

Exhibit "D"

NOTICE OF AGREEMENT

This Notice is made as of the _____ day of _____, 2001 by Nassau Metals Corporation regarding a parcel of real property located at 286 Richmond Valley Road in Staten Island, County of Richmond, New York, bearing Tax Map Identifiers Section 5, Block 7971, Lots 66, 100, 125, 250 and Section 5, Block 7983, Lot 100 (the "Property"); and

WHEREAS, Nassau Metals Corporation ("Volunteer"), entered into an agreement with the Department, Index # W2-0801-01-04 (the "Agreement"), concerning the remediation of contamination present on the Property, which Agreement was signed by the Commissioner of Environmental Conservation on _____; and

WHEREAS, in return for the remediation of the Property pursuant to the Agreement to the satisfaction of the Department, the Department will provide Volunteer and its lessees and sublessees, grantees, successors and assigns, including their respective secured creditors, with a release, covenant not to sue, and forbearance from bringing any action, proceeding, or suit related to the Site's further investigation or remediation, subject to certain reservations set forth in the Agreement; and

WHEREAS, pursuant to the Agreement, Volunteer agreed to cause the filing of a notice of the Agreement with the Nassau County Clerk,

NOW, THEREFORE, Volunteer, for itself and for its successors and assigns, declares that:

1. This Notice of the Agreement is hereby given to all parties who may acquire any interest in the Property; and
2. This Notice shall terminate upon the filing by Volunteer, or its successors and assigns, of a termination of notice of Agreement after having first received approval to do so from the New York State Department of Environmental Conservation or having terminated the Agreement pursuant to its Paragraph XII.

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

Dated:

By: _____

STATE OF NEW YORK

)

) ss:

COUNTY OF

)

On the _____ day of _____, in the year 2001, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual
taking acknowledgment

Appendix "A"

(to Exhibit "D")

Map of the Property

Exhibit "E"

DECLARATION of COVENANTS and RESTRICTIONS

THIS COVENANT, made the ____ day of _____ 2001, by {property owner name}, a {natural person residing at / partnership organized and existing under the laws of the State of [state name] and having an office for the transaction of business at / corporation organized and existing under the laws of the State of [state name] and having an office for the transaction of business at} {address}:

WHEREAS, {property owner name} is the owner of a parcel of real property which is participating in the New York State Department of Environmental Conservation's (the "Department's") Voluntary Cleanup Program, namely, the [] Site, located on _____ in the City of _____, County of _____, State of New York, which is part of lands conveyed by { } to { } by deed dated { } and recorded in the _____ County Clerk's Office on {date} in Book _____ of Deeds at Page _____ and being more particularly described in Appendix "A", attached to this declaration and made a part hereof, and hereinafter referred to as "the Site"; and

WHEREAS, the Site is the subject of a voluntary cleanup agreement entered into by Nassau Metals Corporation and the Department; and

WHEREAS, the Department approved a remedy to eliminate or mitigate all significant threats to the environment presented by the contamination disposed at the Site such remedy requires that the Site be subject to restrictive covenants.

NOW, THEREFORE, _____, for itself and its successors and/or assigns, covenants that:

First, the Site subject to this Declaration of Covenants and Restrictions, is as shown on a map attached to this declaration as Appendix "B" and made a part hereof, and consists of [insert metes and bounds description]

Second, unless prior written approval by the New York State Department of Environmental Conservation or if the Department shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State and the health of the State's citizens, hereinafter referred to as "the Relevant Agency", is first obtained, there shall be no construction, use or occupancy of the Site which results in the disturbance or excavation of the Site, which threatens the integrity of the soil cap, or which results in unacceptable human exposure to contaminated soils.

Third, the owner of the Site shall maintain the cap covering the Site by maintaining its grass cover or, after obtaining the written approval of the Relevant Agency, by capping the Site with another material.

Fourth, the owner of the Site shall prohibit the Site from ever being used for purposes other than for restricted industrial/restricted commercial with the exception of day care, child care and medical care without the express written waiver of such prohibition by the Relevant Agency.

Fifth, the owner of the Site shall prohibit 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 Relevant Agency.

Sixth, the owner of the Site shall continue in full force and effect any institutional and engineering controls required under the Agreement and maintain such controls unless the owner first obtains permission to discontinue such controls from the Relevant Agency.

Seventh, this Declaration is and shall be deemed a covenant that shall run with the land and shall be binding upon all future owners of the Site and shall provide that the owner, and its successors and assigns, consent to the enforcement by the Relevant Agency, of the prohibitions and restrictions that Paragraph X of the Agreement requires to be recorded, and hereby covenants not to contest the authority of the Department to seek enforcement.

Eighth, any deed of conveyance including the portion of the Site referred to as the Site shall recite that the said conveyance is subject to this Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day written below.

[acknowledgment]

Glossary of Terms

The following terms shall have the following meanings:

"ALJ": Administrative Law Judge.

"Covered Contamination": the concentrations of Existing Contamination remaining on the Site on the date that the Department issues the Release set forth in Exhibit "C".

"ECL": the Environmental Conservation Law.

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

"Day": a calendar day unless expressly stated to be a working day. "Working Day" shall mean a day other than a Saturday, Sunday or State holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday or State holiday, the period shall run until the close of business of the next working day.

"Department": the New York State Department of Environmental Conservation.

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

"NL": the Navigation Law.

"Professional engineer": 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.

"Spill Fund": the New York State Environmental Protection and Spill Compensation Fund.

"State Costs": all the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating, implementing, and administering this Agreement. Approved agency fringe benefit and indirect cost rates will be applied.

"Termination Date": the date upon which (i) the Release (Exhibit "C") is issued or the Department approves the final report relative to the OM&M at the Site, whichever is later; or (ii) the Agreement terminates pursuant to Paragraph XII or Subparagraph XIV.A.2.

"Trustee": the Trustee of New York State's natural resources.

"Work Plan": a Department-approved work plan, as may be modified, pertaining to the Site that Volunteer shall implement and that is attached to this Agreement.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of a
Voluntary Cleanup Agreement
for: **Nassau Metals Facility** by: **Nassau Metals Corporation, "Volunteer"**
Site #: V-00159-2 Index #: W2-0801-01-04

WHEREAS, the Department is responsible for enforcement of the ECL and the NL and such laws provide the Department authority to enter into this Agreement;

WHEREAS, the Department has established a Voluntary Cleanup Program to address the environmental, legal and financial barriers that hinder the redevelopment and reuse of contaminated properties;

WHEREAS, Volunteer represents, and the Department relied upon such representations in entering into this Agreement, that the Volunteer is the owner and operator of the Nassau Metals Facility Site ("Site") which is approximately 50 acres in size and is located at 286 Richmond Valley Road in Staten Island, County of Richmond, New York;

WHEREAS, the Volunteer entered and performed an investigation of the contamination at the Nassau Metals Facility Site pursuant to a Voluntary Cleanup Agreement with the Department, Index Number W3-0801-97-09, dated January 8, 1998;

WHEREAS, the parties are entering into this Agreement in order to set forth a process through which the Department will approve and the Volunteer will implement activities designed to address in whole or in part environmental contamination at the Site; and

WHEREAS, the Department has determined that it is in the public interest to enter into this Agreement as a means to address environmental issues at the Site with private funds while ensuring the protection of human health and the environment;

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

I. Site Specific Definitions

For purposes of this Agreement, the terms set forth in the Glossary attached to, and made a part of, this Agreement shall have the meanings ascribed to them in that Glossary. In addition, for purposes of this Agreement, the following terms shall have the following meanings:

A. "Contemplated Use": Restricted Industrial/Commercial excluding day care, child care and medical uses. Volunteer intends to develop the facility as a light industrial

manufacturing/commercial park.

