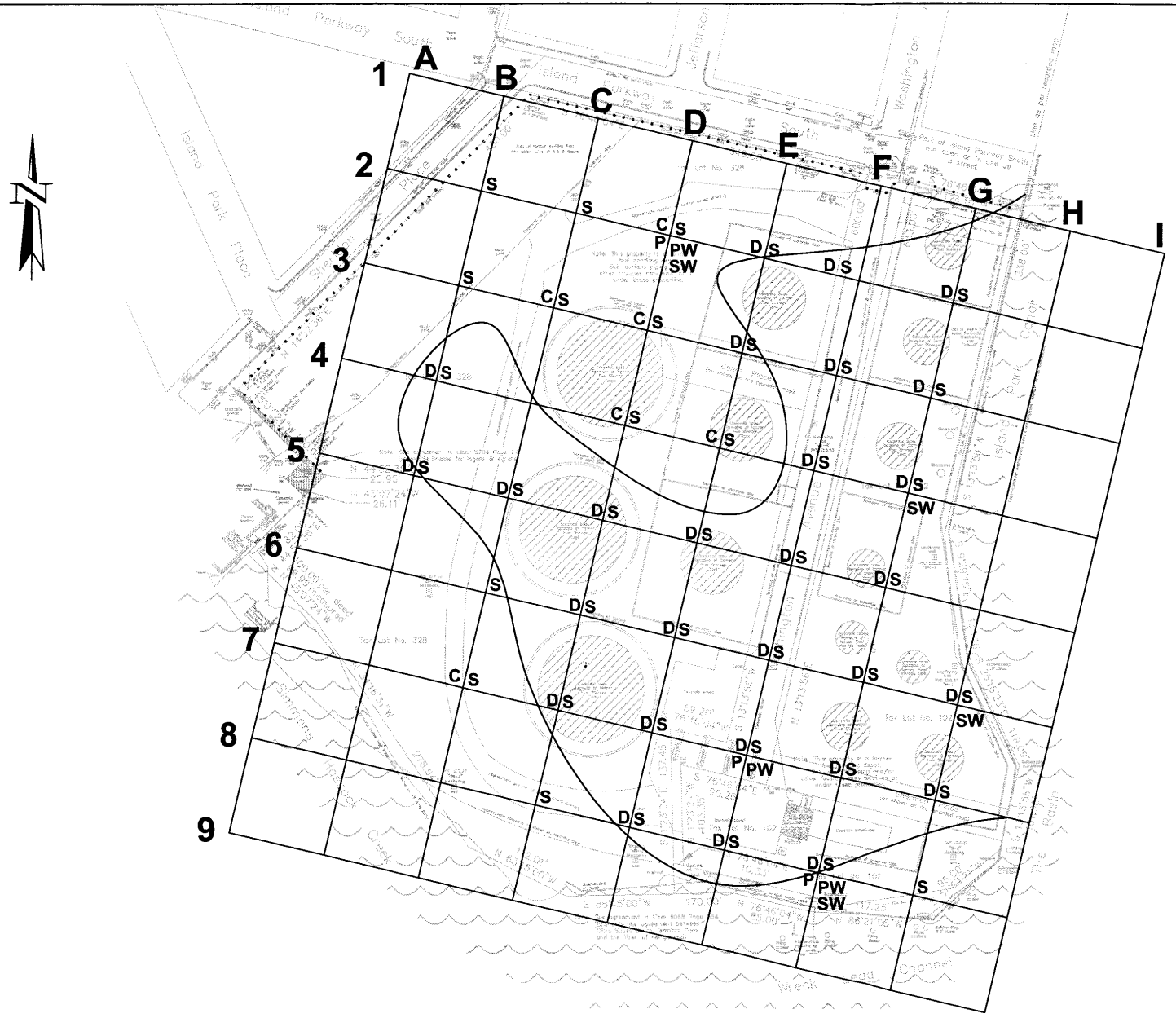

LEGEND:

- ~ - 500 PPM TPH CONTOUR
- S - SURFICIAL SOIL SAMPLES (0-6 IN. B.L.S.)
- C - CLEAN AREA SOIL SAMPLES (3 FT, 6 FT, AB
- D -CONTAMINATED ZONE SOIL SAMPLES (3 FT,
- P - SOIL SAMPLE BELOW PEAT
- PW - WELL SCREENED BELOW PEAT
- SW - WELL SCREEN BRIDGING WATER TABLE
- # - 100 FT GRID

NOTES:

1) NOT ALL SAMPLINGLOCATIONS WILL BE ACCESSIBLE, OR MEET THE CRITERIA OF TH STIPULATION AT THE LOCATION SHOWN ON MAP.
SOME LOCATIONS MAY NEED TO BE MOVED THE GRID AND SOME MAY HAVE TO BE OMIT DUE TO OBSTUCTIONS, AND DISTURBANCE.
2) FIFTH WELL WILL BE USED IF AN EXISTING WELL NEEDS TO BE REPLACED.

