

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION



In the Matter of the
Implementation of an
Investigation and, if needed, the
Remediation of 755 Jefferson Road,
Henrietta, New York by

AGREEMENT
INDEX NUMBER: D8-0001-97-07

Medeva Pharmaceuticals Manufacturing, Inc.,
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"). This Agreement is entered into pursuant to the Department's authority under that law.

2. A. Medeva Pharmaceuticals Manufacturing, Inc. ("Volunteer") is a Delaware corporation having offices with a mailing address of at 755 Jefferson Road, P.O. Box 1710, Rochester, New York 14603.

B. The property subject to this Agreement is located at 755 Jefferson Road, Henrietta, New York (the "Site") and its legal description and a map of the Site showing its general location are attached to this Agreement as Exhibit "A."

C. The Site reportedly is contaminated with methylene chloride, benzene, and other contaminants reportedly related to manufacturing activities conducted at the Site before Volunteer acquired its title. The full nature and extent of this contamination will be investigated and evaluated under this Agreement and the final investigation report submitted under this Agreement will identify the contamination on the Site. That description of the contamination shall constitute the Site's "Existing Contamination" for purposes of this Agreement.

D. Volunteer represents, and for the purposes of this Agreement, the Department relies on those representations, that Volunteer's involvement with the Site and with the facility on that Site is limited to the following: Volunteer acquired title to the Site in July of 1996 and had not previously owned or operated the Site, and is not otherwise responsible under law to remediate contamination existing at the Site as of the effective date of this Agreement. While Volunteer intends to use various portions of the Site for manufacture of pharmaceuticals, distribution of the manufactured products, and office space, it desires to remediate the Site with the intention of allowing it to be used in an unrestricted manner.

3. The Department has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. ECL 3-0301.1.i.

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

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

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

B. Volunteer also wishes to enter into this Agreement in order to resolve its potential liability as a party responsible for the investigation and remediation of the Site under ECL Article 27, Title 13 based upon Volunteer's investigation and, if necessary, remediation, of the Site. The Department finds that such resolution, undertaken in accordance with the terms of this Agreement, is in the public interest.

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

5. The Department and Volunteer agree that the goals of this Agreement are for Volunteer to, (i) implement the Investigation Work Plan for the Site attached to this Agreement as Exhibit "B" and made a part of this Agreement (the "Investigation Work Plan") and, if necessary, develop and implement a Department-approved remediation work plan for the Site ("Remediation Work Plan") and (ii) reimburse the State's administrative costs as provided in this Agreement; and, in accordance with the terms of this Agreement, for the Department and the Trustee of the State's natural resources (the "Trustee") to release, covenant not to sue, and forbear from bringing any action, proceeding, or suit against Volunteer for the further investigation or remediation of the Site.

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

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

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

A. 1. Within 30 days after the effective date of this Agreement, Volunteer shall

commence implementation of the Investigation Work Plan and implement it in accordance with its terms.

2. If after the Department's acceptance of the final Site investigation report submitted under the schedule contained in the Investigation Work Plan, the Department concludes that one or more contamination sources were encountered that require remedial actions to be undertaken in order to ensure that the Site may be used without restriction, from a human health and environmental protection perspective, it shall so state in writing. After receipt of such writing, the parties will immediately commence negotiations to develop a proposed Remediation Work Plan. Upon reaching agreement on such proposed work plan, the Department will publish a notice in the Environmental Notice Bulletin to inform the public of the public's opportunity to submit to the Department by no later than 30 days after the date of the issue of the Environmental Notice Bulletin in which the notice shall appear, comments on same and shall mail an equivalent notice to the Town of Henrietta and the County of Monroe. If, as a result of its review of the comments received, the Department determines that the proposed Remediation Work Plan must be revised

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

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

then the Department will so notify Volunteer and will immediately commence negotiations with Volunteer to revise the proposed Remediation Work Plan accordingly. Otherwise, the proposed Remediation Work Plan shall be attached to this Agreement as Exhibit "B-1" and incorporated into it and shall serve as the Remediation Work Plan. If the negotiations result in an acceptable revision to the proposed Remediation Work Plan, the revised Remediation Work Plan shall be attached to this Agreement as Exhibit "B-1." However, if after goodfaith negotiations, Volunteer and the Department cannot agree upon revisions to the proposed Remediation Work Plan, this Agreement shall terminate upon the Department's so informing Volunteer in writing, and the parties reserve whatever rights they may have had before the execution of this Agreement respecting the Site's remediation. Volunteer shall implement the final Remediation Work Plan and all references to "Work Plan" in this Agreement relating to the undertaking and completion of remedial activities shall refer to that contained in Exhibit "B-1."