B. "Existing Contamination": Lead contamination of approximately 450,000 yards of soils on the Site and sediments in Mill Creek at depths up to 5 feet below the stream bed. Sediment contamination extends off-Site to the east and into the embayment area on the western portion of the Site, as well as other contamination as more fully detailed in the following reports prepared by Roux Associates on behalf of the Volunteer: Site Investigation Report dated September 10, 1998, the Voluntary Cleanup Program Remedial Alternatives Report dated November 24, 1998 and the Voluntary Cleanup Program Supplemental Investigation Report dated October 23, 2000. "The term also includes contamination identified during the implementation of this Agreement, the nature and extent of which were unknown or insufficiently characterized as of the effective date of this Agreement, but which shall have been fully characterized and addressed to the Department's satisfaction.

C. "Site": The approximately 50-acre industrial facility located at 286 Richmond Valley Road in Staten Island, County of Richmond, New York, Tax Map Identifiers Section 5, Block 7971, Lots 66, 100, 125, 250 and Section 5, Block 7983, Lot 100. The Site is immediately bordered on the north by Richmond Valley Road and on the south by the Staten Island Rapid Transit railroad tracks. The developed portions of the Site are bordered on the east by Page Avenue and on the west by Arthur Kill Road. The undeveloped portions of the Site extend approximately 500 feet east of Page Avenue and 600 feet west of Arthur Kill Road. Mill Creek bisects the Site, discharging to the Arthur Kill west of the Site. Exhibit "A" of this Agreement is a map of the Site showing the general location of the Site. Manufacturing at the Site began around 1900. The Tottenville Copper Company was the original operator of the Site and used copper, lead, tin, and zinc as part of their manufacturing process. In 1931, Nassau Metals became the operator of the facility. The facility became the centralized site for the reclamation of non-ferrous scrap metals from Western Electric plants as well as from other telephone companies. The scrap metals were refined and formed into metal products, including copper wire, solder, and lead sleeving. The facility was comprised of two primary manufacturing components: 1) copper operations in Building 10/10X (formerly known as the "red metals" building), and 2) lead and tin operations in Building 2 (formerly known as the "white metals" building). These buildings and a waste water treatment facility which was also located on the site have been demolished. The Nassau Metals facility currently manufactures precious metal containing electroplating solutions and salts. Electroplating chemical manufacturing operations are conducted in Building 41. The only other building currently on-Site is Building 1, located in the northwestern portion of the Site, which houses several Nassau Metals' offices and an insurance company. Exhibit "A" of this Agreement is a map of the Site showing its general location.

D. "Volunteer": Nassau Metals Corporation, a corporation organized under the laws of the State of New York, located at 286 Richmond Valley Road, Staten Island, New York 10309-2620. For the sole purposes of the Voluntary Cleanup Program, the Volunteer is considered a PRP Volunteer. As a result of this status, the PRP Volunteer must address off-site contamination in relevant work plans.

II. Development, Performance and Reporting of Work Plans

A. Work Plan Labels

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be captioned as follows:

1. "Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination at the Site;
2. "IRM Work Plan" if the Work Plan provides for an interim remedial measure;
3. "Remedial Action Work Plan" if the Work Plan provides for the Site's remediation to cleanup levels sufficient to allow for the Contemplated Use of the Site; or
4. "OM&M Work Plan" if the Work Plan provides for post-remedial construction operation, monitoring and/or maintenance.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted within 40 days of the effective date of this Agreement. Thereafter, the Volunteer can submit such other and additional work plans it deems appropriate.
2. A proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. A Professional Engineer must prepare, sign, and seal all Work Plans other than an Investigation Work Plan. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be incorporated into and become an enforceable part of this Agreement and shall be implemented in accordance with the schedule contained therein. Within 20 Days after receiving written notice that Volunteer's Work Plan has been disapproved, Volunteer shall elect in writing to: (i) modify or expand it; (ii) complete any other Department-approved Work Plan(s); (iii) invoke the dispute resolution provisions of this Agreement pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to the provisions set forth in Subparagraph XII.A.
3. During all field activities, Volunteer shall have on-Site a representative who is qualified to supervise the activities undertaken and who may be a consultant retained by Volunteer to perform such supervision.

C. Revisions to Work Plans

If revisions to a Work Plan are required to satisfy the objectives of such Work Plan, the parties will negotiate revisions which shall be attached to and incorporated into the relevant Work Plan and enforceable under this Agreement. If the parties cannot agree upon revisions to the relevant Work Plan, then unless the Volunteer invokes the dispute resolution provisions of

this Agreement pursuant to Paragraph XIII, either party may terminate this Agreement pursuant to Subparagraph XII.A.

D. Submission of Final Reports

In accordance with the schedule contained in a Work Plan, Volunteer shall submit a final report with a cover page containing the caption of that Work Plan as set forth in Subparagraph II.A of this Agreement. The final report pertaining to that Work Plan's implementation shall include but not be limited to: all data generated relative to the Site and all other information obtained as part of the implementation of the subject Work Plan; all of the assessments and evaluations required by the subject Work Plan; a statement of any additional data that must be collected; and "as-built" drawings, to the extent necessary, showing all changes made during construction. Additionally, the final report for an Investigation Work Plan shall contain a certification by the person with primary responsibility for the day to day performance of the activities under this Agreement that those activities were performed in full accordance with the Investigation Work Plan, and all other final reports must contain such certification made by a professional engineer with primary responsibility for the day to day performance of the activities under this Agreement.

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

E. Review of Submittals other than Work Plans

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

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

3. Within 60 Days of the Department's approval of a final report, the Volunteer shall submit such additional Work Plans that it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by the Volunteer, result in the termination of this Agreement pursuant to Subparagraph XII.B.

4. All approved final reports shall be submitted to the Department in an electronic format acceptable to the Department within 30 days of approval of such final report.

F. Department's Determination of Need for Remediation

The Department will determine upon its approval of each final report dealing with the investigation of the Site whether remediation, or additional remediation as the case may be, is needed to allow the Site to be used for the Contemplated Use.

1. If the Department determines that remediation, or additional remediation, is not needed to allow the Site to be used for the Contemplated Use, the Department shall provide Volunteer with the Release described in Subparagraph II.H.

2. If the Department determines that remediation, or additional remediation, is needed to allow the Site to be used for the Contemplated Use, Volunteer may elect to submit for review and approval a proposed Work Plan (or a revision to an existing Remedial Action Work Plan for the Site) which addresses the remediation of Existing Contamination. Such proposed Work Plan shall include, among other requirements, an evaluation of the proposed remedy considering the factors set forth in 6 NYCRR 375-1.10(c)(1) through (c)(6), excluding consideration of cost-effectiveness. At a minimum, the remedial activities contemplated by the proposed Work Plan must eliminate or mitigate all significant threats to the public health and/or the environment and must result in the Site's Contemplated Use being protective of public health and the environment for the Site's Contemplated Use. The Department will notice a proposed Work Plan addressing the Site's remediation for public comment in accordance with Subparagraph II.G of this Agreement. If Volunteer elects not to develop a Work Plan under this Subparagraph or either party concludes that a mutually acceptable Work Plan under this Subparagraph cannot be negotiated, then this Agreement shall terminate in accordance with Subparagraph XII.A

G. Notice of Proposed Work Plan for the Site's Remediation

Whenever a Work Plan for the Site's remediation (other than an IRM Work Plan) is proposed, the Department will publish a notice in the Environmental Notice Bulletin to inform the public of the opportunity to submit comments on the proposed Work Plan within 30 Days after the date of the issue in which the notice appears. The Department shall mail an equivalent notice to the County of Richmond and Borough of Staten Island. The Department will notify Volunteer following the close of the public comment period whether the proposed Work Plan needs to be revised. If the Department determines that revisions are necessary for the Site conditions to be protective of public health or the environment based upon the Contemplated Use, Volunteer agrees to negotiate revisions to the proposed Work Plan in accordance with Paragraph II.C. If the Department determines that no revisions are required, then the Work Plan shall be attached hereto as Exhibit "B".

