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Frank Sowers

JUN 19 2001

DEP/HAZ WASTE REMED RESIDENT

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the  
Implementation of a Remedial  
Response Program for  
CooperVision, Inc. by  
  
CooperVision, Inc.,  
Volunteer.

AGREEMENT  
INDEX NUMBER: B8-0532-98-06  
SITE NUMBER: V001175-8

DEFINITIONS

For purposes of this Agreement, the following terms have the following definitions:

A. "Contemplated Use": the continued operation of a facility for the manufacture of contact lenses or for other industrial or commercial uses but excluding child/day care, health care facilities and hospitals.

B. The Site's "Covered Contamination": the concentrations of Existing Contamination to which the Existing Contamination shall have been remediated in accordance with the requirements of the Work Plan.

C. "ECL": the Environmental Conservation Law.

D. "Day": a calendar day unless otherwise specified.

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

F. The Site's "Existing Contamination": 1,1,1-trichloroethane (1,1,1-TCA), 1,1-dichloroethane (1,1-DCA), 1,1-dichloroethene (1,1-DCE), trichloroethylene (TCE), and tetrachloroethylene (PCE) as indicated in the "Report on VCA Investigation CooperVision, Inc. 711 North Road Scottsville, New York" by Haley & Aldrich of New York dated July 2000. The term also includes contamination encountered during the course of the Work Plan's implementation, the nature and extent of which were unknown or inadequately characterized at the time the Work Plan was submitted to the Department for approval but shall have been fully characterized to the Department's satisfaction.

G. "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.

H. "Site": that property which consists of 5.4 acres and is located at 711 North Road in the Village of Scottsville, New York 14546 and is included on the Monroe County Tax Map

as Parcel Nos. 187.17-1-18 (the "Northern Parcel") and 187.171-18.1/ex (the "Southern Parcel"). Exhibit "A" of this Agreement is a map of the Site showing its general location.

I. "Volunteer": CooperVision, Inc. which is incorporated in the State of New York is located at the Site and is the owner of the Northern Parcel and controls the Southern Parcel.

J. "Work Plan": the Department-approved remedial work plan pertaining to the Site that Volunteer shall implement and that is attached to this Agreement as Exhibit "B", as may be modified under the terms of this Agreement and, as a result, may appear in such other identified exhibit in this Agreement as this Agreement may provide, and is an enforceable part of this Agreement.

#### CONSIDERING

1. The Department is responsible for enforcement of the 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. Volunteer represents, and for the purposes of this Agreement, the Department relies on those representations, that Volunteer's involvement with the Site and with the facility on that Site is limited to the following: Volunteer acquired the Site in 1983.

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

4. A. 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

1. to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and

2. 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 a demonstration, that the 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.

5. A. Volunteer also wishes to enter into this Agreement in order to resolve Volunteer's potential liability for remediating the Existing Contamination as an operator and as 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 Volunteer's plans to use the Site for the Contemplated Use, consents to the terms and conditions of this Agreement.

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

A. for Volunteer to,

1. implement the Work Plan; and
2. 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 Covered Contamination.

7. 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.

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

I. Performance and Reporting of the Work Plan

- A. 1. Within 21 days after the effective date of this Agreement, 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 Work Plan; and shall mail an equivalent notice to the Village of Scottsville, Town of Wheatland and County of Monroe . If, as a result of its review of the comments received, the Department determines that the 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 Work Plan; or

ii. due to information received, in whole or in part, after the execution of this Agreement, 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 Use,

then the Department will so notify Volunteer and will immediately commence negotiations with Volunteer to revise the Work Plan and, if necessary, other components of this Agreement accordingly. However, if after goodfaith negotiations, Volunteer and the Department cannot agree upon revisions to the Work Plan, then, except with respect to

iii. Volunteer's obligations under Paragraphs VI and VIII of this Agreement; and

iv. Volunteer's obligation, here incurred, 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 remedial activities were commenced; and

v. the Department's right to enforce the obligations described in Subparagraphs I.A.1.iii and I.A.1.iv of this Agreement under Paragraph IV of this Agreement,

this Agreement shall terminate effective the date of the Department's written notification to Volunteer that negotiations have failed to develop an acceptable modification to the 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. If both parties agree to a revised Work Plan, the revised Work Plan shall be attached to this Agreement as Exhibit "B-1;" Volunteer shall implement that Work Plan instead of the one contained in Exhibit "B;" and, unless revised as provided in Subparagraph I.B.2 of this Agreement, all references to "Work Plan" in this Agreement shall refer to the one contained in Exhibit "B-1."

