

NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

In the Matter of a Remedial Program
for North Water Street, Poughkeepsie,
New York under Article 27, Title 14 of the
Environmental Conservation Law
by:

BROWNFIELD SITE
CLEANUP AGREEMENT

Index # D3-0004-99-04

Central Hudson Gas and Electric Corporation,

Site # 314070

Participant.

WHEREAS, the Brownfield Cleanup Program Act was enacted to encourage the voluntary remediation of brownfield sites for reuse and redevelopment so as to advance the policy of the State of New York to conserve, improve, and protect its natural resources and environment, and control water, land, and air pollution; and

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

WHEREAS, Central Hudson Gas and Electric Corporation ("Applicant") entered into a Voluntary Cleanup Agreement ("VCA") Index No. D3-0004-99-04 with the Department, effective March 8, 2000, relative to property located at North Water Street, Poughkeepsie, Dutchess County, which property is identified as the City of Poughkeepsie Property Tax Map No. 6062-67-753334. The VCA is attached hereto as Exhibit "A."

WHEREAS, the Applicant plans to conduct a remedial program at the North Water Street Site (the "Site") which includes an investigation, and the Department, by electronic mail dated October 3, 2003, approved the Applicant's "Remedial Investigation Work Plan" dated June, 2003 together with the letter amendment thereto dated June 15, 2004. The intended use of the property is industrial/commercial; and

WHEREAS, the Site has been redefined and is identified as Lot 1A in Exhibit "B" of this Agreement, which includes a map of the site showing its location.

WHEREAS, by letter and certification dated June 1, 2004, the Applicant submitted a request to participate in the Brownfield Cleanup Program for the property located at North Water Street and has certified that it is eligible to participate in such program as a Participant; the Department has determined based upon such certification that the Applicant is eligible to participate in the Brownfield Cleanup Program as a Participant as defined in ECL 27-1405 (1)(a).

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

I. Citizen Participation Plan

Within twenty (20) Days after the effective date of this Agreement, Applicant shall submit revisions to the written citizen participation plan which was prepared pursuant to the VCA and which shall be revised to comply with the requirements of ECL 27-1417 and shall (i) update the names and addresses of the interested public and include a brownfield site contact list; (ii) identify major issues of public concern related to the Site; (iii) include a description of citizen participation activities already performed; and (iv) include a description and schedule of public participation activities that are either specifically required by law or are needed to address public concerns related to the Site. The revised Citizen Participation Plan shall be attached to and incorporated into this Agreement as Exhibit "C."

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 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 migrated from such Site;
3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or
4. "OM&M Work Plan" if the Work Plan provides for operation, maintenance, and/or monitoring.

B. Submission/Implementation of Work Plans

1. The "Remedial Investigation Work Plan," dated June, 2003 together with the letter amendment thereto dated June 15, 2004 has been approved by the Department and is attached to and incorporated into this Agreement in Exhibit "D". Hereafter, the Applicant can submit such other and additional work plans as it deems appropriate.

2. All proposed Work Plans 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 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 incorporated into and become an enforceable part of this Agreement as Exhibit "E" and shall be implemented in accordance with the schedule contained therein.

ii) If the Department modifies a Work Plan, the reasons for such modification shall be provided in writing. Within twenty (20) Days after receiving written notice of such modification, Applicant shall elect in writing to (a) implement the Work Plan as modified; (b) implement any other Department-approved Work Plan(s); (c) invoke dispute resolution pursuant to Paragraph XIV; or (d) terminate this Agreement pursuant to Paragraph XIII.

iii) 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, Applicant shall elect in writing to (a) modify or expand it within thirty (30) Days of receipt of the written disapproval notice; (b) complete any other Department-approved Work Plan(s); (c) invoke dispute resolution pursuant to Paragraph XIV; or (d) terminate this Agreement pursuant to Subparagraph XIII.

3. An OM&M Work 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, Applicant 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 Applicant 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 Applicant invokes dispute resolution pursuant to Paragraph XIV, either party may terminate this Agreement pursuant to Paragraph XIII.

D. Submission of Final Reports

1. In accordance with the schedule contained in a Work Plan, Applicant shall submit a Final Report that 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.

i) The Final Report for an Investigation Work Plan shall comply with the requirements set forth at ECL 27-1411(1) and 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. 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 that supports such determination.

ii) A Final Engineering Report certifying that remediation of the Site has been performed in accordance with this Agreement shall be prepared by a Professional Engineer (or other expert approved by the Department) with primary responsibility for the day to day performance of the activities under this Agreement. The Report shall be prepared in accordance with the requirements of ECL 27-1419(1) and (2) and shall contain a certification that all such activities were performed in accordance with the Department approved Work Plan. The Department shall review such Report, the submittals made pursuant to the 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 time frames; if so, a written Certificate of Completion will be issued in accordance with the requirements of ECL 27-1419. Such Certificate of Completion may be modified or revoked, after notice and an opportunity for hearing, upon a finding that (a) Applicant failed to comply with this Agreement; (b) Applicant made a misrepresentation of material fact in connection with its Application or its certification that cleanup levels required by this Agreement were reached; or (c) good cause exists for such modification or revocation.

iii) All other Work Plan Final Reports shall contain a certification 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. 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 XIII.

E. 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. 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 Applicant to modify or expand the

submittal. Within twenty (20) 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 XIV; or (iv) terminate this Agreement pursuant to Paragraph XIII. 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.

F. 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)(e). 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 filed an Environmental Easement in accordance with Paragraph X within sixty (60) Days of receipt of the Department's determination.

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 a revision to an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL 27-1415(3). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL 27-1417(3)(e) and the Citizen Participation Plan developed pursuant to Paragraph I of this Agreement. If the Department determines following the close of the public comment period that revisions are needed, Applicant agrees to negotiate revisions to the proposed Remedial Work Plan in accordance with Paragraph II.C. 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 XIII.

G. 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, Applicant shall file a report annually (unless a different frequency is specified in an approved Work Plan) on the 1st day of the month following the anniversary of the start of the OM&M and continuing until the Department notifies Applicant in writing that such report may be discontinued. Such report shall be signed by a Professional Engineer or by an expert approved by

the Department to perform that function and certified under penalty of perjury that the institutional and/or engineering controls are unchanged from the previous certification and that nothing has occurred that would impair the ability of such controls to protect public health and the environment or constitute a violation or failure to comply with the approved OM&M Plan. Applicant 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, Applicant 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 report required by this Subparagraph as well as in any progress reports required by Paragraph XI. Applicant 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 or other expert approved by the Department stating that such controls are no longer necessary. The Department shall not unreasonably withhold its approval of such petition.

III. Enforcement

This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant 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) Days of when it obtains knowledge of any such event. Applicant 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. Applicant 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.

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.

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.

V. Payment of State Costs

A. Within forty-five (45) Days after the effective date of this Agreement, Applicant shall pay to the Department the sum of \$13,073.53, which shall represent reimbursement for State Costs incurred pursuant to the VCA referenced herein, as set forth in the cost summary attached as Exhibit "E."

