

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a Remedial Program for
**Standard Portable Site, 21 Valley Street/
13 West Lake Road, Mayville**, under Article 27,
Title 14 of the Environmental Conservation Law
by

**Jo Lyn Enterprises, Ltd.
d/b/a Standard Portable**

BROWNFIELD SITE
CLEANUP AGREEMENT

Index # B9-0720-06-06
Site # C907030

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 8, 2006, Applicant Jo Lyn Enterprises, Ltd., d/b/a Standard Portable, a New York Corporation with an office and place of business at 21 Valley Street, Mayville, New York 14757, submitted a request to participate in the Brownfield Cleanup Program relative to property located at 21 Valley Street and 13 West Lake Road in the Village of Mayville, County of Chautauqua; the Department has accepted the application for said real property, described as new tax no. 262.15-2-10 and new tax no. 262.15-2-12 (the "Site"). A map of the Site showing its general location is attached as Exhibit "A"; and

WHEREAS, the current use of the property is commercial and industrial. There are three structures on the property, constructed on concrete slab foundations. One structure is used for manufacturing of magnetic apparatus; another for warehousing; and the third houses a small retail ice cream shop. The intended use of the property will remain commercial and industrial; 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, Applicant 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 Applicant 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 Applicant agrees that the Work Plan shall include collection of the DNAPL previously delineated as present in SB-1 by the Subsurface Site Investigation prepared and submitted on behalf of the Volunteer, despite the fact that SB-1 is located beyond the site's property line. 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, Applicant shall elect in writing to (a) implement the Work Plan as modified; (b) implement any other Department-approved Work Plan(s); (c) invoke dispute resolution pursuant to Paragraph XIV; or (d) terminate this Agreement pursuant to Paragraph XIII.

iii) If the Department disapproves a Work Plan, the reasons for such disapproval shall be provided in writing. In the event the Department disapproves a Work Plan, within twenty (20) Days after receiving written notice of such disapproval, Applicant shall elect in writing to (a) modify or expand it within thirty (30) Days of receipt of the written disapproval notice; (b) complete any other Department-approved Work Plan(s); (c) invoke dispute resolution pursuant to Paragraph XIV; or (d) terminate this Agreement pursuant to Subparagraph XIII.

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

4. During all field activities, Applicant shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Applicant to perform such supervision.

C. Revisions to Work Plans

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

D. Submission of Final Reports

1. In accordance with the schedule contained in a Work Plan, Applicant shall submit a Final Report that shall include but not be limited to: all data generated relative to the Site and all other information obtained as part of the implementation of the subject Work Plan; all of the assessments and evaluations required by the subject Work Plan; a statement of any additional data that must be collected; and "as-built" drawings.

i) The Final Report for an Investigation Work Plan shall comply with the requirements set forth at ECL 27-1411(1) and shall contain a certification by the person with primary responsibility for the day to day performance of the activities under this Agreement that those activities were performed in full accordance with the Investigation Work Plan. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL 27-1413 that supports such determination.

ii) A Final Engineering Report certifying that remediation of the Site has been performed in accordance with this Agreement shall be prepared by a Professional Engineer 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 Applicant or Applicant'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, Applicant shall submit such additional Work Plans as it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XIII.

E. Review of Submittals other than Work Plans

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

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reasons for its disapproval and may request Applicant to modify or expand the submittal. Within twenty (20) Days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) Days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIV; or (iv) terminate this Agreement pursuant to Paragraph XIII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law.

F. Department's Determination of Need for Remediation

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

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL 27-1417(3)(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 filed an Environmental Easement in accordance with Paragraph X within sixty (60) Days of receipt of the Department's determination.

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or a revision to an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL 27-1415(3). A proposed Remedial Work Plan

addressing the Site's remediation will be noticed for public comment in accordance with ECL 27-1417(3)(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, Applicant agrees to negotiate revisions to the proposed Remedial Work Plan in accordance with Paragraph II.C. If Applicant elects not to develop a Work Plan under this Subparagraph or if either party concludes that a mutually acceptable Work Plan under this Subparagraph cannot be negotiated, then this Agreement shall terminate in accordance with Subparagraph XIII.

G. Submission of Annual Reports, if required

In the event that the remedy for the Site, if any, or any Work Plan for the Site requires operation, maintenance, and monitoring (OM&M), including reliance upon institutional or engineering controls, Applicant shall file a report annually (unless a different frequency is specified in an approved Work Plan) on the 1st day of the month following the anniversary of the start of the OM&M and continuing until the Department notifies Applicant in writing that such report may be discontinued. Such report shall be signed by a Professional Engineer or by an expert approved by the Department to perform that function and certified under penalty of perjury that the institutional and/or engineering controls are unchanged from the previous certification and that nothing has occurred that would impair the ability of such controls to protect public health and the environment or constitute a violation or failure to comply with the approved OM&M Plan. Applicant shall notify the Department within twenty-four (24) hours of discovery of any upset, interruption, or termination of one or more controls without the prior approval of the Department. Further, Applicant shall take all actions required by the Department to maintain conditions at the Site that achieve the objectives of the remedy and/or the Work Plan and are protective of public health and the environment. An explanation of such upset, interruption, or termination of one or more controls and the steps taken in response shall be included in the foregoing notice and in the report required by this Subparagraph as well as in any progress reports required by Paragraph XI. Applicant can petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a Professional Engineer or other expert approved by the Department stating that such controls are no longer necessary. The Department shall not unreasonably withhold its approval of such petition.

III. Enforcement

This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event provided it notifies the Department in writing within ten (10) Days of when it obtains knowledge of any such event. Applicant shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Applicant shall have the burden of proving by a

preponderance of the evidence that an event qualifies as a Force Majeure Event pursuant to this Paragraph.

IV. Entry upon Site

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL 27-1431.

