

New York State Department of Environmental Conservation

Division of Environmental Remediation

Office of the Director, 12th Floor

625 Broadway, Albany, New York 12233-7011

Phone: (518) 402-9706 • **Fax:** (518) 402-9020

Website: www.dec.ny.gov



Joe Martens
Commissioner

APR 11 2013

Qualitrol Company LLC
Attn: Virginia Murn
1385 Fairport Road
Fairport, New York 14450

RE: Site Name: Qualitrol Company LLC
Site No.: C828185
Location of Site: 1385 Fairport Rd., Monroe County, Fairport, New York

Dear Ms. Murn:

To complete your file, attached is a fully executed copy of the Brownfield Cleanup Agreement for the Qualitrol Company LLC Site.

If you have any further questions relating to this matter, please contact the project attorney James Mahoney, Esq., NYS Department of Environmental Conservation, Office of General Counsel, 6274 East Avon-Lima Road, Avon, NY 14414, or by email at jwmahone@gw.dec.state.ny.us.

Sincerely,

Robert W. Schick, P.E.

Director

Division of Environmental Remediation

ec w/out att: Greg MacLean, Project Manager

cc w/att: E. Armater/M. Caruso
J. Mahoney

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

In the Matter of a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index No.: C828185-03-13**

Qualitrol Company LLC

DEC Site No.: C828185

Located at: 1385 Fairport Rd.
Monroe County
Fairport, NY 14450

Hereinafter referred to as "Site"

by:

Qualitrol Company LLC
1385 Fairport Road, Fairport, NY 14450

Hereinafter referred to as "Applicant"

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

WHEREAS, the Applicant submitted an application received by the Department on December 18, 2012; and

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

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

I. Applicant Status

The Applicant, Qualitrol Company LLC, is participating in the BCP as a Participant as defined in ECL 27-1405(1)(a).

II. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 14.900 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 152.15-2-9
Street Number: 1385 Fairport Rd., Fairport
Owner: Qualitrol Company, LLC

Tax Map/Parcel No.: 152.15-2-13
Street Number: 1385 Fairport Rd., Fairport
Owner: Qualitrol Company, LLC

III. Payment of State Costs

Invoices shall be sent to Applicant at the following address:

Qualitrol Company LLC
Attn: Virginia Murn
1385 Fairport Road
Fairport, NY 14450
vmurn@qualitrolcorp.com

In addition to the requirement to pay future state costs as set forth in Appendix "A", within forty-five (45) Days after the effective date of this Agreement, Applicant shall pay to the Department the sum set forth on Exhibit "B", which shall represent reimbursement for past State Costs incurred prior to the effective date of this Agreement. Applicant acknowledges that all past State Costs are not itemized on the cost summary and that additional charges may be billed at a later date for State Costs incurred prior to the effective date of this Agreement.

IV. Communications

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

1. Communication from Applicant shall be sent to:

Greg MacLean
New York State Department of Environmental Conservation
Division of Environmental Remediation
6274 East Avon-Lima Road
Avon, NY 14414
gbmaclea@gw.dec.state.ny.us

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

Krista Anders (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
kma06@health.state.ny.us

James Mahoney, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
6274 East Avon-Lima Road
Avon, NY 14414
jwmahone@gw.dec.state.ny.us

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

Qualitrol Company LLC
Attn: Virginia Murn
1385 Fairport Road
Fairport, NY 14450
vmurn@qualitrolcorp.com

B. The Department and Applicant reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Applicant provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph III.

V. Miscellaneous

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

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

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

DATED:

APR 11 2013

JOSEPH J. MARTENS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Robert W. Schick, P.E., Director
Division of Environmental Remediation

**EXHIBIT B
PAST COSTS**

New York State Department of Environmental Conservation
Division of Environmental Remediation
Bureau of Program Management, 12th Floor
625 Broadway, Albany, New York 12233-7012
Phone: (518) 402-9764 • Fax: (518) 402-9020
Website: www.dec.ny.gov



Transmitted via E-Mail
MEMORANDUM

TO: Michael Caruso, Office of General Counsel
FROM: Susan Bolesky, Bureau of Program Management, DER *Sue Bolesky*
SUBJECT: Past Costs Associated with Pending Brownfield Cleanup Agreement
Qualitrol Company LLC, BCP Site #C828185
DATE: February 8, 2013

The purpose of this cost summary is to provide the past costs figure to the Office of General Counsel for insertion into the pending Brownfield Cleanup Program (BCP) Agreement. That is, whenever an applicant is a participant, Paragraph V. Payment of State Costs of the boilerplate agreement requires the applicant to pay past costs within 45 days of the effective date of the agreement.

