



Sterling Environmental Engineering, P.C.

BROWNFIELD CLEANUP PROGRAM

**PROPOSED
REMEDIAL WORK PLAN
FORMER CIRCLE M WOOD TREATING SITE**

**TOWN OF FISHKILL
DUTCHESS COUNTY, NEW YORK**

**NYSDEC SITE #3-14-083
BROWNFIELD CLEANUP AGREEMENT W3-1077-05-09**

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TABLE OF CONTENTS

	<u>Page #</u>
EXECUTIVE SUMMARY	1
1.0 INTRODUCTION	3
1.1 Site Description & Background	3
1.2 Program Status	5
1.3 Brownfield Site Cleanup Agreement (BCA)	6
2.0 SUMMARY OF SITE CONDITIONS	6
3.0 SELECTION OF REMEDY	7
3.1 Remedial Goals	7
3.2 Identification & Screening of Technologies	7
4.0 IMPLEMENTATION OF THE REMEDY	8
4.1 Initial Activities	8
4.2 Construction Activity	9
4.3 Post-Construction	10
5.0 REMEDIATION SCHEDULE	11
6.0 PLAN SUBMITTALS	11
6.1 Remedial Design	11
6.2 Health and Safety Plan (HASP)	13
6.3 Community Air Monitoring Plan (CAMP)	20
6.4 Soil Excavation and Consolidation Plan	20

List of Figures

Figure 1	Site Location Map
Figure 2	Extent of Impacted Soils
Figure 3	Proposed Monitoring Well Locations
Figure 4	Gantt Chart

List of Appendices

- Appendix A Record of Decision (ROD)
- Appendix B Brownfield Cleanup Agreement (BCA)
- Appendix C Draft Specifications

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EXECUTIVE SUMMARY

This document presents the Remedial Work Plan for the Circle M Wood Treating (Circle M) site (New York State Department of Environmental Conservation (NYSDEC) Site #3-14-083), located in the Town of Fishkill, Dutchess County, New York. This Remedial Work Plan is submitted pursuant to Paragraph II.B of the Brownfield Site Cleanup Agreement (BCA) (Index #W3-1077-05-09) between Chelsea Waterfront Development, LLC and the NYSDEC. The Remedial Design (RD) objectives, construction sequence, project schedule and supporting Community Air Monitoring Plan (CAMP), Health and Safety Plan (HASP), and Soils Management Plan (SMP) requirements are outlined herein. The prior investigations and evaluation of remedial alternatives were completed in compliance with the June 27, 1997 Order on Consent as reported by the September 13, 2002 Supplemental Remedial Investigation (RI) and February 10, 2005 Focused Feasibility Study (FFS).

In January 2004, AVR Realty Company of Yonkers, New York purchased the approximate 58-acre Chelsea Industrial Park with the intention of demolishing the existing industrial buildings, including the Circle M facility, and constructing a multi-phase residential development. The RI investigated the nature and extent of contamination and the FFS evaluated remedial measures consistent with the proposed project. Remediation of this site, coupled with residential development, will convert an industrial property to a use that is entirely consistent with adjacent residential land uses, and will eliminate potential exposure to metal residues left behind by the former Circle M lumber treatment business that occupied one of the buildings.

The substances of concern (copper, chromium and arsenic) are present in surface soil beneath the former Circle M building and in adjacent outdoor areas that were used for storage of treated lumber. Chromium, copper and arsenic are the primary constituents of chromated copper arsenate (CCA), a lumber preservative. The Circle M lumber treatment operation resulted in spills and chronic drippage of CCA prior to 1990.

Based on the FFS analysis and intended use of the property, the NYSDEC issued a Record of Decision (ROD) on September 30, 2005 which provides that the selected remedy for the site consists of the following:

- *A remedial design program will be developed to provide the details necessary to implement the remedial program. This will include additional sampling of surface water, sediment and soil from both banks of the adjacent stream, and analysis for site-related contaminants.*
- *The former treatment building will be demolished.*

- *Contaminated soil will be excavated and consolidated on-site. Soils will be consolidated within a designated area and will include the treatment building's slab, which will be left in place, beneath a portion of the consolidation area. The consolidation area will then be covered with a geotextile fabric and by two feet of clean fill.*
- *An erosion control program in the form of grass or other vegetative cover will be developed to stabilize soils on the stream bank.*
- *Three bedrock monitoring wells (one upgradient and two downgradient) and one upgradient overburden well will be installed.*
- *A Soils Management Plan (SMP) will be developed and implemented. The SMP will include institutional controls and engineering controls to: address soils that may be excavated from the consolidation area in the future; provide for the operation and maintenance of the components of the remedy; monitor groundwater; and identify any restrictions on site development or groundwater use.*
- *An environmental easement will be recorded, which identifies all use restrictions. Uses in the consolidation area will be limited to green space or parking¹.*
- *The SMP will require that the property owner complete and submit to the NYSDEC an Institutional Control/Engineering Control (IC/EC) certification periodically.*

Current development plans for the project call for rezoning to allow residential development and construction of a multi-phased residential development project. The initial phase will temporarily maintain the current Chelsea Industrial Park and its current tenants. Upon successful rezoning of the property, "Phase 1" residential units will be constructed in unaffected areas of the industrial park. At the same time the Phase I construction is underway, existing tenants will be relocated. Upon relocation of all tenants, industrial buildings will be demolished and impacted soils will be managed in accordance with the selected remedy.

¹ The NYSDEC has clarified that use of the consolidation area for "green space" can include an athletic field (i.e., soccer, baseball, etc.). However, any equipment that may be proposed to facilitate such a recreational use, such as goalposts, bleachers/seating, piping, etc., should be careful to not disturb the integrity of the geotextile fabric that will be located on top of the consolidation area (and beneath two feet of clean fill). Further, no buildings of any kind, such as a concession stand or restroom, may be located on any portion of the consolidation area. This clarification was confirmed via the November 7, 2005 letter from Chelsea's outside counsel to the NYSDEC.

1.0 INTRODUCTION

This Remedial Work Plan sets forth the design objectives, construction sequence, project schedule and supporting plan requirements for the implementation of the selected remedy set forth in the NYSDEC ROD dated September 30, 2005. The remedy is based on the Focused Feasibility Study (FFS) and the results of the September 2002 Focused Remedial Investigations (FRI) report.

1.1 Site Description & Background

Chelsea Industrial Park consists of a 58.6-acre parcel at the end of Brockway Road in the Town of Fishkill, Dutchess County, New York (Figure 1). The industrial park is located east of the railroad tracks along the east bank of the Hudson River at an elevation approximately 55 feet above mean sea level (amsl), and 50 feet above the Hudson River mean water level. The former Circle M Wood Treating facility was located within Chelsea Industrial Park, and occupied approximately eight (8) acres of the industrial park. Circle M operated from the eastern half of an 18,500 square foot building. For the purposes of this Remedial Work Plan and the Brownfield Cleanup Program, an area of approximately 19.885 acres has been designated as "the Site", which includes the former Circle M building and surrounding acreage, as more fully described by Exhibit A to the Brownfield Site Cleanup Agreement (BCA).

The Circle M facility has been vacant during most of the period since 1990, and is now occupied by a pavement maintenance company. Much of the Site is covered by the Circle M building, an adjoining 90 x 150-foot concrete drip pad, paved driveways, and concrete pads. Large sections of the Site are unpaved. Concrete pads north of the Circle M building are associated with former buildings not associated with the Circle M operation.

The industrial park and surrounding lands are supplied with water from the Rombout Water District, which is supplied primarily from the City of Beacon water system.

The Circle M facility was operated by Circle M Wood Treating Corporation from 1986 to 1990. Circle M was a lumber treatment business that produced pressure-treated, insect and biodegradation-resistant wood. The Circle M treatment process utilized chromated copper arsenate (CCA), a blend of arsenic acid (As_2O_5), chromic acid (CrO_3), and copper oxide (CuO), all in a solution of water.

To determine whether groundwater had been affected by releases of CCA, five (5) on-site monitoring wells were installed by the operator as a result of NYSDEC enforcement. When first sampled in 1987, none of the monitoring wells contained arsenic (As), chromium (Cr) or copper (Cu) at concentrations exceeding applicable standards. When resampled in November 1987, however, chromium exceeded groundwater standards, and copper was also detected.

In 1988 and 1989, samples collected from the uppermost six (6) inches of soil on the Circle M parcel revealed that As, Cr and Cu were present at concentrations exceeding background levels (Dunn, 1989). Soil contaminants were presumed to have resulted from discharges of CCA from storage tanks or piping, and from improper outdoor storage of treated lumber, which was stored in piles at various locations on the subject property.