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

V. Payment of State Costs

A. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs for 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 Applicant at the following address:

**Jo Lyn Enterprises Ltd.
c/o Julie Baraniewicz
P.O. Box 147
Mayville, New York 14757**

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

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

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL 27-1421, subject to the terms and conditions stated therein. A Notice of the Liability Limitation shall be filed with the recording officer of the county in which the Site is located within thirty (30) Days of (i) the effective date of the Certificate of Completion or (ii) the date Applicant acquires title to the Site, whichever is later.

VII. Reservation of Rights

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

and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

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

VIII. Indemnification

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

IX. Change of Use

Applicant shall notify the Department at least sixty (60) Days in advance of any change of use, as defined in ECL 27-1425, which is proposed for the Site. In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) Days of receipt of such notice.

X. Environmental Easement

A. Within thirty (30) Days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within thirty (30) Days after the Department's determination pursuant to Subparagraph II.F.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36. The submittal shall be substantially similar to Exhibit "D." 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).

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of human health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or other expert approved by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

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

XII. Communications

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

1. Communication from Applicant shall be sent to:

**Martin Doster
Regional Hazardous Waste Remediation Engineer
New York State Department of Environmental Conservation
Division of Environmental Remediation, Region 9
270 Michigan Avenue
Buffalo, New York 14203**

Note: three copies (one unbound) of work plans are required to be sent, and

**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

**Joseph J. Hausbeck Esq.
New York State Department of Environmental Conservation
Division of Environmental Enforcement
270 Michigan Avenue
Buffalo, New York 14203**

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

**Jo Lyn Enterprises Ltd.
c/o Julie Baraniewicz
P.O. Box 147
Mayville, New York 14757**

with a copy to:

**David P. Flynn, Esq.
Phillips Lytle LLP
3400 HSBC Center
Buffalo, New York 14203-2887**

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

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

XIII. Termination of Agreement

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

XIV. Dispute Resolution

A. In the event disputes arise regarding any notice of disapproval of a submittal, proposed Work Plan or Final Report, or during the implementation of any Work Plan, or in connection with any notice from the Department pursuant to Paragraph IX that a proposed Change of Use is prohibited, Applicant may, within thirty (30) Days of receipt of such notice, request in writing informal negotiations with the Department in an effort to resolve the dispute. The Department and Applicant shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph XIV.B. The period for informal negotiations shall not exceed thirty (30) Days from Applicant's request for informal negotiations. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding unless Applicant notifies the Department in writing within thirty (30) Days after the conclusion of the thirty (30) Day period for informal negotiations that it invokes the dispute resolution provisions provided under Subparagraph XIV.B.

B. 1. Applicant shall file with the Office of Hearings and Mediation ("OH&M") a request for formal dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, or opinion supporting its position, and all supporting documentation upon which Applicant relies (hereinafter called the "Statement of Position"). A copy of such request and written statement shall be provided contemporaneously to the Director of the Division of Environmental Remediation ("DER Director") and to the parties listed under Subparagraph XII.A.1.

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

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

4. The OH&M shall prepare and submit a report and recommendation to the DER Director who shall issue a final decision resolving the dispute in a timely manner. The final decision shall constitute a final agency action and Applicant shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR provided that Applicant notifies the Department within thirty (30) Days after receipt of a copy of the final decision of its intent to commence an Article 78 proceeding and commences such proceeding within sixty (60) Days after receipt of a copy of the Director's final decision. Applicant shall be in violation of this Agreement if it fails to comply with the final decision resolving this dispute within sixty (60) Days after the date of such final decision, or such other time period as may be provided in the final decision, unless it seeks judicial review of such decision within the sixty (60) Day

period provided. In the event that Applicant seeks judicial review, Applicant shall be in violation of this Agreement if it fails to comply with the final Court Order or settlement within thirty (30) Days after the effective date of such Order or settlement, unless otherwise directed by the Court. For purposes of this Subparagraph, a Court Order or settlement shall not be final until the time to perfect an appeal of same has expired.

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

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

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

XV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, VII.B, and VIII, shall be null and void *ab initio* fifteen (15) Days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) Days after issuance of a final decision resolving a dispute pursuant to Paragraph XIV, whichever is later, unless Applicant submits information within that fifteen (15) Day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void *ab initio*, and the Department shall reserve all rights that it may have under law.

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

C. The Department may exempt Applicant from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement that (i) is conducted on the Site or on different premises that are under common control or contiguous to or physically connected with the Site and such activity manages exclusively hazardous waste and/or petroleum from such Site, and (ii) satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit, as determined by the Department.

D. Applicant shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Applicant's obligations under this Agreement. If, despite Applicant's best efforts, any access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Agreement are not obtained, Applicant shall promptly notify the Department, and include a summary of the steps taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicant to modify the Work Plan pursuant to Subparagraph II.C of this Agreement to reflect changes necessitated by the lack of access and/or approvals.

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

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

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

H. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or

comment by the Department shall be construed as relieving Applicant of Applicant's obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s) attached as Exhibit "C." Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

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

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

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

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

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

3. Notwithstanding the foregoing Subparagraphs XV.I.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

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

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

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

M. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations. Whenever terms listed in the Glossary attached hereto are used in this Agreement or its Exhibits, the definitions set forth in the Glossary shall apply. In the event of a conflict, the definition set forth in the Glossary shall control.

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

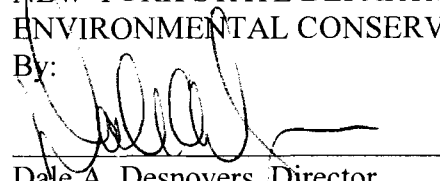
O. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

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

DATED: NOV 16 2006

DENISE M. SHEEHAN
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:


Dale A. Desnoyers, Director
Division of Environmental Remediation

CONSENT BY APPLICANT

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

Jo Lyn Enterprises, Ltd.

