NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Implementation of an
Investigation of
819-845 Edgewater Road, and
810-842 Whittier Street,
by

Dexter Chemical LLC,
Volunteer.

AGREEMENT
INDEX NUMBER: W2-0864-00-02

DEFINITIONS

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

A. "ECL": the Environmental Conservation Law.

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

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

D. "Site": that property located at 819-845 Edgewater Road and 810-842 Whittier Street, Bronx County, State of New York, and shown as Block 2762, Lots 216, 224, 257, 294, 299 and 300. Exhibit "A" of this Agreement is a map of the Site showing its general location.

E. "Volunteer": Dexter Chemical LLC, the current owner and operator of the Site
with offices at 845 Edgewater Road, Bronx, NY 10474.

F. "Work Plan": the Department-approved investigative 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 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.

2. A. The Volunteer intends to continue to use the site for chemical manufacturing consistent with the current operation.

B. 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 is the current owner and operator of the Site and has potential responsibility under law to remediate contamination existing at the Site as of the effective date of this Agreement.

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

4. A. Volunteer wishes to enter into this Agreement in order to resolve its potential liability as an operator under ECL Article 27, Title 13 based solely upon Volunteer's investigation of the Site. 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 an investigation program acceptable to the Department, consents to the terms and conditions of this Agreement.

5. The Department and Volunteer agree that the goals of this Agreement are for Volunteer to,

A. implement the Work Plan; and

B. reimburse the State's administrative costs as provided in this Agreement.

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

IN CONSIDERATION OF AND IN EXCHANGE FOR THE DEPARTMENT'S NOT CONSIDERING VOLUNTEER TO BE THE SITE'S OPERATOR MERELY FOR HAVING INVESTIGATED THE SITE UNDER THE CIRCUMSTANCES SET FORTH IN THIS AGREEMENT, VOLUNTEER AGREES TO THE FOLLOWING:

I. <u>Performance and Reporting of the Investigation Program</u>

A. Within 30 days after the effective date of this Agreement, Volunteer shall commence implementation of the Work Plan and shall carry it out in accordance with its terms.

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

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

work done.

D. In accordance with the schedule contained in the Work Plan, Volunteer shall submit to the Department a final investigation report. The final investigation report shall:

1. include all data generated and all other information obtained during the investigation;

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

3. identify any additional data that must be collected; and

4. include a certification by the individual or firm with primary responsibility for the day to day performance of the investigation that all activities that comprised the investigation were performed in full accordance with the approved Work Plan or, to the extent that it was not performed in full accordance with the Work Plan, certifying that any and all deviations are identified and explained within the final investigation report itself.

E. The Department shall not consider Volunteer to be the Site's operator merely for having carried out its obligations under this Agreement to the Department's satisfaction.

II. Progress Reports

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

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

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 reporting period, including quality assurance/quality control information, whether conducted pursuant to this Agreement or conducted independently by Volunteer;

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

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

5. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of

Volunteer's obligations under the Agreement, and efforts made to mitigate those delays or anticipated delays; and

6. include any modifications to 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 after every two month period beginning when work at the Site under the approved Work Plan has commenced following the effective date of this Agreement.

C. Volunteer also shall allow the Department to attend, and shall provide the Department at least five days advance notice of, any of any meeting relating to the Work Plan's implementation, provided, however, that Volunteer shall not be required under this Agreement to submit any portions of records and/or information that would disclose privileged mental impressions, conclusions, opinions, or legal theories, as provided for by applicable New York law.

III. Review of Submittals

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

B. 1. If the Department disapproves a submittal, it shall so notify Volunteer in writing and shall specify the reasons for its disapproval within 30 days after its receipt of the submittal and may request Volunteer to modify or expand the submittal; provided, however, that the matters to be addressed by such modification or expansion are within the specific scope of work as described in the 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.

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

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

Upon notice which is reasonable under the circumstances presented, Volunteer hereby consents 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 employee, consultant, contractor, or agent of the Department or any State agency having jurisdiction with respect to the Investigation Program for purposes of inspection, sampling, and testing and to ensure Volunteer's compliance wit this Agreement. The Department shall abide by the health and safety rules in effect for work performed at the Site under the terms of this Agreement. Upon request, Volunteer shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Agreement and to scheduled log progress meetings. Volunteer shall also permit the Department full access to all records containing data and factual information pertaining to the environmental conditions at or in the vicinity of the Site, including, but not limited to, sampling and analytical data, monitoring reports, and hydrogeologic, scientific, chemical and engineering data. Volunteer shall have no obligation to provide the Department with any records, or portions thereof, that are privileged, pursuant to applicable statute or common law. Volunteer acknowledges that raw data and factual information are not privileged.

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 date, 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. Each such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

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

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

B. Reimbursement by Volunteer for costs incurred by the New York State Department of Environmental Conservation and New York State Department of Health pursuant to this Agreement is capped at Twenty Five Thousand($25,000) per State Fiscal Year. The Department may aggregate its billing of these State costs for more than one year.