Circle M vacated the premises in spring 1990. At approximately that time, water mixed with CCA was released to the surface of the property. The NYSDEC responded to the spill and recovered approximately 3,000 gallons of CCA solution. Several other removal activities were conducted between 1990 and the beginning of the Remedial Investigation/Feasibility Study (RI/FS) in 1997, including removal and recycling of more than 12,000 gallons of liquid waste recovered by NYSDEC contractors during removal

and remediation activities, and more than 18,000 gallons of liquid waste stored in tanks. In addition, periodic groundwater monitoring was conducted by NYSDEC between 1990 and 1996.

- **Focused Remedial Investigation**

In 1997, the NYSDEC issued an Order on Consent, which set forth requirements for the respondents to voluntarily undertake a Focused Remedial Investigation (FRI) and Focused Feasibility Study (FFS). The Order on Consent was effective in June 1997.

The FRI included: 1) Installation of a monitoring well immediately south of the Circle M concrete drip pad; 2) Collection of groundwater samples from the new monitoring well and the five (5) pre-existing on-site monitoring wells; and 3) Stream sediment sampling. Results of this work are summarized in the FRI report dated September 9, 1998 (Conrad Geoscience, 1998).

The FRI report concludes that samples from the six (6) on-site monitoring wells contained copper, chromium and arsenic at concentrations exceeding NYSDEC standards. Filtered samples from monitoring wells MW-1, MW-3 and MW-7 contained no detectable As, Cr or Cu, indicating that the majority of metals in groundwater were adsorbed to particulate matter. Stream sediments contained lower concentrations of As, Cr and Cu than previously measured, but the 1998 FRI concentrations still remained above NYSDEC standards.

Based on measurements of static water levels in on-site monitoring wells, local groundwater flow is to the southeast, toward the small stream that runs along the eastern boundary of Chelsea Industrial Park.

- **Supplemental Field Investigations**

In January 1999, the Focused Feasibility Study (FFS) was initiated. In a letter dated January 29, 1999, the NYSDEC stipulated that additional field investigations should be completed as part of the FFS. Supplemental field investigations included: 1) Soil sampling and analysis to delineate the vertical distribution of As, Cr and Cu within the uppermost six (6) feet of soil; and 2) Completion of a Biological Resource Inventory & Impact Assessment to determine whether on-site receptors, including stream flora and fauna, show signs of impact from metals. Results of these field investigations are summarized in the FFS.

In April 2000, the NYSDEC requested additional sampling, including areas not previously sampled (under the Circle M floor and all outdoor lumber storage areas) and an expanded FRI sampling plan was prepared. This Supplemental RI work plan was approved by the NYSDEC on April 26, 2001. In May 2001, additional sampling was completed on stream sediments and groundwater, concentrating on the outdoor lumber storage areas as well as soil and groundwater quality directly beneath the Circle M building. Results of these field investigations are summarized in the Supplemental RI report dated July 6, 2001. Following review of the FRI report, the NYSDEC issued a letter dated July 23, 2001 directing that the FFS be prepared.

The NYSDEC subsequently indicated that additional soil sampling was necessary in order to more fully delineate the area of Chelsea Industrial Park affected by past releases of chromated copper arsenate (CCA). Accordingly, two (2) rounds of additional soil sampling and analysis were conducted in February and April 2002. These samples were collected from within and near known outdoor lumber storage areas to determine whether residual copper, chromium or arsenic were present in shallow soils.

The results of the supplemental soil investigation are summarized in the September 13, 2002 Supplemental Remedial Investigation.

- **Focused Feasibility Study (FFS)**

The FFS evaluated various remedial options and technologies in satisfaction of program requirements. Remedial alternatives were developed and evaluated in terms of protection of human health and the environment, compliance with applicable or relevant and appropriate requirements (ARARs), long-term effectiveness and permanence, reduction of toxicity, mobility, and volume through treatment, short-term effectiveness, implementability, and cost as more fully described in Section 3.2.

Alternatives were then ranked. The FFS and the recommended remedy served as the foundation for the NYSDEC's ROD.

1.2 Program Status

The NYSDEC has issued the Record of Decision (ROD) setting forth the selected remedy for the site. The ROD provides for:

- A Remedial Design (RD) program will be developed to provide the details necessary to implement the remedial program. This will include additional sampling of surface water, sediment and soil from both banks of the adjacent stream, and analysis for site-related contaminants.
- The former treatment building will be demolished.
- Contaminated soil will be excavated and consolidated on-site. Soil will be consolidated within a designated area and will include the treatment building's slab, which will be left in place, beneath a portion of the consolidation area. The consolidation area will then be covered with a geotextile fabric and by two feet of clean fill.
- An erosion control program in the form of grass or other vegetative cover will be developed to stabilize soils on the stream bank.
- Three bedrock monitoring wells (one upgradient and two downgradient) and one upgradient overburden well will be installed.
- A Soils Management Plan (SMP) will be developed and implemented. The SMP will include institutional controls and engineering controls to: address soils that may be excavated from the consolidation area in the future; provide for the operation and maintenance of the components of the remedy; monitor groundwater quality; and identify any restrictions on site development or groundwater use.
- An environmental easement will be recorded which identifies all use restrictions. Uses in the consolidation area will be limited to green space or parking.
- The SMP will require that the property owner complete and submit to the NYSDEC an Institutional Control/Engineering Control (IC/EC) certification periodically.

A copy of the ROD is provided as Appendix A.

1.3 Brownfield Site Cleanup Agreement (BCA)

The implementation of the selected remedy will be in accordance with the Brownfield Site Cleanup Agreement (BCA) signed by Chelsea Waterfront Development, LLC. A copy of the BCA is provided as Appendix B.

The BCA provides the detailed requirements for submission of this Remedial Work Plan, a Citizen Participation Plan, and the associated project schedule. The BCA requires submittal of the following:

- Proposed Remedial Work Plan – Must provide for the development and implementation of a Remedial Program for the contamination that has been documented within the boundaries of the site. The Proposed Remedial Work Plan must contain a schedule of implementation and this schedule will contain a schedule for development and implementation of a Remedial Design.
- Department-Approved Remedial Work Plan – This document is incorporated into and becomes an enforceable part of the Brownfield Site Cleanup Agreement (BCA).
- Remedial Design – The Remedial Design is a component document of the Remedial Work Plan and will include the detailed plans, specifications and contract documents which will be utilized to procure contractors and to manage the project.
- Progress Reports – Required the 10th day of each month commencing with approval of the Remedial Work Plan.
- Environmental Easement – Must be submitted within 30 days after the NYSDEC approval of the Remedial Work Plan.
- Final Engineering Report – Prepared by the Professional Engineer with primary responsibility for the day to day performance of the activities under the Brownfield Site Cleanup Agreement (BCA) at the conclusion of all activities required by the Remedial Work Plan.
- Certificate of Completion (issued by the NYSDEC) – Issued by the NYSDEC at the acceptance of the Final Engineering Report.
- OM&M Work Plan – Operating, Maintenance & Monitoring (OM&M) Work Plan that must be submitted as part of the Remedial Work Plan.
- Annual Reports – may be required if the OM&M Work Plan requires ongoing operation, maintenance, and monitoring or institutional controls. If required, is due on the 1st day of the month following the anniversary of the start of the OM&M Work Plan.

2.0 SUMMARY OF SITE CONDITIONS

The site conditions are thoroughly described in the Remedial Investigation (RI), Supplemental RI and FFS reports. Figure 2 presents the extent of the impacted soils.

3.0 SELECTION OF REMEDY

The regulatory goal specified in 6 NYCRR Part 375 is to return the site to predisposal conditions, to the extent feasible. Remedial action objectives developed for the Circle M site reflect results of the FRI and applicable regulatory requirements and guidance, resulting in the establishment of site specific cleanup objectives. Remedial objectives were selected that will be protective of human health and the environment.

3.1 Remedial Goals

The remedial action objectives for the Circle M site are established by the September 2005 Record of Decision (ROD). Specifically, Section 6 of the ROD identifies that the remedial goals for the site are to eliminate or reduce to the extent practical:

- Exposures of persons at or around the site to As, Cr, and Cu in soil and groundwater;
- Environmental exposures of flora or fauna as As, Cr, and Cu in sediment;
- The release of contaminants from soil into groundwater that may create exceedences of groundwater quality standards; and
- The release of contaminants from surface soil into air through wind borne dust.

Further, the remediation goals for the site include attaining to the extent practicable:

- TAGM 4046 objectives, which in this case take into account the site related background levels for arsenic, chromium and copper of 13 ppm, 25 ppm and 25 ppm, respectively.
- Groundwater SCGs based on NYSDEC "Ambient Water Quality Standards and Guidance Values" and Part 5 of the New York State Sanitary Code.

3.2 Identification & Screening of Technologies

The screening of technology types and process options is discussed below. This screening was based on the criteria of effectiveness for treating impacted soils, and implementability.

The FFS comprehensively evaluated:

- Source Control;
- No Further Action;
- Capping and Institutional Controls;
- Excavation and Off-Site Disposal;
- In-place Treatment of Impacted Soil; and
- Hybrid of Capping/Excavation and Disposal.