SCALE
0 60 120
1 INCH = 120

Revisions/Issues			
No	Date	By	Description

FIGURE 3: Proposed 100 FT. Grid and Sampling Locations

FORMER CIBRO PETROLEUM FACILITY
ISLAND PARK, NEW YORK

DWN. BY: JB	CHK'D BY: EK	DATE: 1-6-11

Posillico | We know how.

Posillico Consultin
1750 New Highway
Farmingdale, NY 11735
(631) 249-1872

Appendix A: November 9, 2010 Stipulation of Discontinuance, Attachments Exhibit B and "Supplemental Work to Complete the RI"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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POSILLICO DEVELOPMENT COMPANY AT HARBOR ISLAND, INC.,

Petitioner,

-against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, ALEXANDER B. GRANNIS, as Commissioner of the New York State Department of Environmental Conservation, and DALE A. DESNOYERS, as Director of the Division of Environmental Remediation,

Respondents.

----------x

Index No. 23210-2009

STIPULATION OF DISCONTINUANCE

WHEREAS, in this CPLR article 78 proceeding petitioner challenges a determination by respondents dated September 11, 2009, which was issued based on petitioner's expressed intent to pursue a "Track 1" cleanup of the relevant site; and

WHEREAS, following the initiation of this proceeding petitioner has expressed its intention of pursuing a "Track 4" cleanup of the site; and

WHEREAS, petitioner's agreement to pursue a Track 4 cleanup renders both the respondents' September 11, 2009 determination and this challenge to that determination academic and moot; and

WHEREAS, petitioner and the New York State Department of Environmental Conservation ("DEC") have agreed to enter into an amended brownfield cleanup agreement ("BCA") in a form substantially similar to the document attached hereto as Exhibit A, within sixty days from the execution of this stipulation; and

WHEREAS, petitioner and DEC have agreed on a plan to finish the investigation of the site, a copy of which is annexed hereto as Exhibit B; and

WHEREAS, no responsive papers have been filed in response to the verified petition and the proceeding has not been submitted to a jury or to the Court, and no party to this proceeding is an infant, incompetent person for whom a committee has been appointed or conservatee, and no person not a party to this proceeding has an interest in the subject matter of the action.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between petitioner and respondents by their undersigned counsel of record as follows: This proceeding is discontinued with prejudice, pursuant to CPLR §3217(a)(2) with each party to bear its own costs.

IT IS FURTHER STIPULATED AND AGREED that this stipulation may be executed in counterparts, and a signature by facsimile shall be binding as original.

Dated: Rochester, New York
November 4, 2010

KNAUF SHAW LLP
Attorneys for Petitioner

By: _____
Linda R. Shaw, Esq.
1125 Crossroads Building
2 State Street
Rochester, NY 14614
(585) 546-8430

Dated: New York, New York
November 9, 2010

ANDREW M. CUOMO
Attorney General of the State of New York
Attorney for Respondents

By: _____
Kevin G. W. Olson, Esq.
Assistant Attorney General
Environmental Protection Bureau
120 Broadway
New York, New York 10271
(212) 416-8484

EXHIBIT A

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BROWNFIELD CLEANUP PROGRAM
ECL §27-1401 *et seq.*

In the Matter of a Remedial Program for

BROWNFIELD SITE CLEANUP AGREEMENT

AMENDMENT #1

Former Cibro Petroleum Terminal Site
DEC Site No.: C130153
Located at: 7 Washington Ave
Nassau County
Island Park, NY 11558

Index #:

Hereinafter referred to as "Site"

by:

POSILLICO DEVELOPMENT CO. AT HARBOR ISLAND, INC.
1610 NEW HIGHWAY, FARMINGDALE, NY 11735

Hereinafter referred to as "Applicant"

WHEREAS, the Department of Environmental Conservation (the "Department") is authorized to administer the Brownfield Cleanup Program set forth in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

WHEREAS, the Applicant submitted an application received by the Department on March 28, 2005;

WHEREAS, the Department determined that the Site and Applicant are eligible to participate in the BCP;

WHEREAS, the Department and the Applicant entered into a Brownfield Cleanup Agreement dated April 14, 2006 ("2006 BCA" or "2006 Agreement"); and

WHEREAS, the Applicant has requested that the 2006 BCA be amended.