By: Julianne Baranew

Title: Pres

Date: 10/25/06

STATE OF NEW YORK)
) ss:
COUNTY OF Chautauque

On the 25th day of October, in the year 2006, before me, the undersigned, personally appeared Julianne Baranew personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Elizabeth F. Silliman
Signature and Office of individual
taking acknowledgment

ELIZABETH F. SILLIMAN
Notary Public, State of New York
No. 01SI6034591
Qualified in Chautauque County
Commission Expires December 13, 20 11

Glossary of Terms

The following terms shall have the following meanings:

“Day”: a calendar day. In computing any period of time under this Agreement, if the last day would fall on a Saturday, Sunday, or State holiday, the period shall run until the close of business of the next working day.

“Force Majeure Event”: an event which is brought on as a result of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Applicant’s reasonable control.

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

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

“Professional engineer”: an individual registered as a professional engineer 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.

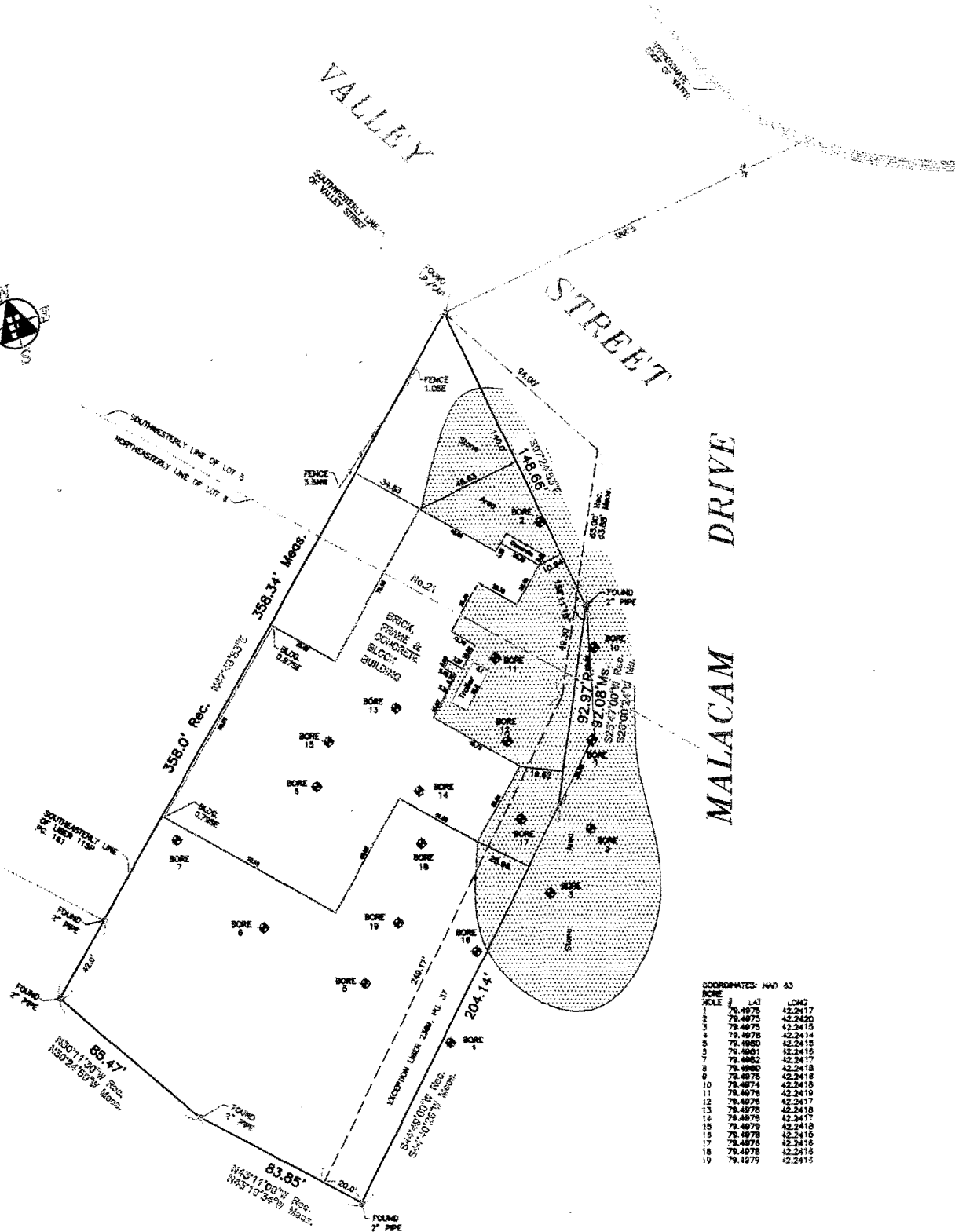
“Termination Date”: the date upon which (i) the Department issues the Certificate of Completion or approves the Final Report relative to the OM&M at the Site, whichever is later, or (ii) the Agreement terminates pursuant to Paragraph XIII or Subparagraph XV.A.,.

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

EXHIBIT “A”

Map

NOTE: THE COUNTRY WAS FORMED THROUGH THE MERGERS OF
AN ASSOCIATION OF TOWNS AND IS SUBJECT TO ANY SORT
OF BARRIERS THAT MAY BE CREATED BY AN ASSOCIATION
OF STATES



COORDINATES: MAP 53	
BORE	LAZ
HOLE	
1	78.4675
2	78.4673
3	78.4675
4	78.4678
5	78.4680
6	78.4681
7	78.4682
8	78.4680
9	78.4675
10	78.4674
11	78.4678
12	78.4676
13	78.4678
14	78.4675
15	78.4679
16	78.4678
17	78.4676
18	78.4678
19	78.4679