These alternatives were then evaluated as specified in the EPA guidance (EPA 1988), which is accepted by the NYSDEC, and are as follows:

- Overall Protection of Human Health and the Environment
- Compliance with ARARs

- Long-Term Effectiveness and Permanence
- Reduction of Toxicity, Mobility and Volume Through Treatment
- Short-Term Effectiveness
- Implementability
- Cost

Soil exhibiting elevated CCA will remain on-site in the designated consolidation area. In addition to capping, institutional controls will also be employed. Periodic groundwater monitoring will be conducted to demonstrate compliance with ARARs and SCGs. Three (3) additional bedrock monitoring wells (one upgradient and two downgradient) and one (1) upgradient overburden well will be installed. Groundwater monitoring will consist of quarterly sampling of all on-site wells for one (1) year, followed by semi-annual sampling for a period of two (2) years, and annual sampling thereafter.

4.0 IMPLEMENTATION OF THE REMEDY

Implementation of the remedy will necessitate a range of pre-construction and construction related activities. Additionally, the selected remedy requires the development of an environmental easement and future use restrictions to be imposed on the remedy.

4.1 Initial Activities

Implementation of the remedy will necessitate the following:

1. Aerial Mapping

The project site will be flown in spring 2006 in order to produce current site topographic mapping suitable for producing construction drawings and Construction Contract Documents. It is anticipated that drawings will be prepared reflecting existing conditions, demolition plans, excavation plans, temporary and permanent storm water management plans, soil stockpile and management plans, construction details, etc. Drawings will be produced at a scale of 1":50' with a one (1) foot contour interval. The aerial mapping activities will include appropriate control surveys necessary to produce accurate, construction quality mapping. Pre-construction surveying will also include the establishment of appropriate survey benchmarks at the property for use during construction.

2. Groundwater Monitoring and Well Abandonment

The Remedial Design (RD) will include a groundwater monitoring program as follows:

The groundwater monitoring program will include: 1) One round of baseline monitoring prior to implementation of the remedy; and, 2) Periodic post-construction sampling and analysis of six (6) groundwater monitoring wells.

The baseline round of groundwater monitoring will include Monitoring Wells MW-1, MW-3, MW-4, MW-5, MW-6, MW-7, MW-8, and the four (4) new wells as specified in the ROD (three (3) bedrock monitoring wells, one upgradient and two downgradient of the consolidation area; and one upgradient overburden well).

Post-construction groundwater monitoring will consist of sampling and analysis of Monitoring

Wells MW-4, MW-6 and the four new wells mentioned above. Monitoring will be conducted quarterly for one (1) year, semi-annually for two (2) years, and annually thereafter. The monitoring program will end upon issuance of the Certificate of Completion.

Proposed well locations are depicted in Figure 3. Previous sampling has demonstrated groundwater flow is to the east in wells completed in the overburden. The presumed direction of groundwater flow in bedrock is to the west, in the direction of the Hudson River.

Monitoring wells will be installed using a truck-mounted drilling rig equipped with hollow-stem augers for drilling in overburden. Bedrock monitoring wells will be installed using air-rotary techniques. Monitoring wells will be installed in accordance with NYSDEC/USEPA protocols. Overburden wells will be screened across the water table in the unconsolidated sediment. Bedrock monitoring wells will be drilled a minimum of ten (10) feet into bedrock, and completed in the first water-bearing zone encountered.

Prior to implementation of the remedy, all groundwater monitoring wells within the consolidation area will be abandoned following NYSDEC/USEPA procedures.

3. Sediment Sampling

The RD will provide for sediment sampling to demonstrate the effectiveness of sedimentation and erosion control practices. During implementation of the remedy, samples of stream sediment will be collected and analyzed. Up to five (5) sampling stations will be established prior to commencing construction activities. Samples will be collected at each of the five stations before and after implementation of the remedy.

4. Community Air Monitoring Plan (CAMP)

Site activities involving the management of impacted soils have the potential to generate dust which could migrate from the site. A CAMP will be developed prior to construction as outlined in more detail in Section 6.0. The CAMP will be reviewed and approved by the NYSDEC and New York State Department of Health (NYSDOH) prior to commencement of construction activities. The CAMP will include real time monitoring for total particulate with a mechanism for immediate reporting to the site where activities are causing an off-site impact.

5. Health and Safety Plan (HASP)

Because the project involves the remediation of a regulated site, all construction/remedial activity must be carried out in accordance with a site Health and Safety Plan (HASP). Such a plan must satisfy the requirements of 40 CFR 1910 and 1926. The required elements of the HASP are presented in Section 6.0.

4.2 **Construction Activity**

All construction will be in accordance with an approved Remedial Design (RD) to be developed pursuant to this Remedial Work Plan. The RD will include the detailed plans, specifications and contract documents which will be utilized to procure contractors and to manage the project.

It is anticipated that pre-qualified contractors will be invited to submit proposals. Chelsea Waterfront Development, LLC will then select one or more contractors to undertake elements of the work as follows:

1. Site Work

Certain preliminary site work will be needed in order to implement the remedy including security measures, construct temporary haul roads, drainage improvements, etc. Prior to the commencement of construction, the selected contractor will be required to make a series of “shop submittals” including but not limited to Project Schedule, Soils Management Plan (SMP), Construction HASP, CAMP, etc.

2. Building Demolition

As existing tenant leases expire, tenants will be relocated. Upon relocation of all tenants, the buildings can be demolished. Building demolition activities will be consistent with established local requirements and approvals. Generally, building contents will be removed and the building is pulled down. Salvageable materials will be removed for recycling. Remaining masonry, brick, concrete, etc. is crushed and used on-site as grade fill or roadbase material. The anticipated sequence of demolition activities will be presented on the Demolition Plan drawing.

3. Excavation and Grading

Impacted soils will be excavated and relocated for on-site consolidation in accordance with a Soils Management Plan (SMP) to be prepared in accordance with Section 6.0.

4. Soils Management

Strict controls for on-site hauling and management of soils are required to minimize dust generation, storm water runoff and address health and safety concerns. The management of soil must also adhere to the industry standard Best Management Practices (BMPs) to minimize runoff and dust.

The measures will be presented in detail in the Soils Management Plan (SMP) to be prepared in accordance with Section 6.0.

Upon completion of soil excavation and relocation, additional work such as utility installation and residential development may commence and can be carried out in an unrestricted fashion.

4.3 Post-Construction

Permanent use restrictions will be implemented for the soil consolidation area in accordance with the BCA.

5.0 REMEDIATION SCHEDULE

The proposed remediation schedule is presented on Figure 4, the Gantt Chart.

It is anticipated the project will follow the following general sequence although a number of site activities are expected to overlap:

- Pre-Construction:

Permits and Approvals. All necessary permits and approvals will be applied for and obtained to authorize the work. The following summarizes the anticipated approvals and permits.

Town of Fishkill	<ul style="list-style-type: none"> • Zone Change • Demolition Permit • Building Permit
NYSDEC	<ul style="list-style-type: none"> • Remedial Work Plan • Soils Management Plan • Remedial Design
NYSDOH	<ul style="list-style-type: none"> • CAMP • HASP

Under prevailing NYSDEC policy, a General Permit for a Construction Activity General Permit (State Pollutant Discharge Elimination System (SPDES) Permit) is not required. The authority to implement the remedy is contained in the BCA and NYSDEC's approval of the Remedial Work Plan and RD.

- Construction:

Active management of the soil will commence following building demolition. Building demolition will be scheduled following expiration of the existing leases once individual tenants move out.

The active management of soil, completion of the consolidation area and site restoration is expected to require one (1) full construction season following building demolition.

6.0 PLAN SUBMITTALS

6.1 Remedial Design

The Remedial Design (RD) is anticipated to include preparation of the following deliverables:

- Plans:

Construction drawing will be prepared at a scale of 1":50' with one (1) foot contours. The following list of drawings is anticipated:

- Plate 1 Existing Conditions
- Plate 2 Site Preparation
- Plate 3 Drainage Improvements and Erosion Control Details

- Plate 4 Excavation Plan
- Plate 5 Soil Consolidation Fill
- Plate 6 Backfill/Finish Grading Plan
- Plate 7 Miscellaneous Construction Details

- Specifications:

Construction specifications will be prepared including:

Contract No. 1 – Division 1 - General Requirements

01010	Summary of Work
01030	Progress Meetings
01041	Coordination
01050	Field Engineering
01150	Measurement and Payment
01210	Preconstruction Conference
01310	Construction Schedules
01340	Shop Drawings, Product Data and Samples
01370	Schedule of Values
01410	Testing Laboratory Services
01501	Contractor's Field Office
01540	Security
01560	Temporary Controls
01570	Maintenance and Protection of Traffic
01600	Transportation and Handling of Materials and Equipment
01620	Storage and Protection
01720	Project Record Documents

Contract No. 1 – Division 2 – Site Work

02110	Site Preparation/Clearing and Grubbing
02222	Rough Grading, Excavation and Backfill
02923	Topsoil Placement
02936	Seed and Mulch
02949	Erosion Control
04100	Stream and Sediment Sampling
04000	Monitoring Well Installation
03000	Mobilization/Demobilization

Copies of Draft Specifications are provided as Appendix C.