VII. Reservation of Rights

A. Except as provided in Subparagraph I.E 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; provided, however, that prior to any such termination the Department must provide Volunteer with written notice of Volunteer's alleged failure to substantially comply with any term or provision of this Agreement and afford Volunteer fifteen (15) days from Volunteer's receipt of such notice to cure the alleged noncompliance; and further provided that if such non-compliance is not reasonably susceptible to a cure within this period of time and

Volunteer is making good faith efforts to cure the alleged non-compliance the Department shall not terminate this Agreement.

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. 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. However, Volunteer shall not be required to indemnify the Department, the State of New York and /or their representatives and employees regarding any liability arising from willful, wanton or malicious 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.

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 "C," with the Office of the Registrar of the City of New York, Bronx County 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.

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. Communications

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

BJC

1. Communication from Volunteer shall be sent to:

Thomas Lang, P.E.
New York State Department of Environmental Conservation
Division of Environmental Remediation
1 Hunters Point Plaza
47-40 21st Street
Long Island City, NY 11101-5407

with copies to:

G. Anders Carlson, Ph.D.
Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216

Rosalie K. Rusinko, Esq.
Senior Attorney
New York State Department of Environmental Conservation
Division of Environmental Enforcement
200 White Plains Road, 5th Floor
Tarrytown, New York 10591-5805

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

- Four copies (one unbound) to Mr. Lang
- Two copies to Dr. Carlson

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

Dexter Chemical
845 Edgewater Road
Bronx, NY 11101
Attention: Leonard Silver, President

with copies to:

The Whitman Companies, Inc.
44 West Ferris Street
East Brunswick, New Jersey 08816
Attention: Ira L. Whitman, P.E.

Richard J. Conway, Jr., Esq.
10 Washington Street
P.O. Box 905
Morristown, NJ 07963

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

XI. Miscellaneous

A. 1. By entering into this Agreement, Volunteer certifies that Volunteer has fully and accurately disclosed to the Department all information known to Volunteer and all information in the possession or control of Volunteer's members, partners, 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.

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

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

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

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

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

purposes of this subparagraph, "best efforts" includes the payment of reasonable sums of money in consideration.

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 satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

F. Volunteer, Volunteer's members, partners, 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 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 members, partners, 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 in connection with such work 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 Thomas Lang, P.E. and to Rosalie K. Rusinko, Esq.

J. This Agreement is not subject to review under the State Environmental

Quality Review Act. 6 NYCRR 617.5(c)(18).

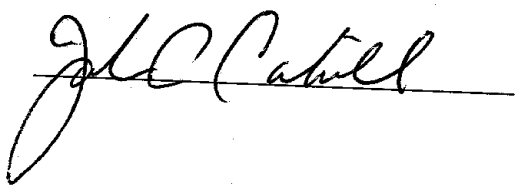
K. The provisions of this Agreement do not constitute and shall not be deemed a waiver of any right Volunteer otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteer's insurers, for payments made previously or in the future for response costs.

L. Volunteer and Volunteer's members, partners, officers, 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 his designee.

DATED: April 24, 2000

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



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.

Dexter Chemical LLC

By: Kenneth Ballan
Authorized Director

Date: March 29, 2000

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

On this 29th day of March, 2000, before me, the undersigned, personally appeared Kenneth Ballan 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