B. 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 for work performed at or in connection with the Site prior to the effective date of this

Agreement, as well as for negotiating this Agreement, and all costs associated with this Agreement up to and including the date upon which the Certificate of Completion is issued, the Department approves the Final Report relative to OM&M, or this Agreement is terminated pursuant to Paragraph XIII, whichever is later.

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

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

Mr. Jeffrey A. Clock
Director of Environmental Affairs
Central Hudson Gas and Electric Corporation
284 South Avenue
Poughkeepsie, New York 12601

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

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

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

G. Applicant may contest, in writing, invoiced costs under this Agreement 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 Applicant objects to an invoiced cost, Applicant shall pay all costs not objected to within the time frame set forth in Subparagraphs V.A and V.B 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 Director of the Bureau of Program Management ("BPM Director") who shall have the authority to relieve Applicant of the obligation to pay invalid costs. Within forty-five (45) Days of the Department's determination of the objection, Applicant shall pay to the Department the amount which the BPM Director or the BPM Director's designee determines Applicant is obligated to pay or commence an action or proceeding seeking appropriate judicial relief.

H. 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 Applicant written notice of such failure of collection, and (ii) the Department does not receive from Applicant a certified check or bank check within fourteen (14) Days after the date of the Department's written notification.

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. A Notice of the Liability Limitation shall be filed with the recording officer of the county in which the Site is located within thirty (30) Days of (i) the effective date of the Certificate of Completion or (ii) the date Applicant acquires title to the Site, whichever is later.

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, 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 or the VCA 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 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.F.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. 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). Such instrument shall be attached hereto as Exhibit "F."

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 human health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or other expert 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 XII.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 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. Communications

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

1. Communication from Applicant shall be sent to:

Robert Schick
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, New York 12233-7010
Note: three copies (one unbound) of work plans are required to be sent.

Gary Litwin
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216
Note: two copies of work plans are required to be sent, and

Patricia J. Mastrianni, Esq
Division of Environmental Enforcement
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-5550
Correspondence only

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

Mr. Jeffrey A. Clock
Director of Environmental Affairs
Central Hudson Gas and Electric Corporation
284 South Avenue
Poughkeepsie, New York 12601

Dennis P. Harkawik
Jaeckle Fleischmann & Mugel, LLP
Fleet Bank Building, Twelve Fountain Plaza
Buffalo, New York 14202-2292

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 XII or in Paragraph V.

XIII. Termination of Agreement

Applicant may terminate this Agreement at any time by providing written notification to the parties listed in Subparagraph XII.A.1. The Department may terminate this Agreement at any time pursuant to Subparagraph XV.A or in the event Applicant fails to substantially comply with the Agreement's terms and conditions. The Department shall provide written notification to Applicant setting forth the basis for termination of the Agreement. The termination shall be effective the 5th day after the non-terminating party's receipt of such written notification, except that such termination shall not affect the provisions contained in Paragraphs V, VII.B, and VIII.

XIV. Dispute Resolution

A. In the event disputes arise regarding any notice of disapproval of a submittal, proposed Work Plan or Final Report, or during the implementation of any Work Plan, Applicant 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. The Department and Applicant shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph XIV.B. The period for informal negotiations shall not exceed thirty (30) Days from Applicant'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 Applicant 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 XIV.B.

B. 1. Applicant shall file with the Office of Hearings and Mediation ("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 Applicant relies (hereinafter called the "Statement of Position"). A copy of such request and written statement shall be provided contemporaneously to the Director of the Division of Environmental Remediation ("DER Director") and to the parties listed under Subparagraph XII.A.1.

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

3. Applicant 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 DER Director who shall issue a final decision resolving the dispute in a timely manner. The final

decision shall constitute a final agency action and Applicant shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Applicant 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. Applicant shall be in violation of this Agreement if it fails to comply with the final decision resolving this dispute within sixty (60) Days after the date of such final decision, or such other time period as may be provided in the final decision, unless it seeks judicial review of such decision within the sixty (60) Day period provided. In the event that Applicant seeks judicial review, Applicant 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 Applicant'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 XIV shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Applicant regarding the issue in dispute.

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

7. Nothing in this Paragraph XIV 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.

XV. 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 XIV, 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. Applicant shall allow the Department to attend, and shall notify the Department at least seven (7) 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 Applicant to allow the Department to attend portions of meetings where privileged matters are discussed.

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 that (i) is conducted on the Site or on different premises that are under common control or contiguous to or physically connected with the Site and such activity manages exclusively hazardous waste and/or petroleum from such Site, and (ii) satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit, as determined by the Department.

D. Applicant 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 Applicant’s obligations under this Agreement. If, despite Applicant’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, Applicant shall promptly notify the Department, and include a summary of the steps taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same. 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 Subparagraph II.C of this Agreement to reflect changes necessitated by the lack of access and/or approvals.

E. All approved Work Plans, Final Reports, and other documents required under this Agreement shall be submitted to the Department in an electronic format acceptable to the Department within thirty (30) Days of approval. If any document cannot be converted into electronic format, Applicant shall so advise the Department and, if the Department concurs, submit such document in an alternative format acceptable to the Department.

F. Applicant 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 for the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement. Applicant 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. Applicant shall nonetheless be responsible for ensuring that Applicant’s contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

G. 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.

H. 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 Applicant’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 "C" or "D." 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, other than a provision of a Work Plan or a time frame, Applicant shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XII.A.1.

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

I. 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 XV.I.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.

J. Applicant shall be entitled to contribution protection to the extent authorized by ECL 27-1421(6).

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

L. 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.

M. 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. Whenever terms listed in the Glossary attached hereto are used in this Agreement or its 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.

N. Applicant'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.

O. 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.

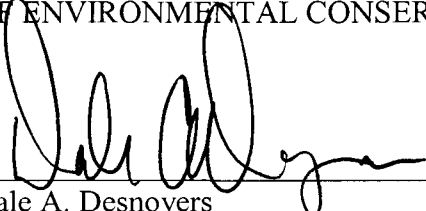
P. This Agreement supersedes and replaces the Voluntary Cleanup Agreement referenced herein.

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

DATED: MAY 12 2005

DENISE SHEEHAN, ACTING COMMISSIONER
NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

By: _____


Dale A. Desnoyers
Director, Division of Environmental Remediation

Glossary of Terms

The following terms shall have the following meanings:

“Day”: a calendar day. In computing any period of time under this Agreement, if 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.

“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 Applicant’s reasonable control.

“IRM”: an interim remedial measure which is a discrete set of activities which can be undertaken without extensive investigation and evaluation to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to a Site.

“OM&M”: operation, maintenance, and monitoring.

“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.

“State Costs”: all the State’s expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating, implementing, and administering this Agreement. Approved agency fringe benefit and indirect cost rates will be applied.