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

I. Applicant Status

The Applicant, POSILLICO DEVELOPMENT CO. AT HARBOR ISLAND, INC., is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Real Property

The Site subject to the amended Brownfield Cleanup Agreement ("Amended BCA" or "Amended Agreement") consists of approximately 11.560 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 43-0381-35
Street Number: 7 Washington Ave, Island Park
Owner: Blue Island Development, LLC

Tax Map/Parcel No.: 43-0381-36
Street Number: 7 Washington Ave, Island Park
Owner: Blue Island Development, LLC

Tax Map/Parcel No.: 43-0381-102
Street Number: 7 Washington Ave, Island Park
Owner: Blue Island Development, LLC

Tax Map/Parcel No.: 43-0381-328
Street Number: 7 Washington Ave, Island Park
Owner: Blue Island Development, LLC

III. Payment of State Costs

Invoices shall be sent to Applicant at the following address:

Posillico Development Co. at Harbor Island, Inc.
Attn: Michael J. Posillico
1610 New Highway
Farmingdale, NY 11735
elliskoch@msn.com

IV. Communications

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

1. Communication from Applicant shall be sent to:

Nick Acampora
New York State Department of Environmental Conservation
Division of Environmental Remediation
Building 40
SUNY
Stony Brook, NY 11790-2356
njacampo@gw.dec.state.ny.us

Note: two hard copies (one unbound) of work plans and reports are required, as well as one electronic copy.

Gary Litwin (electronic copy only)
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, NY 12180-2216
gal09@health.state.ny.us

Note: one bound copy of work plans and reports is required, as well as one electronic copy.

Ben Conlon, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, NY 12233
bxconlon@gw.dec.state.ny.us

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

Posillico Development Co. at Harbor Island, Inc.
Attn: Michael J. Posillico
1610 New Highway
Farmingdale, NY 11735
elliskoch@msn.com

B. The Department and Applicant 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 or in Paragraph I.

V. Miscellaneous

A. Applicant acknowledges that it has read, understands, and agrees to abide by all the terms set forth in Appendix A - "Standard Clauses for All New York State Brownfield Site Cleanup Agreements" which is attached to and hereby made a part of this Amended Agreement as if set forth fully herein.

B. In the event of a conflict between the terms of this Amended BCA (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this Amended BCA shall control.

C. Notwithstanding the effective date set forth in Subparagraph XV.P of the 2006 Agreement, the calculation of tax credits available pursuant to Tax Law Sections 21, 22 and/or 23, the credit shall be calculated as if the Department had issued a notice to the taxpayer on or after June twenty-third, two thousand eight that its request for participation had been accepted under subdivision six of section 27-1407 of the environmental conservation law. The Applicant shall be allowed to include costs paid or incurred by the Applicant on or after the date of the 2006 Agreement, to wit: April 14, 2006.

D. This Amendment Agreement supersedes all other representations, oral or written, and all other communications between the parties related to the subject matter of this Amended Agreement, including the 2006 Agreement.

E. The effective date of this Amended Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED:

ALEXANDER B. GRANNIS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

_____

Dale A. Desnoyers, Director
Division of Environmental Remediation

CONSENT BY APPLICANT

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

POSILLICO DEVELOPMENT CO. AT HARBOR ISLAND, INC.

By:_____

Title:_____

Date:_____

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the _____ day of _____ in the year 2010, 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

EXHIBIT A

SITE MAP

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "the BCA" or "the Agreement" or "this Agreement") agree to be bound by the following clauses which are hereby made a part of the BCA. The word "Applicant" herein refers to any party to the Agreement, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Agreement, Applicant shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of ECL §27-1417 and 6 NYCRR sections 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Agreement.

