

File # 100
and 60000

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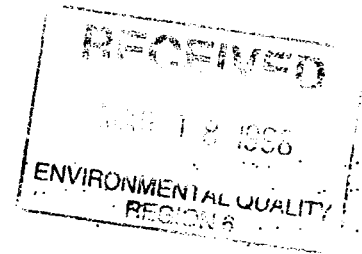
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March 16, 1998

Charles E. Sullivan, Jr., Esq.
Chief, State Superfund and Voluntary Cleanup Practice Group
New York State Department of Environmental Conservation
Division of Environmental Enforcement
50 Wolf Road; Room 410A
Albany, New York 12233-5850



Re: East Rome Business Park
Voluntary Remedial Agreement

Dear Charlie:

Enclosed is a copy of a revised Department-Charles Gaetano Voluntary Remedial Agreement (without maps or work plan exhibits) on which I have noted suggested revisions by *strikeout and bold typeface*. The reasons for substantive changes are set forth in *bold italics*. As a courtesy, I am also sending copies directly to Darrell and Peter. A computer disk with this draft on WordPerfect 6.1 is also enclosed.

Charles Gaetano and I spoke with Darrell and Peter today to tell them that:

(a) A draft of the Voluntary Remedial Agreement would be coming to you for review;

(b) Mr. Gaetano had retained Running Wolf, Inc. (Perry Jacobs) to remove the underground storage tank (UST) on the Canterbury parcel, but that Mr. Jacobs had notified the Department's Utica office rather than the Watertown office about the removal. Mr. Gaetano wanted Peter to know that he had instructed Mr. Jacobs to call Peter about this work later today;

(c) Jack Eisenbach Engineering in Utica, New York will provide the engineering oversight on the private side of the remedial effort. Mr. Eisenbach's office is located closer to Mr. Gaetano and Mr. Gaetano has worked with Mr. Eisenbach on other

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construction projects. Mr. Gaetano will provide Mr. Eisenbach with copies of the draft work plans which Bruce Coulombe of Remediation Technologies prepared earlier this year and Bruce has agreed to forward to Mr. Eisenbach electronic copies of the work plans and drawings which Mr. Eisenbach should review as part of his work.

Mr. Gaetano and I also spoke with Mr. Eisenbach about this matter today and he agreed to accelerate the preparation of revised drafts for Department review.

I will be out of the office from March 18 to March 26, returning on March 27. Perhaps we can meet in Albany sometime the week of March 30 to finalize the draft of the agreement so that it may proceed to public review. In my absence, you can speak to Anthony Pittarelli of my office. Thanks.

Sincerely,

BOND, SCHOENECK & KING, LLP

By: *Barry R. Kogut*
Barry R. Kogut

Enclosure

cc: Darrell Sweredoski (w/enclosure)
Peter Ouderkirk (w/enclosure)
Charles Gaetano (w/enclosure)
Terresa Bakner (w/enclosure)
Jack Eisenbach (w/enclosure)
Bruce Coulombe (w/o enclosure)



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of a Remedial
Response Program for
the Old General Cable Site
a/k/a the Central Core of the
East Rome Business Park
by

ORDER

Charles A. Gaetano,

(INDEX NUMBER: D6-0001-97-07)

Volunteer.

CONSIDERING,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law of the State of New York ("ECL"), including, but not limited to, ECL Article 27, Title 13 (entitled "Inactive Hazardous Waste Disposal Sites"), ECL Article 17 (entitled "Water Pollution Control"), and ECL Article 71. The Department also is responsible for the administration and enforcement of Article 12 of the Navigation Law (entitled "Oil Spill Prevention, Control and Compensation") and is otherwise responsible for carrying out the environmental policy of the State pursuant to ECL 3-0301. This Order is issued pursuant to the Department's authority under the foregoing laws and constitutes an administrative settlement for purposes of 42 USC § 9613(f).

2. A. General Cable Corporation formerly owned and operated an approximately 17 acre parcel of property located within a 202 acre Industrial Redevelopment Area in the City of Rome, which is bounded by Railroad Street on the north, property owned by the New York State Canal Corporation adjacent to the Barge Canal on the south and commercial/industrial development to the east and west ("Old General Cable Site" or "Site"). The Site is to be developed as part of the Central Core of what is known as the "East Rome Business Park," for commercial/industrial purposes (the Site's "Contemplated Use").

B. The Old General Cable Site, which is outlined in the map attached as Exhibit A to this Order, was the subject of a Phase 2 investigation conducted by Remediation Technologies, Inc. ("ReTec") on behalf of the City of Rome under a voluntary remedial order - Order # D6-001-96-11 ("Phase 2 Order"). Under cover of its letter dated March 4, 1997, ReTec issued its report on environmental contamination detected in the course of the Phase 2 investigation of the East Rome Business Park Central Core Area. In response to comments by the Department, ReTec submitted a revised Phase 2 report in July of 1997 and the revised report was approved by the Department by its letter dated December 8, 1997.

C. The redevelopment of the Old General Cable Site was the subject of an
evaluation for environmental impact conducted by the City as lead agency under the New York

[REDACTED]

C. The redevelopment of the Old General Cable Site was the subject of an evaluation for environmental impact conducted by the City as lead agency under the New York State Environmental Quality Review Act ("SEQRA"). On March 26, 1997, the City issued a negative declaration of significant environmental impact in connection with the redevelopment of the Site under the Department's Voluntary Remedial Program.

D. The Old General Cable Site was subdivided into the following seven parcels by approval granted by the City of Rome Planning Board on April 1, 1997 (the "private parcels of the Site"):

- Parcel No. 4 property ("Parcel No. 4 Property") (2.578 acres).
- Railroad Street Property. This property is comprised of three (3) parcels: Parcel No. 3 a/k/a "Bldgs 33/39 Property" - 1.458 acres located to the west of the Parcel No. 4 Property; Parcel No. 2 - 2.019 acres located to the north of the Parcel No. 4 Property; and Parcel No. 1 - 1.500 acres located to the northwest of the Parcel No. 4 Property.
- Rod Mill Property - Parcel No. 5 (6.098 acres) ("Rod Mill Parcel").
- Canterbury Printing Co. of Rome, Inc. ("Canterbury") Property - Parcel No. 6 (0.866 acres) ("Canterbury Parcel").
- Roadway Property - Parcel No. 7 (2.566 acres). On May 6, 1997, the Roadway Property was conveyed by Charles Gaetano to the City of Rome.

