

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of a
Response Program for the
former Taylor Instruments
Facility at Ames Street
Rochester, New York

AGREEMENT
INDEX NUMBER
B8-0508-97-02

by

Combustion Engineering, 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 and constitutes an administrative settlement for purposes of 42 USC 9613(f).

2. A. The Site is located at 95 Ames Street, Rochester, New York 14611 and has the Tax Map Number 120.410-0001-001.002/0000IH. Exhibit "A" of this Agreement is a map of the Site showing its general location. Since approximately 1900, industrial manufacturing has occurred at the Site. In 1993, operations at the Site were terminated and/or relocated, and the process of decommissioning the facility commenced. The structures at the property have been demolished pursuant to a demolition permit granted by the City of Rochester and the entire Site is currently paved. The Site consists of approximately fourteen acres and includes a one acre "Class 4" inactive hazardous waste disposal site (Site #828028A).

B. Volunteer has conducted various investigations of environmental conditions at the Site. The results of the investigation to date indicated the presence of Volatile Organic Compounds, including petroleum products, trichloroethylene, 1,1,1 trichloroethane and dichloroethene and the metal, mercury, at the Site. The Investigative and Remedial Work Plans and Final Engineering Reports will incorporate the results of these prior Site investigations.

3. A. Volunteer ("Volunteer") is Combustion Engineering, Inc., a corporation, and has offices at 1175 John Street, Henrietta, New York.

B. The Volunteer intends to redevelop the property for commercial or industrial use with assistance from the City of Rochester Department of Economic Development and consistent with the cleanup levels set forth in the Remedial Work Plan and consistent with any institutional and engineering controls which may be identified pursuant to Paragraph X hereof. The Site is zoned for commercial and industrial use, is located within a federal Enterprise Community Zone, a federal Brownfields Redevelopment Project Area and a New York State Economic Development Zone. The City intends to use the Site as an "anchor" for its development of an industrial-commercial corridor within the City.

C. 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 conducted manufacturing operations at the facility from 1983 until 1993. Volunteer is also the current owner of the Site.

4. 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.

5. A. The Department alleges that the Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2.

B. ECL 27-1313.3 provides that the Department shall be responsible for inactive hazardous waste disposal site remedial programs, except as provided in Section 1389-b of the Public Health Law. ECL 27-1313.3.a provides that whenever the Commissioner of Environmental Conservation finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order.

C. The regulations implementing ECL Article 27, Title 13 authorize at 6 NYCRR 375-1.2(e)(2)(ii) the proponents of any activity to demonstrate to the Department that such activity will not have the effect described in 6 NYCRR 375-1.2(e)(2)(i) by such demonstration as the Department may find acceptable.

D. Volunteer wishes to enter into this Agreement in order to ensure, and

the Department hereby determines that this Agreement constitutes such a demonstration, that the investigations and response 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.

6. A. Volunteer disputes the Department's allegations that the Site is an inactive hazardous waste site, but wishes to resolve this matter without institution of administrative or civil proceedings and, in the interests of settlement, also wishes to enter into this Agreement in order to resolve its potential liability for remediating the Existing Contamination (as that term is defined in Subparagraph I.H.2 of this Agreement) as an operator and an owner under ECL Article 27, Title 13. The Department finds that such resolution, undertaken in accordance with the terms of this Agreement, is in the public interest.

- B. Volunteer, desirous of implementing a remedial program acceptable to the Department sufficient to allow Volunteer to proceed with its plans to use the Site for the contemplated uses, consents to the terms and conditions of this Agreement.

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

- A. for Volunteer to, (i) implement the Investigative Work Plan and Remedial Work Plan (if required), as approved by the Department; and (ii) reimburse the State's administrative costs as provided in this Agreement, and

- B. for the Department to release Volunteer and its successors and assigns, under the conditions set forth in this Agreement, from any and all claims, actions, suits, and proceedings by the Department 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 Agreement. Volunteer consents to and agrees not to contest the authority or jurisdiction of the Department to enter into or enforce this Agreement, and agrees not to contest the validity of this Agreement or its terms. Notwithstanding the foregoing, however, Volunteer has the right to contest any attempt to enforce this Agreement or any of its terms.

IN CONSIDERATION OF AND IN EXCHANGE FOR THE DEPARTMENT'S RELEASE AND COVENANT NOT TO SUE TO BE PROVIDED UNDER THE CONDITIONS

IDENTIFIED IN THIS AGREEMENT AND FOR THE MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN, VOLUNTEER AGREES TO THE FOLLOWING:

I. Performance and Reporting of the Investigative Work Plan and Development and Implementation of the Remedial Work Plan, if Necessary

A. 1. Within 21 days after the effective date of this Agreement, Volunteer shall commence implementation of the work proposed in the Investigative Work Plan dated August 14, 1997 which the Department hereby expressly approves and which is attached to this Agreement and made a part of the Investigative Work Plan as Exhibit "B", and implement it in accordance with its terms.

2. Volunteer shall notify the Department of any significant difficulties that may be encountered in implementing the Investigative Work Plan or in any Department-approved modification to it and shall not modify any obligation unless first approved by the Department.