On January 18, 2013, a letter was sent to Qualitrol Company LLC, indicating that their BCP application was complete and an eligibility determination is expected to be made. This cost recovery summary provides available costs incurred by the New York State Department of Environmental Conservation (NYSDEC) to date. There may be additional future costs associated with this site that are not included in this summary.

The total unreimbursed costs incurred by DEC through November 21, 2012, in association with the Qualitrol Company LLC Site are \$0.00. This amount includes emergency response costs incurred at the site by a hazardous material spill, if any. If the site involves a petroleum spill, any costs incurred by the Oil Spill Fund would be recovered separately by the Office of the Attorney General and are not included in this summary. Costs incurred by the New York State Department of Health are not included since they are not readily available. Please note that there are no open contracts for this site at this time for which we have outstanding obligations.

Please contact me at (518) 402-9732, if you have any questions on this summary.

Attachments

ec: B. Conlon
R. Schick/A. Daniels
G. MacLean
B. Putzig

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

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

I. Citizen Participation Plan

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

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

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

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site and, if the Applicant is a "Participant", the extent of contamination emanating from such Site. If the Applicant is a "Volunteer" it shall perform a qualitative exposure assessment of the contamination emanating from the site in accordance with ECL § 27-1415(2)(b) and Department guidance;

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

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

4. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering

controls as well as any necessary monitoring and/or operation and maintenance of the remedy.

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

B. Submission/Implementation of Work Plans

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

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities to be conducted in accordance with current guidance, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts in accordance with 6 NYCRR § 375-3.6(b) to approve, modify, or reject a proposed Work Plan within forty-five (45) days from its receipt or within fifteen (15) days from the close of the comment period, if applicable, whichever is later.

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

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

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

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

C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall

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

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

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

D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan in accordance with 6 NYCRR § 375-1.6. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reason for its disapproval and may request Applicant to modify or expand the submittal. Within fifteen (15) days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Paragraph XII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law.

E. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each Final Report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

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

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

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

F. Institutional/Engineering Control Certification

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

III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York.

Applicant shall not suffer any penalty except as provided in Paragraph V, or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event as described at 6 NYCRR § 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

IV. Entry upon Site

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

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement. The Department will generally conduct such inspections during business hours, but retains the right to inspect at any time.

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

V. Payment of State Costs

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR § 375-1.5 (b)(3)(i).

B. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

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

D. The Department shall provide written notification to the Applicant of any change in the foregoing addresses.

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply. Objections

shall be sent to the Department as provided under subparagraph V.C above.

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

VI. Liability Limitation

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

VII. Reservation of Rights

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

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

VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New

York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

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

X. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR § 375-1.8(h)(2). Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after the Department's approval of such instrument. Applicant shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) days of such recording (or such longer period of time as may be required to obtain a certified copy provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) day period), which shall be deemed to be incorporated into this Agreement.

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

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph III.A.1 of the Agreement by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Applicant in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XII. Termination of Agreement

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

XIII. Dispute Resolution

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

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

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

XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, VII.B, and VIII, shall be null and void

ab initio fifteen (15) days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Department shall reserve all rights that it may have under law.

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

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

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

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicant to modify the Work Plan pursuant to 6 NYCRR § 375-1.6(d)(3) to reflect changes necessitated by Applicant's inability to obtain such interest.

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

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the

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

2. i. Except as set forth herein, if Applicant desires that any provision of this Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties in Subparagraph IV.A.1 of the Agreement.

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

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

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

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

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all

such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

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

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

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

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

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

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

M. In accordance with 6 NYCRR § 375-1.6(a)(4), the Department shall be notified at least 7 days in advance of, and be allowed to attend, any field activities to be conducted under a Department approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection meeting; provided, however that the Department may be excluded from portions of meetings where privileged matters are discussed.