A sketch of the subdivided parcels is attached hereto as Exhibit B. Parcels Nos. 1 through 4 are referred to in this Order as the "Northern Redevelopment Area."

3. Charles A. Gaetano ("Volunteer") represents, and for purposes of this Order, the Department relies upon those representations, that:

A. Volunteer's involvement with the Old General Cable Site consists of the following: Volunteer is an individual having an office at 311 Turner Street, Utica, New York 13501; Volunteer presently owns the Old General Cable Site with the exception of the Roadway Property; Volunteer acquired title to the entire Old General Cable Site after General Cable ceased its manufacturing operations, and since that time, has leased the Site to various tenants and has continued to seek redevelopment of the Site for commercial or industrial use.

B. Volunteer has entered into a purchase and sale agreement for the conveyance of the Canterbury Parcel for redevelopment. In the agreement, Volunteer has agreed to undertake the remediation necessary to allow the parcel to be used for commercial/industrial purposes.

4. A. The City of Rome ("Rome") is a municipal corporation and political subdivision of the State of New York. Rome entered into a State Assistance Contract with the Department, dated May 17, 1997, under the Clean Water/Clean Air Bond Act of 1996, pursuant to which it undertook in the summer of 1997 additional investigation to determine the extent of environmental contamination on and from the Roadway Property (the "Site Investigation/Remedial Alternatives Report, Road Right-of-Way Property, East Rome Business Park" or the "SIRAR"). This was done with the objective of having the Department issue a Record of Decision ("ROD") for the Roadway Property so that Rome could proceed with the construction of a new public road and supporting utilities which are designed to promote the private redevelopment of the remainder of the Site.

B. In addition to the SIRAR investigation, ReTec performed additional investigation on Volunteer's behalf on the remaining portions of the Site to address environmental issues raised by the Department following the Phase 2 investigation (the "Supplemental Investigation"). The environmental contamination detected in the course of the Phase 2, SIRAR and Supplemental Investigation work at the private parcels of the Site shall be referred to in this Order as the "Existing Contamination."

C. On November 13, 1997, the Department issued for public comment a Proposed Remedial Action Plan ("PRAP") for the Roadway Property. Following receipt of the public comments, the Department issued its ROD on January 21, 1998.

D. The scope of the required remediation in the Northern Redevelopment Area, the Canterbury Parcel, and the Rod Mill Parcel (with the exception of the petroleum contamination associated with an aboveground storage tank) has been fully defined and is set forth in the work plans attached as Exhibits to this Order.

E. Rome has advised Volunteer that Rome will commit to the Department to undertake the necessary remediation to address "significant threats to the environment" associated with the Roadway Property. Rome has applied for Environmental Restoration Project State assistance to enable it to carry out this responsibility. The Environmental Restoration Project contemplates Rome undertaking certain remedial activities identified in the work plans attached to this Order.

5. A. Volunteer consents to the issuance of this Order in order to resolve his potential liability for remediating the Existing Contamination. The Department finds that such resolution, undertaken in accordance with the terms of this Order, is in the public interest.

B. Volunteer, desirous of implementing a remedial program acceptable to the Department sufficient to allow Volunteer to proceed with the plans to use the private parcels of the Site for redevelopment, consents to the terms and conditions of this Order.

6. The Department published a notice of proposed entry into this Order in the Department's Environmental Notice Bulletin (dated October 14, 1998). It provided written notice to the City of Rome and the County of Oneida of the proposed issuance of this Order and solicited comments from the public and from those local governments on this Order, including the attached Remedial Work Plans.

7. The Department and Volunteer agree that the goals of this Order are:

A. for Volunteer (i) to implement Department-approved investigation and Remedial Work Plans pertaining to the private parcels of the Site under the terms and conditions of this Order with respect to the timing for the performance of the work and possibility of withdrawal, in whole or in part, from the obligations under this Order; and (ii) to reimburse the State's administrative costs as provided in this Order, and

B. for the Department and the Trustee of New York State's natural resources (the "Trustee") to release Volunteer and his heirs, successors and assigns, under the conditions set forth in this Order, from any and all claims, actions, suits, and proceedings by the Department or by the Trustee, which may arise under any applicable law as a result of the Existing Contamination.

8. ~~Volunteer agrees to be bound by the terms of this Order. Volunteer consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.~~

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Performance of Investigation and Remediation

A. Northern Redevelopment Area.

1. Attached as Exhibit "C" is a copy of a Department-approved work plan for the remediation of the Existing Contamination in the Northern Redevelopment Area (the "Northern Redevelopment Area Work Plan").

2. The parties agree that they will immediately commence negotiations to modify such Work Plan, and will modify such Work Plan, in the event that:

i. contamination previously unknown or inadequately characterized is encountered during such Work Plan's implementation; and

ii. such contamination must be remediated in order to avoid a significant threat to the public health and the environment.

Any such modification(s) shall appear in Exhibit "C-1" and all references to "such Work Plan" in this Subparagraph I.A of this Order shall refer to the one contained in Exhibit "C" or "C-1," as appropriate.

3. i. Volunteer shall carry out such Work Plan in accordance with its terms and notify the Department of any significant difficulties that may be encountered in implementing such Work Plan, any Department-approved modification to such Work Plan, or any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto and this Order.

ii. The Department and Respondent contemplate that, under the terms of its remedial Environmental Restoration Project State Assistance Contract, Rome shall perform certain remedial activities identified in such Work Plan; and if by December 31, 1999, Rome shall not have submitted to the Department a remedial completion report under that State Assistance Contract, Volunteer hereby commits to undertake and complete those remedial activities.

4. During implementation of all construction activities performed by the Volunteer under such Work Plan, Volunteer shall have on-Site a full-time representative who is qualified to supervise the work done.