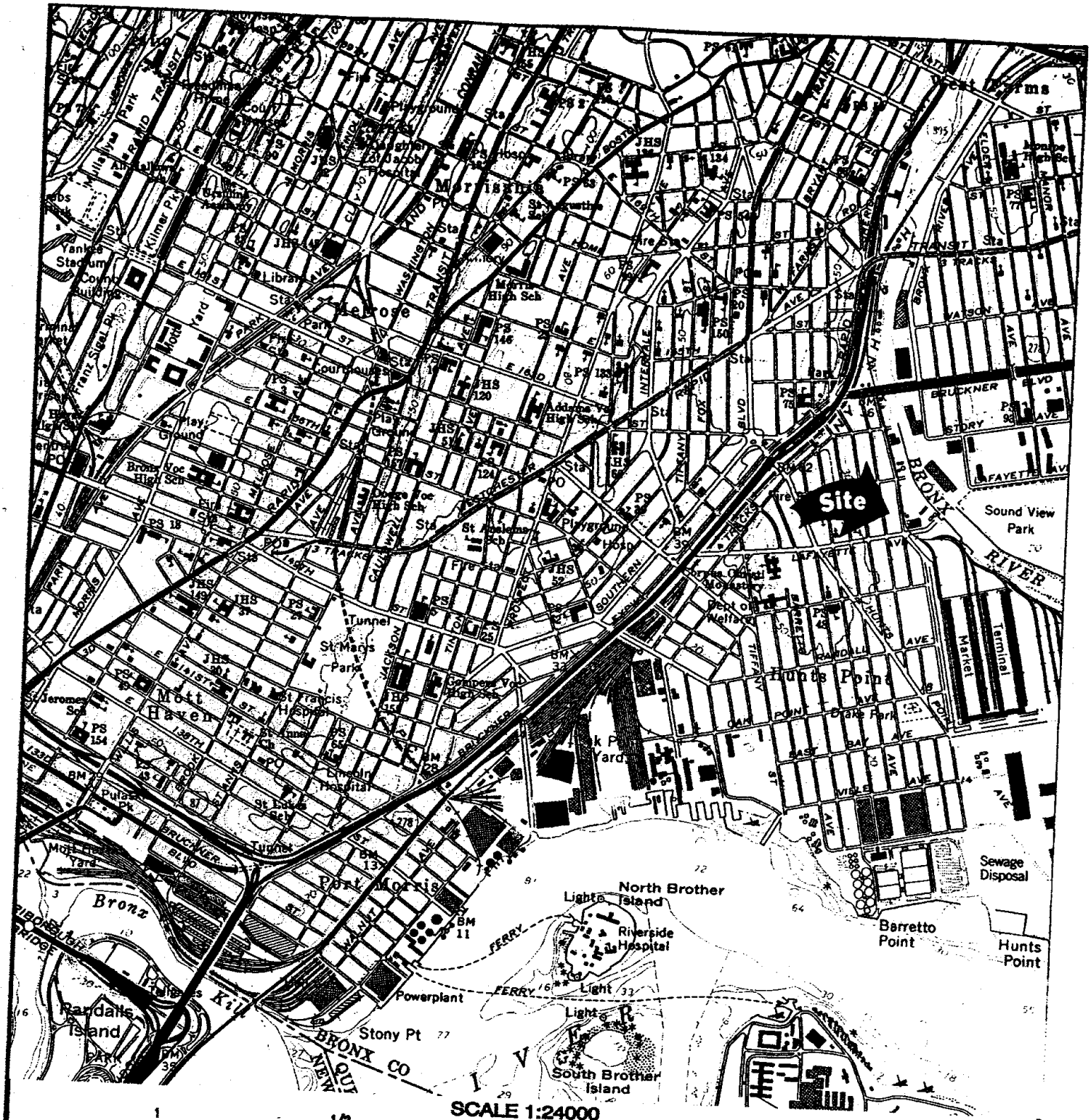
Elba Iris Morales
Notary Public

ELBA IRIS MORALES
Notary Public, State of New York
No. 03-8234755
Qualified in Bronx County
Commission Expires January 31, 2001

EXHIBIT "A"

Map of Site

.0565



SCALE 1:24000

1 0 1 MILE

1000 0 1000 2000 3000 4000 5000 6000 7000 FEET

.5 .25 0 .5 KILOMETER

MN GN

10 1/2° 187 MILES 0°07' 3 MILES

UTM GRID AND 1981 MAGNETIC NORTH DECLINATION AT CENTER OF SHEET

NEW YORK

QUADRANGLE LOCATION

THE WHITMAN Companies, INC.

DEXTER CHEMICAL LLC
845 EDGEWATER ROAD
BRONX, NEW YORK

SITE LOCATION ON USGS
CENTRAL PARK, N.Y. QUADRANGLE

ORIGINAL BY: CC	DRAWN BY: A Jouf	DRAWING NO: 970910A
CHECKED BY: CC	DATE: APRIL 1998	FIGURE NO: 1

EXHIBIT "B"

Department-Approved Work Plan

• SIWD 7/19/99
• Addendum 1 11/3/99

Exhibit "C"

NOTICE OF AGREEMENT

This Notice is made as of the _____ day of _____, 2000 by **Dexter Chemical LLC**, the fee owner of a parcel of real property located at 819-845 Edgewater Road and 810-842 Whittier Street, and shown as block 2762, Lots 216, 224, 257, 294, 299 and 300, as more particularly described on Appendix "A" attached hereto (the "Property"); and

WHEREAS, the **Dexter Chemical LLC**, by authorized signature, entered into an agreement with the Department, Index #W2-0864-00-02 (the "Agreement"), concerning the investigation of the Property, which Agreement was signed by the Commissioner of Environmental Conservation on _____; and

WHEREAS, pursuant to the Agreement, **Dexter Chemical LLC** 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 Office of the Registrar of the City of New York, Bronx County,

NOW, THEREFORE, Dexter Chemical LLC, for itself, its successors and its assigns, declares that:

1. Notice of the Agreement is, hereby, given to all parties who may acquire any interest in the Property.

2. This Notice shall terminate upon the filing by **Dexter Chemical LLC**, or its successors and assigns, of a termination of notice of Agreement.

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

Dexter Chemical LLC

Dated: _____

By: _____

Its: _____

[acknowledgment]