2. Within 30 days after the determination of the final form of the Work Plan after completion of public comment, Volunteer shall commence its implementation in accordance with its provisions.

B. 1. Volunteer shall carry out the Work Plan in accordance with its terms.

 2. The parties agree that the Work Plan will be modified in the event that

contamination previously unknown or inadequately characterized is encountered during the Work Plan's implementation and that such modification(s) shall appear in Exhibit "B-1" and all references to "Work Plan" in this Agreement shall refer to the one contained in Exhibit "B-1." However, if after goodfaith negotiations, Volunteer and the Department cannot agree upon revisions to the Work Plan, then, except with respect to

i. Volunteer's obligations under Paragraphs VI and VIII of this Agreement; and

ii. Volunteer's obligation, here incurred, 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 remedial activities were commenced; and

iii. the Department's right to enforce the obligations described in Subparagraphs I.B.2.i and I.B.2.ii of this Agreement under Paragraph IV of this Agreement,

this Agreement shall terminate effective the date of the Department's written notification to Volunteer that negotiations have failed to develop an acceptable modification to the 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.

3. Volunteer shall notify the Department of any significant difficulties that may be encountered in implementing the Work Plan, any Department-approved modification to the Work Plan, or any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto and shall not modify any obligation unless first approved by the Department.

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

D. 1. In accordance with the schedule contained in the Work Plan, as may be modified by agreement in writing between the Department and Volunteer, Volunteer shall submit to the Department a final engineering report that shall include "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 Work Plan, any Department-approved modification to the Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto, and this Agreement.

2. Volunteer shall submit a detailed post-remedial operation, maintenance, and monitoring plan ("O&M Plan"), if needed, along with the final engineering report.

3. A professional engineer must prepare, sign, and seal the O&M Plan, "as built" drawings, final engineering report, and certification.

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

accordance with the schedule and requirements of the Department-approved O&M Plan.

F. 1. i. The Department shall notify Volunteer in writing whether the Department is satisfied with the implementation of the Work Plan, any Department-approved modification to the 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 construction operation and maintenance activities identified in the Department-approved O&M Plan were implemented in accordance with that plan. The Department shall notify Volunteer whether it is satisfied with the O&M Plan's implementation.

2. Upon being satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the 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 for the further investigation and remediation of the Site, based upon the release or threatened release of any Covered 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 Volunteer's 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 the off-Site presence of contaminants, other than petroleum, that may have migrated off-Site from an on-Site source resulting in impacts to environmental resources, to human health, or to other biota that are not inconsequential and to the off-Site presence of petroleum that may have migrated off-Site from an on-Site source, irrespective of whether the information available to Volunteer and the Department at the time of the development of the Work Plan disclosed the existence or potential existence of such off-Site presence;

ii. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan which indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Use;

iii. due to information received, in whole or in part, after the Department's approval of the final engineering report, 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 Use;

iv. due to Volunteer's failure to implement this Agreement to the

Department's satisfaction; or

v. due to fraud committed, or mistake made, by Volunteer in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the 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 Volunteer if, after the Effective Date of this Agreement, Volunteer 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 § 172[15]), other than Covered Contamination; or if Volunteer causes a, or suffers 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 cause a, or suffer the, release or threat of release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination, after the effective date of this Agreement; who cause a, or suffer 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; 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 this Agreement's execution.

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.

G. If the Department is satisfied with the implementation of the Work Plan, any Department-approved modification to the Work Plan, and Department-approved details, documents, and specifications prepared by or on behalf of Volunteer pursuant thereto, the Department

1. shall provide Volunteer with a written "no further action" letter substantially similar to the model letter attached to this Agreement and incorporated in this Agreement as Exhibit "C;"

H. 1. Notwithstanding any other provision of this Agreement, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of the forbearance, covenant not to sue, or release set forth in Subparagraph I.F or in a "no further action" letter issued under Subparagraph I.G of this Agreement shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

2. Except as above provided in Subparagraph I.F of this Agreement and in

the "no further action" letter issued under Subparagraph I.G of this Agreement, nothing in this Agreement is intended as a release, forbearance, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Department, or the State of New York may have against any person, firm, corporation, or other entity not a party to this Agreement. In addition, notwithstanding any other provision in this Paragraph I of this Agreement, the forbearance, covenant not to sue, and release described in Subparagraph I.F and in the "no further action" letter issued under Subparagraph I.G of this Agreement shall not extend to parties (other than Volunteer) that were responsible under law before the effective date of this Agreement to address the Existing Contamination.