5. i. ~~In accordance with the schedule contained in such Work Plan, Volunteer shall submit to the Department the Northern Redevelopment Area Closure Report. This report shall include a description of all the work performed and a certification that the activities identified in the Work Plan were completed in full accordance with such Work Plan, including any Department-approved modifications to such Work Plan. The certification must be signed and sealed by a professional engineer.~~

ii. Notwithstanding Subparagraph I.A.5.i of this Order, for remedial activities performed by Rome identified in such Work Plan, Volunteer may submit a copy of the certification that Rome's professional engineer shall submit to the Department under the remedial Environmental Restoration Project State Assistance Contract.

6. Within 30 days after receipt of the Northern Redevelopment Area Closure Report, the Department shall notify Volunteer in writing whether the Department is satisfied with the implementation of such Work Plan, including any Department-approved modifications to such Work Plan. If the Department determines that the activities identified in such Work Plan were not so completed, the Department shall so notify Volunteer in writing and shall specify in detail the respects in which the Department believes that the performance of such activities was deficient. The Department shall include in its notification a period of

time within which Volunteer may correct the specified deficiencies in such activities. Volunteer shall submit a Revised Closure Report for the Northern Redevelopment Area upon the completion of the work required to address the specified deficiencies.

7. If the Department disapproves the Revised Closure Report for the Northern Redevelopment Area, the Department and Volunteer may pursue whatever remedies may be available at law or in equity that may be available to them, without prejudice to either party's right to contest the same.

8. Upon being satisfied that Volunteer performed the remediation work in full accordance with such Work Plan, including any Department-approved modifications to such Work Plan, the Department shall notify Volunteer in writing of its satisfaction and, except for the reservations identified below, the Department and the Trustee release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer or Volunteer's lessees, sublessees, heirs, successors, assigns, and their respective secured creditors for any further investigation and remediation of the Northern Redevelopment Area, or for natural resources damages, based upon the release or threatened release of any Existing Contamination at the Northern Redevelopment Area, provided that (a) the appropriate notice and deed restriction have been recorded in accordance with Subparagraphs X.A and XI.A of this Order and the Department receives a copy of the deed restriction in accordance with Subparagraph XI.B of this Order, and (b) Volunteer and/or his lessees, sublessees, heirs, successors, and assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any.

9. ~~Notwithstanding Subparagraph I.A.8 of this Order, to the extent a~~ reopener condition exists, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to, natural resource damages or any further investigation or remedial action the Department deems necessary to be undertaken. A reopener condition for purposes of this Order shall be:

i. the presence of petroleum, irrespective of whether the information available to Volunteer and the Department at the time of the development of such Work Plan disclosed the existence or potential existence of such presence; or

ii. environmental conditions related to the Northern Redevelopment Area that were unknown to the Department at the time of its approval of such Work Plan which indicate that conditions at the Northern Redevelopment Area are not sufficiently protective of human health and the environment for the Contemplated Use or which indicate that any remaining hazardous wastes disposed at the Northern Redevelopment Area constitute a significant threat to the environment; or

iii. information received, in whole or in part, after the Department's

approval of the Closure Report or Revised Closure Report for the Northern Redevelopment Area, which indicates that the activities identified in such Work Plan performed under this Order are not sufficiently protective of human health and the environment for the Contemplated Use or that any remaining hazardous wastes disposed at the Northern Redevelopment Area constitute a significant threat to the environment; or

iv. Volunteer's failure to implement his obligations under Paragraph VII, IX, or XIII of this Order to the Department's satisfaction; or

v. fraud committed, or mistake made, by Volunteer in demonstrating that the cleanup levels identified in, or to be identified in accordance with, such Work Plan were reached; or

vi. Volunteer causes a, or suffers the, release or threat of release at the Northern Redevelopment Area of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law §172[15]), other than Existing Contamination, after the effective date of this Order; or

vii. Volunteer causes a, or suffers the use of the Northern Redevelopment Area to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment.

10. If the Department is satisfied with the implementation of such Work Plan, ~~the Department shall provide Volunteer with a written "no further action" letter~~ substantially similar to the model letter attached to this Order and incorporated in this Order as Exhibit "D." The "no further action letter" signed by the Department may be filed in the Office of the Oneida County Clerk. Notwithstanding any other provision in this Order to the contrary, the forbearance, covenant not to sue, and release described in Subparagraph I.A.8 and in the "no further action" letter issued under this Subparagraph I.A.10 of this Order shall not extend to parties (other than Volunteer) that were responsible under law before the effective date of this Order to address the Existing Contamination.

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

12. i. Following its written approval of the Closure Report or Revised Closure Report for the Northern Redevelopment Area and the recordation of the appropriate notice and deed restriction in accordance with Subparagraphs X.A and XI.A of this Order, the Department shall immediately initiate the process to redefine the Site to make the Northern

Redevelopment Area a separate site for purposes of the Annual Report.

ii. Following the redefinition of the Site, the Department shall not list the Northern Redevelopment Area on the Registry if, as a result of the implementation of the activities identified in such Work Plan, there remains only an inconsequential amount of hazardous waste disposed at the Northern Redevelopment Area.

B. Canterbury Parcel.

1. Attached as Exhibit "E" is a copy of a Department-approved work plan for the remediation of the Existing Contamination in the Canterbury Parcel (the "Canterbury Parcel Work Plan").

2. The parties agree that they will immediately commence negotiations to modify such Work Plan, and will modify such Work Plan, in the event that:

i. contamination previously unknown or inadequately characterized is encountered during such Work Plan's implementation; and

ii. such contamination must be remediated in order to avoid a significant threat to the public health and the environment.

Any such modification(s) shall appear in Exhibit "E-1" and all references to "such Work Plan" in this Subparagraph I.B of this Order shall refer to the one contained in Exhibit "E" or "E-1," as appropriate.

3. i. Volunteer shall carry out such Work Plan in accordance with its terms and notify the Department of any significant difficulties that may be encountered in implementing such Work Plan, any Department-approved modification to such Work Plan, or any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto and this Order.

ii. The Department and Respondent contemplate that, under the terms of its remedial Environmental Restoration Project State Assistance Contract, Rome shall perform certain remedial activities identified in such Work Plan; and if by December 31, 1999, Rome shall not have submitted to the Department a remedial completion report under that State Assistance Contract, Volunteer hereby commits to undertake and complete those remedial activities.

4. During implementation of all construction activities performed by the Volunteer under such Work Plan, Volunteer shall have on-Site a full-time representative who is qualified to supervise the work done.