- Contract Documents

Standard construction contract document will be developed for the purpose of retaining qualified remediation contractors. At a minimum, the documents are anticipated to consist of:

1. Notice To Bidders
2. Instructions To Bidders
3. Bid Forms
4. Standard Form of Agreement
5. Change Order
6. Application For Payment
7. Construction Performance Bond
8. Construction Payment Bond
9. Certificate of Substantial Completion
10. Standard General Conditions
11. Supplementary Conditions
12. Construction Specifications
13. Appendices (HASP, CAMP, Soils Management Plan)
14. Drawings

Additionally, the Remedial Design (RD) will include the following supporting plans:

- Community Air Monitoring Plan (CAMP)
- Health and Safety Plan (HASP)
- Soils Management Plan (SMP)

6.2 Health and Safety Plan (HASP)

A Health and Safety Plan (HASP) must be developed in accordance with the Occupational Safety & Health Administration (OSHA) and other regulations pertaining to working in the vicinity of contaminated materials. The HASP must include:

- Site History and Setting

The site history must be described as it relates to the health and safety risks and to the remedial activities. The setting should be described with respect to its aspects relevant to safety and health risks and impacts. At a minimum, the history of the site from the Remedial Work Plan must be incorporated into this section.

- Site Concerns and Suspected Safety Hazards

The concerns and suspected safety hazards that are known or are relevant given the site history and setting must be described.

At a minimum, the chemical hazards posed by copper, arsenic and chrome will be addressed.

- Chemical Hazard Assessment and Controls

A Chemical Hazard Assessment addressing arsenic, chrome and copper, is necessary as these hazardous constituents are present in the on-site soils in excess of the NYSDEC Technical

Administrative Guidance Memorandum (TAGM) 4046 Recommended Cleanup Objectives for soil concentrations. Additionally, gasoline, diesel fuel or other chemicals to be brought to the site by the remediation contractor and drilling contractors and others, must also be evaluated and assessed as presented in the HASP.

The types of controls that are appropriate for the known chemical hazards must be described. If the details of these controls are not covered in succeeding sections of the plan, then the details of their function and minimum standards must be described in this section.

The plan must contain a commitment that if unknown or unexpected materials of a hazardous nature are encountered during site activities, no work will be conducted if field measurements or observations indicate that there is potential uncontrolled exposure to undefined hazards, or that exposures may exceed protection afforded by the requirements in the HASP.

- Personal Protective Equipment (PPE)

The plan must describe the personal protective equipment that will be used during each of the activities on site. At a minimum, requirements must be considered for the following items:

1. Air-purifying respirator
2. Chemical-resistant disposable overalls
3. Chemical-resistant outer gloves
4. Disposable gloves
5. Overboots (chemically resistant)
6. Leather safety shoes or boots
7. Safety glasses, goggles, or face shield
8. Hard Hat
9. Coveralls

The requirements may refer to protection levels A, B, C or D. Expectations are that activities and exposure risks at this site will require Level D or, at most, Level C PPE.

- Site Controls

The types of controls that will be utilized to provide worker safety and health protection must be described. Engineering controls are usually preferred to personal protection.

- Site Work Zones

One of the basic elements of an effective site sampling program is the delineation of work zones at each sampling site. The purpose of establishing work zones is to:

1. Reduce the accidental spread of hazardous substances by workers or equipment from the contaminated areas to the clean areas;
2. Confine work activities to the appropriate areas, thereby minimizing the likelihood of accidental exposures;
3. Facilitate the location and evacuation of personnel in case of an emergency; and
4. Prevent unauthorized personnel from entering controlled areas.

Although a site may be divided into as many zones as necessary to ensure minimal employee exposure to hazardous substances, the plan must use the three (3) most frequently identified zones

in similar projects. These zones are the Exclusion Zone (sometimes referred to by others as the “hot zone”), the Decontamination Zone, and the Support Zone (sometimes referred to by others as the “clean zone”). Movement of personnel and equipment between these zones should be minimized and restricted to specific access control points to minimize the spreading of contamination.

- Air Monitoring at Work Locations

The air at work locations must be monitored for particulates with the MIE PDM-3 MiniRam or equal.

- Exclusion Zone

The Exclusion Zone is the area where contamination is either known or expected to occur and where the greatest potential for exposure exists. Contamination is actually known to exist on the property. However, the greatest potential for exposure exists where drilling or boring activities are planned. Therefore, the following protective measures must be taken, at a minimum, in the Exclusion Zone.

Unprotected onlookers will be restricted from the exclusion zone. Other aspects of the size of the exclusion zone must be approved by the Site Health and Safety Officer (SHSO) with the goal of providing a safe work environment that minimizes the spread of contamination. Means of controlling entry and exit must be prescribed.

Those conducting activities and sampling in the Exclusion Zone will wear the applicable Personal Protective Equipment (PPE). Actions to be taken and PPE to be worn in the Exclusion Zone if particulates are determined with the MIE PDM-3 MiniRam, or equal, to be above background, must be described. Actions to be taken to minimize impact on workers within or anyone outside the Exclusion Zone must include:

1. wetting of exposed surfaces during excavations;
2. misting of the work area;
3. minimizing excavation by area or pace;
4. alteration of excavation equipment or methods; and
5. suspension of excavations.

- Excavator and Drill Rig Operations

Special precautions to be taken in the operation of excavators and drill rigs must be described. These must include limitations both on the operators and on others in the vicinity of the equipment.

- Decontamination Procedures and Zone

The steps for decontamination must be described for both personnel and equipment that has entered the Exclusion Zone or otherwise become contaminated. Means of controlling entry and exit must be prescribed.

- Support Zone

The personnel and equipment that will be allowed in the support zone must be described.

- Physical Hazards and Controls

All of the physical hazards must be listed. The controls to eliminate the risk from physical hazards must be described in this section or a reference to where this information is located in the plan must be provided.

- Natural Hazards

Work that takes place in the natural environment may be affected by plants and animals which are known to be hazardous to humans. Spiders, bees, wasps, hornets, ticks, poison oak and poison ivy are only some of the hazards that may be encountered. Individuals who may potentially be exposed to these hazards should be made aware of their existence and instructed in their identification. Emergencies resulting from contact with a natural hazard should be handled through the normal medical emergency channels. Individuals who are sensitive to these types of “natural” hazards should indicate their susceptibility to the SHSO.

- Noise Hazards

Work on-site may involve the use of heavy equipment such as a drill rig, geoprobe, jack hammer, compressor, and generator. The unprotected exposure of site workers to this noise during field activities can result in noise induced hearing loss. The SHSO will monitor the noise exposure for the initial trip and determine whether noise protection is warranted for each of the team members. The SHSO will ensure that either ear muffs or disposable foam earplugs are made available to all personnel and are used by the personnel in the immediate vicinity of the field operation as required.

- Slip, Trip and Fall Hazards

The sites could contain a number of slip, trip and fall hazards for site workers, such as:

1. Holes, pits, or ditches
2. Excavation faces
3. Slippery surfaces
4. Steep grades
5. Uneven grades
6. Snow and ice
7. Sharp objects

All personnel must be instructed to keep back, and must keep back, three (3) feet from the top edge of excavation faces, unless operating equipment is designed to safely cross the excavation face.

Drill auger sections and other equipment that may offer a trip hazard will be stored on the transport vehicle as long as possible, and be returned to the transport vehicle as soon as possible, to avoid creating a trip hazard. Drill auger sections and other tools will be stored together in neat arrangements convenient to the drill but sufficiently distant from the immediate area around the drill to minimize trip hazards.

Site personnel will be instructed to look for potential safety hazards and immediately inform the SHSO regarding any new hazards. If the hazard cannot be immediately removed, actions must be

taken, such as spraying with fluorescent paint, flagging on both sides of the item, or posting of signs, to warn site workers about the hazard.

- Confined Space Entry

“Confined Space,” means a space that:

1. is large enough and so configured that an employee can bodily enter and perform assigned work;
2. has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and
3. is not designed for continuous employee occupancy.

Confined space entry does not appear necessary on this project and therefore is prohibited under this project.

- Adverse Weather

Drilling or excavating is dangerous during electrical storms. All field activity must terminate when thunderstorms are evident. Extreme heat and cold, ice and heavy rain can produce unsafe conditions for drilling and excavating work. Such conditions, when present, will be evaluated by the SHSO on a case-by-case basis to determine if work shall terminate.