## II. Progress Reports

A. Volunteer shall submit on a monthly basis during the period of remediation construction and on a quarterly basis during the period of operation and maintenance to the parties identified in Subparagraph XI.A.1 in the numbers specified in that Subparagraph copies of written progress reports that:

1. describe the actions which have been taken toward achieving compliance with this Agreement during the previous month;
2. include all results of sampling and tests and all other data received or generated by Volunteer or Volunteer's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Agreement or conducted independently by Volunteer;
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;
5. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Volunteer's obligations under this Agreement, and efforts made to mitigate those delays or anticipated delays; and
6. include any modifications to the Work Plan that Volunteer has proposed to the Department and any that the Department has approved.

B. Volunteer shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Agreement; and Volunteer's obligation to submit the progress reports shall terminate upon its receipt of the written satisfaction notification identified in Subparagraph I.F.2 of this Agreement approving Volunteer's final engineering report concerning the Work Plan's implementation. However, Volunteer shall continue to submit reports concerning the implementation of any O&M Plan that may be required under this Agreement, in accordance with that Plan's requirements.



C. Volunteer also shall allow the Department to attend, and shall provide the Department at least five days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

### III. Review of Submittals

A. 1. The Department shall review each of the submittals Volunteer makes pursuant to this Agreement to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Agreement and with generally accepted technical and scientific principles. The Department shall notify Volunteer in writing of its approval or disapproval of the submittal within 30 days of the Department's receipt of such submittal or as soon as practicable. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. i. If the Department disapproves a submittal, it shall so notify Volunteer in writing and shall specify the reasons for its disapproval within 30 days of the Department's receipt of such submittal or as soon as practicable 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. Within 30 days after receipt of the revised submittal or as soon as practicable, the Department shall notify Volunteer in writing of its approval or disapproval. Ten days after Volunteer receives notice that the Department has disapproved the revised submittal, the Department and Volunteer may pursue whatever remedies at law or in equity (by declaratory relief) that may be available to them, without prejudice to either's right to contest the same. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Agreement.

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

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

### IV. Enforcement

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

B. Volunteer shall not suffer any penalty under this Agreement or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement because of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Volunteer's reasonable control ("*force majeure* event"). Volunteer shall, within five working days of when it obtains knowledge of any such *force majeure* event, notify the Department in writing. Volunteer shall include in such notice the measures taken and to be taken by Volunteer to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Volunteer shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Agreement pursuant to this Subparagraph IV.B of this Agreement.

V. Entry upon Site

Volunteer hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer by any duly designated employee, consultant, contractor, or agent of the Department or any State agency having jurisdiction with respect to the matters addressed in the Work Plan for purposes of inspection, sampling, and testing and to ensure Volunteer's compliance with this Agreement. The Department agrees to provide Volunteer with 24 hours notice of entry onto the Site unless such notice is unreasonable under the circumstances presented. The Department shall abide by the health and safety rules in effect for work performed at the Site under the terms of this Agreement. Upon request, Volunteer shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Agreement and to job meetings.

VI. Payment of State Costs

Within thirty days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at 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 State's expenses incurred after the Department's notification identified in Subparagraph I.F.2 of this Agreement of its approval of the final engineering report pertaining to the implementation of the Work Plan or, if any, of the Department-approved O&M Plan, whichever is later. Each such payment shall be made by corporate check or bank draft payable to the Department of Environmental Conservation and shall be sent to:

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

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

## VII. Department Reservation of Rights

A. Except as provided in Subparagraph I.F.2 of this Agreement and in any "no further action" letter issued under Subparagraph I.G of this Agreement, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, nor exemplified by, the right to recover natural resources damages) with respect to any party, including Volunteer.

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

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

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

E. Except as otherwise provided in this Agreement, Volunteer specifically reserves all defenses Volunteer may have under applicable law respecting any Departmental assertion of remedial liability against Volunteer; and reserves all rights Volunteer may have 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 this Agreement 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.