5. i. In accordance with the schedule contained in such Work Plan, Volunteer shall submit to the Department the Canterbury Parcel Closure Report. This report shall include a description of all the work performed and a certification that the activities identified in the Work Plan were completed in full accordance with such Work Plan, including any Department-approved modifications to such Work Plan. The certification must be signed and sealed by a professional engineer.

ii. Notwithstanding Subparagraph I.B.5.i of this Order, for remedial activities performed by Rome identified in such Work Plan, Volunteer may submit a copy of the certification that Rome's professional engineer shall submit to the Department under the remedial Environmental Restoration Project State Assistance Contract.

6. Within 30 days after receipt of the Canterbury Parcel Closure Report, the Department shall notify Volunteer in writing whether the Department is satisfied with the implementation of such Work Plan, including any Department-approved modifications to such Work Plan. If the Department determines that the activities identified in such Work Plan were not so completed, the Department shall so notify Volunteer in writing and shall specify in detail the respects in which the Department believes that the performance of such activities was deficient. The Department shall include in its notification a period of time within which Volunteer may correct the specified deficiencies in such activities. Volunteer shall submit a Revised Closure Report for the Canterbury Parcel upon the completion of the work required to address the specified deficiencies.

7. If the Department disapproves the Revised Closure Report for the ~~Canterbury Parcel, the Department and Volunteer may pursue whatever remedies may be~~ available at law or in equity that may be available to them, without prejudice to either party's right to contest the same.

8. Upon being satisfied that Volunteer performed the remediation work in full accordance with such Work Plan, including any Department-approved modifications to such Work Plan, the Department shall notify Volunteer in writing of its satisfaction and, except for the reservations identified below, the Department and the Trustee release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer or Volunteer's lessees, sublessees, heirs, successors, assigns (including Canterbury if it purchases the Canterbury Parcel) and their respective secured creditors for any further investigation and remediation of the Canterbury Parcel, or for natural resources damages, based upon the release or threatened release of any Existing Contamination at the Canterbury Parcel, provided that (a) the appropriate notice and deed restriction have been recorded in accordance with Subparagraphs X.A and XI.C of this Order and the Department receives a copy of the deed restriction in accordance with Subparagraph XI.D of this Order, and (b) Volunteer and/or his lessees, sublessees, heirs, successors, and assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any.

9. Notwithstanding Subparagraph I.B.8 of this Order, to the extent a reopener condition exists, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to, natural resource damages or any further investigation or remedial action the Department deems necessary to be undertaken. A reopener condition for purposes of this Order shall be:

i. the presence of petroleum, irrespective of whether the information available to Volunteer and the Department at the time of the development of such Work Plan disclosed the existence or potential existence of such presence; or

ii. environmental conditions related to the Canterbury Parcel that were unknown to the Department at the time of its approval of such Work Plan which indicate that conditions at the Canterbury Parcel are not sufficiently protective of human health and the environment for the Contemplated Use or which indicate that any remaining hazardous wastes disposed at the Canterbury Parcel constitute a significant threat to the environment; or

iii. information received, in whole or in part, after the Department's approval of the Closure Report or Revised Closure Report for the Canterbury Parcel, which indicates that the activities identified in such Work Plan performed under this Order are not sufficiently protective of human health and the environment for the Contemplated Use or that any remaining hazardous wastes disposed at the Canterbury Parcel constitute a significant threat to the environment; or

iv. ~~Volunteer's failure to implement his obligations under Paragraph VII, IX, or XIII of this Order to the Department's satisfaction; or~~

v. fraud committed, or mistake made, by Volunteer in demonstrating that the cleanup levels identified in, or to be identified in accordance with, such Work Plan were reached; or

vi. Volunteer causes a, or suffers the, release or threat of release at the Canterbury Parcel of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law §172[15]), other than Existing Contamination, after the effective date of this Order; or

vii. Volunteer causes a, or suffers the use of the Canterbury Parcel to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment.

10. If the Department is satisfied with the implementation of such Work Plan, the Department shall provide Volunteer with a written "no further action" letter

substantially similar to the model letter attached to this Order and incorporated in this Order as Exhibit "D." The "no further action letter" signed by the Department may be filed in the Office of the Oneida County Clerk. Notwithstanding any other provision in this Order to the contrary, the forbearance, covenant not to sue, and release described in Subparagraph I.B.8 and in the "no further action" letter issued under this Subparagraph I.B.10 of this Order shall not extend to parties (other than Volunteer) that were responsible under law before the effective date of this Order to address the Existing Contamination.

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

12. i. Following its written approval of the Closure Report or Revised Closure Report for the Canterbury Parcel and the recordation of the appropriate notice and deed restriction in accordance with Subparagraphs X.A and XI.C of this Order, the Department shall immediately initiate the process to redefine the Site to make the Canterbury Parcel a separate site for purposes of the Annual Report .

ii. Following the redefinition of the Site, the Department shall not list the Canterbury Parcel on the Registry if, as a result of the implementation of the activities identified in such Work Plan, there remains only an inconsequential amount of hazardous waste disposed at the Canterbury Parcel.

C. Rod Mill Parcel.

1. Attached as Exhibit "F" is a copy of a Department-approved work plan for the remediation of the Existing Contamination in the Rod Mill Parcel (the "Rod Mill Parcel Work Plan"). For purposes of the Rod Mill Parcel, the term "Existing Contamination" shall be expanded to include the petroleum contamination detected in the course of the investigation specified in the Rod Mill Parcel Work Plan.

2. The parties agree that they will immediately commence negotiations to modify such Work Plan, and will modify such Work Plan, in the event that:

i. contamination previously unknown or inadequately characterized is encountered during such Work Plan's implementation; and

ii. such contamination must be remediated in order to avoid a significant threat to the public health and the environment.

Any such modification(s) shall appear in Exhibit "F-1" and all references to "such Work Plan"

in this Subparagraph I.C of this Order shall refer to the one contained in Exhibit "F" or "F-1," as appropriate.