B. 1. In accordance with the schedule contained in the Investigative Work Plan, Volunteer shall submit to the Department a Final Investigative Report. The Final Investigative Report shall:

a. include all data generated and all other information obtained as part of the investigation;

b. provide all of the assessments and evaluations identified in the Investigative Work Plan;

c. identify any additional data that is proposed to be collected;
and

d. include a certification by the individual or firm with primary responsibility for the day to day performance of the investigation that all activities that comprised the investigation were performed in full accordance with the Investigative Work Plan or expressly identifying and explaining any approved exceptions.

C. 1. After its acceptance of the Final Investigative Report submitted under Subparagraph I.B of this Agreement, the Department shall determine whether it has sufficient information respecting the nature and extent of the contamination on the Site.

i. If the Department determines that it does not have sufficient information respecting the nature and extent of the Site's contamination, it will so inform Volunteer in writing, and will provide Volunteer with comments thereon. In such event,

Volunteer may propose a revision to the Investigative Work Plan to address the Department's comments. If Volunteer submits such a proposed revision and the Department approves it, Volunteer shall collect such additional data under a Department-approved revision to the Investigative Work Plan, which shall be attached to this Agreement as Exhibit "B-1" ("Revised Investigative Work Plan") and made a part of this Agreement. If (a) Volunteer elects not to submit such a proposed revision, or (b) Volunteer submits a proposed revision, the Department disapproves it and, after good faith negotiations between the Department and Volunteer, Volunteer elects not to collect such additional data, then Volunteer shall so notify the Department in writing, Volunteer's obligations under this Agreement (except those under Paragraphs VI and VIII of this Agreement and the Department's right to enforce them under Paragraph IV of this Agreement) shall terminate effective the date of Volunteer's written notification and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

ii. If the Department determines that it has sufficient information respecting the nature and extent of the Site's contamination, it will so inform Volunteer in writing, and the Department will inform it in that communication whether the Department believes that remediation of contamination on the Site is needed to allow the Site to be used for industrial and/or commercial purposes (the "Contemplated Uses") consistent with the cleanup levels set forth, or to be set forth, in the Remedial Work Plan, and consistent with any institutional and engineering controls which may be identified pursuant to Paragraph X hereof and which may be based on the Human Health Risk Assessment submitted to the Department.

2. If the Department determines that no further investigation, remediation or other work is needed to allow the Site to be used for the Contemplated Uses, it shall so state in writing and shall provide Volunteer with the forbearance, release, and covenant not to sue described in Subparagraph I.H of this Agreement and with the notification letter described in Subparagraph I.I of this Agreement.

3. If the Department determines that remediation or other work is needed to allow the Site to be used for the Contemplated Uses, it shall so notify Volunteer in writing. After receipt of such writing, except as provided in Subparagraph I.C.3.ii, the Volunteer shall develop a proposed Remedial Work Plan, which pursuant to Subparagraph

I.G of this Agreement shall include, inter alia, the cleanup levels for the Site and the basis upon which such levels were derived and action levels triggering remedial actions, if any, to be taken off-Site attributable to on-Site disposal of Existing Contamination.

i. If the Department approves such proposed Remedial Work Plan, then the provisions of Subparagraph I.D.1 shall apply. If the Department disapproves such proposed Remedial Work Plan and, after good faith negotiations, the Department and Volunteer cannot agree upon the proposed Remedial Work Plan, then, except with respect to Volunteer's obligations under Paragraphs VI and VIII of this Agreement and the Department's right to enforce them under Paragraph IV of this Agreement, this Agreement shall terminate effective the date of the Department's or the Volunteer's written notification to the other that negotiations have failed to develop an acceptable proposed Remedial Work Plan, and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

ii. Notwithstanding anything to the contrary contained in this Agreement, if Volunteer elects not to develop a proposed Remedial Work Plan, then, except with respect to Volunteer's obligations under Paragraphs VI and VIII of this Agreement and the Department's right to enforce them under Paragraph IV of this Agreement, this Agreement shall terminate effective the date of Volunteer's written notification and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

iii. (a) Any such proposed Remedial Work Plan shall provide, inter alia, that if during the Remedial Work Plan's implementation, contamination is discovered that was not discussed in the Final Investigative Report, or in any of the prior reports submitted to the Department, except as provided in Subparagraph I.C.3.iii.b, Volunteer shall investigate the nature and extent of such newly discovered contamination, and, in the event that this remediation is needed to allow the Contemplated Uses to proceed, the Remedial Work Plan will be revised to have Volunteer remediate, in accordance with a mutually agreed upon cleanup program, such newly discovered contamination.

(b) If Volunteer elects not to revise the Remedial Work Plan as a result of such newly discovered contamination, or, if after good faith negotiations the Department and the Volunteer cannot agree upon a cleanup program or a proposed Revised Remedial Work Plan, and, except with respect to Volunteer's obligations under

Paragraphs VI and VIII of this Agreement and the Department's right to enforce them under Paragraph IV of this Agreement, this Agreement shall terminate effective the date of Volunteer's or the Department's written notification to the other and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

D. 1. Within 21 days after the Department has approved the Remedial Work Plan, if any, the Department will publish a notice in the Environmental Notice Bulletin to inform the public of the execution of this Agreement and of the public's opportunity to submit comments to the Department by no later than 30 days after the issue of the Environmental Notice Bulletin in which such notice shall appear on the Remedial Work Plan (the "Remedial Work Plan") attached to this Agreement and made part of it as Exhibit "C;" and shall mail an equivalent notice to the City of Rochester and County of Monroe.