H. Release and Covenant Not To Sue

Upon the Department's determination that i) Volunteer is in compliance with the Agreement; ii) no requirements other than those remedial actions already conducted at the Site, if any, are necessary to assure that Site conditions are protective of public health and the environment based upon the Contemplated Use; and iii) Volunteer has complied, if required, with Paragraph X, the Department shall provide Volunteer with the Release and Covenant Not to Sue attached hereto as Exhibit "C", subject to the terms and conditions stated therein.

III. Progress Reports

Volunteer shall submit a written progress reports of its actions under this Agreement to the parties identified in Subparagraph XI.A.1 by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous month and those anticipated for the next month; all results of sampling and tests and all other data received or generated by Volunteer or Volunteer's contractors or agents, whether under this Agreement or otherwise, in the previous month, including quality assurance/quality control information; and information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, and efforts made to mitigate such delays.

IV. Enforcement

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

V. Entry upon Site

Volunteer hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer, by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to the matters addressed in a Department-approved Work Plan, and any agent, consultant, contractor or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site. Upon request, Volunteer shall permit the Department full access to all non-privileged records relating to matters addressed by this Agreement. Raw data is not considered privileged and that portion of any privileged document containing raw data must still be provided to the Department.

VI. Payment of State Costs

A. Within 45 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 for work performed at or in connection with the Site prior to the effective date of this Agreement, as well as for negotiating this Agreement and all costs associated with this Agreement, but not including any expenses incurred by the State after the Termination Date.

B. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Non-personal service costs shall be summarized by category of expense (*e.g.*, supplies, materials, travel, contractual) and shall be documented by expenditure reports. The Department shall not be required to provide any other documentation of costs.

C. Such invoice shall be sent to the Volunteer at the following address: Nassau Metals Corporation, 286 Richmond Valley Road, Staten Island, New York 10309-2620.

D. 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.

E. Each party shall provide written notification to the other within 90 days of any change in the foregoing addresses.

F. The Volunteer may contest, in writing, invoiced costs if it believes (1) the cost documentation contains clerical, mathematical or accounting errors, or (2) the costs are not related to the State's activities reimbursable under this Agreement. If Volunteer objects to an invoiced cost, Volunteer shall pay all costs not objected to. Within ten (10) days of its receipt of an invoice, Volunteer shall identify in writing all costs objected to and identify the basis of the objection. This objection shall be filed with the Division of Environmental Remediation's Director of the Bureau of Program Management. The Director or Director's designee shall have the authority to relieve Volunteer of the obligation to pay invalid costs. Within thirty (30) days of the Department's determination of the objection, Volunteer shall pay to the Department the amount for which the Director or Director's designee determines Volunteer is obligated to pay.

VII. Reservation of Rights

A. 1. Except as provided in the Release and Covenant Not to Sue (Exhibit "C") after its issuance and except as provided in Subparagraphs VII.A.2, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to, the right to recover natural resource damages, the right to take any investigatory or remedial action deemed necessary, and the right

to exercise summary abatement powers with respect to any party, including Volunteer.

2. Except for the Department's right to take any investigatory or remedial action deemed necessary as a result of a significant threat resulting from the Existing Contamination or to exercise summary abatement, the Department shall not take any enforcement action under ECL Article 27, Title 13, under CERCLA, under the Navigation Law, or under comparable statutory or common law theories of remedial liability with respect to the Existing Contamination, to the extent that such contamination is being addressed under the Agreement, against Volunteer or Volunteer's grantees, successor or assign during the implementation of this Agreement, provided such party is in compliance with the terms and provisions of this Agreement, including without limitation the requirements of all Work Plans and amendments thereto.

B. Except as otherwise provided in this Agreement, Volunteer specifically reserves all defenses under applicable law respecting any Departmental assertion of remedial liability against Volunteer, and further reserves all rights respecting the enforcement of this Agreement, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Agreement or Volunteer's compliance with it shall not be construed as an admission of liability, fault or wrongdoing 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.

C. Except as provided in Subparagraph XIV.L, Volunteer reserves such rights as it may have to seek and obtain contribution, indemnification and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response/cleanup costs or such other costs or damages arising from the contamination at the Site as provided under applicable State and Federal law.

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 prior to the Termination Date except for liability arising from willful, wanton or malicious acts or acts constituting gross negligence by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. The Department shall send the Volunteer a written notice pursuant to Paragraph XI of its intention to exercise its rights prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Notice of Sale or Conveyance

A. Within 30 Days of the effective date of this Agreement, Volunteer shall cause to be filed a Department-approved Notice of Agreement, which Notice shall be substantially similar to the Notice of Agreement attached to this Agreement as Exhibit "D", with the County Clerk in

the county in which the Site is located (or the City Register if the Site is located in Manhattan, Bronx, Kings or Queens County) to give all parties who may acquire interest in the Site notice of this Agreement. Within such 30 Days, Volunteer shall also provide the Department with a copy of such instrument certified by such County Clerk (or Register) to be a true and faithful copy. Volunteer may terminate such Notice on or after the Termination Date of this Agreement.

B. 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. However, such obligation shall not extend to the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease or any other right accruing to a person not affiliated with Volunteer to secure the repayment of money or the performance of a duty or obligation by a person.

X. Declaration of Covenants & Restrictions

Within 60 Days of the Department's approval of a Remedial Action Work Plan which relies upon institutional controls, Volunteer shall, unless otherwise authorized by the Department in writing, cause to be recorded a Department-approved instrument to run with the land with the County Clerk in the county in which the Site is located (or the Office of the Registrar in the City of New York if the property is located in New York City) which is substantially similar to Exhibit "E" attached to this Agreement, and shall provide the Department with a copy of such instrument certified by such County Clerk (or Registrar) to be a true and faithful copy. The Volunteer or the owner of the Site may petition the Department to terminate the Declaration of Covenants and Restrictions filed pursuant to this Paragraph when the Site is protective of human health and the environment for residential uses without reliance upon the restrictions set forth in such instrument. The Department will not unreasonably withhold its approval of such petition.

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:

Jennifer Kann, Technical Project Manager
New York State Department of Environmental Conservation
1 Hunters Point Plaza
Long Island City, New York 11101

Note: four copies (one unbound) of work plans are required to be sent.

Kevin Carpenter, VCP Coordinator
New York State Department of Environmental Conservation
Division of Environmental Remediation
50 Wolf Road - Room 260a
Albany, New York 12233-7010

Gary Litwin
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216

Note: two copies of work plans are required to be sent, and

Denise J. D'Ambrosio
Assistant Counsel
New York State Department of Environmental Conservation
200 White Plains Road - 5th Floor
Tarrytown, New York 10591-5805

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

Donald J. Margaritonda
President, Nassau Metals Corporation
286 Richmond Valley Road
Staten Island, New York 10309-2620

Ralph L. McMurry, Esq.
Corporate Counsel
Lucent Technologies
475 South Street
Morristown, New Jersey 07962-1976

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

XII. Termination of Agreement

A. 1. Volunteer may elect in writing to terminate this Agreement without cause while the Department may only elect to terminate this Agreement for cause, which shall be established so long as the Department's stated reason is not arbitrary and capricious. The Department shall include in its notice of termination the basis for its election to terminate this Agreement.

2. In the event of either party's election to terminate this Agreement, this Agreement shall terminate effective the 5th Day after the non-terminating party's receipt of the written notification terminating this Agreement, except that such termination shall not affect the provisions contained in Paragraphs IV, VI and VIII and in Subparagraph XIV.L, nor Volunteer's obligation to ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before any activities were commenced under this Agreement, which provisions and obligation shall survive the termination of this Agreement.

B. Notwithstanding Subparagraph XII.A, this Agreement shall terminate without notice in the event that the Volunteer fails to submit additional Work Plans in accordance with Subparagraph II.E, unless other Work Plans are under review by the Department or being implemented by the Volunteer.