## 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 willful or grossly negligent 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 30 days after the effective date of this Agreement, Volunteer shall

1. file the Notice of Agreement, which is attached to this Agreement as Exhibit "D," with the Monroe County Clerk to give all parties who may acquire any interest in the Site notice of this Agreement and

2. provide the Department with evidence of such filing.

Volunteer may terminate the Notice when the Department notifies Volunteer in writing pursuant to Subparagraph I.F.2 of this Agreement that the Department is satisfied that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan have been reached and that the O&M Plan has been successfully implemented.

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.

X. Deed Restriction

A. Within 30 days of Volunteer's receipt of the Department's notification pursuant to Subparagraph I.F.2 of this Agreement approving Volunteer's final engineering report concerning the Work Plan, Volunteer shall record an instrument with the Monroe County Clerk, to run with the land, that:

1. shall prohibit the Site from ever being used for purposes other than for the Contemplated Use without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department;

2. shall at the Site 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 Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department;

3. shall require Volunteer and Volunteer's successors and assigns to continue in full force and effect those engineering and/or institutional controls required by the Work Plan;

4. shall provide the Department with 30 days notice of any planned excavating activities at the Site; and

5. shall provide that Volunteer, on behalf of itself and its successors and assigns, hereby consents to the enforcement by the Department, or if at such time the

Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department, of the prohibitions and restrictions that this Paragraph X requires to be recorded, and hereby covenants not to contest such enforcement.

B. Within 30 days after Volunteer's receipt of the Department's notification pursuant to Subparagraph I.F.2 of this Agreement approving Volunteer's final engineering report concerning the Work Plan, 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.

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

with copies to:

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

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

Richard Elliott, P.E.  
Principle Public Health Engineer  
Monroe County Department of Health  
100 Westfall Road - Caller 632  
Rochester, New York 14692

and

Andrew English, P.E.  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
50 Wolf Road  
Albany, New York 12233-7010

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

- Four copies (one unbound) to Mary Jane Peachey, P.E.
- Two copies to Dr. Carlson
- One copy each to Richard Elliott, P.E., Andrew English, P.E. and James Charles, Esq.

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

Carol R. Kaufman  
Vice President of Legal Affairs  
The Cooper Companies  
6140 Stoneridge Mall Road  
Pleasanton, CA. 94588-3237

and

Christopher H. Marraro, Esq.  
Wallace, King, Marraro & Branson, PLLC  
1050 Thomas Jefferson Street, N.W.  
Washington, D.C. 20007

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

## XII. Miscellaneous

A. 1. By entering into this Agreement, Volunteer certifies that Volunteer has fully and accurately disclosed to the Department all non-privileged 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, and to any past or potential future release of hazardous substances, pollutants, or contaminants, at or from the Site and to their application for this Agreement. Volunteer has not disclosed privileged communications, attorney work product, mental impressions, conclusions, opinions, or legal theories, as provided for by applicable New York law.

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

B. Volunteer shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Agreement. The responsibility for the performance of the professionals retained by Volunteer shall rest solely with Volunteer.

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

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

E. 1. Subject to Subparagraph 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.

2. In carrying out the activities identified in the Work Plan, the Department may exempt Volunteer from the requirement to obtain any Department permit 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.

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

G. Volunteer shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement and to each person representing Volunteer with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement. Volunteer or Volunteer's contractors shall provide written notice of this Agreement to all

subcontractors hired to perform any portion of the work required by this Agreement. Volunteer shall nonetheless be responsible for ensuring that Volunteer's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

H. 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.

I. 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 the 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.

J. This Agreement constitutes 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).

K. Volunteer denies liability for the discharge or release of contaminants at the Site and the provisions of this Agreement shall not constitute an admission of liability and, except as provided in Subparagraph XII.L, 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.

L. 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.



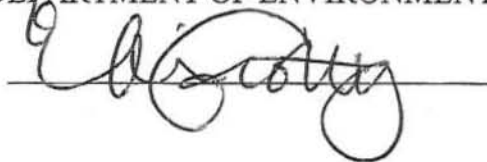
M. The Effective Date of this Agreement shall be the date it is signed by the Commissioner or the Commissioner's designee.