“Termination Date”: the date upon which (i) the Department issues the Certificate of Completion or approves the Final Report relative to the OM&M at the Site, whichever is later, or (ii) the Agreement terminates pursuant to Paragraph XIII or Subparagraph XV.A.,

“Work Plan”: a Department-approved work plan, as may be modified, that Applicant shall implement and that is attached to this Agreement.

EXHIBIT "A"

Voluntary Cleanup Agreement

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of an
Investigation and, if needed,
Remediation of
North Water Street, Poughkeepsie,
by

AGREEMENT

INDEX NUMBER: D3-0004-99-04

Central Hudson Gas and Electric Corporation,
Company.

SITE: #314070

DEFINITIONS

For purposes of this Agreement, the following terms have the following definitions:

A. "Current Use": The Site is used by Company as a propane peaking facility and other utility operations.

B. The Site's "Covered Contamination": the concentrations of Existing Contamination that remain at the Site at the time the Department issues the "no further action" letter pursuant to Paragraph II.J of this Agreement.

C. "ECL": the Environmental Conservation Law.

D. "Day": a calendar day unless otherwise specified.

E. "Department": the New York State Department of Environmental Conservation.

F. The Site's "Existing Contamination": means possible coal/coke/ash, coal tar, purifier waste, or petroleum-based residues and other substances associated with MGP operations, including hazardous wastes as ECL 27-1301 defines that term, that MGP facilities formerly operating on the Site generated. The term also includes contamination encountered during the course of the Agreement's implementation that relates to or is commingled with contamination related to the MGP facilities formerly operated at the Site and also hazardous substances from other operations conducted by Company at the Site, the nature and extent of which were unknown or inadequately characterized as of the effective date of this Agreement but shall be fully characterized to the Department's satisfaction.

G. "Investigation Work Plan": a Department-approved Investigation Work Plan pertaining to the Site that Company shall implement, if one becomes necessary following completion by the Company of the Supplemental PSA, and that will be attached to this Agreement as Exhibit

"C", as may be modified under the terms of this Agreement and is an enforceable part of this Agreement.

H. Interim Remedial Measure ("IRM"): a discrete set of activities to address both emergency and non-emergency site conditions related to the Existing Contamination, which can be undertaken without extensive investigation and evaluation, to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to the Site.

I. "IRM Work Plan": a Department-approved IRM Work Plan related to one or more IRMs that may be implemented by Company, the purpose of which shall be to address conditions related to the Existing Contamination. The IRM Work Plan shall include a chronological description of the anticipated IRM activities together with a schedule for performance of those activities. The IRM Work Plan, if proposed by Company and approved by the Department, will be attached to this Agreement as Exhibit D.

J. "Supplemental PSA": a supplemental preliminary site assessment to gather additional data to enable the Department to characterize Existing Contamination which is or may be present at the Site and to enable the Department to determine whether it is necessary to develop and implement an Investigation Work Plan and whether remediation will be required.

K. "Supplemental PSA Work Plan": the Department-approved Supplemental PSA Work Plan pertaining to Existing Contamination at the Site that the Company shall implement. Company has completed a Phase I and a Phase II investigation of the Site and has provided Reports of the Phase I and Phase II investigations to the Department. The Supplemental PSA Work Plan, which will supplement the foregoing data regarding this Site, has been approved and is attached hereto as Exhibit "B".

L. "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.

M. "Remediation Work Plan": a Department-approved Remediation Work Plan pertaining to the Site that Company shall implement, if one becomes necessary, and that will be attached to this Agreement as Exhibit "E", as may be modified under the terms of this Agreement and, as a result, may appear in such other identified exhibit in this Agreement as this Agreement may provide, and is an enforceable part of this Agreement.

N. "Site": that property which is located on North Water Street in the City of Poughkeepsie, bearing Tax Map Identifier No. 6062-67-753334. Exhibit "A" of this Agreement is a map of the Site showing its general location.

O. "Company": Central Hudson Gas and Electric Corporation, incorporated in the State of New York, with corporate offices located at 284 South Avenue, Poughkeepsie, New York 12601.

CONSIDERING

1. The Department is responsible for enforcement of the ECL. This Agreement is entered into pursuant to the Department's authority under that law and constitutes an administrative settlement for purposes of 42 USC 9613(f) with respect to the Existing Contamination at the Site.

2. Company represents, and for the purposes of this Agreement, the Department relies on those representations, that Company's involvement with the Site and with the facility on that Site is limited to the following: Company is the successor corporation to the Poughkeepsie Light, Heat & Power Company which operated a manufactured gas plant ("MGP") at the Site from 1911 until 1954. Company is the current owner of the Site.

3. The Department has identified the Site as a potential Inactive Hazardous Waste Disposal Site for which further investigation is required to determine whether conditions at the Site constitute a significant threat to the public health or the environment as a result of Existing Contamination.

4. The Department's authority to require abatement and remediation of releases of, inter alia, hazardous substances as that term is defined in 42 U.S.C. 9601(14), including MGP wastes, that are in violation of law or that exceed State environmental quality standards (as those set forth in 6 NYCRR Part 703) ("hazardous substances"), is varied, including, but not limited to, ECL 1-0101, 3-0301, 71-1929, 71-2703, and 71-2705. In addition, the Department has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution caused, by inter alia, the release of hazardous substances into the environment. ECL 3-0301.1.i. Furthermore, the Department has authority to require abatement and remediation of significant threats to the public health or the environment caused by threatened releases of hazardous substances that are hazardous wastes as that term is defined in ECL 27-1301.

5. A. Company wishes to enter into this Agreement in order to ensure and the Department hereby determines that this Agreement constitutes a demonstration that any remedial action undertaken under this Agreement will be in compliance with the ECL and will not:

1. prevent or interfere significantly with any proposed, ongoing or completed remedial program at the Site, or

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

B. Company also wishes to enter into this Agreement in order to resolve its potential liability as a party responsible for the investigation and remediation of the Existing Contamination at the Site under ECL Article 27, Title 13 based upon Company's investigation and, if necessary,

remediation of the Site. The Department finds that such resolution, undertaken in accordance with the terms of this Agreement, is in the public interest.

C. Company, desirous of implementing an investigation program acceptable to the Department, consents to the terms and conditions of this Agreement.

6. The Department and Company agree that the goals of this Agreement are

A. for Company to,

1. implement the Supplemental PSA Work Plan and, if necessary, develop and implement an Investigation Work Plan and, if necessary, develop and implement a Department-approved Remediation Work Plan for the Site relating to the Existing Contamination and

2. reimburse the State's administrative costs as provided in this Agreement, and,

B. in accordance with the terms of this Agreement, for the Department to release, covenant not to sue, and forbear from bringing any action, proceeding, or suit against Company for the further investigation or remediation of the Existing Contamination at the Site.

7. Company agrees to be bound by the terms of this Agreement. Company consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Agreement, and agrees not to contest the validity of this Agreement or its terms.