N. In accordance with 6 NYCRR § 375-1.11(a), all work plans; reports, including all attachments and appendices, and certifications, submitted by a remedial party shall be submitted in print, as well as in an electronic format acceptable to the Department.

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.

QUALITROL COMPANY LLC

**ACTION BY WRITTEN CONSENT IN LIEU OF
A MEETING OF MANAGERS**

Pursuant to the Section 18-404 of the Delaware Limited Liability Company Act and in lieu of a meeting of the managers for such purposes, the undersigned, constituting all of the managers of Qualitrol Company LLC (the "Company") do hereby consent to the following actions permitted to be taken at a meeting of the managers of the Company without the necessity of any formal meeting being held:

Appointment of Officers

WHEREAS, the managers desire to elect officers of the Company to serve until the earliest of the next annual meeting (or action by written consent in lieu of an annual meeting) of the managers of the Company, until their successors are elected and qualified or until their earlier resignation or removal.

NOW THEREFORE BE IT RESOLVED, that the following individuals are hereby elected to serve as officers of the Company, to serve until the earliest of the next annual meeting (or action by written consent in lieu of an annual meeting) of the managers of the Company, until their respective successors are elected and qualified or until their resignation or removal:

Ronald N. Meyer	President
Raj Karanam	Vice President
Richard M. Kloc	Vice President
Robert S. Lutz	Vice President
Laurence S. Smith	Vice President
Frank T. McFaden	Vice President and Treasurer
James F. O'Reilly	Vice President and Secretary
Charles A. Schwertner	Assistant Treasurer and Assistant Secretary

Tax Delegation of Authority

RESOLVED, that each person in the Danaher Corporation tax department with a title of Director or higher (any person holding any such title at any time is referred to as a "Danaher Tax Delegate" and collectively the "Danaher Tax Delegates") shall have, and is hereby granted, full power and authority to act for and on behalf of the Company in all tax and taxation matters at the Federal, State and local levels of government of the United States, and in so doing, is hereby authorized to prepare, execute and file documents of any nature in the conduct of the tax affairs of the Company with such authorities and responsibilities to include, but not be limited to, preparation and filing of tax returns, tax reports and tax renditions; payment of taxes and related licenses and fees; receipt, but not endorsement, negotiation or collection, of checks in payment of any refund of taxes, penalties and interest; inspection and receipt of confidential information, filing of tax protests and claims; prosecuting, defending and compromising tax litigations; providing a system of records retention, and the execution of all documents, including waivers, necessary or desirable in connection therewith;

FURTHER RESOLVED, that for the sole purpose of executing and delivering any and all instruments and documents under the authority granted above, each of the Danaher Tax Delegates is hereby designated as Assistant Treasurer – Taxes, respectively, of the Company, to serve until the earliest of the next annual meeting (or action by written consent in lieu of an annual meeting) of the managers of the Company, until such individual is no longer considered a Danaher Tax Delegate or until his or her resignation or removal;

FURTHER RESOLVED, that for the sole purpose of certifying all instruments, documents, and records of the Company, to attest to the authority and position of any signatory whose signature may be affixed to

an instrument, and to execute on behalf of the Company affidavits, pleadings and other documents in connection with tax litigation and other tax proceedings and for the purpose of executing and delivering any and all instruments and documents under the authority granted above, each of the Danaher Tax Delegates is hereby designated as Assistant Treasurer – Taxes, respectively, of the Company, to serve until the earliest of the next annual meeting (or action by written consent in lieu of an annual meeting) of the managers of the Company, until such individual is no longer considered a Danaher Tax Delegate or until his or her resignation or removal;

FURTHER RESOLVED, that for the purpose of paying, on behalf of and for the account of the Company, all Federal, State and local taxes, depository payments, licenses, fees, penalties and interest which may from time to time be owed by or due from the Company in connection with its tax affairs, each of the Danaher Tax Delegates is hereby authorized to make such payments. Amounts for such payments may be drawn on Danaher Corporation bank accounts, for the account of the Company, and if so the Company will be billed for any such amounts paid on behalf of the Company by Danaher Corporation;

FURTHER RESOLVED, that all prior Resolutions adopted by the managers relating to the subject matter of the foregoing Resolutions are hereby replaced by these Resolutions, but all actions taken in accordance with any such prior Resolutions are hereby affirmed and ratified; and