- Equipment Failure

If any equipment at the work site fails to operate properly, the Project Manager and/or SHSO will determine the effect of this failure on continuing operations. If the failure affects the safety of personnel (e.g., failure of monitoring equipment) or prevents completion of the planned tasks, all personnel will leave the work area until appropriate corrective actions have been taken.

- Safety Inspections and Record Keeping

The plan must require that records of reports concerning occupational injuries and illnesses be maintained in accordance with 29 CFR 1904.

- Emergency Action Plan for Spills, Fires and Explosions

1. Notification

Any symptoms of adverse health, regardless of the suspected cause, are to be reported to the SHSO immediately and to the CHSO promptly.

Upon the occurrence of an emergency, including an unplanned chemical release, fire or explosion, personnel will be alerted and the area evacuated immediately. Re-entry to the site will be limited to that necessary to assist injured personnel, fire fighting or spill control, and only after appropriate protective equipment is donned.

The following alarm system will be utilized to alert personnel to evacuate the restricted area:

Audible Alarm; Air horn (optional)

X Direct Verbal Communication (10 employees or less)

Radio Communication or Equivalent (Remote Sites)

X Other: Portable or Fixed Telephone Available On-Site

The following standard hand signals will also be used as necessary:

Hand gripping throat	Can't breathe/Out of Air
Grip co-worker's wrist	Leave area immediately, No Debate!
Hands on top of head	Need assistance
Thumbs up	Yes/Okay
Thumbs down	No/Problem

Upon activation of the alarm, employees will proceed to the designated assembly area. The designated assembly area will be determined on a daily basis by the SHSO and updated as necessary depending upon work conditions, weather, air monitoring, etc. The location of the designated assembly area will be clearly marked and communicated to employees daily or upon relocation of the area. Employees gathered in the designated assembly area will remain there until their presence has been noted. A comparison of employees against the daily restricted area access roster will be made as necessary to ensure all employees have been properly evacuated and accounted for.

Employees must exit the restricted area (exclusion zone, decontamination area, and support zone) upon activation of the evacuation alarm.

2. Personal Injury

If anyone within a work area is injured and cannot leave the restricted area without assistance, emergency medical services will be notified and appropriate first aid will be initiated by local emergency medical services.

3. Emergency Response

Emergency response actions must be prepared in advance for foreseeable potential emergencies, including, at a minimum, fires/explosions and spills. The steps and methods of response must be identified, including notifications to on-site personnel, off-site emergency responders, potentially affected members of the public, and local and state regulatory agencies.

4. Spills

The steps to be taken to minimize the spilled quantity and affects must be identified.

5. Fires/Explosions

The person responsible and the criteria used to determine when the fire department is to be called must be identified.

6. Emergency Services

<u>Emergency Services</u>	<u>Telephone Number</u>
Owners: Chelsea Waterfront Development, LLC 1 Executive Boulevard, Yonkers, New York	(914) 965-3990
Fire Department	911 or 845/869-8620 (non-emergency)
Police Department	911
Ambulance	911
Beacon Volunteer Ambulance	(845) 831-4540
St. Lukes Cornwall Hospital	(845) 561-4400
Poison Control Center	800/282-3171
Chemical Emergency Advice (CHEMTREC)	800/424-9300
Town of Fishkill Police Headquarters	(845) 864-2260
Rombout Volunteer Fire Department	(845) 869-8620

A map showing the preferred route to the nearest emergency health care facilities is attached as Figure 1; and written directions to the nearest hospital is also attached behind the map.

7. Record Keeping

Records of reports concerning occupational injuries and illnesses must be maintained in accordance with 29 CFR 1904.

- Medical Monitoring

Code of Federal Regulations 29, Parts 1910 and 1920, mandate comprehensive medical examinations for employees involved in hazardous waste operations and emergency response. Medical monitoring must be conducted in conformance with these requirements, as applicable.

- Training

Minimum training that is required by OSHA 29 CFR 1910.120 in HAZWOPER, Excavation Safety, Confined Space, Traffic, Fire Safety and other training aspects.

- Modifications to this Plan.

6.3 Community Air Monitoring Plan (CAMP)

The Community Air Monitoring Plan (CAMP) must be prepared and implemented in conformance with the New York State Department of Health (NYSDOH) Generic Community Air Monitoring Plan as contained in Appendix 1A of the DRAFT DER-10 TECHNICAL GUIDANCE FOR SITE INVESTIGATION AND REMEDIATION, December 2002 (12/25/02). The particulate monitoring at the perimeter of the exclusion zone will be with a MIE PDM-3 MiniRam or equal.

The CAMP will be submitted to the appropriate agencies for approval, including the New York State Department of Environmental Conservation (NYSDEC) and New York State Department of Health (NYSDOH).

In particular, the following section of the NYSDOH Generic Community Air Monitoring Plan must be followed:

Particulate Monitoring, Response Levels, and Actions

Particulate concentrations should be monitored continuously at the upwind and downwind perimeters of the exclusion zone at temporary particulate monitoring stations. The particulate monitoring should be performed using real-time monitoring equipment capable of measuring particulate matter less than 10 micrometers in size (PM-10) and capable of integrating over a period of 15 minutes (or less) for comparison to the airborne particulate action level. The equipment must be equipped with an audible alarm to indicate exceedance of the action level. In addition, fugitive dust migration should be visually assessed during all work activities.

- If the downwind PM-10 particulate level is 100 micrograms per cubic meter (mcg/m³) greater than background (upwind perimeter) for the 15-minute period or if airborne dust is observed leaving the work area, then dust suppression techniques must be employed. Work may continue with dust suppression techniques provided that downwind PM-10 particulate levels do not exceed 150 mcg/m³ above the upwind level and provided that no visible dust is migrating from the work area.
- If, after implementation of dust suppression techniques, downwind PM-10 particulate levels are greater than 150 mcg/m³ above the upwind level, work must be stopped and a re-evaluation of activities initiated. Work can resume provided that dust suppression measures and other controls are successful in reducing the downwind PM-10 particulate concentration to within 150 mcg/m³ of the upwind level and in preventing visible dust migration.

All readings must be recorded and be available for NYSDEC and NYSDOH personnel to review.

6.4 Soil Excavation and Consolidation Plan

This plan will identify the intended sequence to excavate, transport and consolidate impacted soil. Generally, the soils most distant from the consolidation area will be excavated first. The excavation will be progressed in a logical sequence to minimize the extent of open disturbed soil at the site. Strict erosion control measures will be employed as set forth in the detailed specifications.

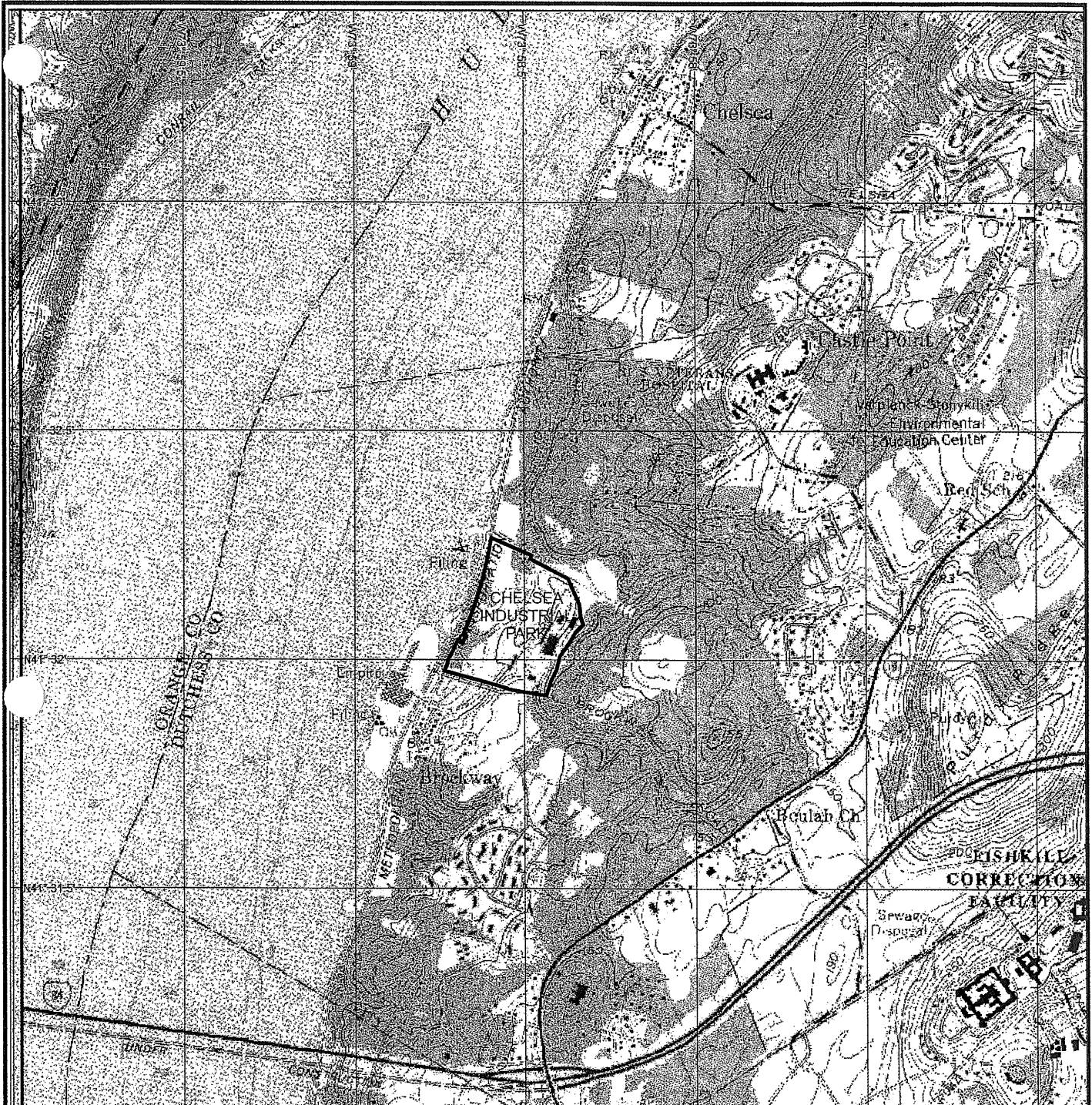
The plan will identify the methods and means for soil excavation, equipment to be used, haul routes,