3. Within 60 days after the determination of the final form of the Remediation Work Plan after completion of public comment, Volunteer shall commence its implementation in accordance with its provisions.

B. Volunteer shall perform the investigative activities portion of the Response Program in accordance with Exhibit "B" and the remedial activities portion of the Response Program in accordance with Exhibit "B-1."

1. The parties agree that the Remediation Work Plan will be modified in the event that contamination previously unknown or inadequately characterized is encountered during the Remediation Work Plan's implementation and that the modified Remediation Work Plan shall appear in Exhibit "B-2" and all references to "Remediation Work Plan" later in this Agreement (other than in the following sentence) shall refer to the one contained in Exhibit "B-2." However, if after goodfaith negotiations, Volunteer and the Department cannot agree upon modifications to the Remediation Work Plan, then except with respect to Volunteer's obligations under Paragraphs VI and VIII of this Agreement, this Agreement shall terminate effective the date of the Department's written notification to Volunteer that negotiations have failed to develop an acceptable modification to the Remediation Work Plan; Volunteer shall not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before remedial activities were commenced; and (except with respect to the Department's right to enforce the obligations of Volunteer previously described in this sentence, which it may enforce under this Agreement) both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

2. Volunteer shall notify the Department of any significant difficulties that may be encountered in implementing investigative or remedial activities, any Department-approved modification to either Exhibit "B" or to the Remediation Work Plan, as appropriate, or any Department-approved detailed document or specification prepared by or on behalf of Volunteer pursuant thereto and shall not modify any obligation unless first approved by the Department, which approval shall not be unreasonably withheld.

C. During implementation of all construction activities, Volunteer shall have on-Site a full-time representative who is qualified to supervise the work done.

D. In accordance with the schedule contained in the Remediation Work Plan, Volunteer shall submit to the Department a final engineering report. The final engineering report shall include a detailed post-remedial operation and maintenance plan ("O&M Plan"), to the extent necessary; "as-built" drawings showing all changes made during construction, to the extent necessary; and a certification that all construction activities were implemented and completed in full accordance with the Remediation Work Plan, any Department-approved modification, detailed document, or specification prepared by or on behalf of Volunteer pursuant thereto, and this Agreement. The O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

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

F. 1. i. Within 60 days after receipt of the final engineering report and certification, the Department shall notify Volunteer in writing whether the Department is satisfied with the implementation of the Remediation Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto, and this Agreement, which notification shall not be unreasonably withheld.

ii. Within 60 days after completion of the Department-approved O&M Plan, if any, Volunteer shall submit to the Department a final engineering report and certification that the post-remedial construction operation and maintenance activities identified in the Department-approved O&M Plan were implemented in accordance with that plan. The Department shall notify Volunteer whether it is satisfied with the O&M Plan's implementation, which notification shall not be unreasonably withheld.

2. Upon being satisfied that the Site-specific cleanup levels identified in the Remediation Work Plan have been reached, 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 for the further investigation and remediation of the Site, or for natural resources damages, based upon the release or threatened release of any Existing Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of this Agreement continue to be or have been made to the Department, and (b) Volunteer and/or its lessees, sublessees, successors, successors-in-title, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any. Nonetheless, 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, any further investigation or remedial action the Department deems necessary:

i. due to the presence of petroleum off-Site, if any, that may have migrated off-Site from an on-Site source, irrespective of whether the information available to Volunteer and the Department at the time of the development of the Remediation Work Plan disclosed the existence or potential existence of such off-Site presence;

ii. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Remediation Work Plan;

iii. due to information received, in whole or in part, after the Department's approval of the final engineering report and certification, which indicates that the Response Program performed under this Agreement is not sufficiently protective of human health for unrestricted use;

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

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

Additionally, the Department and the Trustee hereby reserve all of their respective rights concerning, and any such any such release, covenant not to sue, and forbearance shall not extend to, any further investigation or abatement it deems necessary to be undertaken in the event that Volunteer causes or suffers the release or threat of release at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law §172[15]) after the effective date of this Agreement.