XIII. Dispute Resolution

Volunteer may commence dispute resolution 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 XII.A.2. Disputes regarding Work Plan development and revision shall be heard by the Bureau Director of the Division of Environmental Remediation's remedial bureau 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 timely. 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.

DATED: *May 31, 2001*

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

A handwritten signature in cursive script, appearing to read "Erin M. Crotty", is written over a horizontal line.

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.

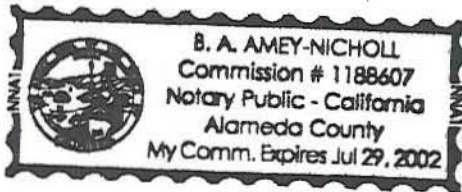
CooperVision, Inc.

By: [Signature]  
CAROL R. KAUFMAN

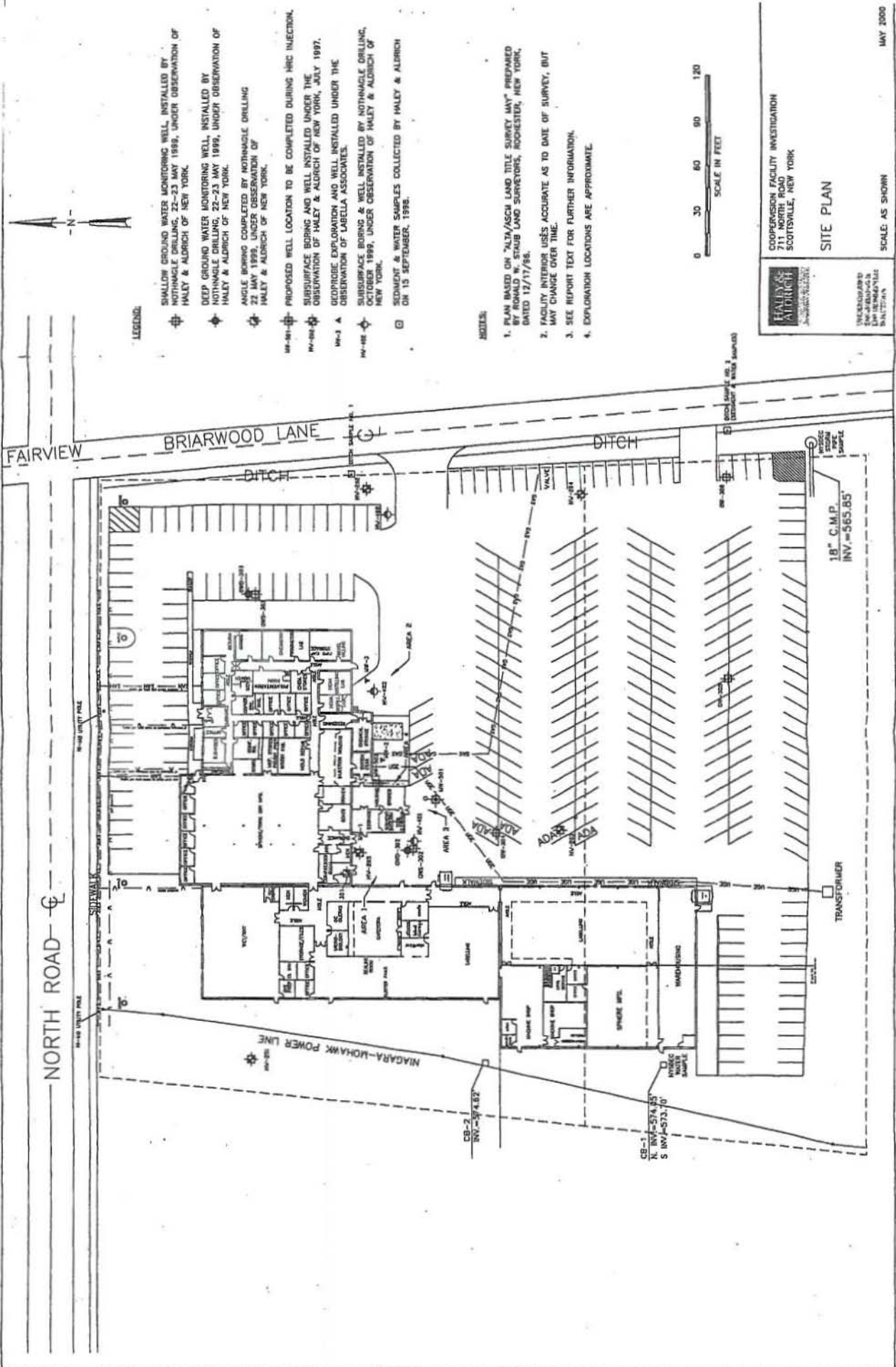
Date: 3/22/01

STATE OF California )  
 ) s.s.:  
COUNTY OF Alameda )