2. If, (a) as a result of its review of the comments received, or (b) as a result of contamination previously unknown or inadequately characterized being encountered during implementation of the Remedial Work Plan, the Department reasonably determines that the Remedial 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 Remedial Work Plan; or

ii. due to information received, in whole or in part, after the Department's approval of the Remedial Work Plan, which indicates that the activities to be carried out in accordance with the Remedial Work Plan are not sufficiently protective of human health and the environment for the Contemplated Uses; then, in such event, the Department will so notify Volunteer and will immediately commence negotiations with Volunteer to revise the Remedial Work Plan and, if necessary, other components of this Agreement accordingly. If after good faith negotiations, mutual agreement on revisions to the Remedial Work Plan cannot be reached, this Agreement shall terminate except with respect to Volunteer's obligations pursuant to Paragraphs VI and VIII and the Department's right to enforce them under Paragraph IV of this Agreement, upon the either party's so informing the other in writing, and, upon termination, both parties reserve whatever rights they may have had respecting each other as they had before the effective date of this Agreement. If both parties agree to a Revised Remedial Work Plan, the Revised Remedial Work Plan shall be attached to this Agreement as Exhibit "C-1;" Volunteer shall implement

that Revised Remedial Work Plan instead of the one contained in Exhibit "C;" and all references to "Revised Remedial Work Plan" in this Agreement shall refer to the one contained in Exhibit "C-1."

3. Within 30 days after the Department's approval of the Remedial Work Plan after completion of public comment, Volunteer shall commence its implementation in accordance with its provisions.

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

5. In the event Volunteer terminates this Agreement pursuant to Subparagraph I.D.2, 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.

E. In accordance with the schedule contained in the Remedial Work Plan, as may be modified by agreement between the parties, 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 activities were completed in full accordance with the Remedial Work Plan, any Department-approved modification to the Remedial Work Plan, any Department-approved detailed documents and specifications 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.

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

G. 1. Volunteer shall carry out the Investigative Work Plan and Remedial Work Plan in accordance with their respective terms. Volunteer shall notify the Department of any significant difficulties encountered during the implementation of either Work Plan, any Department-approved modification of either, or any Department-approved details,

documents, or specifications prepared by or on behalf of Volunteer pursuant to either Work Plan, and shall not modify any obligation unless first approved by the Department.

2. During the time Volunteer is implementing the Work Plans in accordance with their respective terms, the Department will not list the Site in the Registry of Inactive Hazardous Waste Disposal Sites and shall report the Site in its Annual Report of Inactive Hazardous Waste Disposal Sites as a Class "V" unless the Department determines that the hazardous waste disposed at the Site constitutes a significant threat to the public health or to the environment. In the event that the Department makes such a determination, it may list the Site as a Class "2" inactive hazardous waste disposal site in its Registry of Inactive Hazardous Waste Disposal Sites if after good faith negotiations mutual agreement on:

i. provisions to be included in the Remedial Work Plan pertaining to the identification of cleanup levels for on-Site contamination cannot be reached by November 30, 1997 and the identification of cleanup levels for off-Site contamination cannot be reached by January 31, 1998; and

ii. an approved Remedial Work Plan including the remedial activities designed to achieve such cleanup levels cannot be reached by March 1, 1998; and either party may terminate this Agreement upon written notice to the other and except for Volunteer's obligations pursuant to Paragraphs VI and VIII of this Agreement and the Department's right to enforce them under Paragraph IV of this Agreement, both parties reserve whatever rights they may have had respecting each other as they had before the effective date of this Agreement, including Volunteer's right to oppose any listing of the Site.

H. 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 Remedial Work Plan, any Department-approved modification to the Remedial Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto, and this Agreement.

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 operation and maintenance activities identified in the Department-approved O&M Plan were implemented in accordance with that plan. The

Department shall notify Volunteer in writing whether it is satisfied with the O&M Plan's implementation.

2. Upon being satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Remedial Work Plan have been reached, the Department shall notify Volunteer in writing of its satisfaction and, except for the reservations identified below, the Department releases, covenants not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer, and Volunteer's lessees, sublessees, licensees, invitees, successors and assigns, and their respective secured creditors, for the further investigation and remediation of the Site based upon the release or threatened release of any contamination identified and characterized in the Final Investigative Report and, if any, any other contamination discovered and characterized and disclosed to the Department during the implementation of the final Remedial Work Plan and remediated in accordance with Exhibit "C" (and "C-1", as appropriate) of this Agreement present or existing in, on, at, under, or from the Site, (collectively, the "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, (b) appropriate notices and deed restrictions have been recorded in accordance with Paragraphs IX and X of this Agreement, and (c) Volunteer and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any. Nonetheless, the Department hereby reserves all of its rights concerning, and such release, covenant not to sue, and forbearance shall not extend to natural resource damages nor to any further investigation or remedial action the Department deems necessary:

i. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Remedial Work Plan or the last written modification thereto approved by the Department which indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Uses;

ii. 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 activities carried out in accordance with the Remedial Work Plan are not sufficiently protective of human health and the environment for the Contemplated Uses;

iii. due to Volunteer's failure to implement this Agreement; provided, however, that any such reservation of rights by the Department and any such determination by the Department not to extend the release, covenant not to sue, and forbearance, as set forth in this Subparagraph I.H.2.iii, shall be upon notice to Volunteer and shall be conditioned upon the Department's granting to Volunteer a sufficient period of time to investigate and cure any failure to implement this Agreement that is alleged by the Department, but this notice and opportunity to cure shall not be available to the Volunteer in the event of fraud under the circumstances noted in Subparagraph I.H.2.iv of this Agreement; or

iv. 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 Remedial Work Plan were reached.