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14, 6 NYCRR §§ 375-1.6(a), 375 3.6, and 375-6, and all applicable laws, rules, regulations, and guidance documents. The Work Plans shall be captioned as follows:

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site and emanating from such Site;

2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site and contamination that has emanated from such Site;

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

4. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

5. "Supplemental" if additional work plans other than those set forth in II.A.1-4 are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted no later than thirty (30) days after the effective date of this Agreement. Thereafter, the Applicant shall submit such other and additional work plans as necessary.

2. Any 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. The Department shall use best efforts in accordance with 6 NYCRR 375-3.6(b) to approve, modify, or reject a proposed Work Plan within forty-five (45) days from its receipt or within fifteen (15) days from the close of the comment period, if applicable, whichever is later.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein.

ii. If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the provisions of 6 NYCRR § 375- 1.6(d)(3) shall apply.

iii. If the Department disapproves a Work Plan, the reason for such disapproval shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(4) shall apply.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

4. During all field activities conducted under a Department-approved Work Plan, Applicant shall have on-Site a representative who is qualified to supervise the activities undertaken in accordance with the provisions of 6 NYCRR § 375-1.6(a)(3).

C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL § 27-1411(1) and 6 NYCRR § 375-1.6. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL § 27-1413 and 6 NYCRR § 375-3.8(f) that supports such determination.

2. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Engineering Report certifying that remediation of the Site has been performed in accordance with the requirements of ECL §§ 27-1419(1) and (2) and 6 NYCRR § 375-1.6. The Department shall review such Report, the submittals made pursuant to this Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL § 27-1419, 6 NYCRR §§ 375-1.9 and 375-3.9.

3. Within sixty (60) days of the Department's approval of a Final Report, Applicant 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 Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan in accordance with 6 NYCRR § 375- 1.6. 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 reason for its disapproval and may request Applicant to modify or expand the submittal. Within fifteen (15) days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Paragraph XII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law.

E. Department's Determination of Need for Remediation

The Department shall 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 for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL § 27-1417(3)(f). The Department shall provide timely notification to the Applicant of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Applicant shall cause to be recorded an Environmental Easement in accordance with 6 NYCRR § 375-1.8(h).

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6 NYCRR § 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL § 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant elects not to develop a Work Plan under this Subparagraph or if 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.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Applicant shall submit a written certification in accordance with 6 NYCRR §§ 375-1.8(h)(3) and 375-3.8(h)(2).

III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty except as provided in Paragraph V, 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 as described at 6 NYCRR § 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

IV. Entry upon Site

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL § 27 1431. Applicant agrees to provide the Department upon request with proof of access if it is not the owner of the site.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement.

C. Failure to provide access as provided for under this Paragraph may result in termination of this Agreement pursuant to Paragraph XII.

V. Payment of State Costs

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR § 375-1.5 (b)(3)(i). Failure to timely pay any invoice will be subject to late payment charge and interest at a rate of 9% from the date the payment is due until the date the payment is made.

B. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3). 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. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7012

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

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an enforcement action for non-compliance with ECL §27-1423 and ECL §71-4003.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL § 27- 1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR §§ 375-1.9 and 375-3.9.

VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, 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 Applicant's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct 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 Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in ECL §27-1425, which is proposed for the Site, in accordance with the provisions of 6 NYCRR § 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

X. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within thirty (30) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR § 375-1.8(h)(2). Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after the Department's approval of such instrument. Applicant shall provide the Department with a copy of such instrument certified by the recording officer 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 Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) Day period), which shall be deemed to be incorporated into this Agreement.

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of public health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or Qualified Environmental Professional as defined at 6 NYCRR § 375-1.2(ak) approved by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph III.A.1 of the Agreement 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 Applicant 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 and 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.

XII. Termination of Agreement

Applicant or the Department may terminate this Agreement consistent with the provisions of 6 NYCRR §§ 375-3.5(b), (c), and (d) by providing written notification to the parties listed in Paragraph III of the Agreement.

XIII. Dispute Resolution

A. In the event disputes arise under this Agreement, Applicant may, within fifteen (15) days after Applicant knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR § 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Agreement.

C. Notwithstanding any other rights otherwise authorized in law or equity, any disputes pursuant to this Agreement shall be limited to Departmental decisions on remedial activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, VII.B, and VIII, 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, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Department shall reserve all rights that it may have under law.

