

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Implementation of the  
Remediation of the former  
Champion Products, Inc. Site

AGREEMENT  
INDEX NUMBER: B9-0539-98-09  
SITE NUMBER: V000189-9

by

Champion Products, Inc.,  
Volunteer.

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DEFINITIONS

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

- A. "Contemplated Use": commercial or industrial excluding the use for childcare/ day care facilities, hospitals, and residential health care facilities.
- B. The Site's "Covered Contamination": the concentrations of Existing Contamination (1) to which the Existing Contamination shall have been remediated in accordance with the requirements of the Remediation Work Plan; or (2) for which no remediation is required by the Remediation 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": those substances enumerated in the "Remediation Work Plan Champion Products, Inc. Perry, New York DEC Site No. V00018-9 Delta Project No. S098-009 May 1999" including acetone, methylene chloride, tetrachloroethylene, 1,1,1-trichloroethane, 1,1-dichloroethane, 1,2-dichloroethane, 1,1-dichloroethene, cis-1,2-dichloroethene, toluene, ethylbenzene, styrene, total xylenes, chloroethane, chloroform, trichloroethene, 2-hexanone, 2-butanone, bromodichloromethane, benzene, vinyl chloride, carbon disulfide, isopropylbenzene, n-propylbenzene, 1,2,4-trichlorobenzene, 1,2,4 trimethylbenzene, 1,3,5- trimethylbenzene, n-butylbenzene, naphthalene, 4-methyl-2-pentanone . The term also includes contamination encountered during the course of the Remediation Work Plan's implementation, the nature and extent of which were unknown or inadequately characterized at the time the Remediation 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. "Release": the definition contained in 6 NYCRR Part 375-1.3(s) as of the effective date of this Agreement which defines a Release as any pumping, pouring, emitting, emptying, or leaching, directly or indirectly, of a substance so that the substance or any related constituent thereof, or any degradation product of such a substance or of a related constituent thereof, may enter the environment, or the disposal of any substance..

I. "Remediation": all activities undertaken to eliminate, remove, abate, control, or monitor existing health hazards, existing environmental hazards, potential health hazards, and/or potential environmental hazards, and all activities undertaken to manage wastes and contaminated materials, including but not limited to , the following:

1. activities (such as investigative activities needed to evaluate remedial alternatives) to develop a program in response to the foregoing;
2. design activities;
3. construction activities including without limitation grading, contouring, trenching, grouting, capping, excavation, transporting, incineration, and other thermal treatment, chemical treatment, biological treatment, or construction of groundwater and/or leachate collection and treatment facilities;
4. post-construction operation, maintenance, and monitoring;
5. restoration of the environment;
6. appropriate involvement by local governments of jurisdiction and by the general public; and
7. oversight by the Department.

J. "Remediation Work Plan": the Department-approved Remediation 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.

K. "Site": that property located on 200 North Main Street in Perry, New York 14530 having the Wyoming County Tax Map Identifier number 88.20-3-15. Exhibit "A" of this Agreement is a map of the Site showing its general location.

L. "Site Owner": SMG Development LLC whose address is P.O. Box 81, Perry, New York 14530.

M. "Volunteer": Champion Products, Inc., which is a former Site owner and current tenant at the Site, and has offices at 475 Corporate Square Drive, Winston-Salem, North Carolina 27102-1550.

#### 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 facilities on that Site is limited to the following: Volunteer purchased the Site in 1958 and has manufactured apparel in the facility located on the Site. Volunteer sold the Site in 1998. Volunteer is now a tenant on the Site and manufactures apparel in the facility located on the Site.

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

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

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

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

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

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

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

A. for Volunteer to,

1. develop and implement a Department-approved Remediation Work Plan for the Site and

2. reimburse the State's administrative costs as provided in this Agreement, and,

B. in accordance with the terms of this Agreement, for the Department to release, covenant not to sue, and forbear from asserting or bringing any claim, action, proceeding, or suit against Volunteer for the Site's further Remediation.