XIII. Dispute Resolution

Volunteer may commence dispute resolution in writing within 20 Days of Volunteer's receipt of the Department's notice of disapproval of a submittal or proposed Work Plan, disapproval of a final report, or termination of this Agreement pursuant to Subparagraph XIV.A.2. Disputes regarding Work Plan development and revision shall be heard by the Director of the Bureau of Remedial Action, Division of Environmental Remediation, for the region within which the Site is located. All other disputes subject to dispute resolution shall be heard by the Assistant Division Director of the Division of Environmental Remediation. Volunteer shall serve upon the Department a request for dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis or opinion supporting its position, and all supporting documentation upon which Volunteer relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position no later than 20 Days after receipt of Volunteer's Statement of Position. Volunteer shall have the burden of proving that the Department's position should not prevail. A meeting or telephone conference can be scheduled if it will promote a resolution of the issues. A final decision resolving the dispute will be issued in a timely manner. The final decision shall constitute a final agency action and Volunteer shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR if Volunteer commences such proceeding no later than 30 Days after receipt of a copy of the decision. The invocation of dispute resolution shall not extend, postpone or modify Volunteer's obligations under this Agreement with respect to any item not in dispute unless or until the Department agrees or a court determines otherwise. The Department shall keep an administrative record which shall be available consistent with Article 6 of the Public Officers Law.

XIV. Miscellaneous

A. 1. Volunteer hereby certifies that all information known to Volunteer and all information in the possession or control of Volunteer and its agents which relates in any way to the contamination existing at the Site on the effective date of this Agreement, and to any past or

potential future release of hazardous substances, pollutants, or contaminants at or from the Site, and to its application for this Agreement, has been fully and accurately disclosed to the Department in conjunction with the Volunteer's application for the Voluntary Cleanup Program.

2. If the information provided and certifications made by Volunteer are not materially accurate and complete, this Agreement, except with respect to the provisions of Paragraphs IV, VI and VIII and Subparagraph XIV.L, at the sole discretion of the Department, shall be null and void *ab initio* 15 Days after the Department's notification of such inaccuracy or incompleteness and the Department shall reserve all rights that it may have, unless, however, Volunteer submits information within that 15 Day time period indicating that the information provided and the certifications made were materially accurate and complete.

B. Each party shall have the right to take samples and to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the other party. The Department shall make the results of all sampling under this Subparagraph available to Volunteer and Volunteer shall make the results available pursuant to its reporting obligations.

C. Volunteer shall allow the Department to attend and shall notify the Department at least 5 business days in advance of any field activities to be conducted pursuant to this Agreement as well as any prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

D. Volunteer shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Volunteer's obligations under this Agreement, except that the Department may exempt Volunteer from the requirement to obtain any permit issued by the Department for any activity that is conducted on the Site and that the Department determines satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest can not be obtained, then the Department may require that the Volunteer modify the Work Plan pursuant to Subparagraph II.C of this Agreement.

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

F. Volunteer shall provide a copy of this Agreement to each contractor and subcontractor hired to perform work required by this Agreement and to each person representing Volunteer with respect to the Site. Further, Volunteer shall require all contracts entered into in order to carry out the obligations identified in this Agreement to be in compliance with the terms of this Agreement.

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

H. 1. The terms of this Agreement shall constitute the complete and entire Agreement between the Department and Volunteer concerning the implementation of the work plan(s) attached to this Agreement. No term, condition, understanding or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department 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. In the event of a conflict between the terms of this Agreement and any Work Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s) attached as Exhibit "B." Volunteer consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. Except as set forth herein, if Volunteer desires that any provision of this Agreement be changed, Volunteer shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XI.A and the Commissioner or the Commissioner's designee shall timely respond. This Subparagraph shall not extend to revisions to any Work Plan or to a change in any time frame contained in this Agreement. Changes to the Work Plan shall be accomplished as set forth in Subparagraph II.C of this Agreement. Changes to a time frame set forth in this Agreement shall be accomplished by a written request to the Department's project attorney and project manager, which request shall be timely responded to in writing.

I. If there are multiple parties, the term "Volunteer" shall be read in the plural where required to give meaning to this Agreement. Further, the obligations of the Volunteers under this Agreement are joint and several and the "bankruptcy" or inability to continue by any Volunteer shall not affect the obligations of the remaining Volunteer(s) to carry out the obligations under this Agreement.

J. Except as provided in Subparagraph XIV.L., and to the extent authorized under 42 U.S.C. Section 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 alleged contamination which is addressed under this Agreement. 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 provisions of 42 U.S.C. Section 9613(f)(3) shall apply.

K. Volunteer, Volunteer's grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership 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.

L. Volunteer and Volunteer's employees, servants, agents, lessees, sublessees, grantees, successors, and assigns hereby waive any right to pursue reimbursement of monies

K. Volunteer and its employees, servants, agents, lessees, sublessees, successors, and assigns hereby waive any right to pursue reimbursement of monies expended by Volunteer prior to the Termination Date as against the State or the Spill Fund, and agree to indemnify and hold harmless the Spill Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site 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.

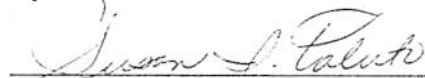
L. Volunteer, Volunteer's lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Volunteer including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Volunteer's responsibilities under this Agreement. Volunteer's successors and assigns shall provide to the Department a certification that they agree to be bound by this Agreement within 30 days of becoming a successor or assign.

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

DATED: JAN 4 2002

ERIN M. CROTTY, COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Susan I. Taluto

Deputy Commissioner

Water Quality and Environmental Remediation

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.

Nassau Metals Corporation

By: Donald J. Margaritondo

Title: President

Date: 5/2/2001

STATE OF New Jersey)
~~NEW JERSEY~~)

) ss:

COUNTY OF Morris)

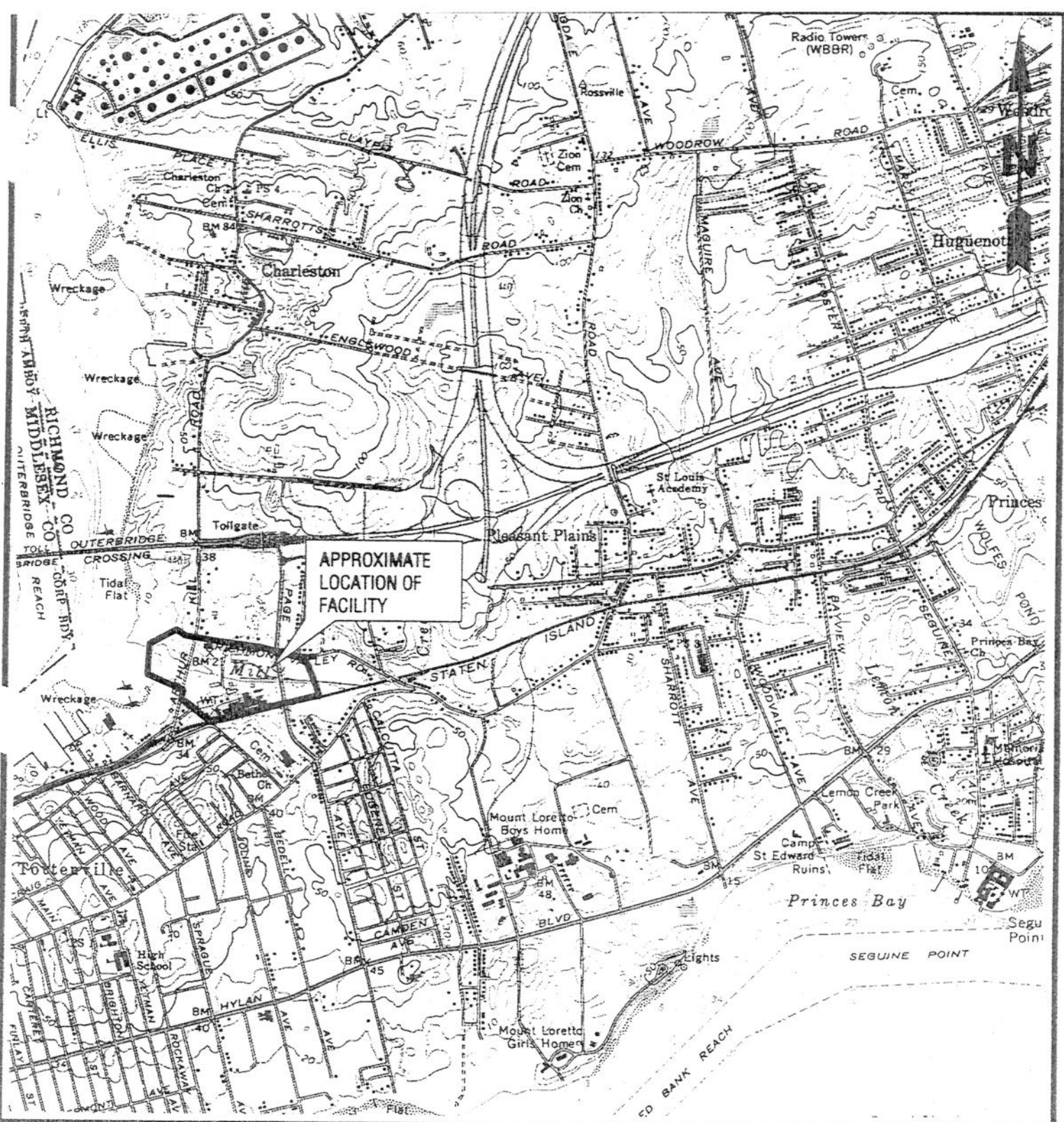
On the 2nd day of May, in the year 2001, before me, the undersigned, personally appeared Donald Margaritondo personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Darlene M. McHugh
Signature and Office of individual
taking acknowledgment