On the 22<sup>nd</sup> day of March, in the year 2001, before me, the undersigned, personally appeared Carol R. Kaufman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



[Signature]  
Notary Public



**LEGEND:**

- ⊕ SHALLOW GROUND WATER MONITORING WELL, INSTALLED BY NOTHMANGLER DRILLING, 22-23 MAY 1999, UNDER OBSERVATION OF HALEY & ALDRICH OF NEW YORK.
- ⊕ DEEP GROUND WATER MONITORING WELL, INSTALLED BY NOTHMANGLER DRILLING, 22-23 MAY 1999, UNDER OBSERVATION OF HALEY & ALDRICH OF NEW YORK.
- ⊕ ANGLE BORING COMPLETED BY NOTHMANGLER DRILLING 22 MAY 1999 UNDER OBSERVATION OF HALEY & ALDRICH OF NEW YORK.
- ⊕ PROPOSED WELL LOCATION TO BE COMPLETED DURING WIC INJECTION.
- ⊕ SUBSURFACE BORING AND WELL INSTALLED UNDER THE OBSERVATION OF HALEY & ALDRICH OF NEW YORK, JULY 1997.
- ⊕ GEOPROBE EXPLORATION AND WELL INSTALLED UNDER THE OBSERVATION OF LABELLA ASSOCIATES.
- ⊕ SUBSURFACE BORING & WELL INSTALLED BY NOTHMANGLER DRILLING, OCTOBER 1999, UNDER OBSERVATION OF HALEY & ALDRICH OF NEW YORK.
- ⊕ SEDIMENT & WATER SAMPLES COLLECTED BY HALEY & ALDRICH ON 15 SEPTEMBER, 1998.

**NOTES:**

1. PLAN BASED ON "ALTA/ASCH LAND TITLE SURVEY MAP" PREPARED BY RONALD W. STUBB LAND SURVEYORS, ROCHESTER, NEW YORK, DATED 12/17/98.
2. FACILITY INTERIOR USES ACCURATE AS TO DATE OF SURVEY, BUT MAY CHANGE OVER TIME.
3. SEE REPORT TEXT FOR FURTHER INFORMATION.
4. EXPLORATION LOCATIONS ARE APPROXIMATE.



**HALEY & ALDRICH**  
 REGISTERED PROFESSIONAL ENGINEERS  
 711 NORTH ROAD  
 SCOTTSVILLE, NEW YORK

**CORPERSSION FACILITY INVESTIGATION**  
 711 NORTH ROAD  
 SCOTTSVILLE, NEW YORK

**SITE PLAN**

SCALE: AS SHOWN  
 MAY 2000  
 FILENAME: HRC\_R.DWG

FIGURE

70665-005

Exhibit "A"

**EXHIBIT "B"**

**Department-Approved Work Plan**

## EXHIBIT "C"

### Assignable Release and Covenant Not To Sue

[On Department Letterhead]

[Insert Date]

Christopher H. Marraro, Esq.  
Wallace, King, Marraro & Branson, PLLC  
1050 Thomas Jefferson Street, N.W.  
Washington, D.C. 20006

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 Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and CooperVision, Inc. ("Volunteer"), Index No. B8-0532-98-06 (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Agreement's Work Plan, covering the remediation of the Site, located at 711 North Road in the Village of Scottsville, New York 14546 and is included on the Monroe County Tax Map as Parcel Nos. 187.17-1-18 (the "Northern Parcel") and 187.171-18.1/ex (the "Southern Parcel"), has been successfully implemented.