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to, any further investigation or remediation the Department deems necessary to be undertaken in the event that Volunteer, or any of its lessees, sublessees, licensees, invitees, successors and assigns, 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 Section 172[15]) after the effective date of this Agreement; or Volunteer, or any of its lessees, sublessees, licensees, invitees, successors and assigns causes a, or suffers the use of the Site to, change from the Contemplated Uses to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment.

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 against any party, nothing in this Agreement shall be construed, or deemed, to preclude the State of New York from recovering such claim.

I. If the Department is satisfied with the implementation of the Remedial Work Plan and Department-approved design, the Department shall provide Volunteer with a separate written "no further action" letter substantially similar to the model letter attached to this Agreement and incorporated into this Agreement as Exhibit "D".

J. 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.H or in a "no further action" letter issued under Subparagraph I.I 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.H of this Agreement and in the "no further action" letter issued under Subparagraph I.I 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.H and in the "no further action" letter issued under Subparagraph I.I of this Agreement shall not extend to entities 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 XI.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 during the previous month;
2. include in summary format, or, if requested by the Department, in full format, 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, conducted pursuant to this Agreement, provided that nothing in this Agreement shall be deemed a waiver of the Department's right to request information developed by Volunteer independent of this Agreement pursuant to the Department's statutory and regulatory authorities, including, without limitation, Sections 27-1307 and 27-1309 of the Environmental Conservation Law;
3. identify all work plans, 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 the Work Plan, that are scheduled for the next month and provide other information relating to the progress at the Site in implementing this Agreement;

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 the Investigative Work Plan or the Remedial Work Plan that Volunteer has proposed to the Department and any that the Department has approved during the previous month.

B. Volunteer shall submit these progress reports to the Department by the fifteenth 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.H of this Agreement. 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 the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting. Nothing in this Agreement shall afford the Department the right to attend or to have notice of any internal, informal, or strategy meetings, any meetings attended by legal counsel or any meetings at which privileged mental impressions, conclusions, opinions, or legal theories are anticipated to be discussed, as provided for by applicable New York law.

III. Review of Submittals

A. 1. As expeditiously as possible, 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 generally accepted technical and scientific principles. The Department shall as expeditiously as possible 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, except with respect

to the Final Engineering Report and certification (in which case the period shall be 60 days), 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 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.

ii. After receipt of the revised submittal, the Department shall notify Volunteer in writing within 30 days or as soon as practicable 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 (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) or an acceptable computerized copy, as the Project Manager may direct, 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 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 Response 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 and access to a telephone if such exists, and shall permit the Department full access to all records relating to matters addressed by this Agreement and to job meetings. Volunteer shall not be required under this Agreement to submit any portions of records and/or information that would disclose privileged mental impressions, conclusions, opinions, or legal theories, as provided for by applicable New York law.

VI. Payment of State Costs

A. 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 Department's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the Department for work performed regarding the Site to the effective date of this Agreement, as well as 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, but not including the Department's expenses incurred after the Department's notification identified in Subparagraph I.H of this Agreement of its approval of the Final Engineering Report and certification pertaining to the implementation of the Remedial Work Plan, if any, or of the Department-approved O&M Plan, if any, whichever is later. Each such

payment shall be made by 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. Notwithstanding anything to the contrary contained herein, Volunteer shall have no obligation to pay to the Department a sum of money which, in the aggregate, exceeds \$25,000 for the Department's expenses incurred prior to the effective date of this Agreement, a sum of money which, in the aggregate, exceeds \$75,000 for the Department's expenses incurred in connection with investigative activities conducted after the effective date of this Agreement, and a sum of money which, in the aggregate, exceeds \$50,000 for the Department's expenses incurred in connection with remedial activities, and in no event shall Volunteer pay to the Department pursuant hereto amounts which total in excess of \$150,000. Volunteer shall have no obligation under this Agreement to reimburse the Department for costs incurred if this Agreement is terminated at any time by Volunteer or the Department, for any costs incurred after such termination.

VII. Reservation of Rights

A. Except as provided in Subparagraphs I.H and XII.M of this Agreement and in any "no further action" letter issued under Subparagraph I.I 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 Volunteer's rights with respect to any party other than Volunteer.