IN CONSIDERATION OF AND IN EXCHANGE FOR THE DEPARTMENT'S RELEASE AND COVENANT NOT TO SUE SET FORTH IN THIS AGREEMENT, COMPANY AGREES TO THE FOLLOWING:

I. Performance and Reporting of the Supplemental PSA Work Plan

A. 1. Within 30 days of the effective date of this Agreement, Company shall submit to the Department all data within Company's possession or control regarding environmental conditions on-Site and off-Site, and other information described below, to the extent that the information is not contained in the Supplemental PSA Work Plan unless the Department advises Company that such data have previously been provided to the Department. The Department acknowledges that it has received Phase I and Phase II reports from the Company for the Site and that these reports need not be resubmitted. The data and other information shall include:

i. A brief history and description of the Site, including the types, quantities, physical state, location, and dates of disposal of hazardous substances including methods of disposal and spillage of such wastes;

ii. A concise summary of information held by Company and Company's attorneys and consultants with respect to all persons responsible for such disposal of hazardous substances, including but not limited to names, addresses, dates of disposal and any proof linking each such person responsible with hazardous substances identified pursuant to Subparagraph I.A.1; and

iii. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs.

B. Within 75 days after the execution of this Agreement, Company shall commence implementation of the Supplemental PSA Work Plan.

C. Company shall implement the Site assessment in accordance with the Department-approved Supplemental PSA Work Plan.

D. Company shall prepare a Supplemental PSA Report that shall:

1. include all data generated and all other information obtained during the Supplemental PSA;

2. provide all of the assessments and evaluations set forth in the Division of Environmental Remediation Technical & Administrative Guidance Memorandum 4007 and 4008 and other appropriate Departmental technical and administrative guidelines that shall have been developed as of the time of submission of the Supplemental PSA Work Plan except those assessments and evaluations that the Company has already provided the Department;

3. identify any additional data that must be collected related to the Existing Contamination; and

4. include a certification by the individual or firm with primary responsibility for the day to day performance of the Supplemental PSA that all activities that comprised the Supplemental PSA were performed in full accordance with the approved Supplemental PSA Work Plan.

E. 1. After its acceptance of the Supplemental PSA Report submitted under Subparagraph I.D of this Agreement, the Department shall determine and notify Company in writing whether further investigation and/or remediation of the Existing Contamination is necessary at the Site.

2. If the Department determines that no further investigation is necessary and remediation of the Existing Contamination is not required to allow the Site to be used for the Current

Use, it shall so state in writing and shall provide Company with the forbearance, release, and covenant not to sue described in Subparagraph II.I of this Agreement and with the notification letter described in Subparagraph II.J of this Agreement.

3. If the Department determines that further investigation and/or remediation of the Existing Contamination is needed to allow the Site to be used for the Current Use, it shall so state in writing; and both parties shall attempt in good faith to develop a proposed Investigation Work Plan in accordance with Paragraph II.A. of this Agreement. If within 10 days after receipt of the Department's written determination, Company elects not to develop an Investigation Work Plan; or, in the event that the Department concludes that a mutually acceptable Investigation Work Plan cannot be successfully negotiated, then, except with respect to

i. Company's obligations under Paragraphs VIII and X of this Agreement; and

ii. Company's obligation, here incurred, 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 under this Agreement were commenced; and

iii. the Department's right to enforce the obligations described in Subparagraphs I.E.3.i and I.E.3.ii of this Agreement under Paragraph VI of this Agreement,

this Agreement shall terminate; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

II. Performance and Reporting of the Investigation Work Plan and Development and Implementation of the Remediation Work Plan, if Necessary

A. If the Department determines pursuant to Subparagraph I.E.1 that an Investigation Work Plan is necessary to further characterize the nature and extent of the Existing Contamination at the Site, then Company shall submit to the Department a proposed Investigation Work Plan describing in detail the methods and procedures to be implemented in performing the Investigation Work Plan for the Site within 60 days after the Department notification unless the Company has elected not to perform the additional investigation and, if necessary, remediation under this Agreement pursuant to Subparagraph I.E.3.

B. 1. The Investigation Work Plan shall incorporate all elements of a Remedial Investigation ("RI") as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 USC 9601 et seq.], as amended, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the

Investigation Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.

2. The Investigation Work Plan shall include, but not be limited to, the following:

i. A chronological description of the anticipated Investigation activities together with a schedule for the performance of these activities.

ii. A Sampling and Analysis Plan that shall include:

a. A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience.

b. A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Field Methods Compendium," OSWER Directive 9285.2-11 (draft June 1993), as supplemented by the Department.

iii. A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the Investigation which shall be prepared in accordance with 29 CFR 1910 and all other applicable standards by a certified health and safety professional. Company shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Agreement.

C. Company shall implement the Department-approved Investigation Work Plan, which shall be attached to this Agreement as Exhibit "C" and made a part of this Agreement, in accordance with the schedule provided in the approved Investigation Work Plan.

D. Company shall notify the Department of any significant difficulties that may be encountered in implementing the Investigation Work Plan or any Department-approved modification to it and shall not modify any obligation unless first approved by the Department.

E. In accordance with the schedule contained in the Investigation Work Plan, Company shall submit to the Department a final investigation report. The final investigation report shall:

1. include all data generated and all other information obtained during the investigation;

2. provide all of the assessments and evaluations identified in the Investigation Work Plan;

3. identify any additional data that must be collected with respect to the Existing Contamination; and

4. include a certification by the individual or firm with primary responsibility for the day to day performance of the investigation that all activities that comprised the investigation were performed in full accordance with the Investigation Work Plan.

F. 1. After its acceptance of the final investigative report submitted under Subparagraph II.E of this Agreement, the Department shall determine whether it has sufficient information respecting the nature and extent of the Existing Contamination on the Site.

2. If the Department determines that it does not have sufficient information respecting the nature and extent of the Existing Contamination, it will so notify Company in writing. Company shall collect such additional data under a Department-approved revision to the Investigation Work Plan, which shall be attached to this Agreement as Exhibit "C-1" and made a part of this Agreement. However, if within 10 days after receipt of the Department's written notification, Company elects in writing not to collect such additional data or if within that period the Department and Company cannot agree upon revisions to the Investigation Work Plan, then, except with respect to

i. Company's obligations under Paragraphs VIII and X of this Agreement; and

ii. Company's obligation, here incurred, 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 under the Agreement were commenced; and

iii. the Department's right to enforce the obligations described in Subparagraphs II.F.2.i and II.F.2.ii of this Agreement under Paragraph VI of this Agreement,

this Agreement shall terminate effective the tenth day after Company's receipt of the Department's written notification; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

3. If the Department determines that it has sufficient information respecting the nature and extent of the Existing Contamination, it will so inform Company in writing, and the Department will inform it in that communication whether the Department believes that remediation of the Existing Contamination on the Site is needed to allow the Site to be used for the Current Use.

4. If the Department determines that no remediation of the Existing Contamination is needed to allow the Site to be used for the Current Use, it shall so state in writing and shall provide Company with the forbearance, release, and covenant not to sue for matters relating

to the Existing Contamination described in Subparagraph II.I of this Agreement and with the notification letter described in Subparagraph II.J of this Agreement.