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 RELEASE AND COVENANT NOT TO SUE SET FORTH IN THIS AGREEMENT, VOLUNTEER AGREES TO THE FOLLOWING:

I. Development and Implementation of the Remediation Work Plan

A. 1. The Department and Volunteer have a proposed Remediation Work Plan that shall be noticed for public comment in accordance with Subparagraph I.A.2 of this Agreement. In the event that the Department concludes that a mutually acceptable Remediation Work Plan cannot be successfully negotiated, 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.A.1.i and I.A.1.ii of this Agreement under Paragraph IV of this Agreement, this Agreement shall terminate; and both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

The proposed Remediation Work Plan shall provide, *inter alia*, that if during the Remediation Work Plan's implementation, contamination is discovered that was not addressed in the Remediation Work Plan, Volunteer shall investigate the nature and extent of such newly discovered contamination, and the Work Plan will be revised to have Volunteer remediate such newly discovered contamination in the event that this remediation is needed to allow the

Contemplated Use to proceed. The terms of Subparagraph I.A.3 apply during the implementation of the Remediation Work Plan.

2. Upon development of a proposed Remediation Work Plan, the Department will publish a notice in the Environmental Notice Bulletin to inform the public of the public's opportunity to submit to the Department by no later than 30 days after the date of the issue of the Environmental Notice Bulletin in which the notice shall appear, comments on the proposed Remediation Work Plan and shall mail an equivalent notice to the Town of Perry and County of Wyoming. If, as a result of its review of the comments received, the Department determines that the proposed Remediation Work Plan to implement the Department-approved remedial activities for the Site must be revised:

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

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

then the Department will so notify Volunteer and will immediately commence negotiations with Volunteer to revise the proposed Remediation Work Plan accordingly. If the Department and Volunteer agree upon revisions to the proposed Remediation Work Plan, the revised proposed Remediation Work Plan shall become the final Remediation Work Plan and shall be attached to this Agreement as Exhibit "B" and made a part of this Agreement. If, after good faith negotiations, Volunteer and the Department cannot agree upon revisions to the proposed Remediation 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 its remedial activities were commenced; and

v. the Department's right to enforce the obligations described in Subparagraphs I.A.2.iii and I.A.2.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 Remediation 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 the Department does not make such a determination, the

proposed Remediation Work Plan shall become the final Remediation Work Plan and shall be attached to this Agreement as Exhibit "B" and made a part of this Agreement.

3. Volunteer shall commence implementation of, and implement, the final Remediation Work Plan contained in Exhibit "B" in accordance with its terms. However, the parties agree that the final Remediation Work Plan will be modified in the event that contamination previously unknown or inadequately characterized is encountered during implementation of the final Remediation Work Plan unless after good faith negotiations, Volunteer and the Department cannot agree upon modifications to the final Remediation Work Plan. In such event, 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 its activities, if any, under the Remediation Work Plan do not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before any such activities were commenced; and

iii. the Department's right to enforce the obligations described in Subparagraphs I.A.3.i and I.A.3.ii of this Agreement under Paragraph IV of this Agreement,

this Agreement shall terminate effective the date of either party's written notification to the other that negotiations have failed to develop an acceptable modification to the final Remediation 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.

B. 1. In accordance with the schedule contained in Exhibit "B," as may be modified by agreement between the parties and which modifications shall appear in Exhibit "B-1" of this Agreement, 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 Remediation Work Plan, any Department-approved modification to the Remediation Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto, and this Agreement.

2. Respondent shall submit a detailed post-remedial operation, maintenance, and monitoring plan ("O&M Plan"), if needed, in accordance with the schedule contained in Exhibit "B," as may be modified by agreement between the parties and which modification shall appear in Exhibit "B-1" of this Agreement.

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

C. Should post-remedial operation and maintenance prove to be necessary to effectuate the goals of the Remediation Work Plan, 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.