Darlene M. McHugh
Notary Public of New Jersey
My Commission Expires January 30, 2006

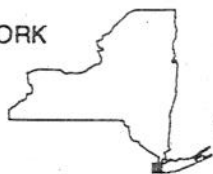
EXHIBIT "A"

Map of Site



SOURCE:
ARTHUR KILL, NEW YORK-NEW JERSEY
QUADRANGLE 7.5 MINUTE SERIES (TOPOGRAPHIC)

NEW YORK



QUADRANGLE
LOCATION

SITE LOCATION MAP

Title:

Prepared For:

NASSAU METALS CORPORATION
STATEN ISLAND, NEW YORK

ROUX

ROUX ASSOCIATES INC.
Environmental Consulting
& Management

Compiled by:	S.G.	Date:	04JAN01
Prepared by:	R.K.	Scale:	1"=2,000'
Project Mgr:	S.G.	Revision:	
File No:	LUC0212004.WOR	Project:	77002Y02

FIGURE

1

EXHIBIT "B"

Department-Approved Work Plan(s)

The complete Remedial Action Work Plan consists of the following:

- Work Plan entitled Voluntary Cleanup Program Revised Remedial Alternatives and Preliminary Design Report, Dated February 28, 2001 by ROUX ASSOCIATES, INC.
- Addendum # 1, May 9, 2001 NYSDEC Comment Letter
- Addendum # 2, May 16, 2001 Lucent Technologies Inc. Response to Comments
- Addendum # 3, November 15, 2001 NYSDEC Comment Letter
- Addendum # 4, November 23, 2001 Letter approving changes to design as requested in NYSDEC November 15, 2001 letter (i.e. Addendum 3)
- Addendum 5, Revised Project Schedule

Addendum #1

May 9, 2001 NYSDEC Comment Letter

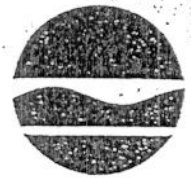
New York State Department of Environmental Conservation

Division of Environmental Remediation, Region 2

47-40 21ST Street, Long Island City, NY 11101-5407

Phone: (718) 482-4995 • FAX: (718) 482-6358

Website: www.dec.state.ny.us



Erin M. Crotty
Commissioner

May 9, 2001

Via Fax: 718-317-4493

Mr. Donald J. Margaritonda
Nassau Metals Corporation
Lucent Technologies, Inc.
286 Richmond Valley Road
Staten Island, NY 10309-2620

Re: Nassau Metals Corporation, Voluntary Cleanup Program
Revised Remedial Alternatives Plan and Preliminary Design Report

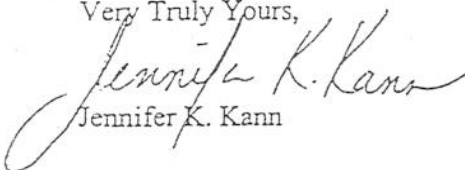
Dear Mr. Margaritonda:

The Department of Environmental Conservation ("Department") has reviewed the Revised Remedial Alternatives Plan and Preliminary Design Report ("Report"), dated February 28, 2001, prepared by Roux Associates for the referenced site. The Report was revised in response to comments made by the Department in subsequent letters and based on conclusions reached in a meeting held between yourself, representatives of the Volunteer and the Department on December 1, 2000.

Comments made on the Report by the Department and the New York State Department of Health can be found in Attachment A. The Department has determined that the Work Plan is conditionally acceptable, provided the comments found in Attachment A are addressed. A response to the attached comments should be submitted to the Department for review. An addendum letter can be prepared to address these comments; the Work Plan will not need to be reissued. Please note that the Work Plan is not approved until the Voluntary Cleanup Agreement is executed and the comments attached are addressed.

If you have any questions or issues you want to discuss, we will be glad to meet with you at your earliest convenience. Please call me at 718-482-4905 if you have any questions or to arrange a meeting.

Very Truly Yours,



Jennifer K. Kann

Attachment A

cc: T. Lang, V. Brevdo, D. Harrington, P. Carella, R. Pinzon, A. Lechich, J. Harrington
M. Eapen, D. D'Ambrosio, C. Montroy; NYSDEC
J. Nealon; NYSDOH
M. Roux; Roux Associates

The following are comments on the Voluntary Cleanup Program Revised Remedial Alternatives and Preliminary Design Report, dated February 28, 2001, prepared by Roux Associates on behalf of the Nassau Metals Corporation:

1. Section 5.4.2.2 Cap Construction (Page 56 - Low Permeability Cap): The last sentence of the first paragraph in this section should be modified. Specifically, during the discussion of the cap components, the phrase "(from top to bottom)" should be replaced with "(from the bottom up)" or "(from bottom to top)" due to the order in which the layers are presented in the subsequent narrative.
2. Section 7.2 Permitting and Regulatory Issues (Page 80): The statement is made that it is "anticipated that it will not be necessary to obtain permits for elements of the work (remediation), but instead, to obtain approvals through the VCA process." It should be noted that this applies only for State issued permits. Any federal or local permits required for the remedial work must be obtained from the appropriate agency. On the same page it also indicates that there will be "no administrative requirements, such as public hearings or comment periods." Although this may be true for State permit issues, it should be noted that standard comment periods and public notice requirements of the Voluntary Cleanup Program will be required.
3. Section 7.3.1 (Page 81, 2nd Paragraph): The report mentions that pilot testing of the alternate stabilization materials maybe performed during the design phase. It is not clear whether the applicant will use dredge sediment from the creek for the pilot testing and in what volumes. More details will be needed on the stabilization process, and the expected and final testing results for physical properties of the stabilized product will need to be submitted to the Department when they become available.
4. Section 7.3.1 (Page 84, 4th Paragraph): The applicant must take precautions to prevent any spill of the dredge material during transportation of dredge sediments from the dredge site to the processing site.
5. Section 7.3.6 Sewer System Work South of Mill Creek (Pages 91 and 92): There is no discussion with regard to the disposition of fill material that will be excavated as part of the new sewer installation.
6. Section 7.3.10 Operations and Maintenance Plan (Page 95): It should be noted at the top of the page that the draft O&M Plan will be provided to the Department during the construction phase so that a final plan will be available for implementation at the completion of remedial construction activities.
7. Section 7.3.7 Wetlands Restoration/Mitigation (Page 92, 93) The creation of upland "green areas" just landward of the proposed bulkhead will not be considered wetland mitigation for the loss of wetlands on the southern bank of Mill Creek. This area will be considered permanently impacted wetlands and will need to be mitigated at a 3:1 ratio for the vegetated portion and a 2:1 ratio for the unvegetated portion. This should be reflected in the mitigation design.