5. If the Department determines that remediation of the Existing Contamination is needed to allow the Site to be used for the Current Use, it shall so state in writing; and both parties shall develop a proposed Remediation Work Plan. The proposed Remediation Work Plan shall include, among other requirements, an evaluation of the proposed remedy for the Existing Contamination considering the factors set forth in 6 NYCRR 375-1.10(c). At a minimum, the proposed remedial plan for the Existing Contamination must eliminate or mitigate all significant threats to the environment or public health that the Existing Contamination constitutes and that allows the Current Use to proceed safely. In addition, the Proposed Work Plan shall provide a detailed description of the remedial objectives and the possible means by which each element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:

- i. the construction and operation of any structures;
- ii. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby if such is necessary;
- iii. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air if necessary;
- iv. physical security and posting of the Site if necessary;
- v. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Construction; and
- vi. monitoring, if such is necessary, which integrates needs which are present on-Site and, if necessary, off-Site during implementation of the Department-selected remedial alternative.
- vii. "Biddable Quality" documents for the Remedial Design including, but not limited to, documents and specifications prepared, signed, and sealed by a professional engineer. These plans shall satisfy all applicable local, state and federal laws, rules and regulations;
- viii. A time schedule to implement the Remedial Design;
- ix. The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design, including a schedule for periodic sampling to the extent necessary of groundwater monitoring wells on-Site and off-Site;

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

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

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

xiii. A citizen participation plan which incorporates appropriate activities as required under the Voluntary Cleanup Program; and

xiv. A provision that if during the Remediation Work Plan's implementation, contamination within the definition of Existing Contamination is discovered that was not discussed in the final investigative report, Company shall investigate the nature and extent of such newly discovered contamination, and, if necessary, the Remediation Work Plan will be revised to have Company remediate such newly discovered contamination in the event that this remediation is needed to allow the Contemplated Use to proceed.

6. The Remediation Work shall be noticed for public comment in accordance with Subparagraph II.F.7 of this Agreement. If within 10 days after receipt of the Department's written determination, Company elects not to develop a Remediation Work Plan; or, in the event that the Department concludes that a mutually acceptable Remediation Work Plan cannot be successfully negotiated, then, except with respect to

i. Company's obligations under Paragraphs VIII and X of this Agreement; and

ii. Company's obligation, here incurred, 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 under the Agreement were commenced; and

iii. the Department's right to enforce the obligations described in Subparagraphs II.F.6.i and II.F.6.ii of this Agreement under Paragraph VI of this Agreement,

this Agreement shall terminate; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

7. Upon development of a proposed Remediation Work Plan, the Department will publish a notice in the Environmental Notice Bulletin to inform the public of the public's opportunity to submit to the Department by no later than 30 days after the date of the issue of the Environmental Notice Bulletin in which the notice shall appear, comments on the proposed Remediation Work Plan and shall mail an equivalent notice to City of Poughkeepsie and County of Dutchess. If, as a result of its review of the comments received, the Department determines that the proposed Remediation Work Plan to implement the Department-approved remedial activities for the Site must be revised:

i. due to environmental conditions related to the Existing Contamination at the Site that were unknown to the Department at the time of its approval of the proposed Remediation Work Plan; or

ii. due to information received, in whole or in part, after the Department's approval of the proposed Remediation Work Plan, which indicates that the activities carried out in accordance with the Remediation Work Plan relating to the Existing Contamination are not sufficiently protective of human health and the environment for the Contemplated Use,

then the Department will so notify Company and will immediately commence negotiations with Company to revise the proposed Remediation Work Plan accordingly. If the Department and Company agree upon revisions to the proposed Remediation Work Plan, the revised proposed Remediation Work Plan shall become the final Remediation Work Plan and shall be attached to this Agreement as Exhibit "E" and made a part of this Agreement. However, if after goodfaith negotiations, Company and the Department cannot agree upon revisions to the proposed Remediation Work Plan, then, except with respect to

iii. Company's obligations under Paragraphs VIII and X of this Agreement; and

iv. Company's obligation, here incurred, 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 under the Agreement were commenced; and

v. the Department's right to enforce the obligations described in Subparagraphs II.F.7.iii and II.F.7.iv of this Agreement under Paragraph VI of this Agreement,

this Agreement shall terminate effective the date of the Department's written notification to Company that negotiations have failed to develop an acceptable Remediation Work Plan; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement. If the Department does not make such a determination, the proposed Remediation Work Plan shall become the final Remediation Work Plan and shall be attached to this Agreement as Exhibit "E" and made a part of this Agreement.

8. Company shall commence implementation of, and implement, the final Remediation Work Plan contained in Exhibit "E" in accordance with its terms. However, the parties agree that the final Remediation Work Plan will be modified in the event that Existing Contamination previously unknown or inadequately characterized is encountered during implementation of the final Remediation Work Plan unless after good faith negotiations, Company and the Department cannot agree upon modifications to the final Remediation Work Plan. In such event, except with respect to

i. Company's obligations under Paragraphs VIII and X of this Agreement; and

ii. Company's obligation, here incurred, 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 remedial activities were commenced; and

iii. the Department's right to enforce the obligations described in Subparagraphs II.F.8.i and II.F.8.ii of this Agreement under Paragraph VI of this Agreement,

this Agreement shall terminate effective the date of the Department's written notification to Company that negotiations have failed to develop an acceptable modification to the final Remediation Work Plan; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

G. 1. In accordance with the schedule contained in Exhibit "E," as maybe modified by agreement between the parties and which modifications shall appear in Exhibit "E-1" of this Agreement, Company shall submit to the Department a final engineering report that shall include "as-built" drawings showing all changes made during construction, to the extent necessary; and a certification that all activities were completed in full accordance with the Remediation Work Plan, any Department-approved modification to the Remediation Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Company pursuant thereto, and this Agreement.

2. Company shall submit a detailed post-remedial operation, maintenance, and monitoring plan ("O&M Plan"), if needed, in accordance with the time schedule and requirements in the Remediation Work Plan.

3. A professional engineer must prepare, sign, and seal the O&M Plan, "as built" drawings, final engineering report, and certification.

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

1. 1. After receipt of the final engineering report, the Department shall notify Company in writing whether the Department is satisfied that the Remediation Work Plan was satisfactorily implemented in compliance with Exhibit "E" (and, as appropriate "E-1") and the Department-approved design, which notification shall not be unreasonably withheld.