COUNTRY: VILLAGE OF MARYLE COUNTY: OF CHAUTAUKA, STATE OF NEW YORK PART OF LOTS 5 & 6 OF THE MOLLAND LANDS COMPANY'S SURVEY MAP DATE: ELEVATION: DISCOVER: 3/28/78 COORDINATES ADDED DATE: JUNE 30, 1935 REF: 03-51319	SPILL PLUG D. A. REYES D. E. WELLS	<div data-bbox="1140 1837 1185 1852"> </div> <div data-bbox="1192 1837 1427 1852"> Foit-Albert Associates Architects, Engineers and Surveyors, P.C. 7133 Main Street, Buffalo, New York 14221 SUBMITTER TO THE BUREAU OF MINES & GEOL. PRINTS (716) 637-3333 FAX (716) 635-3331 </div>
DATE: JUNE 30, 1935 REF: 03-51319	DATE:	<div data-bbox="1140 1852 1279 1869"> This is a reproduction of a map or drawing submitted to the Bureau of Mines and Geology for the purpose of recording the location of a spill. The map or drawing is a plan view of the spill area, showing the location of the spill and the surrounding area. The map or drawing is a plan view of the spill area, showing the location of the spill and the surrounding area. </div> <div data-bbox="1287 1852 1427 1869"> This is a reproduction of a map or drawing submitted to the Bureau of Mines and Geology for the purpose of recording the location of a spill. The map or drawing is a plan view of the spill area, showing the location of the spill and the surrounding area. The map or drawing is a plan view of the spill area, showing the location of the spill and the surrounding area. </div>

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").

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.

D. 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.

E. 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.

9. Extinguishment. This environmental easement may be extinguished only by a release 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.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Grantor's Name

By: _____

Title: _____

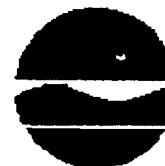
Date: _____

**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED
BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By
and Through the Department of Environmental Conservation**

By: _____

7/21/2006

**New York State Department of Environmental Conservation
Division of Environmental Remediation**



MEMORANDUM

TO: Joseph Hausbeck, Project Attorney
FROM: Martin Doster, RHWRE
Linda Ross, Project Manager
THRU: Ed Belmore, Director, Remedial Bureau BURD
SUBJECT: BCP Eligibility Recommendation

Site Name	Standard Portable Site	Site Code	C907030
Site Address	21 Valley Street/13 West Lake Road	County	Chautauqua
Municipality	Mayville	Zip	14757

DATE: 7/21/2006

Attached is a site record which sets forth information relative to the site. The public comment period will end in early September. It is recommended that the Application to participate in the BCP be granted.

1. Enforcement Actions (check all that apply): ☐ None
- Site Specific:
- ☐ Class 1 or Class 2 ☐ NPL site ☐ RCRA site
- ☐ Solid Waste enf. ☐ RCRA enf. ☐ Spills Order ☐ Bulk Storage Order
- ☐ State/Fed. enf. order ☒ Other_Air Permits for Vapor Degreaser
- Party Specific issues against this party at this site: ☒ None
- ☐ Pending action related to site contamination ☐ Order for remedial program
- ☐ Spill claim outstanding ☐ Public interest factors (explain): _____
- ☐ Other _____

7/20/2006

2. Prior Remedial work: ☐ None
☐ SSF ☐ Spills Program ☐ ERP ☐ VCP
☐ Fed. SSF ☐ RCRA
X Other: Excavation and later Phase II both for property transfers

Performed Pursuant to:

- ☐ Order ☐ Agreement ☐ Stipulation ☐ SAC
X Other: Property Transfer-Required by lending institution

Nature of Work (explain): Excavation performed in 1986 to remove a septic tank and associated soils containing TCE. Phase II occurred in 2002.

3. Public Comments: X None

4. Site Specific Issues/Local Concerns: ☐ None

Village of Mayville is considering a public ROW to convert a former rail line to a public bike path. This ROW would be adjacent to the site. The municipality will not proceed until remedial issues are addressed.

5. Other Considerations:

There is evidence of NAPL (TCE) on the property boundary, migrating off-site toward Lake Chautauqua (<0.2 mile away). The applicant has reportedly few assets and if deemed a participant, will likely not be able to participate financially.

6. Recommendations:

- A. ☒ Eligible ☐ Not Eligible
☐ Part Eligible/ Part Non-eligible (describe recommended site): _____

- B. Applicant Status (if applicable): ☐ Participant ☐ Volunteer

Project Attorney is determining whether Standard Portable is a volunteer or a participant. At issue is whether owner operated the facility during the time that TCE was used on-site.

7. Justification for recommendation:

The site is severely contaminated with TCE. NAPL is present on and off-site with migration to Lake Chautauqua occurring. Vapor intrusion may be an issue, depending on groundwater direction. The application includes an IRM WP that will address the on-site source area. Additional investigation will be required off-site.

ec: D. Desnoyers
S. Ervolina
R. Sherman
D. Christian
J. Hausbeck
D. David

7/20/2006



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL REMEDIATION
BCP Site Information



Site Code	NA	Site Name	Standard Portable Site	
Classification	P	Address	21 Valley Street/13 West Lake Road	
Region	9	City	Mayville	Zip 14757
Latitude	42:14'30"	Town	Mayville	Project Manager Linda Ross
Longitude	79:29'52"	County	Chautauqua	
Site Type	Commercial/Industrial			Estimated Size 3 acres

Site Description

The Standard Portable Site is located along the shore of Lake Chautauqua at 21 Valley Street/13 West Lake Road. The Site is used for an ice cream stand and the manufacturer of magnetic apparatus. The soil and groundwater are highly contaminated with trichloroethene (TCE). The surface water could potentially be impacted.

A pre-purchase investigation identified a septic tank historically used as a storage and disposal unit for TCE waste, generated by the vapor degreasing unit. The septic system was removed in 1996 at the time of the participant's purchase.

Materials Disposed at Site- Trichloroethene

Quantity Disposed- Unknown

Analytical Data Available for : Volatile Organic Compounds (VOCs)

Applicable Standards Exceeded for: TCE; cis-1,2-DCE; Vinyl Chloride; 1,12-TCA

Assessment of Environmental Problems

There are high concentrations of TCE and daughter products in the soil (12,200 mg/L) and groundwater (1,450 mg/L). Free phase TCE has also been detected in the groundwater.

Assessment of Health Problems: The property is located approximately 588 feet from Lake Chautauqua, a Class A waterway and is located above a principal aquifer.