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

G. If the Response Program was completed in compliance with Exhibit "B" and the Remediation Work Plan and Department-approved design, the Department shall provide Volunteer with a separate written "clean site notification" letter containing substantially the same language as the model letter attached to this Agreement and incorporated in this Agreement as Exhibit "C."

H. 1. Notwithstanding any other provision of this Agreement, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of the forbearance, covenant not to sue, or release set forth in Subparagraph I.F or in a "clean site notification" letter issued under Subparagraph I.G of this Agreement shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

2. Except as above provided in Subparagraph I.F of this Agreement and in the "clean site notification" letter issued under Subparagraph I.G of this Agreement, nothing in this Agreement is intended as a release, forbearance, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Department or the State of New York may have against any person, firm, corporation, or other entity not a party to this Agreement. In addition, notwithstanding any other provision in this Paragraph I of this Agreement, the forbearance, covenant not to sue, and release described in Subparagraph I.F and in the "clean site notification" letter issued under Subparagraph I.G of this Agreement shall not extend to parties (other than Volunteer) that were responsible under law before the effective date of this Agreement to address the Existing Contamination.

II. Progress Reports

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

1. describe the actions which have been taken toward achieving compliance with this Agreement;

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

3. identify all reports and other deliverables required by this Agreement that were completed and submitted during the previous month;

4. describe all actions, including, but not limited to, data collection and implementation of Exhibit "B" or the Remediation Work Plan, that are scheduled for the next month and provide other information relating to the progress at the Site;

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

6. include any modifications to Exhibit "B" or the Remediation Work Plan 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 Agreement; and Volunteer's obligation to submit the progress reports shall terminate upon its receipt of the written satisfaction notification identified in Subparagraph I.F.2 of this Agreement approving Volunteer's final engineering report and certification concerning the Remediation Work Plan's implementation. However, Volunteer shall continue to submit reports concerning the implementation of any O&M Plan that may be required under this Agreement, in accordance with that Plan's requirements.

C. Volunteer also shall allow the Department to attend, and shall provide the Department at least five days advance notice of, any of any meeting relating to the implementation of Exhibit "B" or the Remediation Work, including, but not limited to, prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

III. Review of Submittals

A. 1. The Department shall review each of the submittals Volunteer makes pursuant to this Agreement to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Agreement and 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 Agreement.

2. i. If the Department disapproves a submittal, it shall so notify Volunteer in writing and shall specify the reasons for its disapproval within 30 days (60 days, in the case of the final engineering report and certification) 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 Exhibit "B" or the Remediation Work Plan, as appropriate. 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.

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

B. Within 30 days after the Department's approval of the final engineering report and certification, Volunteer shall submit to the Department one microfilm copy (16 millimeter roll film M type cartridge) of that report and all other Department-approved drawings and submittals. Such submission shall be made to:

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

IV. Enforcement

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

B. Volunteer shall not suffer any penalty under this Agreement or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement because of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials,

war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Volunteer's reasonable control ("*force majeure* event"). Volunteer shall, within five working days of when it 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 Agreement. Volunteer shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Agreement pursuant to this Subparagraph IV.B of this Agreement.

V. Entry upon Site

Volunteer hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer by any duly designated employee, consultant, contractor, or agent of the Department or any State agency having jurisdiction with respect to the Investigation Program for purposes of inspection, sampling, and testing and to ensure Volunteer's compliance with this Agreement. The Department shall abide by the health and safety rules in effect for work performed at the Site under the terms of this Agreement. Upon request, Volunteer shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Agreement and to job meetings.

VI. Payment of State Costs

Within thirty 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 Agreement, reviewing and revising submittals made pursuant to this Agreement, overseeing activities conducted pursuant to this Agreement, collecting and analyzing samples, and administrative costs associated with this Agreement. Each such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

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

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

documented by expenditure reports.

VII. Department Reservation of Rights

A. Except as provided in Subparagraph I.F of this Agreement and in any “clean site notification” letter issued under Subparagraph I.G of this Agreement, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or the Trustee's rights (including, but not limited to, nor exemplified by, the right to recover natural resource damages) with respect to any party, including Volunteer.

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

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

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

VIII. Indemnification

Volunteer shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Volunteer and/or any of Volunteer's directors, officers, employees, servants, agents, successors, and assigns.

IX. Notice of Sale or Conveyance

If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in the Site, Volunteer shall, not fewer than 60 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 Agreement and provide the transferee with a copy of this Agreement.