2. Upon being satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan have been reached, the Department shall notify Company in writing of its satisfaction and, except for the reservations identified below, the Department release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against, Company for the further investigation and remediation of the Site based upon the release or threatened release of any Covered Contamination (see subparagraph II.J and Exhibit F below), provided that (a) timely payments of the amounts specified in Paragraph VIII of this Agreement continue to be or have been made to the Department, (b) appropriate notices and deed restrictions, if they are necessary, have been recorded in accordance with Paragraphs XI and XII of this Agreement, and (c) Company and/or Company's lessees, Sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any. Nonetheless, the Department hereby reserves all of its rights concerning, and such release, covenant not to sue, and forbearance shall not extend to natural resource damages nor to any further investigation or remedial action relating to the Existing Contamination the Department deems necessary:

i. due to the off-Site presence of Existing Contamination other than petroleum, that may have migrated off-Site from an on-Site source resulting in impacts to environmental resources, to human health, or to other biota that are not inconsequential and to the off-Site presence of petroleum that may have migrated off-Site from an on-Site source, irrespective of whether the information available to Company and the Department at the time of the development of the Work Plan disclosed the existence or potential existence of such off-Site presence;

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

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

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

v. due to fraud committed, or mistake made, by Company in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan were reached.

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to contaminants at the Site other than those comprising the Existing Contamination or to Company if Company causes a, or suffers the, 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 if Company causes a, or suffers the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to any of Company's lessees, Sublessees, successors, or assigns who causes a, or suffers the, 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, after the effective date of this Agreement; who causes a, or suffers the use of the Site to, change from the Current Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or to any Company successor or assign who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same established resulting solely from this Agreement's execution.

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

J. If the Department is satisfied with the implementation of the Remediation Work Plan, any Department-approved modification to the Work Plan, and Department-approved details, documents, and specifications prepared by or on behalf of Company pursuant thereto, the Department shall provide Company with a written "no further action" letter substantially similar to the model letter attached to this Agreement and incorporated in this Agreement as Exhibit "F."

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

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

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

L. During implementation of all activities conducted on the Site under this Agreement, Company shall

1. have on-site a full-time representative who is qualified to supervise the activities undertaken; and

2. notify the Department of any significant difficulties that may be encountered in implementing the Supplemental PSA Work Plan, the Investigative Work Plan, the Remediation Work Plan, any Department-approved modification to any of them, or any Department-approved detailed document or specification prepared by or on behalf of Company pursuant to any, and shall not modify any, obligation unless first approved by the Department, which approval shall not be unreasonably withheld.

III. Interim Remedial Measures

A. Company may propose one or more IRMs for the Site. In proposing each IRM, the Company shall submit to the Department an IRM Work Plan that includes a chronological description of the anticipated IRM activities together with a schedule for performance of those activities.

B. Upon the Department's determination that the proposal is an appropriate IRM and upon the Department's approval of such IRM Work Plan, the IRM Work Plan shall be attached as Exhibit D, incorporated into and become an enforceable part of this Agreement; and the Company shall submit to the Department for their review and the Department's approval, in accordance with the schedule contained in the Department-approved IRM Work Plan, detailed documents and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include:

1. A chronological description of the anticipated investigation activities together with a schedule for the performance of these activities.

2. A Sampling and Analysis Plan that shall include:

i. A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience.

ii. A field sampling plan that defines sampling and data gathering methods in a manner consistent with the Department's Voluntary Cleanup Program.

iii. A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the Investigation Work Plan which shall be prepared in accordance with 29 CFR 1910 and all other applicable standards by a certified health and safety professional. Company shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Agreement.

iv. A citizen participation plan that is consistent with the Department's requirements under the Voluntary Cleanup Program and the citizen participation plan developed under the Investigation Work Plan.

The Company shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this Agreement. Company shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department.

C. During implementation of all construction activities identified in the Department-approved IRM Work Plan, Company shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within the schedule contained in the Department-approved IRM Work Plan, Company shall submit to the Department an IRM O&M Plan and a Final Engineering Report prepared by a professional engineer that includes a certification by that individual that all activities that comprised the Department-approved IRM were completed in accordance with the Department-approved IRM Work Plan and this Agreement.

1. If the performance of the Department-approved IRM encompassed construction activities, the Final Engineering Report also shall include a certification by a professional engineer that the IRM was implemented and all construction activities were completed in accordance with the Department-approved detailed documents and specifications for the IRM and all such activities were personally witnessed by him or her or by a person under his or her direct supervision. The IRM O&M Plan, "as built" drawings, Final Engineering Report, and certification must be prepared, signed, and sealed by a professional engineer.

2. Upon the Department's approval of the IRM O&M Plan, the Company shall implement the IRM O&M Plan in accordance with the requirements of the Department-approved IRM O&M Plan.

E. After receipt of the Final Engineering Report and certification, the Department shall notify the Company in writing whether the Department is satisfied that the IRM was completed in compliance with the Department-approved IRM Work Plan and design.

IV. Progress Reports and Meetings

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

1. describe the actions which have been taken toward achieving compliance with this Agreement;
2. include all results of sampling and tests and all other data received or generated by Company or Company's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Agreement or conducted independently by Company;
3. identify all reports and other deliverables required by this Agreement that were completed and submitted during the previous month;
4. describe all actions, including, but not limited to, data collection and implementation of the Investigation Work Plan or the Remediation Work Plan, that are scheduled for the next month and provide other information relating to the progress at the Site;
5. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Company's obligations under the Agreement, and efforts made to mitigate those delays or anticipated delays; and
6. include any modifications to the Investigation Work Plan or the Remediation Work Plan that Company has proposed to the Department and any that the Department has approved.

B. Company shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Agreement; and Company's obligation to submit the progress reports shall terminate upon its receipt of the written satisfaction notification identified in Subparagraph II.I.2 of this Agreement approving Company's final engineering report concerning the Remediation Work Plan's implementation. However, Company shall continue to submit reports concerning the implementation of any O&M Plan that may be required under this Agreement, in accordance with that Plan's requirements.

C. Company also shall allow the Department to attend, and shall provide the Department at least five days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however, that if circumstances are such as to prevent Company from providing the Department with such advance notice, Company will provide as much advance notice as possible under the circumstances.

V. Review of Submittals

A. 1. The Department shall review each of the submittals Company makes pursuant to this Agreement to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Agreement and generally accepted technical and scientific principles. The Department shall notify Company in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. i. If the Department disapproves a submittal, it shall so notify Company in writing and shall specify the reasons for its disapproval after its receipt of the submittal and may request Company to modify or expand the submittal; provided, however, that the matters to be addressed by such modification or expansion are within the specific scope of work as described in the Work Plan under which the work was performed. The Department agrees to promptly meet with Company to explain and clarify its disapproval and attempt to resolve any areas of disagreement. Within 30 days after receiving written notice that Company's submittal has been disapproved, or such additional time as the parties may agree, Company shall make a revised submittal to the Department which endeavors to address and resolve all of the Department's stated reasons for disapproving the first submittal.

ii. If the Department disapproves the revised submittal, the Department and Company may pursue whatever remedies at law or in equity (by declaratory relief) that may be available to them, without prejudice to either's right to contest the same. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Agreement.