loading and unloading methods, temporary stockpiling if needed, and the ultimate placement and compaction in the consolidation area. No excavation below the water table will occur. Therefore, no construction dewatering is proposed.

Most important, the plan will identify the schedule and anticipate sequencing for soils management based upon the ultimate building demolition sequence.

21044/Remedial Work Plan_FINAL.doc

FIGURES



**CONRAD
GEOSCIENCE
CORP.**

8 Raymond Avenue, Poughkeepsie, New York 12603

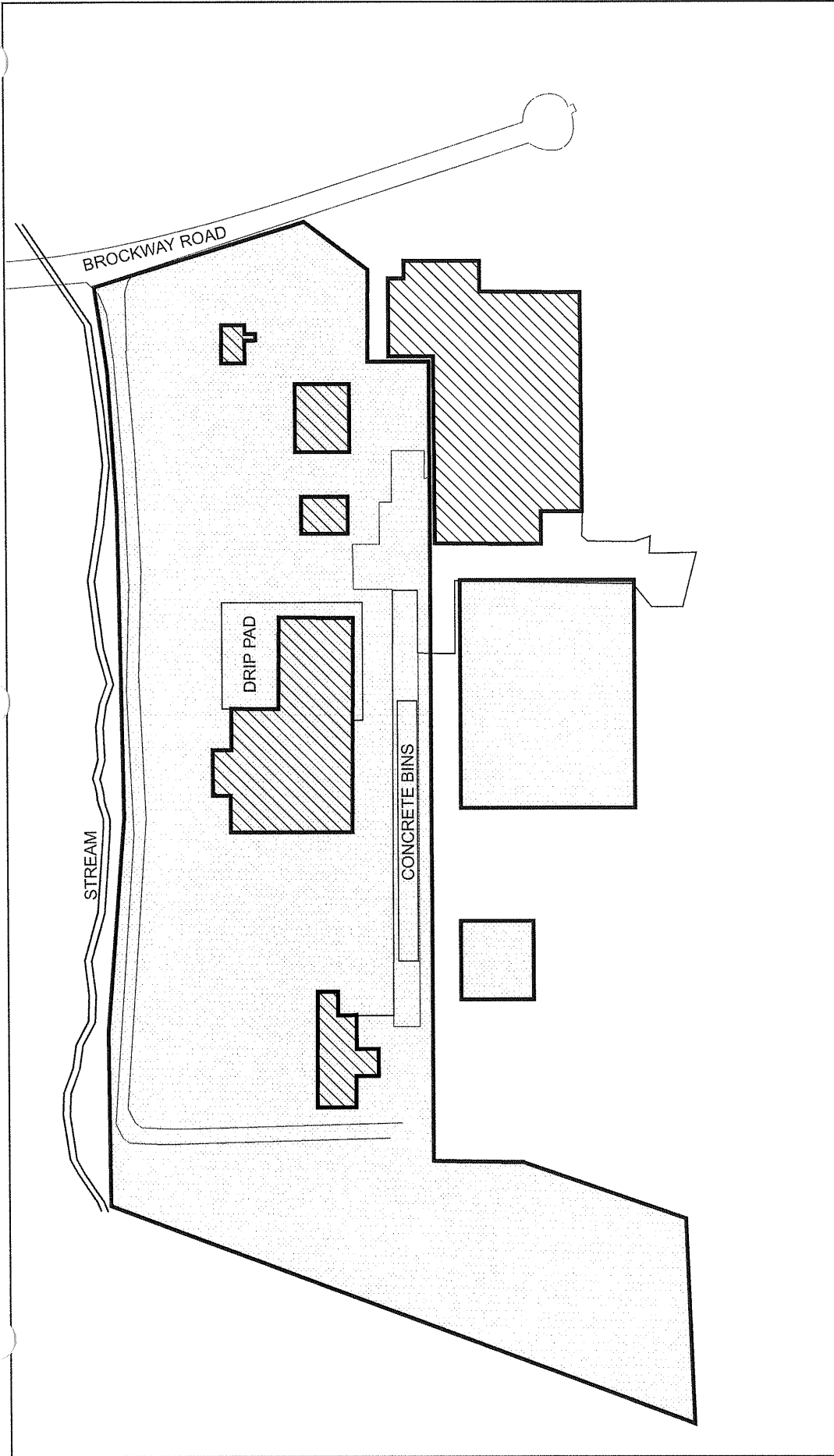



Figure 1

SITE LOCATION MAP

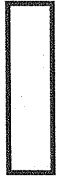

Prepared By:	DJO 03/02
Reviewed By:	CBB 03/02
Revised:	BPG 1/28/05
Approved By:	JAC 1/28/05

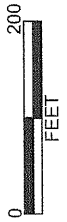
CIRCLE M WOOD TREATMENT
Fishkill, New York
CF030290