May 9, 2001

8. General - The proposed exchange of habitat type from mud flat to a "harder" type of substrate (6" of gravel) is of concern to the Department. Rip-rap structures were discussed to be placed along areas such as the culverts located at Arthur Kill Road and Page Avenue and possibly at the outfall locations that will feed into Mill Creek. Since the Department seeks to maintain a mud flat habitat, further analysis/discussions on the type of backfill for the dredged areas of the creek and embayment will be required. This can be addressed during the design phase of the project.
9. General - The implementation of a deed restriction was not discussed in the text even though it was requested by the Department in the June 16, 1999 comment letter. The deed restriction will be used to require owners to maintain the protective layer (cap) and to prohibit the usage of groundwater. If development or excavation occurs on-site, any subsurface soils below the cap that are excavated will have to be disposed off-site at an approved and permitted landfill in accordance with NYSDEC regulations. A plan will need to be submitted and approval given before any development or excavation work proceeds.
10. Table 1, Page 7 of 7: Concentration for lead at SS-34 (0-0.5 feet) is indicated as 2430 ppm. In the October 23, 2000 Supplemental Site Investigation Report the lead concentration for the same location and depth is indicated as 11,200 ppm. Please explain why this number was modified.

Addendum #2

May 16, 2001 Lucent Technologies Inc. Response to Comments

design phase. This information will be submitted to the Department prior to pilot testing and as it becomes available as part of the design process.

Comment 4. *Section 7.3.1 (Page 84, 4th Paragraph): The applicant must take precautions to prevent any spill of the dredge material during transportation of dredge sediments from the dredge site to the processing site.*

Response: Engineering controls such as covering transport vehicles and use of leakproof vehicles will be implemented during remediation to limit any spill of the dredge material during transportation of dredge sediments from the dredge site to the processing site. Proposed engineering controls will be submitted as part of the sixty percent design documents for agency review and comment.

Comment 5. *Section 7.3.6 Sewer System Work South of Mill Creek (Pages 91 and 92): There is no discussion with regard to the disposition of fill material that will be excavated as part of the new sewer installation.*

Response: Fill material excavated as part of the new sewer system installation or any other construction activities related to the re-development of the Site described in the Report, will be placed under the proposed asphalt cap or under any new buildings that will be integrated into the Site cap.

Comment 6. *Section 7.3.10 Operations and Maintenance Plan (Page 95): It should be noted at the top of the page that the draft O&M Plan will be provided to the Department during the construction phase so that a final plan will be available for implementation at the completion of remedial construction activities.*

Response: The following sentence will be added to the end of the first paragraph of Section 7.3.10. "This operation and maintenance plan will be submitted to the NYSDEC during the construction phase for review so that comments can be incorporated and the plan finalized prior to the completion of remedial construction activities."

Comment 7. *Section 7.3.7 Wetlands Restoration/Mitigation (page 92,93): The creation of upland "green areas" just landward of the proposed bulkhead will not be considered wetland mitigation for the loss of wetlands*

on the southern bank of Mill Creek. This area will be considered permanently impacted wetlands and will need to be mitigated at a 3:1 ratio for the vegetated portion and a 2:1 ratio for the unvegetated portion. This should be reflected in the mitigation design.

Response: This comment is understood and will be reflected in the remedial design documents.

Comment 8. General – *The proposed exchange of habitat type from mud flat to a "harder" type of substrate (6" of gravel) is of concern to the Department. Rip-rap structures were discussed to be placed along areas such as the culverts located at Arthur Kill Road and Page Avenue and possibly at the outfall locations that will feed into Mill Creek. Since the Department seeks to maintain a mud flat habitat, further analysis/discussions on the type of backfill for the dredged areas of the creek and embayment will be required. This can be addressed during the design phase of the project.*

Response: It is agreed that analysis, discussion, and selection of the backfill is an important issue that will be further discussed during the design phase of the project. The type of backfill proposed for the dredged areas of the creek and embayment will be presented in greater detail in the sixty percent design documents.

Comment 9. General – *The implementation of a deed restriction was not discussed in the text even though it was requested by the Department in the June 16, 1999 comment letter. The deed restriction will be used to require owners to maintain the protective layer (cap) and to prohibit the usage of groundwater. If development or excavation occurs on-site, any subsurface soils below the cap that are excavated will have to be disposed off-site at any approved and permitted landfill in accordance with NYSDEC regulations. A plan will need to be submitted and approval given before any development or excavation work proceeds.*

Response: We understand that a deed restriction will be required on the Site. Although the words "deed restriction" did not appear in the report, Section 5.2 Development of Remedial Action Objectives (Page 26, Item 5) was intended to address the Department's comment in its June 16, 1999 letter. To further clarify the issue, Item 5 will be replaced with the following:

- "5. through implementation of a deed restriction, limit the future use of the Site to industrial or commercial uses (i.e., non-residential), require owner(s) to maintain protective measures implemented during the Site remediation, require off-site disposal of any fill material excavated during future construction activities at the Site (i.e., any construction activities undertaken after completion of the Site redevelopment described herein) at an approved and permitted landfill in accordance with NYSDEC regulations, and prohibit the installation of drinking water wells."

As discussed in the response to Comment 5 and the revised Item 5 above, any fill material excavated during the Site re-development described in the Report, will be placed onsite under the proposed asphalt cap or under any new buildings that will be integrated into the Site cap.


Comment 10. *Table 1, Page 7 of 7: Concentration for lead at SS-34 (0-0.5 feet) is indicated as 2430 ppm. In the October 23, 2000 Supplemental Site Investigation Report the lead concentration for the same location and depth is indicated as 11,200 ppm. Please explain why this number was modified.*

Response: Laboratory analytical results summarized in the tables and figures of the October 23, 2000 *Supplemental Site Investigation Report* were based upon preliminary results received from the laboratory. Final laboratory analytical results reported by the analytical laboratory showed decreases in the concentrations of 15 metals including lead by approximately a factor of five in sediment sample SS-34 (0-0.5). These were the only changes between the preliminary and final analytical results. Table 1 and Figure 4 of the *Revised Remedial Alternatives and Preliminary Design Report* were prepared using the final analytical results and therefore differ slightly from Table 1 and Figure 3 in the *Supplemental Site Investigation Report*.

In addition to the response to comments presented above, a revised Project Schedule (Figure 14) has been attached to reflect a change in the start date for the design phase and public comment periods as described in Comment 2 above.