B. Nothing contained in this Agreement shall prejudice any right of the Department to take any investigatory or remedial action it may deem necessary if Volunteer fails to comply with this Agreement or contamination other than Existing Contamination is encountered at the Site; provided, however, that except in the instance

described in this Subparagraph VII.C of this Agreement, any such exercise of the rights provided to the Department in this Subparagraph VII.B shall be upon notice to Volunteer and shall be conditioned upon the Department's granting to Volunteer a sufficient period of time to investigate and cure any failure to comply with this Agreement or any finding of contamination other than Existing Contamination that is alleged by the Department. This notice and opportunity to cure shall not be available to Volunteer in the event of fraud under the circumstances noted in Subparagraph I.H.2.iv of 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. Volunteer reserves any rights it may have to contest, defend against, dispute or disprove any actions, proceedings, allegations, assertions, determinations, or orders of the Department, except with respect to the validity of this Agreement or its terms, and reserves its right to notice, to be heard, to appeal, and to any other due process in any action or proceeding by the Department, including any action or proceeding pursuant to or to enforce this Agreement. The existence of this Agreement or the fact that Volunteer participated in activities pursuant to this Agreement shall not constitute, be construed as, nor be considered an admission of liability, fault, wrongdoing, or violation of any law, regulation, or permit condition by Volunteer, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

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; provided, however, that Volunteer shall not indemnify the Department, the State of New York, and their representatives and employees if such claim, suit, action, damages, or costs relates to or arises from any unlawful, willful, grossly negligent, or malicious act or omission on the part of the Department, the State of New York, or their representatives and employees.

IX. Notice of Sale or Conveyance

A. Within 60 days after the effective date of this Agreement, Volunteer shall

file the Notice of Agreement, which is attached to this Agreement as Exhibit "E," with the Monroe County Clerk to give all parties who may acquire any interest in the Site notice of this Agreement. Volunteer may terminate the Notice when Volunteer receives all applicable notifications from the Department pursuant to Subparagraph I.H of this Agreement.

B. If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in the Site, before the Department has notified Volunteer that the Department is satisfied that the Remedial Program was completed in accordance with the Work Plan pursuant to Subparagraph I.H of this Agreement, or that the O & M activities, if any, were completed in accordance with Subparagraph I.I of this Agreement, whichever is later, 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.

X. Deed Restriction

A. Within 30 days of its receipt of the Department's notification pursuant to Subparagraph I.H of this Agreement approving Volunteer's Final Engineering Report and certification for the Work Plan, Volunteer shall record an instrument with the Monroe County Clerk, to run with the land, that shall prohibit the Site from ever being used for purposes other than of the Contemplated Uses 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.

B. Such instrument also will include:

1. a provision prohibiting the use of the groundwater underlying the Site without treatment rendering it safe for drinking water or industrial purposes, as appropriate, 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

2. a provision requiring Volunteer and Volunteer's successors and assigns to continue in full force and effect those necessary institutional or engineering controls identified in the Remedial Work Plan or the O&M Work Plan or in any of the final reports.

C. Volunteer shall provide the Department with a copy of such instrument certified by the Monroe County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Monroe County Clerk.

D. Volunteer, on behalf of itself and its successors and assigns, consents to the Department's enforcement of the prohibitions and restrictions that this Paragraph X requires to be recorded and covenants not to contest such enforcement.

XI. 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
Division of Environmental Remediation
6274 East Avon-Lima Road
East Avon, New York 14414
(716) 226-2466

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

James D. Charles, Esq.
New York State Department of Environmental Conservation
Division of Environmental Enforcement
270 Michigan Avenue
Buffalo, New York 14203-2999

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

Jean H. McCreary, Esq.
Nixon, Hargrave, Devans & Doyle LLP
Clinton Square
Rochester, New York 14604

B. Multiple copies of Work Plans and Reports (but not other communications) shall be submitted as follows:

Mary Jane Peachey (4 copies, 1 unbound)

Dr. Carlson (2 copies)

C. 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 XI.

XII. 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. Nothing in this Subparagraph XII.A.1 shall require Volunteer to disclose information which is a privileged communication between the Volunteer and its counsel or which contains the mental impressions, conclusions, opinions, legal theories and preparations for litigation of Volunteer's legal counsel, as provided for by applicable New York law.

2. Volunteer has submitted to the Department two reports, entitled "Background Documents - Ames Street - Former Taylor Instrument Site, 95 Ames St., Rochester, New York" [October 17, 1995] and "Former Taylor Instrument Ames Street Site - Proposed Phase I - Areas and Chemicals of Concern" [October 3, 1995], for purposes of disclosing, in summary format, information known to Volunteer concerning past releases of hazardous substances at or from the Site to satisfy its disclosure obligation pursuant to Subparagraph XII.A.1 hereof. If the Department determines that it desires access to, or be provided with copies of, additional historical information pursuant to the above certification, Volunteer shall, upon Department's request, provide such information, access and/or copies.

3. 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 and except for Volunteer's obligations pursuant to Paragraphs VI and VIII of this Agreement and the Department's right to enforce them under Paragraph IV of this Agreement, and the parties shall reserve

all rights that each 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. Volunteer shall have the right to obtain split samples and/or a copy of analytical results of all substances and materials sampled by the Department. The Department will make available to Volunteer the results of all sampling and/or tests or other data generated by the Department in overseeing implementation of this Agreement, and Volunteer will take such information into account in preparing its plans and submissions hereunder.