3. i. Volunteer shall carry out such Work Plan in accordance with its terms and notify the Department of any significant difficulties that may be encountered in implementing such Work Plan, any Department-approved modification to such Work Plan, or any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto and this Order.

ii. The Department and Respondent contemplate that, under the terms of its remedial Environmental Restoration Project State Assistance Contract, Rome shall perform certain remedial activities identified in such Work Plan; and if by December 31, 1999, Rome shall not have submitted to the Department a remedial completion report under that State Assistance Contract, Volunteer hereby commits to undertake and complete those remedial activities.

4. During implementation of all construction activities performed by the Volunteer under such Work Plan, Volunteer shall have on-Site a full-time representative who is qualified to supervise the work done.

5. i. In accordance with the schedule contained in such Work Plan, Volunteer shall submit to the Department the Rod Mill Parcel Closure Report. This report shall include a description of all the work performed and a certification that the activities identified in the Work Plan were completed in full accordance with such Work Plan, including any Department-approved modifications to such Work Plan. The certification must be signed and sealed by a professional engineer.

ii. Notwithstanding Subparagraph I.C.5.i of this Order, for remedial activities performed by Rome identified in such Work Plan, Volunteer may submit a copy of the certification that Rome's professional engineer shall submit to the Department under the remedial Environmental Restoration Project State Assistance Contract.

6. Within 30 days after receipt of the Rod Mill Parcel Closure Report, the Department shall notify Volunteer in writing whether the Department is satisfied with the implementation of such Work Plan, including any Department-approved modifications to such Work Plan. If the Department determines that the activities identified in such Work Plan were not so completed, the Department shall so notify Volunteer in writing and shall specify in detail the respects in which the Department believes that the performance of such activities was deficient. The Department shall include in its notification a period of time within which Volunteer may correct the specified deficiencies in such activities. Volunteer shall submit a Revised Closure Report for the Rod Mill Parcel upon the completion of the work required to address the specified deficiencies.

7. If the Department disapproves the Revised Closure Report for the Rod Mill Parcel, the Department and Volunteer may pursue whatever remedies may be available at law or in equity that may be available to them, without prejudice to either party's right to contest the same.

8. Upon being satisfied that Volunteer performed the remediation work in full accordance with such Work Plan, including any Department-approved modifications to such Work Plan, the Department shall notify Volunteer in writing of its satisfaction and, except for the reservations identified below, the Department and the Trustee release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer or Volunteer's lessees, sublessees, heirs, successors, assigns and their respective secured creditors, for any further investigation and remediation of the Rod Mill Parcel, or for natural resources damages, based upon the release or threatened release of any Existing Contamination at the Rod Mill Parcel, provided that (a) the appropriate notice and deed restriction have been recorded in accordance with Subparagraphs X.A and XI.E of this Order and the Department receives a copy of the deed restriction in accordance with Subparagraph XI.F of this Order, and (b) Volunteer and/or his lessees, sublessees, heirs, successors, and assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any.

9. Notwithstanding Subparagraph I.C.8 of this Order, to the extent a reopener condition exists, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to, natural resource damages or any further investigation or remedial action the Department deems necessary to be undertaken. A reopener condition for purposes of this Order shall be:

- i. the presence of petroleum, irrespective of whether the information available to Volunteer and the Department at the time of the development of such Work Plan disclosed the existence or potential existence of such presence; or
- ii. environmental conditions related to the Rod Mill Parcel that were unknown to the Department at the time of its approval of such Work Plan which indicate that conditions at the Rod Mill Parcel are not sufficiently protective of human health and the environment for the Contemplated Use or which indicate that any remaining hazardous wastes disposed at the Rod Mill Parcel constitute a significant threat to the environment; or
- iii. information received, in whole or in part, after the Department's approval of the Closure Report or Revised Closure Report for the Rod Mill Parcel, which indicates that the activities identified in such Work Plan performed under this Order are not sufficiently protective of human health and the environment for the Contemplated Use or that any remaining hazardous wastes disposed at the Rod Mill Parcel constitute a significant threat

to the environment; or

iv. Volunteer's failure to implement his obligations under Paragraph VII, IX, or XIII of this Order to the Department's satisfaction; or

v. fraud committed, or mistake made, by Volunteer in demonstrating that the cleanup levels identified in, or to be identified in accordance with, such Work Plan were reached; or

vi. Volunteer causes a, or suffers the, release or threat of release at the Rod Mill Parcel of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law §172[15]), other than Existing Contamination, after the effective date of this Order; or

vii. Volunteer causes a, or suffers the use of the Rod Mill Parcel to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment.

10. If the Department is satisfied with the implementation of such Work Plan, the Department shall provide Volunteer with a written "no further action" letter substantially similar to the model letter attached to this Order and incorporated in this Order as Exhibit "D." The "no further action letter" signed by the Department may be filed in the Office of the Oneida County Clerk. Notwithstanding any other provision in this Order to the contrary, ~~the forbearance, covenant not to sue, and release described in Subparagraph I.C.8~~ and in the "no further action" letter issued under this Subparagraph I.C.10 of this Order shall not extend to parties (other than Volunteer) that were responsible under law before the effective date of this Order to address the Existing Contamination.

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

12. i. Following its written approval of the Closure Report or Revised Closure Report for the Rod Mill Parcel and the recordation of the appropriate notice and deed restriction in accordance with Subparagraphs X.A and XI.E of this Order, the Department ~~shall immediately initiate the process to redefine the Site to make the Rod Mill Parcel a~~ separate site for purposes of the Annual Report .

ii. Following the redefinition of the Site, the Department shall not list the Rod Mill Parcel on the Registry if, as a result of the implementation of the activities

identified in such Work Plan, there remains only an inconsequential amount of hazardous waste disposed at the Rod Mill Parcel.

D. Addendum to the Work Plans.

Attached as Exhibit G is a copy of an Addendum to the Work Plans which are attached as Exhibits C (Northern Redevelopment Area), E (Canterbury Parcel) and F (Rod Mill Parcel) to this Agreement (the "Work Plans"). The Department hereby accepts and approves the Addendum which modifies the scope of work for the Work Plans to the extent set forth in the Addendum.

II. Withdrawal from the Order

A. Volunteer may withdraw from his obligations respecting the Northern Redevelopment Area, the Canterbury Parcel, and the Rod Mill Parcel (the three "Redevelopment Areas" subject to this Order), or any of them, under Paragraph I of this Order by giving written notice to the Department no later than 30 days after his receipt of the Department's written approval of Rome's completion of the remediation work required on the Roadway Property.