X. Communications

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

1. Communication from Volunteer shall be sent to:

Mary Jane Peachey, P.E.
New York State Department of Environmental Conservation
6274 East Avon-Lima Road
Avon, New York 14414

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
50 Wolf Road, Room 410A
Albany, New York 12233-5550

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

- Four copies (one unbound) to Ms. Peachey
- Two copies to Dr. Carlson
- One copy to Mr. Sullivan

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

Dale Rosene
Director, HSE
c/o Medeva Pharmaceuticals Manufacturing, Inc.
BR P.O. Box 1710
Rochester, New York 14603

with copies to:

Edward J. Hinchey, Operations Manager
ERM - Northeast
5788 Widewaters Parkway

Dewitt, New York 13214

and to:

Doreen A. Simmons, Esq.
Hancock & Estabrook, LLP
1500 MONY Tower I
P.O. Box 4976
Syracuse, New York 13221-4976

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 X.

XI. Miscellaneous

A. 1. By entering into this Agreement, Volunteer certifies that it has fully and accurately disclosed to the Department all information known to Volunteer and all information in the possession or control of Volunteer's officers, directors, employees, contractors, and agents which relates in any way to the contamination existing on the effective date of this Agreement or any past or potential future release of hazardous substances, pollutants, or contaminants at or from the Site and to their application for this Agreement. Volunteer also certifies that it has not caused or contributed to the Existing Contamination.

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

B. 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 required by this Agreement. The responsibility for the performance of the professionals retained by Volunteer shall rest solely with Volunteer.

C. 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 Agreement and shall submit these results in the progress reports required by this Agreement.

D. Volunteer shall notify the Department at least five working days in advance of any field activities to be conducted pursuant to this Agreement.

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

2. In carrying out the activities identified in the Remediation Work Plan, 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.

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

G. Volunteer shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement 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 Agreement upon performance in conformity with the terms of this Agreement. Volunteer or Volunteer's contractors shall provide written notice of this Agreement to all subcontractors hired to perform any portion of the work required by this Agreement. Volunteer shall nonetheless be responsible for ensuring that Volunteer's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

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

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

J. 1. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Volunteer of Volunteer's obligation to obtain such

formal approvals as may be required by this Agreement.

2. If Volunteer desires that any provision of this Agreement be changed, Volunteer shall make timely written application, signed by Volunteer, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Ms. Peachey and to Mr. Sullivan.

K. This Agreement is not subject to review under the State Environmental Quality Review Act. 6 NYCRR 617.5(c)(18, 29).

L. The provisions of this Agreement 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.

M. Volunteer and Volunteer's employees, servants, agents, lessees, 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 Site, and further release and hold harmless the New York State Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever that any of same has or may have as a result of Volunteer's entering into or fulfilling the terms of this Agreement with respect to the Site.

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

DATED: 3/31/98

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

A handwritten signature in cursive script, reading "John P. Cahill", written over a horizontal line.

CONSENT BY VOLUNTEER

Medeva Pharmaceuticals Manufacturing, Inc. hereby consents to the issuing and entering of this Agreement, waive its right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

Medeva Pharmaceuticals Manufacturing, Inc.

By: Gunter E. Pawlowski

Date: 2/24/98

STATE OF NEW YORK)
) s.s.:
COUNTY OF MONROE)

On this 27th day of February, 1998, before me personally came Gunter E. Pawlowski, to me known, who being duly sworn, did depose and say that he is Sr. V.P. Operations of Medeva Pharmaceuticals Manufacturing, Inc., the corporation described in and which executed the foregoing instrument; and that he signed his name on behalf of Medeva Pharmaceuticals Manufacturing, Inc. and was authorized to do so.