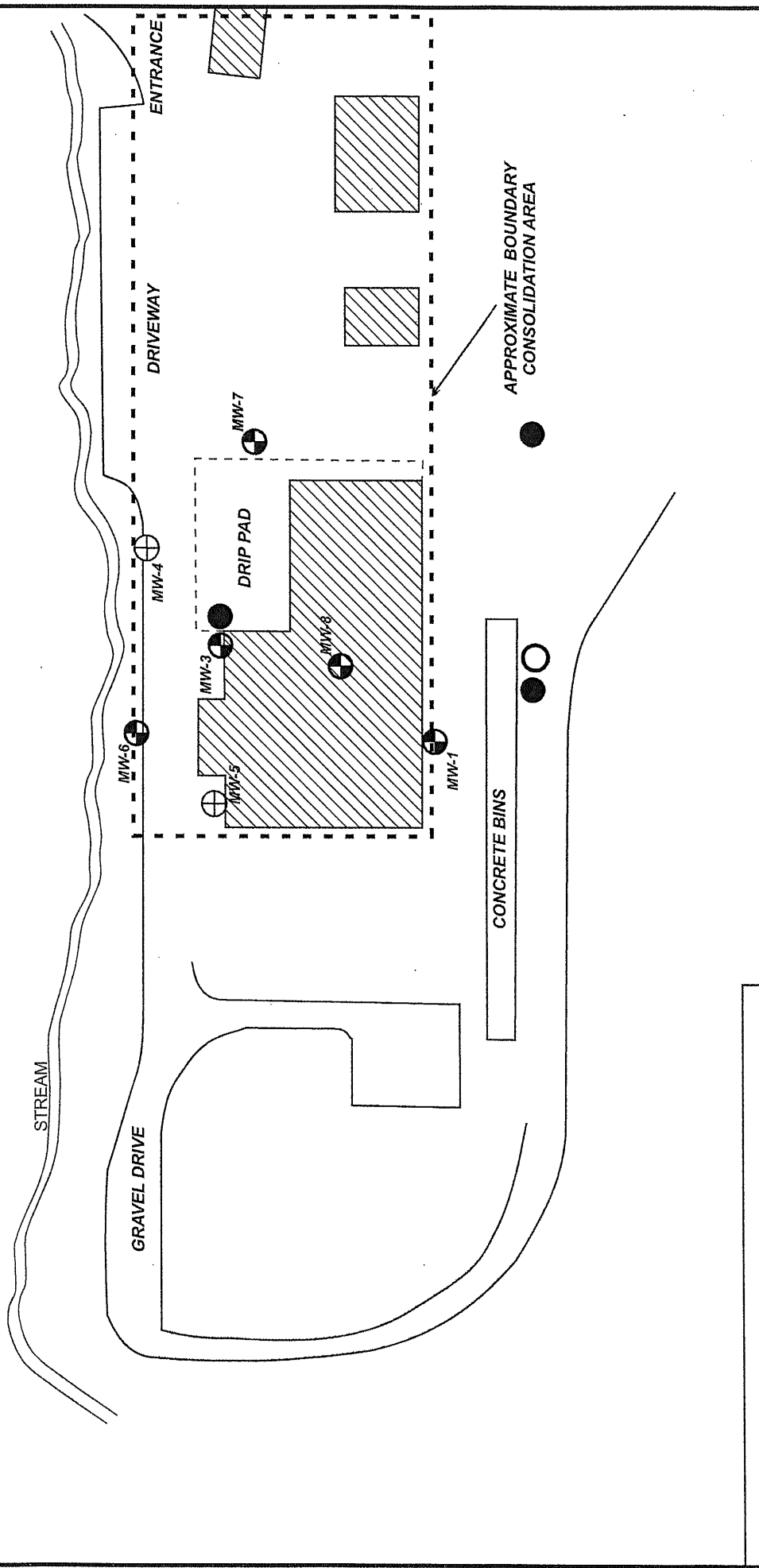


 CONRAD GEOSCIENCE CORP.	8 Raymond Avenue, Poughkeepsie, New York 12603	
	Figure 2	
Prepared By: DJO 05/16/02	EXTENT OF IMPACTED SOIL	
Reviewed By: JAC 05/16/02	CHELSEA INDUSTRIAL PARK	
Revised By: BPG 1/30/06	Fishkill, New York	
Approved By: CBB 1/30/06	CF030290	

LEGEND

	EXTENT OF IMPACTED SOIL
	BUILDING FOOTPRINTS





LEGEND

- PROPOSED BEDROCK MONITORING WELL LOCATION
- PROPOSED OVERBURDEN MONITORING WELL LOCATION
- ⊕ EXISTING MONITORING WELL LOCATION
- ⊕ MONITORING WELL TO BE PERMANENTLY ABANDONED
- ▨ BUILDING FOOTPRINTS



**CONRAD
GEOSCIENCE
CORP.**

8 Raymond Avenue, Poughkeepsie, New York 12603



Figure 3

Prepared By: CBB 5/98	PROPOSED MONITORING WELL LOCATIONS
Reviewed By: JAC 5/98	
Revised By: BPG 1/30/06	
Approved By: CBB 1/30/06	
CHELSEA INDUSTRIAL PARK Fishkill, New York CF-030290	

APPENDIX A
RECORD OF DECISION (ROD)

APPENDIX B

BROWNFIELD CLEANUP AGREEMENT (BCA)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a Remedial Program for
Circle M Wood Treating Site,
Dutchess County under Article 27, Title 14 of the
Environmental Conservation Law
by

BROWNFIELD SITE
CLEANUP AGREEMENT

Index # W3-1077-05-09
Site # C314083

Chelsea Waterfront Development, LLC

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, by a certified application dated June 27, 2005, Chelsea Waterfront Development, LLC, a New York State limited liability company, with offices located at One Executive Boulevard, Yonkers, New York 10701 submitted a request to participate in the Brownfield Cleanup Program relative to property located on Industrial Way at the end of Brockway Road, Town of Fishkill, Dutchess County, New York; the Department has accepted the application for the real property as described in the survey map, and metes and bounds "Description of Property" (the "Site") attached as Exhibit "A"; and

WHEREAS, the current use of the property is industrial. The intended use of the property is residential; and

WHEREAS, the Department issued a Proposed Remedial Action Plan ("PRAP") for the Circle M Wood Treatment Site in February 2005 with a public comment period scheduled from March 1, 2005 to March 30, 2005 (extended to June 10, 2005). The Department held a public meeting on March 14, 2005 which provided an opportunity for citizens to discuss their concerns, ask questions and comment on the proposed remedy; and

WHEREAS, the Department issued, on September 30, 2005, a Record of Decision (the "ROD") selecting the final remedial alternative for the Circle M Wood Treatment Site and responding to all questions and comments raised during the public comment period in the Responsiveness Summary; and

WHEREAS, the Department has provided ample opportunity for public participation in the remedy selection process to date, no additional public comment period for the remedy

selection is required; and

WHEREAS, the Volunteer will implement the ROD under this Agreement; and

WHEREAS, an opportunity for public comment on Applicant's request to participate in the Brownfield Cleanup Program was provided and the Department duly considered all comments received; and

WHEREAS, upon consideration of the factors enumerated in ECL 27-1407(8) and (9), the Department made a determination, based upon the information contained in the application and the certifications made by the Applicant, as well as any public comment received, that Applicant is eligible to participate in the Brownfield Cleanup Program as a Volunteer as defined in ECL 27-1405(1)(b).

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, Volunteer shall submit a written citizen participation plan prepared in accordance with the requirements of ECL 27-1417 that, at a minimum (i) updates the names and addresses of the interested public and includes a brownfield site contact list; (ii) identifies major issues of public concern related to the Site; (iii) includes a description of citizen participation activities already performed; and (iv) includes 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 Citizen Participation Plan shall be attached to and incorporated into this Agreement as Exhibit "B."

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;
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;

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 first proposed Work Plan to be submitted under this Agreement shall be submitted within forty (40) Days after the effective date of this Agreement. Thereafter, the Volunteer can submit such other and additional work plans as it deems appropriate.

2. A proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. 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 "C" 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, Volunteer 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, Volunteer 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, Volunteer shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee

or a consultant retained by Volunteer to perform such supervision.

C. Revisions to Work Plans

If revisions to a Work Plan are required to satisfy the objectives of such Work Plan, the parties will negotiate revisions which shall be attached to and incorporated into the relevant Work Plan and which shall be enforceable under this Agreement. If the parties cannot agree upon revisions to the relevant Work Plan, then unless the Volunteer invokes dispute resolution pursuant to Paragraph 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, Volunteer 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, Volunteer 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 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 timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL 27-1419. Such Certificate of Completion may be modified or revoked, after notice and an opportunity for hearing, upon a finding that either Volunteer or Volunteer's successors or assigns has (a) failed to comply with this Agreement; (b) made a misrepresentation of material fact in connection with the Application or any 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 (or other expert approved by the Department) 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, Volunteer shall submit such additional Work Plans as it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Volunteer, result in the termination of this Agreement pursuant to Paragraph XIII.

E. Review of Submittals other than Work Plans

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

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reasons for its disapproval and may request Volunteer to modify or expand the submittal. Within twenty (20) Days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall elect in writing to either (i) modify or expand it 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 Volunteer submits a revised submittal and it is disapproved, the Department and Volunteer may pursue whatever remedies may be available under this Agreement or under law.

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)(f). The Department shall provide timely notification to the Volunteer 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, Volunteer 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, Volunteer 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)(f) 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, Volunteer agrees to negotiate revisions to the proposed Remedial Work Plan in accordance with Paragraph II.C. If Volunteer 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, Volunteer 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 Volunteer 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. Volunteer shall notify the Department within twenty-four (24) hours of discovery of any upset, interruption, or termination of one or more controls without the prior approval of the Department. Further, Volunteer shall take all actions required by the Department to maintain conditions at the Site that achieve the objectives of the remedy and/or the Work Plan and are protective of public health and the environment. An explanation of such upset, interruption, or termination of one or more controls and the steps taken in response shall be included in the foregoing notice and in the report required by this Subparagraph as well as in any progress reports required by Paragraph XI. Volunteer can petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a Professional Engineer 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. Volunteer shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure

Event provided it notifies the Department in writing within ten (10) Days of when it obtains knowledge of any such event. Volunteer shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Volunteer shall have the burden of proving by a preponderance of the evidence that an event qualifies as a Force Majeure Event pursuant to this Paragraph.

IV. Entry upon Site

A. Volunteer 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 receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money which shall represent reimbursement for State Costs 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.

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

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

Thomas F. Perna
Partner
Chelsea Waterfront Development, LLC
One Executive Boulevard
Yonkers, New York 10701

with copy to:

Robert R. Tyson, Esq.
Bond, Schoeneck & King, PLLC
One Lincoln Center
Syracuse, New York 13201

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

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

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

F. Volunteer may contest, in writing, invoiced costs under 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 Volunteer objects to an invoiced cost, Volunteer shall pay all costs not objected to within the time frame set forth in Subparagraph V.A and shall, within thirty (30) Days of receipt of an invoice, identify in writing all costs objected to and identify the basis of the objection. This objection shall be filed with the Director of the Bureau of Program Management ("BPM Director") who shall have the authority to relieve Volunteer of the obligation to pay invalid costs. Within forty-five (45) Days of the Department's determination of the objection, Volunteer shall pay to the Department the amount which the BPM Director or the BPM Director's designee determines Volunteer is obligated to pay or commence an action or proceeding seeking appropriate judicial relief.