Main Contacts

Applicant: Julianne Baraniewicz

Project Manager: Linda Ross

Lead Office: REG 9S

7/21/2006

Application Completion Start Date:

Application Completion End Date:

Application Approval Start Date:

Application Approval End Date:

BCA Start Date:

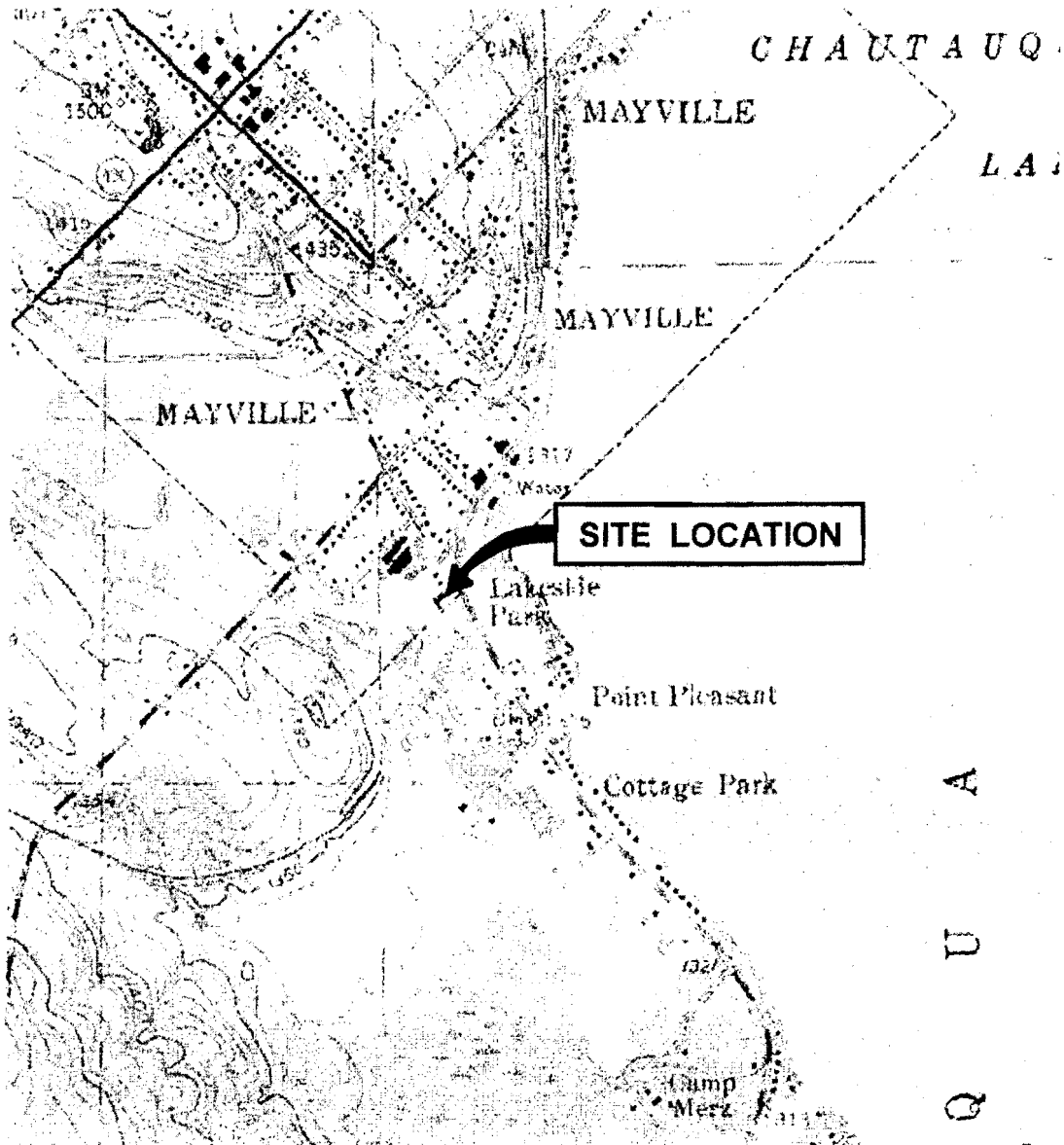
Application Completion Start Date:

Application Completion End Date:

Application Approval Start Date:

Application Approval End Date:

BCA Start Date:



THIS DRAWING IS FOR ILLUSTRATIVE AND INFORMATIONAL PURPOSES ONLY AND WAS ADAPTED FROM USGS, SHERMAN, NEW YORK QUADRANGLE.



HAZARD EVALUATIONS, INC.		
Phase I/II Audits - Site Investigations - Facility Inspections		
SITE LOCATION PLAN		
JO LYN ENTERPRISES, LTD.		
MAYVILLE, NEW YORK		
DRAWN BY: DLW	SCALE: NOT TO SCALE	PROJECT: 15208
CHECKED BY: CMH	DATE: 7/06	DRAWING NO: 1

the site. The North Chautauqua Lake Sewer District is the owner of the property on the northern edge of the site.

13. Describe on attachment the potential vulnerability of groundwater to contamination that might migrate from the site, including proximity to wellhead protection and groundwater recharge areas.

Groundwater contamination has been detected at the site boundary, with likely migration toward Lake Chautauqua approximately 0.2 miles away. The site is likely within a groundwater discharge area, considering the surrounding elevated topography and the close proximity of the lake. We have not yet investigated whether any groundwater wells exist in this area. That would be necessary to determine if they would be affected by the contaminant plume. It is suspected that there are none currently in use due both to the proximity to the lake (surface water intakes would have been used on the lake side of the road) and the presence of the park in the contaminant migration pathway to the lake.

14. Describe on an attachment the geography and geology of the site.

Subject site lies within the Allegheny Plateau geographic province which is characterized by steep valley walls, wide ridge tops and flat-topped hills between drainage ways. This province is strongly influenced by the underlying bedrock, which is nearly level bedded. The site is within the lake plain of Lake Chautauqua. (USDA Soil Survey of Chautauqua County, New York, August 1994.)