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

E. 1. Subject to Subparagraph XII.E.2 of this Agreement, Volunteer shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Volunteer's obligations under this Agreement. In the event off-Site access is required to implement the terms of this Agreement, Volunteer shall use best efforts to obtain such access. In the event such access is unreasonably withheld by the off-Site landowners, the Department may assist Volunteer in gaining access to such properties. "Best efforts" shall not require Volunteer to pay substantial sums of money, nor shall it require Volunteer to commence litigation against such off-Site property owners.

2. In carrying out the activities identified in the 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 not as individuals), 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 shall require its officers, directors, employees, servants, and agents 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.

H. All references to "professional engineer" in this Agreement 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.

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

J. 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.

K. 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 Mary Jane Peachey, P.E. and to James Charles, Esq. However, nothing in this Agreement shall be deemed to prohibit Ms. Peachey from authorizing field changes without first having received permission to do so from the Commissioner under this Subparagraph XII.K.2.

L. This Agreement constitutes with respect to Volunteer an exercise of the Department's prosecutorial discretion and accordingly, the remedial activities to be undertaken under the terms of this Agreement 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 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. 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 the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the provision of 42 USC 9613(f)(3) shall apply.

N. 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.

O. The effective date of this Agreement shall be the date on which Volunteer receives from the Department a fully executed copy, signed by the Commissioner or his designee.

P. If not otherwise terminated by the Department or Volunteer upon notice to the other, Volunteer's obligations under this Agreement, other than its indemnification

obligations under Paragraph VIII and its obligation to pay the sum due under Paragraph VI of this Agreement, shall terminate when:

1. The Department has notified it that the Remedial Work Plan was performed in accordance with its terms pursuant to this Agreement, or if the Department determines that remediation is not necessary at the Site pursuant to paragraphs I.C.2 and 3 of this Agreement; and
2. The Department has notified Volunteer that Volunteer has performed the O&M Plan, if one is necessary at all, in accordance with the schedule and requirements of the Department-approved O&M Plan pursuant to this Agreement.

XIII. Dispute Resolution

A. The Department and Volunteer shall attempt to resolve expeditiously and informally any disagreements concerning implementation of this Agreement, the amounts payable to the Department as a reimbursement for the Department's expenses pursuant to Paragraph VI of this Agreement or any other work required under this Agreement.

B. 1. If (a) the Department disapproves a revised submittal and no further revised submittal is made, (b) the Department disapproves the further revised submittal if made, or (c) Volunteer disagrees with the Department's calculation of the amounts payable to the Department as a reimbursement pursuant to Paragraph VI of this Agreement, Volunteer may serve within 10 business days of receipt of the Department's notice of disapproval or itemized invoice on the Department a request for an appointment of an Administrative Law Judge ("ALJ"), and a written statement of the issues in dispute with copies to the parties indicated in Subparagraph XI.A.1, containing the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting Volunteer's position, and all supporting documentation on which Volunteer relies (hereinafter called "Volunteer's Statement of Position"). The Department may send a similar statement of position ("Department's Statement of Position") to Volunteer within ten business days of receipt of Volunteer's Statement of Position. Volunteer shall be given an opportunity to meet with the appointed ALJ and the Department to present its responses to the Department's objections or calculation of the amounts payable.

2. The Department shall maintain an administrative record of any dispute under this Paragraph. The record shall include the Statement of Position of each party served pursuant to the preceding Subparagraph, and any relevant information. The

record shall be available for review of all parties and the public.


3. Upon review of the administrative record as developed pursuant to this paragraph, the ALJ shall issue a final decision and order resolving the dispute. Volunteer shall revise the submittal in accordance with the Department's specific comments, as may be modified or withdrawn by the ALJ, and shall submit a revised submittal in accordance with a schedule established by the ALJ in the ALJ's final decision and order. After receipt of the conformed revised submittal, the Department shall notify the Volunteer in writing of its approval or disapproval of the conformed revised submittal. If the submittal is disapproved, the Department's notice shall state the reasons for such disapproval.

4. In the event that Volunteer does not invoke the procedures set forth in this Paragraph XIII, the Department and Volunteer remain free to pursue whatever remedies may be available at law or in equity (by declaratory relief) that may be available to each, without prejudice to any party's right to contest the same.

5. The invocation of formal dispute resolution procedures under this paragraph shall not of itself extend, postpone or affect in any way Volunteer's obligations under this Agreement that are not the subject of, or dependent upon the outcome of, the dispute resolution procedures set forth herein.

6. The ALJ's decision is final and the invocation procedure stated in this paragraph shall constitute an election of remedies by Volunteer and such election shall constitute a waiver of any and all other remedies which may otherwise be available to Volunteer regarding the issue in dispute.

DATED: NOV 6 1997

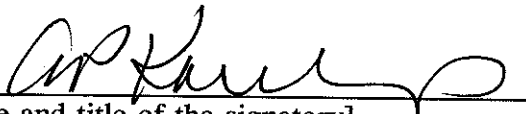

JOHN P. CAHILL
COMMISSIONER
NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION

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CONSENT BY VOLUNTEER :

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

COMBUSTION ENGINEERING, INC.