FURTHER RESOLVED, that the delegation of authority contained in these Resolutions shall continue in full force and effect until these Resolutions are amended, replaced or rescinded by further action of the managers

Treasury Delegation of Authority

WHEREAS, it is agreed that Danaher Corporation's corporate treasury department shall be engaged in managing certain banking transactions on behalf of the Company, and that certain officers within Danaher Corporation's corporate treasury department and their designees shall perform these services on behalf of the Company, and it is therefore:

RESOLVED, that any one or more of Danaher Corporation's Chief Financial Officer, Vice President-Treasurer or Assistant Treasurer (any person holding any such title at any time is referred to as a "Danaher Treasury Delegate" and collectively the "Danaher Treasury Delegates") are hereby authorized in the name of and on behalf of the Company, acting singly or jointly, to open and close, or to authorize any designated person or persons to open and close, from time to time, one or more accounts in the name of the Company ("Account(s)") with one or more bank(s) or financial institution(s) (each an "Authorized Depository") in which funds of the Company may be deposited, whether represented by cash, checks, notes or other evidences of debt, or any securities owned by the Company;

FURTHER RESOLVED, that any endorsement for deposit to an Account may be in the form of a written or stamped endorsement of the Company without identification of the person making the endorsement;

FURTHER RESOLVED, that any one or more of the Danaher Treasury Delegates are hereby authorized in the name and on behalf of the Company, acting singly or jointly, to establish or confirm or to authorize any designated person or persons to establish and confirm, from time to time, by written notice to an Authorized Depository: (i) authority of any designated person or persons, acting jointly, to withdraw funds from Account(s) by commercially recognized means, including telephone instruction, electronic funds transfer, manual signature, and facsimile signature; (ii) termination of authority previously granted to any person or persons with respect to Account(s); and (iii) special requirements or conditions in connection with Account(s);

FURTHER RESOLVED, that each Authorized Depository is hereby authorized to honor all checks, drafts, notes, bills of exchange, depository-transfer checks, wire transfers, automated clearing house transfers, or other orders for the payment of money against the Company's funds in Account(s) in accordance with instructions given, from time to time, as specified in these Resolutions;

FURTHER RESOLVED, that each Authorized Depository is hereby authorized to honor depository-transfer checks, automated clearing house transfers, and wire transfers ("Transfer Instruments") without requiring any signature other than the name of the Company in instances in which Transfer Instruments are payable to the order of another bank or financial institution (or affiliate thereof) for credit to an account of the Company maintained at such bank or financial institution;

FURTHER RESOLVED, that any one or more of the Danaher Treasury Delegates is hereby authorized, in the name of and on behalf of the Company, acting singly or jointly, to execute and deliver or to authorize any designated person or persons to execute and deliver from time to time one or more wire transfer or other agreements with regard to the management of Accounts (including, without limitation, agreements to facilitate electronic banking, facsimile signatures, and electronic instructions for issuance of checks and bank drafts), lockbox agreements, account sweep agreements, pooling agreements, custody agreements, controlled disbursement agreements, overdraft facility agreements and balance reporting agreements, or any similar agreement to any of the foregoing, between the Company and any bank or financial institution with which the Company maintains an account (or affiliate thereof), and to otherwise operate the applicable Accounts;

FURTHER RESOLVED, that any one or more of the Danaher Treasury Delegates is hereby authorized, in the name of and on behalf of the Company, acting singly or jointly, to execute and deliver or to authorize any designated person or persons to execute and deliver from time to time one or more spot or forward currency exchange agreements (with maturity not exceeding 90 days) between the Company and any bank, financial institution or other entity;

FURTHER RESOLVED, that any one or more of the Danaher Treasury Delegates is hereby authorized, in the name of and on behalf of the Company, acting singly or jointly, to invest, or to authorize any designated person or persons to invest, excess funds of the Company in investments as determined in his or her discretion, and to take such actions as may be required in connection with such investment;

FURTHER RESOLVED, that the foregoing resolutions do not authorize the Company to incur indebtedness of any nature whatsoever (except with respect to overdraft facilities) or to guarantee, directly or indirectly, the obligations of any party unless such guarantee is delivered pursuant to one of the agreements referred to in the preceding resolutions;

FURTHER RESOLVED, that all prior Resolutions adopted by the managers relating to the subject matter of the foregoing Resolutions are hereby replaced by these Resolutions, but all actions taken in accordance with any such prior Resolutions are hereby affirmed and ratified; and

FURTHER RESOLVED, that the delegation of authority contained in these Resolutions shall continue in full force and effect until these Resolutions are amended, replaced or rescinded by further action of the managers.