The vast majority of the subject site is covered by Red hook Silt Loam, which exists in low flats on outwash plains. Red Hook soils are acidic, nearly level, very deep and somewhat poorly drained. Slopes generally range from 0-3%. Water table may be at 0.5 - 1.5 feet bg from December through May. Generally there is at least a six-foot soil profile over bedrock. (USDA Soil Survey of Chautauqua County, New York, August 1994.)

The bedrock in the area of the site is the Conneaut Group (Chadokoin Formation), the top 270 feet of which likely consists of interbedded gray shale (relatively soft) and siltstone (Ellicott Group).

Explanation of Standard Portable's Status as a BCP Volunteer

Julianne Baraniewicz, as the current owner of the property is requesting approval of her application to the Brownfield Cleanup Program as a volunteer.

Under ECL § 27-1405 a volunteer in the Brownfield program is defined as:

(b) "Volunteer" shall mean an applicant other than a participant, including without limitation a person whose liability arises solely as a result of such person's ownership or operation of or involvement with the site subsequent to the disposal or discharge of contaminants, provided however, such person

exercises appropriate care with respect to contamination found at the facility by taking reasonable steps to:

- (i) stop any continuing release;
- (ii) prevent any threatened future release; and
- (iii) prevent or limit human, environmental, or natural resource exposure to any previously release contamination.

Jo Lyn Enterprises, Ltd. d/b/a Standard Portable is currently operating at the site. Jo Lyn Enterprises Ltd. ("Jo Lyn") purchased the assets of Standard Portable in 1996 from Roland Kidder the Conservator for Gene DeMambro. Originally, Richard Baraniewicz, Julianne Baraniewicz, as the owners of Jo Lyn purchased the Standard Portable property in 1996. Julianne Baraniewicz became the sole owner of the company and property as part of a divorce settlement in November of 2001. Julianne Baraniewicz currently operates the company.

As part of the purchase in 1996, the lending institution required a Phase I investigation. The Phase I identified contamination and the source was determined to be an underground tank, specifically a septic tank. It is believed that the former owner used this septic tank to dispose of TCE. Anderson Environmental was hired to remove the tank and complete the remediation. The initial work consisted of the excavation and removal of the underground septic tank and surrounding contaminated soil. Confirmation samples showed that contamination was still present after the initial excavation. Additional excavation activities were completed and additional samples were taken. In a letter dated December 24, 1996 from Anderson International to Richard Baraniewicz and Jo Lyn, Anderson International stated that the septic tank was removed, the tank contents and the contaminated soil were disposed of properly and the project was successfully concluded on December 8, 1996. The total cost for this remediation work in 1996 was \$60,658.00. Subsequently the lending institution authorized a loan to Julianne Baraniewicz, Richard Baraniewicz, and Jo Lyn.

In 2002, as part of an attempt to re-sell the property a Phase I was completed by LCS Inc. During the Phase I investigation additional trichloroethene contaminated soil was identified and because of this the pending sale was not completed. Julianne Baraniewicz remains the sole owner of the business and the property.

As stated above a volunteer is an applicant whose liability arises solely as the result of such person's operation or involvement with the site subsequent to the disposal or the discharge of the contaminants. (Proposed Regulations 6 NYCRR 375-3.2). It is known that the site was contaminated prior to 1996 when Julianne Baraniewicz purchased the property. The contamination was identified by the Phase I in 1996. Based on this fact Julianne Baraniewicz, the requestor, meets the first part of the definition of volunteer under the proposed regulations.

The second component necessary for an applicant to meet the definition of a volunteer mandates that the volunteer took reasonable steps "to stop any continuing release," "prevent any threatened future release," and "prevent or limit human, environmental or natural resource exposure to any previously released contaminant." Julianne Baraniewicz did just that. The Baraniewiczs hired an environmental consultant. The consultant removed the septic tank, excavated soil on two separate occasions, and then sent a confirmation letter stating that the project had been successfully completed. At that time, Julianne Baraniewicz thought all of the contamination had been identified, removed and the site had been remediated. It was based on this fact that the Baraniewiczs were able to complete the purchase of the property. Thus, Julianne Baraniewicz, the requestor meets the second part of the definition of volunteer under the proposed regulations because she removed the tank to stop any continuing release and excavated contaminated soil to prevent exposure to any previously released contaminants. (Proposed Regulations 6 NYCRR 375-3.2).

Under the Brownfield program where an applicant does not cause the contamination and takes steps to remediate the property to prevent future release and exposure to contaminants, the applicant qualifies as a volunteer according to NYSDEC regulations. (Proposed Regulations 6 NYCRR 375-3.2). Therefore, for the above reasons Julianne Baraniewicz requests that as the owner of Jo Lyn Enterprises, Ltd. and the property at 13 West Lake/21 Valley Street that she be approved as a volunteer applicant under the Brownfield Cleanup Program.

BFLO Doc. # 1577136.1

SUBSURFACE SITE INVESTIGATION

**Jo Lyn Enterprises, Ltd.
21 Valley Street
Mayville, New York 14757**

Prepared by:
Hazard Evaluations, Inc.
3836 North Buffalo Road
Orchard Park, New York 14127

June 2006

SUBSURFACE SITE INVESTIGATION

**Jo Lyn Enterprises, Ltd.
21 Valley Street
Mayville, New York**

Introduction

In accordance with an agreement, dated May 8, 2006, Hazard Evaluations, Inc. (HEI) completed a focused Subsurface Site Investigation (SSI) at the above-referenced (subject) site (Figure 1, Attachment 1). This SSI was completed to provide additional data and information concerning the subsurface condition of the subject site, at which a historic release of Trichloroethene occurred from a historic septic tank. Preliminary site subsurface data were provided in a Phase II ESA report by LCS, Inc., dated September 23, 2005. HEI's SSI addressed the following: 1) A more thorough characterization of Volatile Organic Contaminants (VOCs) within the on-site soil profile, both vertically and laterally; 2) Water table elevations and the approximate on-site groundwater flow direction; 3) Definition of the shallow contaminant plume on-site with respect to site boundaries; 4) Condition of the subfloor soil/fill beneath a portion of the facility; and 5) Identification of any "hot spots" within the soil profile in the impacted zone, including any areas exhibiting dense non-aqueous phase liquid (DNAPL) product.