B. 1. In the event of withdrawal under Subparagraph II.A of this Order for a particular Redevelopment Area, this Order shall, except as otherwise provided in this Subparagraph II.B, terminate and be rendered null and void with respect to the provisions of this Order applicable to the Redevelopment Area concerning which Volunteer has withdrawn. ~~Volunteer's withdrawal for a particular Redevelopment Area shall have no impact on the Department's and Volunteer's rights and obligations under Paragraph I with respect to the remaining Redevelopment Area or Areas.~~

2. Volunteer's withdrawal under Subparagraph II.A of this Order for a particular Redevelopment Area shall not affect Volunteer's obligation to pay State costs under Paragraph VII of this Order up to the date of withdrawal, nor the Department's enforcement of that obligation under Paragraph V of this Order. The "date of withdrawal" shall be the date of the Department's receipt of Volunteer's notice of withdrawal under Subparagraph II.A of this Order.

3. Volunteer's indemnification obligation under Paragraph IX shall survive the termination of the Order and Volunteer shall be required to leave the Redevelopment Area concerning which Volunteer withdraws from this Order no worse, from an environmental and human health perspective, than when he began his activities under this Order.

C. 1. If the Department determines that a consequential amount of hazardous waste was disposed at any of the private parcels of the Site, the Department will list that parcel in the Annual Report described in ECL 27-1305 as a Class "V" inactive hazardous waste

disposal site. On the basis of the investigation performed to date, none of the hazardous waste found to be disposed at any of the private parcels of the Site constitutes a "significant threat" to the environment as that term is defined under 6 NYCRR Part 375.

2. In the event that the implementation of any of the Remedial Work Plans results in a Department determination that there exists hazardous waste disposed at one of the private parcels at the Site which constitute a "significant threat" to the environment, the Department shall list that parcel as a Class "2" inactive hazardous waste disposal site unless the Volunteer agrees to modify the applicable Remedial Work Plan to remediate that hazardous waste so that it no longer constitutes a "significant threat" to the environment.

III. Progress Reports

A. Volunteer shall submit to the parties identified in Subparagraph XII.A.1, in the numbers specified in that Subparagraph, copies of written monthly progress reports that:

1. describe the actions which have been taken toward achieving compliance with this Order during the previous month;

2. include all results of sampling and tests and all other data received or generated by Volunteer or Volunteer's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Volunteer;

3. ~~identify all work plans, reports, and other deliverables required by this~~ Order that were completed and submitted during the previous month;

4. describe all actions, including, but not limited to, data collection and implementation of the Redevelopment Area Work Plans that are scheduled for the next month and provide other information relating to the progress of investigation and remedial actions at the Site;

5. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Volunteer's obligations under this Order, and efforts made to mitigate those delays or anticipated delays; and

6. include any modifications to any of the Redevelopment Area Work Plans that Volunteer has proposed to the Department and any that the Department has approved.

B. Volunteer shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order. Volunteer's obligation to

submit the progress reports shall terminate upon his receipt of the written satisfaction notification for the last Redevelopment Area remediated under the terms of this Order. However, Volunteer shall continue to submit reports concerning the implementation of any O&M Plan that may be required under this Order, in accordance with that Plan's requirements.

IV. Review of Submittals

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

B. If the Department disapproves a submittal, it shall so notify Volunteer in writing and shall specify the reasons for its disapproval within 30 days after its receipt of the submittal and may request Volunteer to modify or expand the submittal; provided, however, that the matters to be addressed by such modification or expansion are within the specific scope of work as described in the specific Redevelopment Area Work Plan. Within 30 days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall make a revised submittal to the Department which endeavors to address and resolve all of the Department's stated reasons for disapproving the first submittal.

C. ~~After receipt of the revised submittal, the Department shall notify Volunteer in writing within 30 days of its approval or disapproval.~~ If the Department disapproves the revised submittal, the Department and the Volunteer may pursue whatever remedies at law or in equity that may be available to them, without prejudice to either party's right to contest the same. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

V. Enforcement

A. Volunteer's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

B. Volunteer shall not suffer any penalty under this Order or be subject to any proceeding or action if he cannot comply with any requirement of this Order because of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Volunteer's reasonable control ("*force majeure* event"). Volunteer shall, within five (5) working days of when he obtains knowledge of any such *force majeure* event, notify the Department in writing. Volunteer shall include in such notice the measures taken

and to be taken by Volunteer to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Volunteer shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Order pursuant to Subparagraph V.B of this Order.

VI. Entry upon Site

A. Volunteer shall permit any duly designated officer, employee, consultant, contractor or agent of the Department or any State agency to enter upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer for purposes of inspection, sampling, and testing to assure compliance with this Order.

B. The Department shall abide by the health and safety rules in effect for work performed at the Site under the terms of this Order. Upon request, Volunteer shall permit the Department full access to all records relating to matters addressed in this Order and to job meetings; provided, however, that nothing in this Order shall afford the Department the right to attend or have notice of any internal, informal or strategy meetings at which implementation of this Order is not discussed, or any meetings at which privileged mental impressions, conclusions, opinions or legal theories are anticipated to be discussed or any correspondence or documents which may be held confidential and privileged under applicable New York State law; and further provided that if any results of investigation or data are to be discussed at a meeting during which privileged mental impressions, conclusions, opinions, or legal theories are anticipated to be discussed or if any such results or data are contained in correspondence or documents concerning which a claim of privilege may be asserted, Volunteer shall provide such results and data but need not disclose the privileged mental impressions, conclusions, opinions, or legal theories of counsel or Volunteer's requests for same, as provided under applicable New York State law.

VII. Payment of State Costs

A. Within thirty (30) days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money which shall represent reimbursement for 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 this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order up until the Department's issuance of its written approval of the Closure Report (or Revised Closed Report) of the last Redevelopment Area to be remediated under this Order ("oversight costs").

B. Each such payment shall be made by check, payable to the New York State Department of Environmental Conservation, and sent to the following address:

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

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

D. The Volunteer may object to payment of any portion of the oversight costs and seek reimbursement for costs improperly paid.