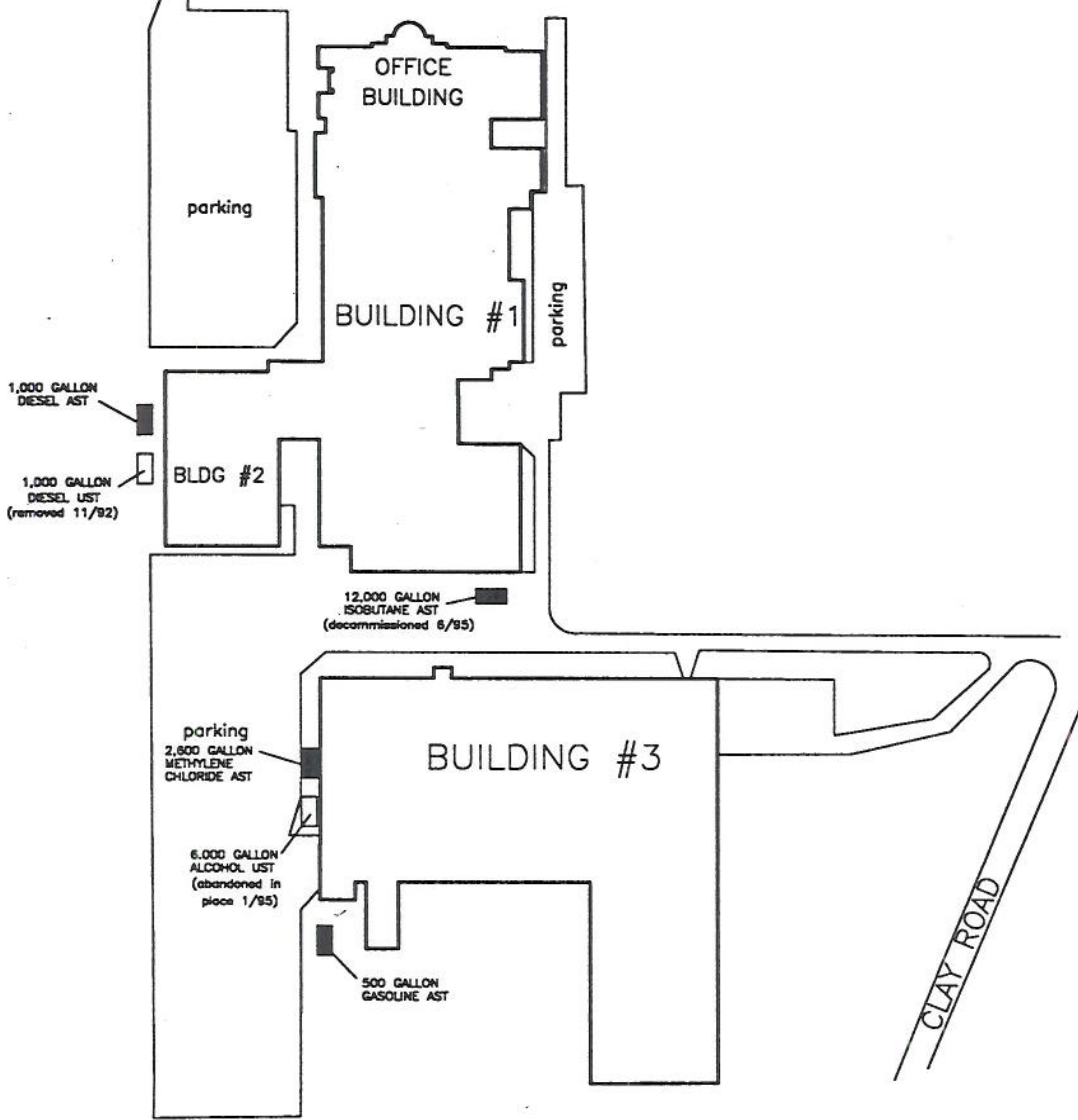
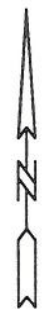
Linda M. Shenk
Notary Public

LINDA M. SHENK
Notary Public, State of New York
No. 4971682
Qualified in Monroe County
Commission Expires Sept. 10, 1998

EXHIBIT "A"

Legal Description and Map of Site

JEFFERSON ROAD



Site is now referenced as -
JEFFERSON ROAD FACILITY

LEGEND

- EXISTING TANK LOCATION
- FORMER TANK LOCATION

**SITE LAYOUT MAP
FORMER FISIONS PROPERTY
HENRIETTA, NEW YORK**

PREPARED FOR			
THOMPSON & KNIGHT			
	SCALE	FIGURE	
	DATE	NTS	3-1
	4-97		

11/9/97 NCP /SITELAY.DWG

EXHIBIT "B"

Investigation Work Plan

**VOLUNTARY CLEANUP WORK PLAN
DATA GAP INVESTIGATION
FORMER FISIONS PROPERTY
HENRIETTA, NEW YORK**

July 1997

Site is now referenced as -
JEFFERSON ROAD FACILITY

**ERM-NORTHEAST, INC.
5788 Widewaters Parkway
Dewitt, New York 13214
(315) 445-2554**