Site History

Jo Lyn Enterprises owns and operates the facility, which is located at 21 Valley Street, Village of Mayville, Chautauqua County, New York. This parcel of land consists of approximately 1.06 acres of land located within the lake plain across Route 394 along the western side of Chautauqua Lake. Historically, the facility was operated by Wappat Saw Company. Later the facility was operated as Standard Portable Products, Inc. One or more of the prior owners reportedly performed various metal working operations, including vapor degreasing using a Trichloroethene (TCE) degreasing unit. It is understood that the spent TCE solvent from this unit was disposed of or stored in an exterior underground septic tank.

The current owner, Jo Lyn Enterprises Ltd. d/b/a Standard Portable ("Jo Lyn"), purchased certain assets including the facility in 1996 and began manufacturing operations. Pre-purchase due diligence investigations identified a septic tank historically believed to be used as storage/disposal for TCE waste generated by the vapor degreasing unit; a remedial program was conducted by Anderson International, Inc. on Jo Lyn's behalf. It should be noted that the septic tank was removed in 1996 at the time of Jo Lyn's purchase. The waste that Jo Lyn generated in association with its use of the vapor degreaser was containerized and transported off-site for disposal. The use of the vapor degreaser continued until 2001, when it was taken out of service. In late 2002, Jo Lyn sought to sell the subject site, and as part of the due diligence process, a Phase II ESA was performed on behalf of the potential buyer's financial lending institution. The results of that Phase II ESA indicated significant levels of TCE contamination in the soil and groundwater in the vicinity of former septic tank.

General Geology and Hydrogeology

The subject site lies within the Allegheny Plateau geographic province which is characterized by steep valley walls, wide ridge tops and flat-topped hills between drainage ways. This province is strongly influenced by the underlying bedrock, which is nearly level bedded. The site is within the lake plain of Chautauqua Lake.

The vast majority of the subject site is covered by Red Hook Silt Loam, which exists in low flats on outwash plains. Red Hook soils are acidic, nearly level, very deep and somewhat poorly drained. Slopes generally range from 0-3%. Water table may be at 0.5-1.5 feet below grade from December through May. Generally, there is at least a six foot soil profile overlying the bedrock. Bedrock in the area of the site consists of the Conneaut Group portion of the Chadokoin Formation, the top 270 feet of which likely is comprised of relatively soft, interbedded gray shales and Ellicott Group siltstone. Geologic and hydrogeologic information contained in this section was derived from the USDA Soil Survey of Chautauqua County, New York, August 1994.

The floodplain of Chautauqua Lake intersects the southeast corner of the subject site, covering approximately 5-10% of the site according to the March 26, 1976 FIA Flood Hazard Boundary Map for the Village of Mayville.

Soil Boring Installation and Soil Sampling

Prior to performing any on-site activities, underground utilities were located and marked by contacting the Underground Facilities Protection Organization (UFPO). In addition, a site-specific Health & Safety Plan was developed and implemented. On May 10 and 11, 2006, a direct-push boring rig was mobilized to the subject site to install soil borings and temporary piezometers to define the nature and extent of soil and groundwater contamination. A total of fourteen push borings were installed on-site, four of which were installed beneath the on-site structure. An additional five borings were installed off-site. Figure 2 (Attachment 1) presents the soil boring locations.

At each boring location, decontaminated hollow stem sampling probes were used to obtain discrete soil samples at approximately four foot depth intervals to the bottom of each sampling location. The soil/fill encountered at each sampling location was visually described from the discrete samples obtained. Upon collection, each discrete sample was screened for the presence of VOCs using a portable OVM. After all discrete samples for each boring had been collected, a piezometer was installed within the boring as described below.

In general, the soil at the sample locations was found to consist of a stiff, brittle, fine to very fine sand with sparse areas of medium to coarse sand and gravel to a depth of approximately 12 to 14 feet below grade (bg), below which a silt and clay material with some plasticity was encountered. The thickness of the silt and clay layer was not investigated, as it likely serves as a confining layer as evidenced by the presence of DNAPL in the sample collected from SB1 (12'-14').

On-site Soil Borings - Soil samples collected from three of the fourteen on-site borings exhibited very high headspace VOCs readings (maximum >500 ppm) including samples SB12, SB17 and SB18. In addition, SB14 exhibited headspace VOCs readings above 250 ppm.

Off-site Soil Borings - Soil samples collected from three of the five offsite borings exhibited very high headspace VOCs readings (maximum >500 ppm) including samples SB1, SB3, and SB9. In addition, SB10 exhibited headspace VOCs readings above 250 ppm.

The soil samples from the remaining 10 borings on-site and one boring off-site all exhibited VOCs headspace readings below 50 ppm. Attachment 2 presents HEI's Field Notes, which include a summary of soil sample headspace VOCs readings.

A total of eleven soil samples consisting of ten on-site samples and one offsite sample were placed in appropriate containers, preserved by cooling in the field, and submitted under standard chain-of-custody procedures to a NYSDEC-approved analytical laboratory for analysis for specific VOCs compounds of concern using USEPA Method 8260, including cis-1,2-Dichloroethene, 1,1,2,2-Tetrachloroethane, Tetrachloroethene, 1,1,2-Trichloroethane, Trichloroethene, Vinyl chloride, Ethylbenzene, Methylene chloride, Toluene and Xylenes. Soil samples SB8 (4'-8') and SB18 (8'-12') were selected to fulfill a NYSDEC request that 10% of the samples submitted (two soil samples) for this investigation address the USEPA Method 8260 Target Compound List (TCL).