B. Within 30 days after the Department's approval of the final engineering report, Company shall submit to the Department one microfilm copy (16 millimeter roll film M type cartridge) of that report and all other Department-approved drawings and submittals, however Company shall not be required to submit a microfilm copy of any report which the Department agrees in writing does not need to be submitted in such form. Such submission shall be made to:

Director, Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

VI. Enforcement

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

B. Company shall not suffer any penalty under this Agreement or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement because of fire,

lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, inability to obtain reasonable Site access to perform its obligations under this Agreement despite its good faith efforts, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Company's reasonable control ("*force majeure* event"). Company shall, within five working days of when it obtains knowledge of any such *force majeure* event, notify the Department in writing. Company shall include in such notice the measures taken and to be taken by Company to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Company shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Agreement pursuant to this Subparagraph VI.B of this Agreement.

VII. Entry upon Site

Subject to conditions which may be prescribed in the Site's Health and Safety Plan, Company hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Company by any duly designated employee, consultant, contractor, or agent of the Department or any State agency having jurisdiction with respect to the matters addressed in the Work Plan upon such advance notice as is reasonable under the circumstances presented for purposes of inspection, sampling, and testing and to ensure Company's compliance with this Agreement. The Department shall abide by the health and safety rules in effect for work performed at the Site under the terms of this Agreement. Company shall provide the Department full access to all records relating to matters addressed by this Agreement and to job meetings.

VIII. Payment of State Costs

A. Within thirty days after receipt of an itemized invoice from the Department, Company shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to the effective date of this Agreement, as well as for negotiating this Agreement, reviewing and revising submittals made pursuant to this Agreement, overseeing activities conducted pursuant to this Agreement, collecting and analyzing samples, and administrative costs associated with this Agreement, but not including the State's expenses incurred after the Department's notification identified in Subparagraph II.I.2 of this Agreement of its approval of the final engineering report pertaining to the implementation of the Work Plan or, if any, of the Department-approved O&M Plan, whichever is later. Each such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7010

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports.

IX. Reservations of Rights

A. Except as provided in Subparagraph II.I.2 of this Agreement and in any “no further action” letter issued under Subparagraph II.J of this Agreement, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, nor exemplified by, the right to recover natural resources damages) with respect to any party, including Company.

B. Nothing contained in this Agreement shall prejudice any rights of the Department to take any investigatory or remedial action it may deem necessary.

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

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

E. Except as otherwise provided in this Agreement, Company specifically reserves all defenses Company may have under applicable law respecting any Departmental assertion of remedial liability against Company; and reserves all rights Company may have respecting the enforcement of this Agreement, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Agreement or Company's compliance with this Agreement shall not be construed as an admission of liability, fault, or wrongdoing by Company, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

X. Indemnification

Company shall indemnify and hold the Department, 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 Company and/or any of Company's directors, officers, employees, servants, agents, successors, and assigns, provided, however that Company shall not indemnify the Department, the State of New York, and their representatives and employees in the event that such claim, suit, action, damages or costs relate to or arise from any unlawful, willful, grossly negligent or malicious acts or

omissions on the part of the Department, the State of New York or their representatives or employees.

XI. Notice of Sale or Conveyance

Within 30 days after the effective date of this Agreement, Company shall

A. file the Notice of Agreement, which is attached to this Agreement as Exhibit "G," with the Dutchess County Clerk to give all parties who may acquire any interest in the Site notice of this Agreement and

B. provide the Department with evidence of such filing.

Company may terminate the Notice upon the earlier of when the Department notifies Company in writing pursuant to Subparagraph II.I.2 of this Agreement that the Department is satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan have been reached and that the O&M Plan has been successfully implemented or when the Department notifies the Company that no further investigation or remediation is necessary pursuant to Subparagraph I.D.1.

XII. Deed Restriction

A. If the Department determines that Deed restrictions are required in order for the Site to be protective of public health and the environment, then Company shall, within 30 days of Company's receipt of the Department's notification pursuant to Subparagraph II.I.2 of this Agreement, record an instrument with the Dutchess County Clerk, to run with the land, that:

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

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

3. shall require Company and Company's successors and assigns to continue in full force and effect any and all institutional and engineering controls required by the Remediation Work Plan; and

4. shall provide that Company, on behalf of itself and its successors and assigns, hereby consents to the enforcement by the Department, or if at such time the Department shall no

longer exist, any New York State department, bureau, or other entity replacing the Department, of the prohibitions and restrictions that this Paragraph XII requires to be recorded, and hereby covenants not to contest such enforcement.

B. Within 30 days after Company's receipt of the Department's notification pursuant to Subparagraph II.I.2 of this Agreement approving Company's final engineering report concerning the Remediation Work Plan, Company shall provide the Department with a copy of the instrument reflecting the deed restriction certified by the Dutchess County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Dutchess County Clerk.

XIII. Communications

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

1. Communication from Company shall be sent to:

Ram Pergadia, P.E.
New York State Department of Environmental Conservation
21 South Putt Corners Road
New Paltz, New York 12561

with copies to:

Earl Barcomb, Director
Bureau of Hazardous Site Control
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

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

Dale A. Desnoyers, Esq.
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-5550

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

- Four copies (one unbound) to Ram Pergadia, P.E.
- One copy to Earl Barcomb
- Two copies to Dr. Carlson

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

Dennis P. Harkawik, Esq.
Jaeckle, Fleishmann & Mugel
Fleet Bank Building
Twelve Fountain Plaza
Buffalo, New York 14202-2292

with a copy to:

Mr. Jeffrey A. Clock
Director, Environmental Affairs and Special Projects
Central Hudson Gas and Electric Corporation
284 South Avenue
Poughkeepsie, New York 12601

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

XIV. Miscellaneous

A. 1. By entering into this Agreement, Company certifies that Company has fully and accurately disclosed to the Department all information known to Company and all information in the possession or control of Company's officers, directors, employees, contractors, and agents which relates in any way to the contamination existing 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 their application for this Agreement.

2. If the Department determines that information Company provided and certifications made are not materially accurate and complete, this Agreement, within the sole discretion of the Department, shall be null and void *ab initio* except with respect to the provisions of Paragraphs VIII and X and except with respect to the Department's right to enforce those obligations under this Agreement, and the Department shall reserve all rights that it may have.

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

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

D. Company shall notify the Department at least five working days in advance of any field activities to be conducted pursuant to this Agreement except where such advance notice is not possible in that case Company will provide the Department with as much advance notice as is possible under the circumstances.

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

2. In carrying out the activities identified in the Work Plan, the Department may exempt Company from the requirement to obtain any Department permit 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.

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

G. Company shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement and to each person representing Company with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement. Company or Company's contractors shall provide written notice of this Agreement to all subcontractors hired to perform any portion of the work required by this Agreement. Company shall nonetheless be responsible for ensuring that Company's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

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

I. 1. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to

be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Company of Company's obligation to obtain such formal approvals as may be required by this Agreement.

2. If Company desires that any provision of this Agreement be changed, Company shall make timely written application, signed by the Company, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Ram Pergadia, P.E. and to Dale A. Desnoyers, Esq..