B. By entering into this Agreement, Applicant agrees to comply with and be bound by the provisions of 6 NYCRR subparts 375-1, 375-3 and 375-6; the provisions of such subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Agreement.

C. The Department may exempt Applicant from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR §§ 375-1.12(b), (c), and (d).

D. 1. Applicant shall use "best efforts" to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Applicant's obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Applicant's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Applicant shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same.

2. 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 Applicant to modify the Work Plan pursuant to 6 NYCRR § 375-1.6(d)(3) to reflect changes necessitated by Applicant's inability to obtain such interest.

E. 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.

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant 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 Applicant of its 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). Applicant 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 Applicant desires that any provision of this Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties in Subparagraph III.A.1 of the Agreement.

ii. If Applicant seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph III.A.1 of the Agreement.

iii. Requests for a change to a time frame set forth in this Agreement shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Applicant promptly.

G. 1. If there are multiple parties signing this Agreement, the term "Applicant" shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Applicant to implement any obligations under this Agreement shall not affect the obligations of the remaining Applicant(s) under this Agreement.

2. If Applicant is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants 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 Applicants 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 Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

4. Any change to parties pursuant to this Agreement, including successors and assigns through acquisition of title, is subject to approval by the Department, after submittal of an application acceptable to the Department.

H. Applicant shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL §27-1421(6) and 6 NYCRR § 375-1.5(b)(5).

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

J. Applicant and Applicant's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant's responsibilities under this Agreement.

K. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

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

M. 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.

EXHIBIT B

The DER has reviewed the Volunteer's proposed outline, entitled Sampling and Remediation Plan, dated June 18, 2010, sent by their attorney to the Office of Attorney General on June 18, 2010, for settlement purposes. Our review was premised upon the Volunteer's intention to modify the BCP from Track 1 Unrestricted to Track 4 Restricted Residential. Based upon our review, the proposed outline is acceptable for settlement as follows:

- The activities listed under the heading "Supplemental Work to Complete the RI" are acceptable See attachment
- Additional investigation parameters needed to complete the RI are based upon the sixth bulleted item found under the heading "Pre-Construction and Remediation Procedures". Additional sampling must be conducted to identify sources which meet either the definition of 6NYCRR375-1.2(u), exceed a total TIC content of 100 ppm (for 30 SVOC TICs and/or 10 ppm for 10 VOC TICs), or exceed a PID meter reading of 250 ppm
- DEC will not require additional TPH sampling, and existing TPH data will be accepted to delineate the extent of TPH contamination at the site, specifically the data contained in the following figures/maps incorporated in the May 22, 2008 Gannett Fleming Engineers "Final Remedial Investigation Report - Former Cibro Petroleum Terminal Site, Harbor Island, NY BCP Site #C130153 / BCA Index #W1-1075-05-09" submitted on behalf of Blue Island LLC: Figure 3, Figure 4, Appendix B: Figure 4-3, Figure 4-2 and Figure 4-1
- An Investigative Work Plan, as described in Section 3.3 of DER – 10, based upon these activities, must be submitted and approved before the work is performed. In accordance with DER-10, the work provided for in the workplan, in addition to existing site data and information is expected to provide the data necessary to delineate the areal and vertical extent of any release to an environmental medium and to develop remedial alternative(s) to address the release.

Further, if the Volunteer elects to propose any interim remedial measure, a remedial design/remedial action work plan, as described in Section 5 of DER – 10, must be submitted and approved before the work is performed. Any soil vapor intrusion investigation will be in accord with the NYSDOH Guidance for Evaluating Soil Vapor Intrusion in the State of New York, dated October 2006

Sampling and Remediation Plan

June 18, 2010

Supplementary Work to Complete the RI:

1. Install 5 temporary wells to fill gaps in the groundwater monitoring network.
2. Measure free product in all wells and if oil found sample it instead of GW.
3. Collect GW samples from wells that don't have free product: max 10 samples.
4. Collect sediment and GW samples from below the peat at three locations.
5. Collect surficial soil samples in a 100-ft grid (only accessible and undisturbed areas) at the following percentages: 100% lead, 20% PCBs, 30% RCRA metals. Sample inaccessible areas during remediation if samples from adjacent areas show excessive levels of tested constituents.
6. Collect five 0.5-2 ft deep soil samples in the area previously delineated as clean that will be analyzed by Methods 8260+10 and 8270+20 for VOCs and SVOCs, respectively.
7. Find the historical 3000-gal UST formerly observed near the filling racks during the remediation/construction phase.
8. Include sediment sampling in the canal along the bulkhead as a requirement in the bulkhead reconstruction permit.
9. During the remediation phase determine if soil vapor mitigation will be needed. (See Items #8 & #9 on remediation below)