D. 1. After receipt of the final engineering report, the Department shall notify Volunteer in writing whether the Department is satisfied that the Remediation Work Plan was satisfactorily implemented in compliance with Exhibit "B" (and, as appropriate "B-1") and the Department-approved design, which notification shall not be unreasonably withheld.

2. Upon demonstration that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Remediation Work Plan have been reached, the Department shall notify Volunteer in writing that such demonstration has been made and, except for the reservations identified below, effective as of the date of such notification, the Department releases, covenants not to sue, and shall forbear from asserting or bringing any claim, 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 are recorded in accordance with Paragraphs IX and X of this Agreement, and (c) Volunteer and/or Volunteer's 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 Remediation 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 Remediation Work Plan disclosed the existence or potential existence of such off-Site migration;

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

iii. due to reliable information received, in whole or in part, after the Department's approval of the final engineering report, which demonstrates that the activities carried out in accordance with the Remediation Work Plan are not sufficiently protective of human health and the environment for the Contemplated Use for the Site;

iv. due to Volunteer's failure to implement this Agreement to the Department's satisfaction provided, however, that any such reservation of rights by the Department

and any such determination by the Department not to extend the release, covenant not to sue, and forbearance, as set forth in this subparagraph, shall be upon notice to Volunteer and shall be conditioned upon the Department's granting to Volunteer 30 days to investigate and cure any failure to implement this Agreement that is alleged by the Department, but this notice and opportunity to cure shall not be available to the Volunteer in the event of fraud under the circumstances noted in Subparagraph I.D.2.v of this Agreement; or

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

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to Volunteer if 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 for the Site 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 sublessees, successors, or assigns who causes a, or suffers the, Release or threat of Release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination, after the effective date of this Agreement; who 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; 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.

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

F. 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.D or in a "no further action" letter issued under Subparagraph I.E 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.D of this Agreement and in the "no further action" letter issued under Subparagraph I.E 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.D and in the "no further action" letter issued under Subparagraph I.E 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.

G. During implementation of all activities conducted on the Site under the Remediation Work Plan, Volunteer shall

1. have on-site a representative during the construction and sampling activities required by the Remediation Work Plan who is qualified to supervise such activities; and

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

## II. Progress Reports

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

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

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

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

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

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

6. include any modifications to the Remediation Work Plan that Volunteer has proposed to the Department and any that the Department has approved.

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

C. Volunteer also shall allow the Department to attend, and shall provide the Department at least five days advance notice of, any of 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 generally accepted technical and scientific principles. The Department shall notify Volunteer in writing of its reasonable approval or reasonable disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. i. If the Department disapproves a submittal, it shall so notify Volunteer in writing and shall specify the reasons for its disapproval within 30 days (60 days, in the case of the final engineering report) 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 Remediation Work Plan. Within 30 days (60 days, in the case of the final engineering report) after receiving written notice that Volunteer's submittal has been disapproved, or such longer period that Volunteer requests from the Department, for which Department approval shall not be unreasonably withheld, 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. Subject to Paragraph XIII of this Agreement, if the Department disapproves the revised submittal, the Department and Volunteer may pursue whatever remedies at law or in equity (by declaratory relief) that may be available to them, without prejudice to either's

right to contest the same. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Agreement.

B. Within 60 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 ten 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 states that it 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 Remediation Work Plan for purposes of inspection, sampling, and testing and to ensure Volunteer's compliance with this Agreement, and Volunteer also states that Site Owner has informed it that Site Owner consents to the foregoing. 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, as long as Volunteer remains a Site tenant, 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. However, nothing in this Agreement shall afford the Department the right to attend or to have notice of any internal, informal, or strategy meetings, any meetings attended by legal counsel

or any meetings at which privileged mental impressions, conclusions, opinions, or legal theories are anticipated to be discussed, as provided for by applicable New York law or to review records which are privileged communications, attorney work product, mental impressions, conclusions, opinions, or legal theories, as provided for by applicable New York law.