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

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Volunteer 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 Volunteer acquires title to the Site,

whichever is later.

VII. Reservation of Rights

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

B. Notwithstanding the foregoing, Volunteer 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 Volunteer may have as a result of Volunteer's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Volunteer shall indemnify and hold the Department, the Trustee, 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 by Volunteer 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 Volunteer with written notice no less than thirty (30) Days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

Volunteer 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 Volunteer 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, Volunteer 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. The submittal shall be substantially similar to Exhibit "D." Volunteer 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. Volunteer 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 Volunteer advises the Department of the status of its efforts to obtain same within such thirty (30) Day period).

B. Volunteer 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

Volunteer 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 Volunteer in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule 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 Volunteer shall be sent to:

Ramanand Pergadia, P.E.
Division of Environmental Remediation, Region3
New York State Department of Environmental Conservation
21 South Putt Corner
New Paltz, New York 12561-1696
Note: four 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

Rosalie K. Rusinko
Senior Attorney
New York State Department of Environmental Conservation
200 White Plains Road, 5th Floor
Tarrytown, New York 10591-5805
Note: copy of correspondence only, with electronic copy of other documents as provided for in Par. XV.E

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

Thomas F. Perna
Partner
Chelsea Waterfront Development, LLC
One Executive Boulevard
Yonkers, New York 10701

with copy to:

Robert R. Tyson, Esq.
Bond, Schoeneck & King, PLLC
One Lincoln Center
Syracuse, New York 13201

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

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

XIII. Termination of Agreement

Volunteer 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 Volunteer fails to substantially comply with the Agreement's terms and conditions. The Department shall provide written notification to Volunteer 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, or in connection with any notice from the Department pursuant to Paragraph IX that a proposed Change of Use is prohibited, Volunteer may, within thirty (30) Days of receipt of such notice, request in writing informal negotiations with the Department in an effort to resolve the dispute. The Department and Volunteer shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph XIV.B. The period for informal negotiations shall not exceed thirty (30) Days from Volunteer's request for informal negotiations. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding unless Volunteer notifies the Department in writing within thirty (30) Days after the conclusion of the thirty (30) Day period for informal negotiations that it invokes the dispute resolution provisions provided under Subparagraph XIV.B.

B. 1. Volunteer 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 Volunteer 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 Volunteer's Statement of Position.

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

4. The OH&M shall prepare and submit a report and recommendation to the 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 Volunteer shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Volunteer notifies the Department within thirty (30) Days after receipt of a copy of the final decision of its intent to commence an Article 78 proceeding and commences such proceeding within sixty (60) Days after receipt of a copy of the Director's final decision. Volunteer shall be in violation of this Agreement if it fails to comply with the final decision resolving this dispute within 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 Volunteer seeks judicial review, Volunteer shall be in violation of this Agreement if it fails to comply with the final Court Order or settlement within thirty (30) Days after the effective date of such Order or settlement, unless otherwise directed by the Court. For purposes of this Subparagraph, a Court Order or settlement shall not be final until the time to perfect an appeal of same has expired.

5. The invocation of dispute resolution shall not extend, postpone, or modify Volunteer's obligations under this Agreement with respect to any item not in dispute unless or until the Department agrees or a Court determines otherwise. The invocation of the procedures set forth in this Paragraph XIV shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Volunteer regarding the issue in dispute.

6. The Department shall keep an administrative record of any proceedings under this Paragraph 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 Volunteer are not materially accurate and complete, this Agreement, except with respect to Volunteer'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 Volunteer 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. Volunteer 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 Volunteer to allow the Department to attend portions of meetings where privileged matters are discussed.

C. The Department may exempt Volunteer 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. Volunteer shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Volunteer's obligations under this Agreement. If, despite Volunteer's best efforts, any access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Agreement are not obtained, Volunteer 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 Volunteer 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 Volunteer to modify the Work Plan pursuant to Subparagraph II.C of this Agreement to reflect changes necessitated by the lack of access and/or approvals.

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, Volunteer shall so advise the Department and, if the Department concurs, submit such document in an alternative format acceptable to the Department.

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

perform the work in satisfaction of the requirements of this Agreement.

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 Volunteer concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Volunteer of Volunteer's obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s) attached as Exhibit "C." Volunteer consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

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

I. 1. If there are multiple parties signing this Agreement, the term "Volunteer" 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 Volunteer to implement any obligations under this Agreement shall not affect the obligations of the remaining Volunteer(s) under this Agreement.

2. If Volunteer 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 Volunteers but not all of the signing parties elect to implement a Work Plan, all Volunteers are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Volunteers electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Volunteers electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

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

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

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

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

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

DATED:

DENISE M. SHEEHAN
ACTING COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION AND
TRUSTEE OF THE STATE'S NATURAL
RESOURCES

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 Volunteer’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 or otherwise authorized 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.,

“Trustee”: the Trustee of New York State’s natural resources.

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

EXHIBIT "A"

Survey Map & "Description of Property"

File No. 86-129
W.O. No. 17323

Doc. No. RP17JN5D.lwp
Created: June 17, 2005
Revised: June 22, 2005
Printed: June 22, 2005
Figure No(s.) 1010
Author: SRM

DESCRIPTION OF PROPERTY
prepared for
Chelsea Waterfront Development, LLC.
Description of Remediation Parcel
(Portions of Fishkill Tax Map Parcels 5955-02-798930 &
5955-02-791875)

ALL that certain parcel of land situate in the Town of Fishkill, County of Dutchess and State of New York that is a portion of Lot 1 and a portion of Lot 2 as shown on that certain map entitled "Subdivision of Chelsea Industrial Park..." which was filed in the Dutchess County Clerk's Office on December 18, 2000 as Map No. 11111 that is bounded and described as follows:

BEGINNING at a point in the northerly line of Industrial Way at the southwesterly terminus of the division line between the property herein described on the west and Lot I-105 as shown on that certain map entitled "Final Subdivision Plat... The Waterfront at Fishkill..." which was filed in the Dutchess County Clerk's Office on February 26, 2002 as Map No. 11351 on the east. **THENCE** from the said point of beginning along the northerly line of Industrial Way

on a curve to the left, the center of which bears S 26°42'16" W, the central angle of which is 9°12'16", the radius of which is 200.00 feet for 32.13 feet and

N 72°30'00" W 256.00 feet

to a point. Thence running through Lot 2, through Lot 1 and through Lot 2 again, as said lots are shown on that certain map entitled "Subdivision of Chelsea

Industrial Park..." which was filed in the Dutchess County Clerk's Office on December 18, 2000 as Map No. 11111

N 40°52'00" W 108.00 feet
N 36°40'00" E 23.60 feet
S 53°20'00" E 20.10 feet
N 36°40'00" E 100.20 feet
N 53°20'00" W 57.00 feet
N 36°40'00" E 246.80 feet
N 53°20'00" W 141.40 feet
S 36°40'00" W 39.60 feet
N 53°20'00" W 205.00 feet
N 37°40'00" E 1,188.00 feet and
S 32°28'00" E 709.12 feet

to a point in the westerly line of Lot I-105 as shown on the aforementioned Filed Map No. 11351. Thence along the same

S 04°28'30" W 26.47 feet
S 11°20'40" E 100.80 feet
S 51°06'20" W 72.27 feet
S 55°20'20" W 84.43 feet
S 38°58'30" W 125.11 feet
S 42°41'50" W 146.16 feet
S 47°07'30" W 123.75 feet
S 21°15'00" W 130.61 feet
S 27°22'30" W 78.70 feet
S 37°26'30" W 147.17 feet and
S 28°15'50" W 217.17 feet

to the point or place of beginning, containing 19.885 acres, more or less.

Prepared by

BADEY & WATSON

Surveying & Engineering, P.C.

U.S. Route 9

Cold Spring, New York 10516

(845)265-9217(V)

(845)265-4428(F)

File U:\86-129B\RP17JN5D.lwp

EXHIBIT "B"

Citizen Participation Plan

EXHIBIT "C"

Approved Work Plans

EXHIBIT "D"

Environmental Easement

ENVIRONMENTAL EASEMENT

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

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

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

WHEREAS, the Legislature of the State of New York has declared that environmental easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a brownfield site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and;

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

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

WHEREAS, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein and the terms and conditions of **Brownfield Cleanup Agreement Number** _____ /**State Assistance Contract Number** _____ /**Order on Consent Number** _____, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

Draft

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The following controls apply to the use of the Controlled Property, run with the land are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees, and any person using the Controlled Property:

A. The Controlled Property may be used for

residential
commercial
industrial

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

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

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

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

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

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

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

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

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

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

5. Enforcement

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

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

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

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

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

Division of Environmental Enforcement
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway
Albany New York 12233-5500

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

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

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

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the _____ day of _____, in the year 200_, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Draft

Notary Public - State of New York

APPENDIX C
DRAFT SPECIFICATIONS