The Department, therefore, hereby releases, covenants not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer and Volunteer's lessees and sublessees and Volunteer's 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 notices and deed restrictions have been recorded in accordance with Paragraphs IX and X of the Agreement, and (c) Volunteer and/or Volunteer's 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:

- due to off-Site migration of contaminants other than petroleum resulting in impacts to environmental resources, to human health, or to other biota that are not inconsequential and to off-Site migration of petroleum, irrespective of whether the information available to Volunteer and the Department at the time of the development of the Work Plan disclosed the existence or potential existence of such off-Site migration;
- due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan which indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Use;

- due to information received, in whole or in part, after the Department's approval of the final engineering report, 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 Use;
- due to Volunteer's failure to implement the Agreement to the Department's satisfaction; or
- 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 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:

- Volunteer if, after the Effective Date of the Agreement, Volunteer 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 § 172[15]), other than Covered Contamination; or if Volunteer causes a, or suffers 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 cause a, or suffer the, release or threat of release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination, after the effective date of the Agreement; who cause a, or suffer 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; 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, 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 release shall be construed, or deemed, to preclude the

State of New York from recovering such claim.

- except as provided in Subparagraph I.F of the Agreement and in this letter, 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, nor exemplified by, 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 may deem necessary if Volunteer fails to comply with the Agreement or if contamination other than Existing Contamination or Covered 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 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