Groundwater Sampling

One-inch diameter, PVC piezometers were installed in all nineteen soil borings to allow both the collection of shallow groundwater samples and the measurement of shallow groundwater surface elevations across the site. At each location, a piezometer consisting of 0.030 slotted PVC well screen and solid riser was placed to the bottom of the boring. An effort was made to install sand filter pack around the well screen to a depth at least one foot above screen, after which a Bentonite pellet seal was installed within the remainder of the boring annulus to the ground surface. The piezometers all remain in-place at ground level.

On May 12, 2006, all wellheads were vertically surveyed to a common on-site datum to allow an approximate determination of all water surface elevations. HEI then used a decontaminated electronic water level indicator to measure the depth to water relative to each PVC wellhead. The depth to groundwater was observed to range from 1.89' bg to 4.65' bg in wells SB11 and SB4, respectively (Refer to Field Notes). Subsequent to the groundwater level measurement, each piezometer was purged using a new single-use, polyethylene bailer until reduced turbidity was observed or the well was nearly dry. Unfiltered groundwater samples were then withdrawn and placed in appropriately preserved sample jars, placed in a cooler, prepared for laboratory analysis, and handled under standard chain-of-custody procedures until received by a NYSDEC-approved analytical laboratory. A total of

thirteen groundwater samples were submitted for specific VOCs compounds of concern as listed above using USEPA Method 8260. Groundwater samples collected from SB7 and SB9 were selected to fulfill a NYSDEC request that 10% of the samples submitted (two groundwater samples) for this investigation address the USEPA Method 8260 Target Compound List (TCL).

Discussion of Field Data and Analytical Results

In general, the analytical data indicated significant levels of Trichloroethene (TCE) at depth within the on-site and off-site soil in an area extending generally from the former septic system (SB14 and SB18) to the southeast, encompassing SB1, SB3, SB8, SB9, SB10, SB11, SB12, SB13, SB14, SB16, SB17 and SB18 (Figure 3). In addition, significant levels of TCE in the on-site and off-site groundwater were detected within the same general area, but not as widespread, encompassing SB1, SB3, SB9, SB12, SB14, SB17 and SB18.

Field observations indicated decreasing levels of impact in borings relative to their distance from this significantly contaminated area (i.e., borings further from the area exhibited less or no field observable impact). The analytical results discussed below for both soil and groundwater reflect the potentially applicable New York State Department of Environmental Conservation Recommended Soil Cleanup Objectives (RSCOs), as presented in Appendix A, Table 1 of TAGM HWR-94-4046, dated January 24, 1994 (TAGM 4046) or the Ambient Water Quality Standards and Guidance Values (WQSs), as presented in TOGS 1.1.1, dated June 1998.

The laboratory analytical results of the soil samples indicated the presence of TCE at concentrations exceeding the RSCO in 9 of the 11 samples submitted, with on-site samples SB17 (8'-12') and SB18 (8'-12') exhibiting the two highest concentrations at 6,510 µg/kg and 8,720 µg/kg, respectively (RSCO = 700 µg/kg). The soil samples for SB10 (12'-14') (which is offsite) and SB17 (12'-14') (which is on-site) exhibited the two lowest TCE concentrations measuring 468 µg/kg and 592 µg/kg, respectively. Table 1 (Attachment 3) presents a summary of the soil analytical results. It should be noted that many of these results were identified as being "Estimated Values" due to concentrations exceeding the calibration range; however, the laboratory indicated that these concentrations are routinely within 15%-20% of the actual concentration when rerun under appropriate dilutions. For the purposes of this project, HEI has assumed that these data are adequate. The laboratory analytical results are presented in Attachment 4. It should also be noted that no additional parameters were detected in the extra TCL analysis that was completed at the NYSDEC's request.

All 13 groundwater samples submitted for laboratory analysis exhibited TCE concentrations exceeding the WQS of 5 µg/l. Two of the three most impacted wells were found offsite at SB1 and SB9 with TCE concentrations of 132,000 µg/l, 134,000 µg/l respectively. The most impacted well was on-site at SB18 with 152,000 µg/l. Groundwater from the on-site wells including SB2, SB5 and SB7 exhibited the lowest levels of TCE, with concentrations of 14.6 µg/l, 18.4 µg/l and 30.5 µg/l, respectively.

It should be noted that during the purging of the off-site well SB1, free phase DNAPL was recovered; however, only the aqueous portion of the recovery was submitted for laboratory analysis. Table 2 (Attachment 3) presents a summary of the groundwater analytical results. The laboratory analytical results are presented in Attachment 4. It should also be noted that no additional parameters were detected in the extra TCL analysis that was completed at the NYSDEC's request.

The analytical data generally support the field observations and headspace screenings made with regard to the soil profile with TCE concentrations decreasing as the distance increased from the significantly impacted area. However, the analytical results obtained for soil samples from SB5, SB8 and SB13, which were assumed in the field to be "clean" (i.e., below the RSCOs), identified TCE concentrations above the TCE RSCO.

The groundwater levels detected in the piezometers were relatively shallow, ranging in depth from 1.89' to 4.65' bg. The groundwater flow direction was relatively pronounced toward the southeast (Chautauqua Lake), with a maximum head differential of 4.43' being observed between SB7 and SB2 (a distance of approximately 230 feet). Figure 4 presents a depiction of the estimated groundwater flow gradient and direction. The fine sandy soil appeared to exhibit a moderate hydraulic conductivity based on the observations made during the purging of the selected wells. However, many of the wells were observed to have poor recharge due to fine sand filling the bottom portion of the wells, which was a result of field conditions that prohibited the installation of effective sand-packs.

Summary

The results of this SSI have revealed well-defined areas of soil and groundwater contaminated with TCE. In addition, recoverable free phase DNAPL was observed off-site in the vicinity of SB1, which is located along the southeastern border of the subject site. Based on the relatively pronounced gradient of the shallow groundwater to the southeast toward Chautauqua Lake, HEI suspects the impacted soils within the defined plume area primarily represent the result of solvent transport via groundwater flow from the identified source area, as well as limited dispersion and diffusion effects. The impacted groundwater plume identified on-site which extends off-site would be the result of the same physical processes.