Appendix B: Resumes

ELLIS KOCH, CPG
PROJECT DIRECTOR

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YEARS OF PROFESSIONAL EXPERIENCE: 43

PRINCIPAL EXPERTISE:
Mr. Koch is a certified professional geologist that has focused his career on describing environmental conditions in soil and groundwater, the health and cleanup risks of the discovered chemicals, and cost-effective, expeditious remediation strategies to remove the stigma from the properties. He has applied this expertise to a variety of locations, releases and situations as described ahead.

SUMMARY OF EXPERIENCE:
Mr. Koch has been a Project Director since 2001. He is responsible for technical project development and oversight. Prior to 2001, Mr. Koch was a member of a large international consulting company from 1979 to 2001. His responsibilities involved providing senior technical oversight on projects ranging into the millions of dollars, managing accounts, and strategic market penetration. He also had operations responsibility from 1985 until 1996.

From 1997 until 2001 Mr. Koch was primarily involved in the technical aspects of the Real Estate and Asset Solutions initiative. As such he applied investigation, risk management, remediation, and regulatory negotiation expertise to develop strategies for dealing with the financial risk attributes of contaminated property.

From 1974 until 1979 Mr. Koch was a member of the Suffolk County Department of Environmental Control where he was the principal hydrogeologist for the County. Prior to that, from 1967 until 1974 he held the position of Hydrologist at the U.S. Geological Survey, Long Island Sub-district Office in Mineola, NY.

Mr. Koch has designed and managed projects with multi-million dollar budgets. He has been responsible for projects concerning the effects of oil and gas leakage and dissolved chemicals on soil and groundwater quality. He has developed and implemented plans for removing these contaminants using combinations of in situ and traditional treatment and control technologies. Mr. Koch has provided expert testimony on behalf of industrial clients in the preparation of applications for permits, at hearings and in the development of information for compliance documents and for complex groundwater situations pertaining to toxic-tort environmental cases. In addition, he has designed and successfully negotiated RI/FS plans with USEPA and state regulatory agencies that concerned sites covered by RCRA and CERCLA statutory requirements.

Mr. Koch designed and managed studies to assess the groundwater potential of aquifers for use in the prediction of aquifer yield and the effects of groundwater withdrawal.

Mr. Koch also served between 1977 and 1979 as an Adjunct Assistant Professor in the Environmental Studies Program at the State University of New York at Stony Brook, where he taught students the design, and implementation of groundwater investigations.

PROJECT HIGHLIGHTS:

- REAL ESTATE SERVICES
    - Property Transfer Due Diligence
        - Negotiated one of the first master services contracts and scope of services with a leading New York bank to perform environmental site assessments for properties undergoing financing due diligence.
        - Managed the due diligence section of a national consulting company to insure the technical quality of the products.