VIII. Department Reservation of Rights

A. Except as provided in Subparagraph I.A.8, I.B.8, or I.C.8 of this Order and in any "no further action" letter issued under Subparagraph I.A.10, I.B.10, or I.C.10 of this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or Trustee's rights (including, but not limited to, nor exemplified by, the right to recover natural resources damages) with respect to any party, including Volunteer.

B. Nothing contained in this Order shall prejudice any rights of the Department or Trustee to undertake any investigation or remedial action it may deem necessary if Volunteer fails to comply with this Order or if contamination other than Existing Contamination is encountered at the Site.

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

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

E. 1. Except as otherwise provided in this Order, Volunteer specifically reserves all defenses Volunteer may have under applicable law respecting any Department assertion of remedial liability against Volunteer and reserves all rights Volunteer may have respecting the enforcement of this Order, including rights to notice, to be heard, to appeal, and to any other due process.

2. Volunteer's consent to the issuance of this Order and compliance with its terms does not constitute, and shall not be construed as, an admission of liability, fault, or wrongdoing or an admission by Volunteer of law or fact or the applicability of any law to the conditions at the Old General Cable Site and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party. Volunteer also specifically reserves his rights under applicable law with respect to any position the Department may take with respect to the placement or the characterization of the Old General Cable Site, or any portion of that Site, on the Registry.

IX. Indemnification

Volunteer shall indemnify and hold the Department, the Trustee, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Volunteer and/or any of Volunteer's employees, servants, agents, heirs, successors, and assigns. Said indemnification shall not include indemnification in any form for gross negligence or willful misconduct on the part of the Department, the State of New York or their representatives and employees.

X. Notice of Sale or Conveyance

A. Within 30 days after the effective date of this Order, Volunteer shall file the Notice of Order, which is attached to this Order as Exhibit "H," with the Oneida County Clerk to give all parties who may acquire any interest in the private parcels of the Site notice of this Order.

B. If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in private parcels of the Site prior to the completion of required investigation or remedial action in the particular private parcel, Volunteer shall, not fewer than 30 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. The foregoing requirement for prior notice to the Department shall not apply to Volunteer's transferees of any of the private parcels at the Site.

C. Volunteer's obligation to provide prior notice of transfer under Subparagraph IX.B of the Phase 2 Order shall terminate upon the effective date of this Order.

XI. Deed Restriction

A. Within 30 days of his receipt of the Department's written approval of the Closure Report (or the Revised Closure Report) of the Northern Redevelopment Area, Volunteer shall record an instrument with the Oneida County Clerk, to run with the land for

each of Parcels Nos. 1-4, that:

1. shall prohibit each of the parcels in the Northern Redevelopment Area from ever being used for purposes other than for commercial or industrial use without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department, respecting the parcel in question;

2. shall prohibit the use of the groundwater underlying the parcels in the Northern Redevelopment Area unless the user first obtains permission to do so from the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department; and

3. shall provide that Volunteer, on behalf of himself and his heirs, successors, and assigns, hereby consents to the enforcement by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department, of the prohibitions and restrictions that this Paragraph XI requires to be recorded, and hereby covenants not to contest such enforcement.

B. Volunteer shall provide the Department with a copy of such instrument for each of the parcels in the Northern Core Redevelopment Area certified by the Oneida County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Oneida County Clerk.

~~C. Within 30 days of receipt of the Department's written approval of the Closure Report (or the Revised Closure Report) of the Canterbury Parcel, Volunteer shall record an instrument with the Oneida County Clerk, to run with the land, that:~~

1. shall prohibit the Canterbury Parcel from ever being used for purposes other than for commercial or industrial use without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department, respecting the parcel in question; and

2. shall provide that Volunteer, on behalf of himself and his heirs, successors, and assigns, hereby consents to the enforcement by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department, of the prohibitions and restrictions that this Paragraph XI requires to be recorded, and hereby covenants not to contest such enforcement.

D. Volunteer shall provide the Department with a copy of such instrument for the Canterbury Parcel certified by the Oneida County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Oneida County Clerk.

E. Within 30 days of receipt of the Department's written approval of the Closure Report (or the Revised Closure Report) of the Rod Mill Parcel, Volunteer shall record an instrument with the Oneida County Clerk, to run with the land, that:

1. shall prohibit the Rod Mill Parcel from ever being used for purposes other than for commercial or industrial use without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department, respecting the parcel in question;

2. shall prohibit the use of the groundwater underlying the Rod Mill Parcel, unless the user first obtains permission to do so from the Department, or if at such time the Department shall no longer exist, any New York State department, bureau or other entity replacing the Department; and

3. shall provide that the Volunteer, on behalf of himself and his heirs, successors, and assigns, hereby consents to the enforcement by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department, of the prohibitions and restrictions that this Paragraph XI requires to be recorded, and hereby covenants not to contest such enforcement.

F. Volunteer shall provide the Department with a copy of such instrument for the Rod Mill Parcel certified by the Oneida County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Oneida County Clerk.

XII. Communications

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

1. Communication from Volunteer shall be sent to:

Darrell Sweredoski, P.E.
New York State Department of Environmental Conservation
State Office Building
Watertown, New York 13601

with copies to:

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

Charles E. Sullivan, Jr., Esq.
New York State Department of Environmental Conservation
Division of Environmental Enforcement
50 Wolf Road, Room 627
Albany, New York 12233-5500

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

- Four copies (one unbound) to Mr. Sweredoski
 - Two copies to Dr. Carlson
2. Communication to be made from the Department to Volunteer shall be sent to:

Mr. Charles A. Gaetano
311 Turner Street
Utica, New York 13501

with a copy to:

Barry R. Kogut, Esq.
Bond, Schoeneck & King, LLP
One Lincoln Center
Syracuse, New York 13202

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

XIII. Miscellaneous

A. Volunteer shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations ("technical work") required by this Order. Volunteer intends to use the services of Jack Eisenbach Engineering, P.C. to perform certain technical work under this Order and this is acceptable to the Department. The Volunteer shall not use any other firm to perform the technical work under this Order without submitting the respective experience, capabilities and qualifications of that firm to the Department for prior approval, which approval shall not be unreasonably withheld or delayed. The responsibility for the performance of the professionals retained by Volunteer shall rest solely with Volunteer.