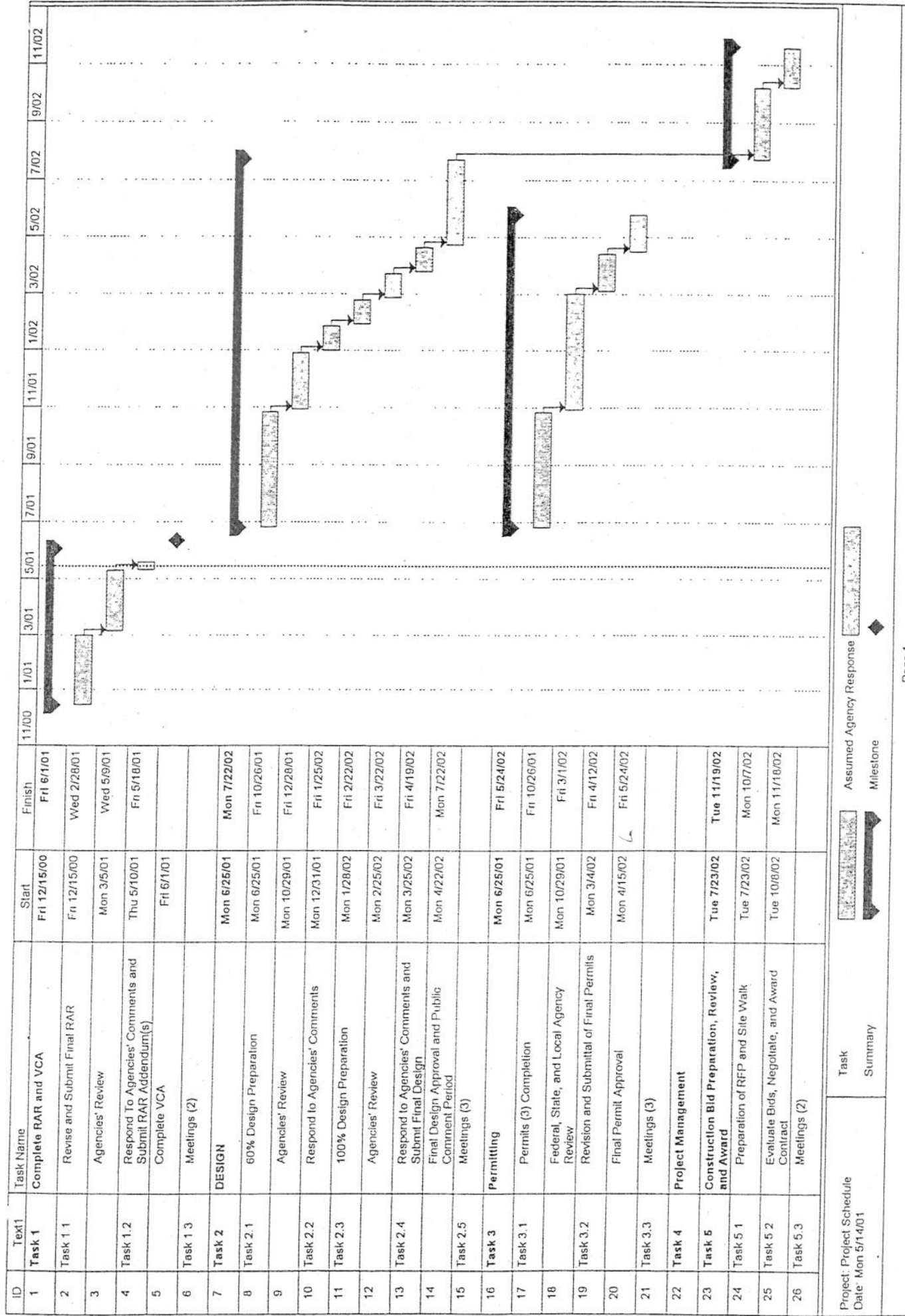
As described in Section 7.4 of the Report, Project Schedule and Milestones, the proposed schedule will be updated on an ongoing basis. This section of the Report should be revised to show a submittal of 60 percent design documents by October 2001 and submittal of final design documents by February 2002.

Sincerely,


Donald Margaritonda

Attachments

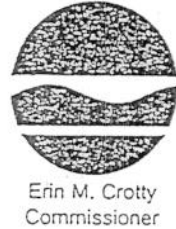
cc: Denise J. D'Ambrosio, Esq., NYSDEC
Gary Litwin, NYSDOH



Addendum #3

November 15, 2001 NYSDEC Comment Letter

New York State Department of Environmental Conservation
Division of Environmental Remediation, Region 2
47-40 21ST Street, Long Island City, NY 11101-5407
Phone: (718) 482-4995 • FAX: (718) 482-6358
Website: www.dec.state.ny.us



November 15, 2001

Michael Roux
Roux Associates, Inc.
1377 Motor Parkway
Islandia, NY 11749

RE: Remedial Alternatives
Nassau Metals Corporation, Staten Island
Agreement Index Number W3-0801-97-09

Dear Mr. Roux:

This letter is to confirm our recent telephone conversation regarding the report, "Voluntary Cleanup Program Revised Remedial Alternatives and Preliminary Design Report, Nassau Metals Corporation, 286 Richmond Valley Road, Staten Island, February 28, 2001" ("the Report"). As discussed between Michael Roux of Roux Associates and Dennis J. Wolterding, Chief of the Regional Hazardous Waste Remediation Program, the New York State Department of Environmental Conservation ("the Department") is requesting the following changes to the final design for the project:

- With regard to sediments that are proposed to be dredged from Mill Creek, treated, and then placed on the site, the stabilized sediments shall be placed only on existing hazardous soil. This stabilized sediment shall be placed in the areas under the proposed concrete cap or under any new buildings that will be integrated into the site's cap.
- With regard to the parts of the site that contain hazardous fill and that are currently vegetated, these areas shall be underlain with a geosynthetic clay liner (GCL) below the two foot soil cap. This would apply to 7.3 acres of the site, which include both the area where a soil-only cap exists (2.6 acres) and where a soil-only cap is proposed (4.7 acres). For further clarification, please refer to Figure 8 of the Report. The recommended GCL products are Claymax CL, Bentomat CLT, or an equivalent. A Quality Control plan for the installation of the GCL must be submitted to the Department prior to commencement

of the work.

An Operations Maintenance and Management Plan (OM&M) must be submitted to the Department because post-remediation requires that the site be managed as a Class 4 on the New York State Registry of Inactive Hazardous Waste Disposal Sites. The OM&M requirement includes the submission of an annual report with a review of the monitoring data which will be required for the site. Submit this plan to the attention of Gerald Rider, DER, NYSDEC, 625 Broadway, Albany, NY 12233.

If you have any questions or issues you may want to discuss, I am available to meet or speak with you at your earliest convenience. I can be reached at 718-482-4602.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dennis J. Wolterding", with a long horizontal flourish extending to the right.

Dennis J. Wolterding, Chief
Regional Hazardous Waste Remediation Program

cc S. Martinkat, R. Gardineer, J. Kann, R. Cozzy, C. Vasudevan, S. Ervolina,, M. O'Toole,
M.E. Kris, NYSDEC
✓ D. Swanson, Roux Associates
D. Margaritonda, Nassau Metal Corporation

Addendum # 4

November 23, 2001 Letter approving changes to design
as requested in NYSDEC November 15 Letter

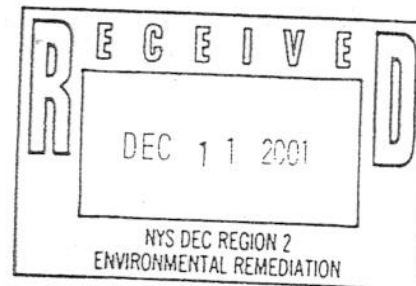
HILL, BETTS & NASH LLP
ONE RIVERFRONT PLAZA, SUITE 327
NEWARK, NJ 07102-5401

GEOFFREY D. FERRER*
JAMES M. HAZEN*
MARK M. JAFFE*
JOHN F. KEATING, JR.*
PETER J. McHUGH*

SUSAN P. MAHON*

*Also admitted in N.Y.

(973) 623-0800
FAX: (973) 623-1188
WRITER'S DIRECT PHONE:
(973) 623-0800



November 23, 2001

Denise J. D'Ambrosio, Esq.
Assistant Counsel
New York State Department of Environmental Conservation
Division of Environmental Enforcement
Eastern Field Unit
200 White Plains Rd., 5th Fl.
Tarrytown, NY 10591-5805

Re: Nassau Metals, Staten Island Voluntary Cleanup Program

Dear Ms. D'Ambrosio:

Please find attached a copy of a letter dated November 15, 2001 to our consultant, Roux Associates, from Dennis J. Wolterding, Chief, NYSDEC Regional Hazardous Waste Remediation Program with respect to the above-referenced matter.

Please be advised that Nassau Metals Corporation hereby accepts the changes to the final design for the project requested by NYSDEC in the above-referenced letter.