        - Participated in numerous ESA projects concerning petroleum and industrial properties.
    - Environmental Risk Management
        - Negotiated a guaranteed remediation contract with a Connecticut manufacturing company to assume the total cost for completing a RCRA closure and state consent order cleanup of the industrial property. Negotiated the underlying insurance policy and terms and conditions of the master contract.
        - Prepared a guaranteed remediation estimate and quotation for an abandoned petroleum terminal on the south shore of Long Island that was owned by a debtor in bankruptcy. Provided information needed to reduce the taxes on the property. Provided support to the property owner for companies interested in purchasing the property.
        - Provided due diligence to a company buying properties from a Community Development Agency for a portfolio of properties consisting of state and federal superfund sites. Currently providing oversight support to document the extent of the remediation and any exposure pathways that will need to be addressed in the future buildout. Negotiating the site management plan with the regulatory agency.
        - Managed the cleanup of a former gasoline station and provided sales negotiation services for the property owner subsequent to the implementation of the cleanup program.
        - Acted as environmental agent for a client interested in purchasing a former oil terminal. Provided due diligence and negotiation support.
        - Designed an environmental demolition project for a 39-acre former copper refinery concerning hazardous chemicals such as asbestos, PCBs, solvents and heavy metals. Cost savings were achieved by pre-characterizing the site so that the demolition and waste removal could be scheduled to minimize repeat handling of materials and downtime caused by "surprises" that would upset the schedule.
- CERCLA/GROUNDWATER/SOIL CONTAMINATION
    - Negotiated a cost-effective investigation and cleanup strategy for a petroleum leak at a terminal in upstate NY that saved the client hundreds of thousands of dollars compared to the plan presented by the regulatory agency. Cost savings were achieved by using a lower capital and energy approach than what was being asked for by the regulatory agency.
    - Negotiated a cost-effective approach to demonstrate that natural attenuation was an effective cleanup technology for gasoline constituents dissolved in groundwater beneath a petroleum terminal in upstate NY. Cost savings were achieved by demonstrating that MNA was occurring and that the contaminants were not migrating offsite.
    - Developed an approach to determine the extent of PCB contaminated soil for a major manufacturing firm in upstate NY, prepared a removal plan, and supervised the removal. Cost-saving was achieved by obtaining laboratory results overnight to identify areas that were clean from those needing further excavation, and to order the appropriate number of trucks to handle the expected soil amounts without any downtime.
    - Supervised the implementation of a four-year investigation and remedial program to control industrial discharges into the Housatonic River in western Massachusetts.
    - Developed a compliance-monitoring program to satisfy requirements of the Pennsylvania DER for an electrical utility in central Pennsylvania.
    - Designed and implemented a study to define the effects on the underlying aquifer system of an ore processing plant in the western US, and developed a monitoring and remedial program to satisfy the requirements of the client.
    - Developed and implemented an RI/FS for an industrial client in western Massachusetts at a plant site affected by solvent leakage, drum burial, waste burial, and PCB disposal. A unique cost-savings approach was to substitute empirical field data in lieu of a solute transport model to predict plume concentrations and establish an early warning system.

- Designed and implemented multi-disciplinary studies to define the effect of solvent leakage on groundwater quality at a site in Kansas; analyzed the data to separate the effect of various solvent users in the study area; presented the information to state regulatory agencies and negotiated and implemented a clean-up strategy. Subsequently supervised the design and testing of the remedial system.

- EXPERT TESTIMONY
  - Provided expert testimony for a plaintiff in the Woburn toxic-tort case that resulted in a jury finding of not guilty.
- LONG ISLAND HYDROGEOLOGY
  - Managed studies and collected data for numerous projects on Long Island, New York to assess the effects of pumpage on groundwater and surface water levels and subsequent effects on streamflow and salinity changes in adjacent saltwater bodies.
  - Helped design and review the results of groundwater modeling studies used to predict the effects of groundwater diversion on water levels due to ocean outfall of treated sewage.

EDUCATION:
M.S. Geology/Hydrogeology, Virginia Polytechnic Institute and University, 1967
B.S. Geology, Brooklyn College of the City University of New York, 1965

PROFESSIONAL REGISTRATIONS:
Registered Geologist: Georgia, Virginia, Arizona, Pennsylvania, and Florida

Certified Professional Geologist: American Institute of Professional Geologists,

LICENSES:
New York State High School Earth Science Teacher

SELECTED PUBLICATIONS:

Koch, Ellis, 1974, Flow of Contaminants in the Saturated Zone, Suffolk County Department of Environmental Control.

Koch, Ellis, 1970, Man's Effect on the Quality of Selected Streams in Southern Nassau County, Long Island, New York: U.S. Geological Survey Professional Paper 700-C, pp. C189-192.

Koch, Ellis, Harris Fischer, James Maloney, and Joseph Baier, 1976, Impact Assessment of the Proposed Plainview Landfill, Town of Oyster Bay: Suffolk County Department of Environmental Control, 32 p.

Koch, Ellis, A.A. Giamio, and D.J. Sulam, 1973, Design and Operation of the Bay Park Artificial-Recharge Plant, Bay Park, New York: U.S. Geological Survey Professional Paper 751, Chapter B.

Perlmutter, N.M., and Ellis Koch, 1975, Hydrochemical Data From Investigation of Water Quality in Sewered Areas in Southern Nassau County, Long Island, New York: Nassau County Department of Public Works, Long Island Water Resources Investigations, LIWR-4, 34 p.