Corporate Development Delegation of Authority

RESOLVED, that each of the officers and employees of Danaher Corporation (the ultimate parent of the Company) who may from time to time have any of the following titles or positions:

- Senior Vice President, Corporate Development
- Vice President, Corporate Development
- Vice President-Managing Director
- Director, Corporate Development
- Manager, Corporate Development
- Vice President, Corporate Development, Europe
- Director, Corporate Development, Europe
- Manager, Corporate Development, Europe

- Vice President, M&A Finance
- Director, M&A Finance
- Manager, M&A Finance
- Senior Vice President, Strategic Development
- Vice President, Strategic Development
- Director, Strategic Development
- Manager, Strategic Development
- Associate General Counsel
- Chief Counsel, Mergers & Acquisitions
- Senior Counsel, Mergers & Acquisitions
- Counsel, Mergers & Acquisitions
- Chief Counsel, Litigation
- Chief Counsel, Labor & Employment
- any attorney employed in the legal department of Danaher Corporation

shall, in such capacity, have full right and authority to execute and deliver as an authorized signatory of, and on behalf of, the Company any and all of the following types of letters, agreements and other documents:

- agreements with advisors, consultants and other firms, including without limitation engagement letters, no-reliance letters, indemnity letters and conflict waiver letters;
- indication of interest letters;
- letters of intent, term sheets and/or memorandum of understanding;
- exclusivity agreements;
- confidentiality and/or non-disclosure agreements, whether or not including "standstill" provisions;
- standstill agreements; and
- any and all similar or comparable letters, agreements and other documents, and any and all letters, agreements and documents containing the contents typically contained in the aforementioned documents, and any and all amendments, modifications, supplements or waivers with respect to any of the foregoing.

General

RESOLVED, That the officers of the Company be, and each of them hereby is, authorized and directed, for and on behalf of the Company, to take such actions and to execute all such documents that any of such officers deems to be necessary or appropriate to carry out the intents and purposes of the foregoing resolutions and to carry on the business of the Company; and

FURTHER RESOLVED, That the Secretary or any Assistant Secretary of the Company, in his or her capacity as such be, and each of them hereby is, authorized to certify that the foregoing resolutions were duly consented to and adopted as of the latest date set forth on the signature page hereto, and that the Secretary or any Assistant Secretary of the Company shall be, and hereby is, authorized and directed to insert, or cause to be inserted, this unanimous written consent, or a copy thereof, in the minutes of proceedings of the managers of the Company.

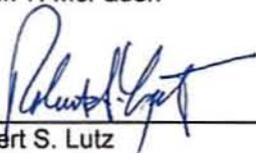
IN WITNESS WHEREOF, each of the undersigned has caused the execution of this consent as of the date set forth below next to the undersigned's name.

Date: 17 May 2012



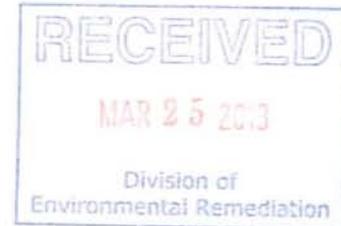
Frank T. McFaden

Date: May 30, 2012



Robert S. Lutz

March 21, 2013



Robert W. Schick, P.E., Director
NYS Department of Environmental Conservation
Division of Environmental Remediation, 12th Floor
625 Broadway
Albany, NY 12233-7011

Re: Qualitrol Company LLC
Tax Map ID No.: 152.15-2-9, 152.15-2-13
Property County: Monroe
Site No.: C828185

Dear Mr. Schick,

Please find enclosed the three original, signed Brownfield Cleanup Agreements for Qualitrol Company LLC. A document entitled "Qualitrol Company LLC Action By Written Consent in Lieu of a Meeting of Managers" is also enclosed as proof that the party executing the BCA, Richard (Dick) Kloc, is authorized to bind the Requestor.

We look forward to working with the Department on this project.

Sincerely,

Virginia Murn
Sr. Quality, Safety & Health Specialist