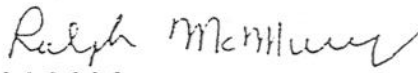
Please be advised also that Nassau Metals Corporation agrees that this letter and the above-referenced November 15, 2001 letter, as well as previous agreed-upon changes to the "Voluntary Cleanup Program Revised Remedial Alternatives and Preliminary Design Report, Nassau Metals Corporation, 286 Richmond Valley Road, Staten Island, February 28, 2001 ("Report"), copies of all of which changes are attached hereto for your convenience, may now be considered collectively as addenda to be attached to the Report and the Voluntary Cleanup Agreement for the above-referenced site, signed by Nassau Metals Corporation on May 2, 2001, but not yet signed by NYSDEC (Volunteer Site #V-00159-2, Index W2-0801-01-04.

Nassau Metals Corporation trusts that, given the foregoing, NYSDEC is now in a position to execute the above-referenced Voluntary Cleanup Agreement. Please advise as to the status of NYSDEC's signature to the above-referenced Voluntary Cleanup Agreement and please advise if there is anything further that Nassau Metals Corporation or I can do to bring this matter to a conclusion.

Denise J. D'Ambrosio, Esq.
November 23, 2001
Page 2

Thank you for your cooperation and attention to this matter.

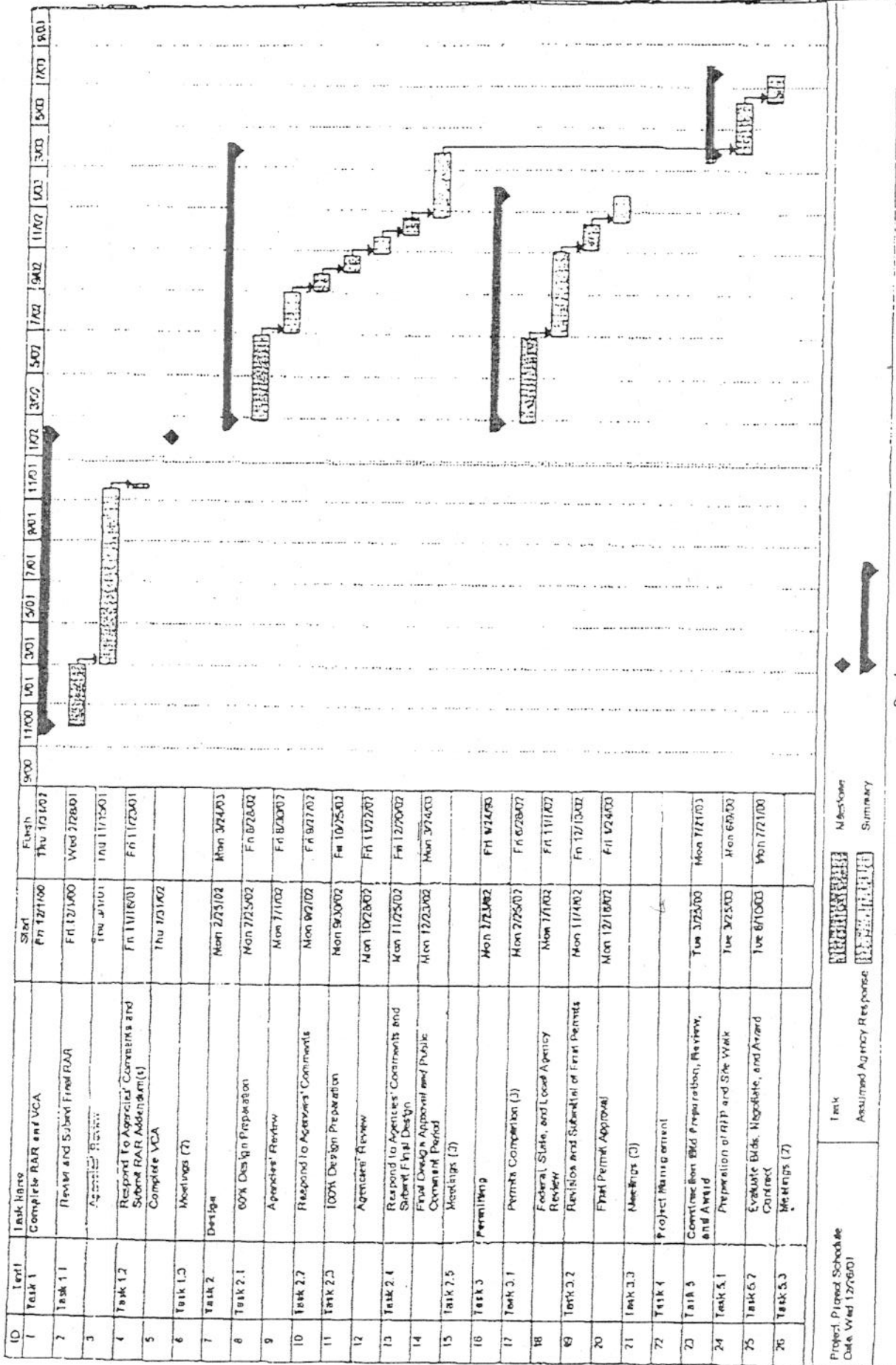
Very truly yours,


Ralph McMurry

cc:
M.E. Kris, NYSDEC
D. Wolterding, NYSDEC
D. Swanson, Roux Associates
D. Margaritonda, Nassau Metals Corporation

Addendum # 5

New Project Schedule dated December 26, 2001



Page 1

NASSAU METALS - PROJECT SCHEDULE FIGURE 14

EXHIBIT "C"

Release and Covenant Not to Sue

Unless otherwise specified in this letter, all terms used in this letter shall have the meaning assigned to them under the terms of the Voluntary Cleanup Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and Nassau Metals Corporation ("Volunteer"), Index No. W2-0801-01-04 (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Agreement's Work Plan(s) relative to the Site, located at 286 Richmond Valley Road in Staten Island, County of Richmond, New York, Tax Map Identifiers Section 5, Block 7971, Lots 66, 100, 125, 250 and Section 5, Block 7983, Lot 100 has been successfully implemented.

The Department, therefore, hereby releases, covenants not to sue, and shall forbear from bringing any action, proceeding, or suit pursuant to the Environmental Conservation Law, the Navigation Law or the State Finance Law, and from referring to the Attorney General any claim for recovery of costs incurred by the Department, against Volunteer and Volunteer's lessees and sublessees, grantees, 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 Covered 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 deed restrictions remain recorded in accordance with Paragraph X of the Agreement, and (c) Volunteer and/or its' lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Work Plan providing for OM&M, 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 or to any further investigation or remedial action the Department deems necessary:

- due to migration off-Site of contaminants resulting in impacts to environmental resources, to human health, or to other biota that are not inconsequential and to off-Site migration of petroleum;
- due to environmental conditions or information related to the Site which were unknown at the time this Release and Covenant not to Sue was issued and which indicate that the Contemplated Use cannot be implemented with sufficient protection of human health and the environment;
- due to Volunteer's failure to implement the Agreement to the Department's satisfaction; or
- due to fraud committed by Volunteer in entering into or implementing this Agreement.

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to Volunteer nor to any of Volunteer's lessees, sublessees, successors, or assigns who cause or allow a 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]), other than Covered Contamination; or cause or allow the use of the Site to change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to any of Volunteer's lessees, sublessees, successors, or assigns 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 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, covenant not to sue, and forbearance shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance,

- 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 letter shall be construed or deemed to preclude the State of New York from recovering such claim.
- except as provided in this letter and in Agreement, nothing contained in the Agreement or in this letter shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, the right to recover natural resources damages) with respect to any party, including Volunteer.
- nothing contained in this letter shall prejudice any rights of the Department to take any investigatory or remedial action it deems necessary if Volunteer fails to comply with the Agreement or if contamination other than Existing Contamination is encountered at the Site.
- nothing contained in this letter shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
- nothing contained in this letter shall be construed to affect the Department's right to terminate the Agreement under the terms of the Agreement at any time during its implementation if Volunteer fails to comply substantially with the Agreement's terms and conditions.

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: _____

Date: _____

Appendix "A"

(to Exhibit "C")

Map of the Site