By: 
[name and title of the signatory]

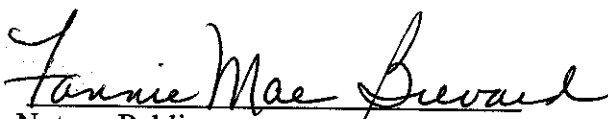
A.P. KARLBERGS
Dir. REAL ESTATE

Date: 8/14/97

STATE OF CONNECTICUT)

SS:
COUNTY OF Fairfield)

On this 14th day of August, 1997, before me personally came Andy P. Karlbergs, to me known, who being duly sworn, did depose and say that he resides in the State of Connecticut; that he is an officer of Combustion Engineering, the corporation described in and which executed the foregoing instrument; and that he signed his name on behalf of Combustion Engineering and was authorized to do so.


Notary Public

My Commission expires
June 30, 2002

EXHIBIT "A"

Map of Site

EXHIBIT "B"

Department-Approved Investigative Work Plan

EXHIBIT "C"

Department-Approved Remedial Work Plan (if any)

EXHIBIT "D"

Assignable Release and Covenant Not To Sue

[On Department Letterhead]

[Insert Date]

To whom it may concern:

Unless otherwise specified in this letter, all terms used herein shall have the meaning assigned to them under the terms of the Voluntary Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and Combustion Engineering ("Volunteer"), Index No. B8-0508-97-02 (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Department-approved Work Plans to implement a response program at the parcel of land located at 95 Ames Street in the City of Rochester, New York, 120.410-0001-001.002/0000IH, a map of which is attached hereto as Appendix "A" (the "Site"), has been successfully implemented. So long as no information has been withheld from the Department or mistake made as to the hazard posed by any Site-related compound or analyte of concern, the Department believes that no further investigation or response will be required at the Site respecting the Existing Contamination to render the Site safe to be used for the Contemplated Uses.

Assignable Release and Covenant Not To Sue:

The Department, therefore, hereby releases, covenants not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer for the further investigation and remediation of the Site, based upon the release or threatened release of any Existing Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of the Agreement continue to be or have been made to the Department, (b) appropriate notices and deed restrictions have been recorded in accordance with Paragraphs IX and X of the Agreement, and Volunteer and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any. Nonetheless, the Department hereby reserves all of its 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 environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Remedial Work Plan or the last written modification thereto approved by the Department which indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Uses;

(ii) 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 activities carried out in accordance with the Work Plan are not sufficiently protective of human health and the environment for the Contemplated Uses;

(iii) due to Volunteer's failure to implement the Agreement; provided, however, that any such reservation of rights by the Department and any such determination by the Department not to extend the release, covenant not to sue, and forbearance shall be upon notice to Volunteer and shall be conditioned upon the Department's granting to Volunteer a sufficient period of time to investigate and cure any failure to implement the Agreement that is alleged by the Department and further provided that such notice and opportunity to cure shall not be available to the Volunteer in the event of fraud under the circumstances noted in Subparagraph I.H.2.iv of the Agreement; or

(iv) 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 Work Plans were reached.

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to:

(a) Volunteer if it causes a, 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 Section 172[15]), other than Existing Contamination, after the effective date of the Agreement; or if it causes a, or suffers the use of the Site to, change from the Contemplated Uses to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to

(b) any of Volunteer's lessees, sublessees, successors, or assigns who causes a, 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 Section 172[15]), other than Existing Contamination, after the effective date of the Agreement; who causes a, or suffers the use of the Site to, change from the Contemplated Uses to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same established resulting solely from the Agreement's execution. Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

Notwithstanding any other provision in this release, 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 against any party, nothing in this

release shall be construed, or deemed, to preclude the State of New York from recovering such claim.

In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: _____
Its: _____

Appendix "A" to Exhibit "D"