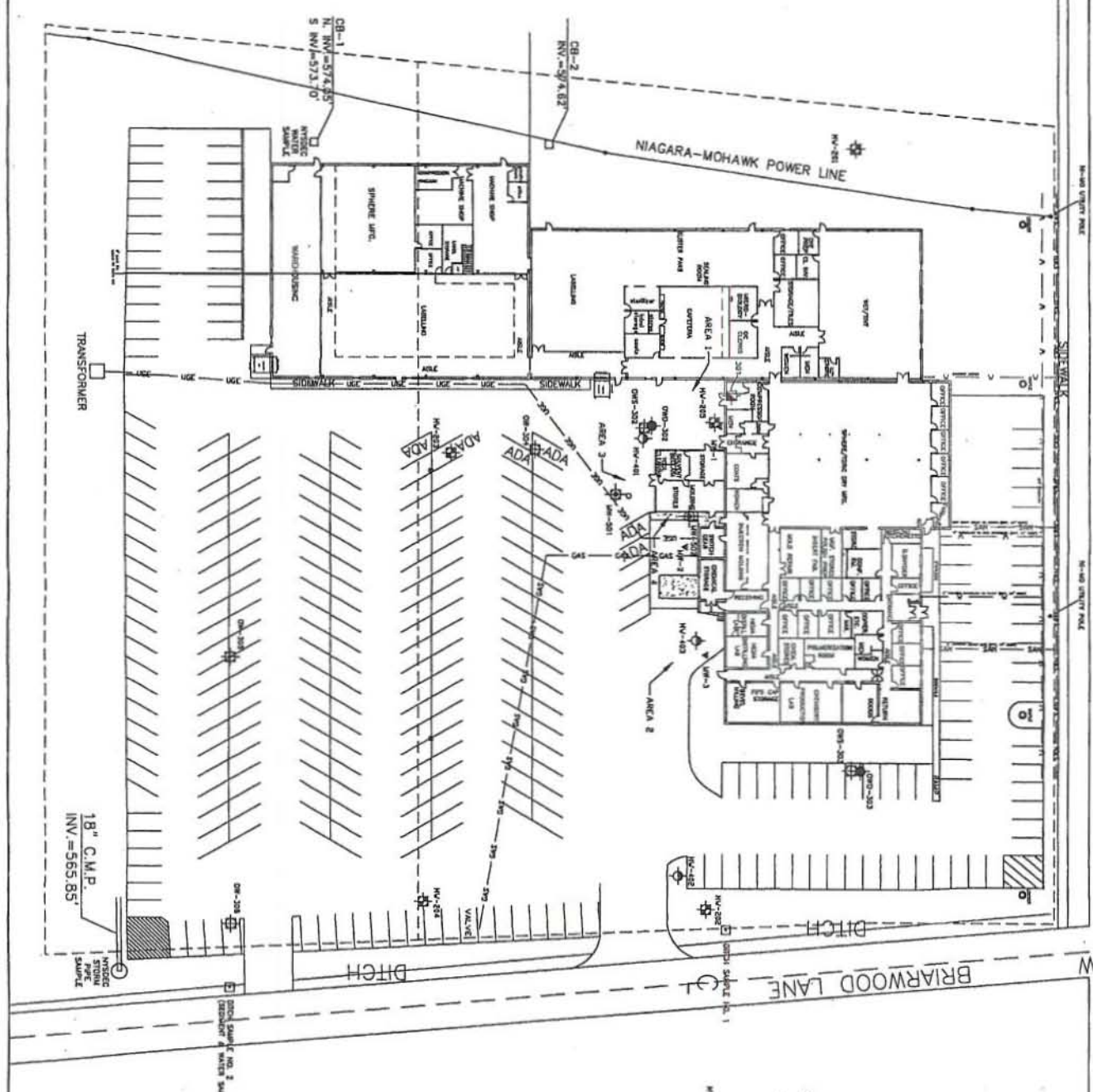
By: \_\_\_\_\_

Its: \_\_\_\_\_

**Appendix "A"**  
**(to Exhibit "C")**  
**Map of the Site**



NORTH ROAD



18" C.M.P.  
INV. = 565.85'

LEGEND:

- ◆ SHALLOW GROUND WATER MONITORING WELL, INSTALLED BY NOTHMAN DRILLING, 22-23 MAY 1999, UNDER OBSERVATION OF HALEY & ALDRICH OF NEW YORK.
- ◆ DEEP GROUND WATER MONITORING WELL, INSTALLED BY NOTHMAN DRILLING, 22-23 MAY 1999, UNDER OBSERVATION OF HALEY & ALDRICH OF NEW YORK.
- ◆ ANGLE BORING COMPLETED BY NOTHMAN DRILLING, 22 MAY 1999, UNDER OBSERVATION OF HALEY & ALDRICH OF NEW YORK.
- ◆ PROPOSED WELL LOCATION TO BE COMPLETED DURING HRC INJECTION.
- ◆ SUBSURFACE BORING AND WELL INSTALLED UNDER THE OBSERVATION OF HALEY & ALDRICH OF NEW YORK, JULY 1997.
- ◆ GEOPHYSICAL EXPLORATION AND WELL INSTALLED UNDER THE OBSERVATION OF LABELLA ASSOCIATES.
- ◆ SUBSURFACE BORING & WELL INSTALLED BY NOTHMAN DRILLING, OCTOBER 1998, UNDER OBSERVATION OF HALEY & ALDRICH OF NEW YORK.
- EQUIPMENT & WATER SAMPLES COLLECTED BY HALEY & ALDRICH ON 15 SEPTEMBER, 1998.

NOTES:

1. PLAN BASED ON "ULT./ASCU LAND TITLE SURVEY MAY" PREPARED BY ROBERT W. STRAUB LAND SURVEYORS, ROCHESTER, NEW YORK, DATED 12/17/98.
2. FACILITY INTERIOR USES ACCURATE AS TO DATE OF SURVEY, BUT MAY CHANGE OVER TIME.
3. SEE REPORT TEXT FOR FURTHER INFORMATION.
4. EXPLORATION LOCATIONS ARE APPROXIMATE.



**HALEY & ALDRICH**  
INCORPORATED  
A PROFESSIONAL CORPORATION

COOPERATION FACILITY INVESTIGATION  
711 NORTH ROAD  
SCOTTSDALE, NEW YORK

SCALE: AS SHOWN

MAY 2000

FILENAME: HRC\_R.DWG

FIGURE 1

APPENDIX A

**Exhibit "D"**

**NOTICE OF AGREEMENT**

**This Notice** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2001 by CooperVision, Inc., the fee owner of a parcel of real property located at 711 North Road in the Village of Scottsville, New York 14546 and is included on the Monroe County Tax Map as Parcel Nos. 187.17-1-18 (the "Northern Parcel") and 187.171-18.1/ex (the "Southern Parcel"), as more particularly described on Appendix "A" attached hereto (the "Property"); and

**WHEREAS**, CooperVision, Inc., by authorized signature, entered into an agreement with the Department, Index # B8-0532-98-06 ( 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 CooperVision, Inc. and Volunteer's lessees and sublessees and Volunteer's 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, CooperVision, Inc. agreed that it would 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**, CooperVision, Inc., 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 that
2. This Notice shall terminate upon the filing by CooperVision, Inc., 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.

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

Dated:

CooperVision, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF )  
 ) s.s.:  
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 whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

---

Notary Public

**Appendix "A"**  
**(to Exhibit "D")**  
**Map of the Property**