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

C. Volunteer shall notify the Department at least five (5) working days in advance of any field activities to be conducted pursuant to this Order.

D. 1. Subject to Subparagraph XIII.D.2 of this Order, Volunteer shall use his best efforts to obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations that are necessary to perform his obligations under this Order (the "authorizations"). Volunteer shall promptly notify the Department in the event of his inability to obtain such authorizations on a timely basis. In the event Volunteer is unable to obtain the necessary authorizations, the Department may, consistent with its legal authority, assist in obtaining all such authorizations which Volunteer was unable to obtain despite his best efforts, or which Volunteer could not obtain without unreasonable terms or conditions. If Volunteer cannot obtain such authorization on a timely basis, the time for performance of any obligation dependent upon such authorization shall be appropriately extended and the Order appropriately modified.

2. In carrying out the activities identified in the Remedial Work Plans for the Redevelopment Areas, the Department shall exempt Volunteer from the requirement to ~~obtain any Department permit for any activity that is conducted on the Site and that satisfies all~~ substantive technical requirements applicable to like activity conducted pursuant to a permit.

E. Volunteer and Volunteer's agents, servants, and employees (in the performance of their designated duties on behalf of Volunteer) shall be bound by this Order. Volunteer's agents, servants, and employees shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Volunteer.

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

G. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State

Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

H. All references to "days" in this Order are to calendar days unless otherwise specified.

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

J. 1. The terms of this Order shall constitute the complete and entire Order issued to Volunteer concerning the performance of investigation and remedial action at the Site described in this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Volunteer of Volunteer's obligation to obtain such formal approvals as may be required by this Order.

2. If Volunteer desires that any provision of this Order be changed, Volunteer shall make timely written application, signed by the Volunteer, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Mr. Sweredoski and to Mr. Sullivan. However, day to day ~~considerations of a purely technical nature may be addressed by Volunteer's consultant directly~~ to the Department's Project Manager, Darrell Sweredoski.

K. In undertaking the work required under this Order, Volunteer and his representatives, agents, contractors and subcontractors are deemed for the purpose of ECL § 27-1321.3 and any other similar provision of state or federal law, to be performing services related to cleanup or restorative work, which is conducted pursuant to a contract with the Department.

L. This Order constitutes an exercise of the Department's prosecutorial discretion and accordingly, the remedial activities to be undertaken under the terms of this Order are not subject to review under the State Environmental Quality Review Act, ECL Article 8, and its implementing regulations, 6 NYCRR Part 617. ECL 8-0105.5(i), 6 NYCRR 617.5(c)(29).

M. The provisions of this Order do not constitute and shall not be deemed a waiver of any right Volunteer otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteer's insurers, for payments made previously or in the future for response costs. To the extent authorized under 42 USC § 9613 and any other applicable law, Volunteer shall not be liable

for any claim, now or in the future, in the nature of contribution by potentially responsible parties concerning the Existing Contamination. In any future action brought by Volunteer against a potentially responsible party under CERCLA, the provision of 42 USC § 9613(f)(3) shall apply.

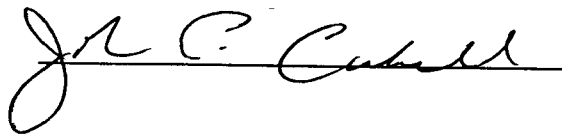
N. Volunteer and Volunteer's employees, servants, agents, lessees, heirs, successors, and assigns hereby affirmatively waive any right they had, have, or may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Existing Contamination, and further release the New York State Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever that any of same has, or may have, as a result of Volunteer's entering into or fulfilling the terms of this Order with respect to addressing the Existing Contamination.

O. The effective date of this Order shall be the date the Commissioner or his designee signs it.

DATED:

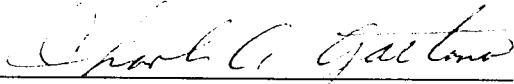
3/8, 1999
Albany, New York

JOHN P. CAHILL, COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
AND TRUSTEE OF THE STATE'S
NATURAL RESOURCES



CONSENT BY VOLUNTEER

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

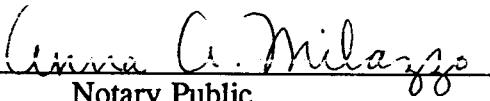


Charles A. Gaetano

Dated: January 21, 1999

STATE OF NEW YORK)
) ss:
COUNTY OF ONEIDA)

On this 21st day of January 1999, before me personally came Charles A. Gaetano, to me known, who being duly sworn, did depose and say that he has an office at 311 Turner Street, Utica, New York 13501; that he is the person described in and who consented to the issuance and entry of the foregoing Order; and that he duly acknowledged to me that he did so as his knowing and voluntary act and deed.



Notary Public

ANNA A. MILAZZO
Notary Public
No. 01MI4827033
County of Oneida, State of New York
My Commission Expires April 30, 2000

LIST OF EXHIBITS

Exhibit	Description
Exhibit "A"	Map of Site
Exhibit "B"	Subdivision Map of Site
Exhibit "C"	Department-approved Work Plan for the Northern Redevelopment Area
Exhibit "D"	Form of Assignable Release and Covenant Not to Sue
Exhibit "E"	Department-approved Work Plan for the Canterbury Parcel
Exhibit "F"	Department-approved Work Plan for the Rod Mill Parcel
Exhibit "G"	Addendum to the Work Plans
Exhibit "H"	Notice of Order

From: Michael Lesser
To: Ouderkirk, Peter
Date: 5/11/01 4:47PM
Subject: Charlie's nice try

ATTORNEY CLIENT PRIVILEGE

Peter, based on the scenario outlined in your letter, Mr. Gaetano would become subject to legal ACTION for cost recovery by both the municipality and the AG under the terms of the Brownfield program (not to mention the need for a major modification of the terms of the VCA). I think he has to cleanup the tank area. Call me if I misunderstood something. ML.

As of Monday June 18, 2001, my new address and telephone # at the DEC will be as follows:

Office of General Counsel
625 Broadway
Albany, N.Y. 12233-5500
(518) 402-9512 (office)
(518) 402-9019 (FAX)

CC: Demick, Walt; Sweredoski, Darrell