Map of Site

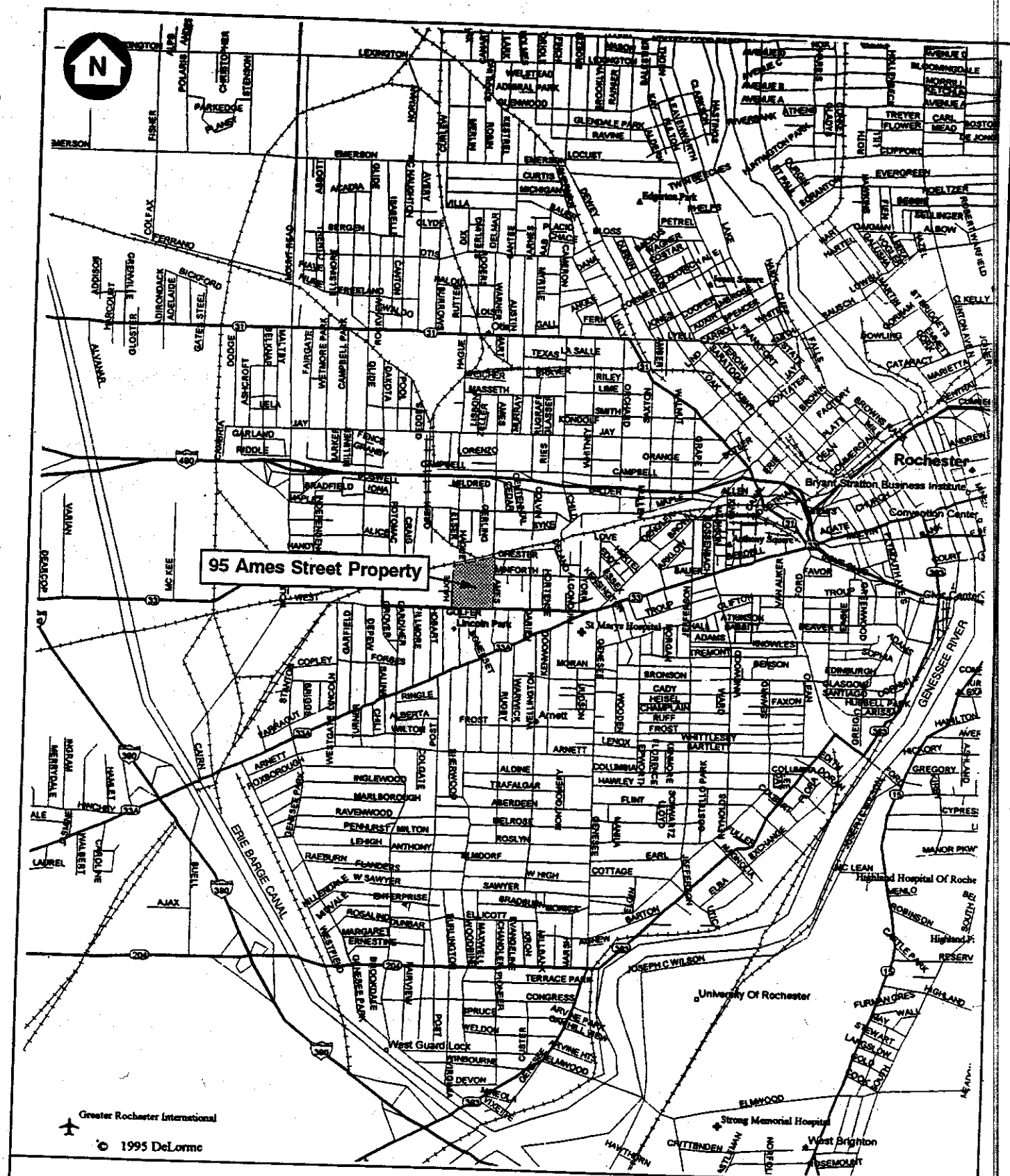


FIGURE 1-1
SITE LOCATION MAP
SITE INVESTIGATION WORK PLAN - PHASE I
95 AMES STREET
ROCHESTER, NEW YORK
 ABB Environmental Services, Inc.

Exhibit "E"

NOTICE OF AGREEMENT

This Notice is made as of the ____ day of _____, 1997 by Combustion Engineering, Inc., the fee owner of a parcel of real property located at 95 Ames Street in the City of Rochester, New York, 120.410-0001-001.002/0000IH as more particularly described on Appendix "A" attached hereto (the "Property"); and

WHEREAS, there is presently located on the Property Volatile Organic Compounds including Trichloroethylene, 1,1,1 Trichloroethane and Dichloroethene and the metal, mercury, at the Site; and

WHEREAS, Combustion Engineering, Inc., by authorized signature, entered into an administrative Agreement with the Department, Index # B8-0508-97-02 (the "Agreement"), concerning the remediation of the Property, which Agreement was signed by the Commissioner of Environmental Conservation on _____, 1997; and

WHEREAS, in return for the remediation of the Property pursuant to the Agreement to the satisfaction of the Department, the Department will provide Combustion Engineering, Inc., and its successors, assigns, lessees and sublessees, including their respective secured creditors, with a release and covenant not to sue or bring any action, proceeding, or suit related to the further investigation or remediation based upon the release or threatened release of any hazardous substances, pollutants, wastes and/or contaminants present or existing in, on, at or under the Property as of the date of the Agreement, subject to certain reservations set forth in the Agreement; and

WHEREAS, pursuant to the Agreement, Combustion Engineering, Inc. agreed that it will give notice of the Agreement to all parties who may acquire any interest in the Property by filing this Notice with the Monroe County Clerk,

NOW, THEREFORE, Combustion Engineering, Inc. for itself, its successors and its assigns, declares that:

1. Notice of the Agreement is, hereby, given to all parties who may acquire any interest in the Property.
2. This Notice shall terminate upon the filing by Combustion Engineering, Inc., or its successors and assigns, of a termination of notice of Agreement.

IN WITNESS WHEREOF, Combustion Engineering, Inc. has executed this Notice of Agreement by its duly authorized representative.

COMBUSTION ENGINEERING, INC.

Dated: _____, 1997

BY: _____

Its: _____

STATE OF CONNECTICUT)

ss:

COUNTY OF)

On this _____ day of _____, 19____, before me personally came Andy P. Karlbergs, to me known, who being duly sworn, did depose and say that he resides in the State of Connecticut; that he is an officer of Combustion Engineering, the corporation described in and which executed the foregoing instrument; and that he signed his name on behalf of Combustion Engineering and was authorized to do so.

Notary Public

Appendix "A" to Exhibit "E"

Map of Site