J. That portion of this Agreement concerning the Site's investigation is not subject to review under the State Environmental Quality Review Act, ECL Article 8, and its implementing regulations, 6 NYCRR Part 617. That portion of this Agreement concerning the Site's remediation constitutes an exercise of the Department's prosecutorial discretion and accordingly, is not subject to review under the State Environmental Quality Review Act and its implementing regulations. ECL 8-0105.5(I), 6 NYCRR 617.5(c)(29).

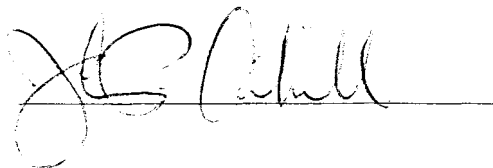
K. The provisions of this Agreement do not constitute and shall not be deemed a waiver of any right Company otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties, including present or past owners and/or operators of the Site, or their insurers, or Company's insurers, for payments made previously or in the future for response costs.

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

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

DATED: 3/8/00

JOHN P. CAHILL, COMMISSIONER
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION

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

CONSENT BY Company

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

Central Hudson Gas and Electric Corporation

Ronald P. Brand

By: *Senior Vice President*
[name and title of the signatory]

Date: *January 21, 2000*

STATE OF NEW YORK)
) s.s.:
COUNTY OF *DUTCHESS*)

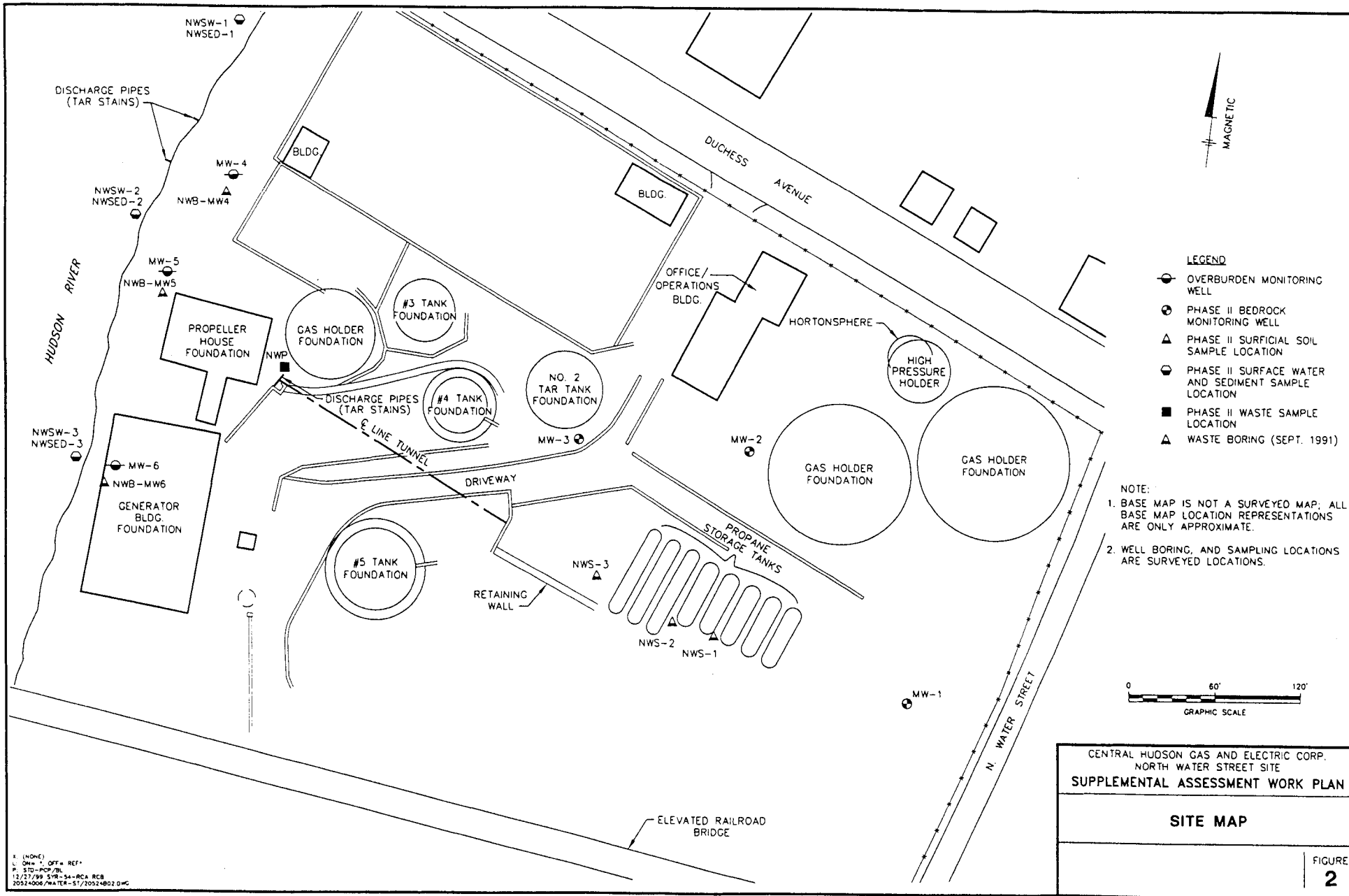
On this *21ST* day of *JANUARY*, ~~1999~~ ²⁰⁰⁰, before me personally came *RONALD P. BRAND*, to me known, who being duly sworn, did depose and say that *he* resides in *CLINTON CURS, NY*; that *he* is *SR. VICE PRESIDENT* of the corporation described in and which executed the foregoing instrument; and that *he* signed *his* name on behalf of Central Hudson Gas & Electric Corporation and was authorized to do so.

Sharron E. Smith
Notary Public

SHARRON E. SMITH
Notary Public, State of New York
Qualified in Dutchess County
Commission Expires May 26, ~~2001~~

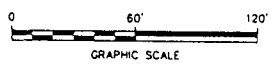
EXHIBIT "A"

Map of Site



- LEGEND**
- OVERBURDEN MONITORING WELL
 - ⊕ PHASE II BEDROCK MONITORING WELL
 - ▲ PHASE II SURFICIAL SOIL SAMPLE LOCATION
 - ⊖ PHASE II SURFACE WATER AND SEDIMENT SAMPLE LOCATION
 - PHASE II WASTE SAMPLE LOCATION
 - ▲ WASTE BORING (SEPT. 1991)

- NOTE:**
1. BASE MAP IS NOT A SURVEYED MAP; ALL BASE MAP LOCATION REPRESENTATIONS ARE ONLY APPROXIMATE.
 2. WELL BORING, AND SAMPLING LOCATIONS ARE SURVEYED LOCATIONS.



CENTRAL HUDSON GAS AND ELECTRIC CORP. NORTH WATER STREET SITE SUPPLEMENTAL ASSESSMENT WORK PLAN	
SITE MAP	
	FIGURE 2

E. (NDHE)
L. OHM * OFF = REF*
P. STD - POP/JL
12/27/99 SW-54-RCB
20524006/WATER-S1/20524002.DWG

EXHIBIT "B"

Supplemental PSA Work Plan