VI. Payment of State Costs

A. Within thirty days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money which shall represent reimbursement for the 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 (1) the termination of this Agreement; or (2) the Department's notification identified in Subparagraph I.D.1 of this Agreement of its approval of the final engineering report pertaining to the implementation of the Work Plan or, completion of the implementation of the Department-approved O&M Plan, if any, whichever is later. 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. The total costs charged to Volunteer under this Paragraph VI shall not exceed \$52,125. The costs charged to Volunteer shall be for costs actually incurred, which may be less than \$52,125.

VII. Department Reservation of Rights

A. Except as provided in Subparagraph I.D.2 of this Agreement and in any "no further action" letter issued under 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 action or Remediation 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. Volunteer shall have the right to cure such failure consistent with Subparagraph I.D.2.iv.

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, except to the extent such claims, suits, actions, damages or costs arise out of or result from the gross negligence or willful misconduct of the Department, the State of New York or any of their respective representatives or employees.

#### IX. Notice of Sale or Conveyance

A. Within 45 days after the effective date of this Agreement, Volunteer shall use its best efforts to

1. file or have filed the Notice of Agreement, which is attached to this Agreement as Exhibit "D," with the Wyoming 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.D.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 Remediation Work Plan have been reached and that the O&M Plan has been successfully implemented.

3. For purposes of this Subparagraph IX. A, "best efforts" include the payment of reasonable sums of money in consideration. If the required Notice of Agreement is not filed despite best efforts within 45 days of the effective date of this Agreement, Volunteer shall promptly notify the Department, and shall include in that notification a summary of the steps Volunteer has taken in its attempt to have such Notice filed. The Department may, as it deems appropriate, assist Volunteer in obtaining such filing. Volunteer shall reimburse the Department, subject to the procedures and limits in Paragraph VI, for costs incurred by the Department in obtaining such filing, including, but not limited to, attorneys fees. If neither Volunteer nor the Department can, despite their best efforts, obtain such filing the time for obtaining same shall be extended.

B. If Volunteer's plant manager at the Site or Volunteer receives actual notice of a proposal to convey the whole or any part the Site, Volunteer shall, not fewer than 30 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. If such actual notice is received less than 30 days before the date of conveyance, Volunteer shall notify the Department of the proposed conveyance as soon as possible.

X. Deed Restriction

A. Within 45 days of Volunteer's receipt of the Department's notification pursuant to Subparagraph I.D.2 of this Agreement, Volunteer shall use its best efforts to record or have recorded an instrument with the Wyoming 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 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 Site Owner and Site Owner's successors and assigns to continue in full force and effect any institutional controls and allow Volunteer and its successors and assigns to perform operation and maintenance ; and

4. shall provide that Volunteer and Site Owner, on behalf of themselves and their successors and assigns, hereby consent 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 covenant not to contest such enforcement.

B. Within 45 days after Volunteer's receipt of the Department's notification pursuant to Subparagraph I.D.2 of this Agreement, Volunteer shall use its best efforts to provide the Department with a copy of such instrument, identified in Subparagraph X.A of this Agreement, certified by the Wyoming County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Wyoming County Clerk.

C. For purposes of this Subparagraph X, "best efforts" include the payment of reasonable sums of money in consideration. If the deed restrictions required by this Paragraph X are not filed and/or provided to the Department despite best efforts within the time period specified by this Paragraph X, Volunteer shall promptly notify the Department, and shall include in that notification a summary of the steps Volunteer has taken in its attempt to have such deed restrictions filed and/or provided to the Department. The Department may, as it deems appropriate, assist Volunteer in obtaining such filing and/or providing such deed restrictions. Volunteer shall reimburse the Department, subject to the procedures and limits in Paragraph VI, for costs incurred by the Department in obtaining such filing and/or providing such deed restrictions, including, but not limited to, attorneys fees. If neither Volunteer nor the Department can, despite their best efforts, obtain such filing and/or provide such deed restrictions the time for obtaining same shall be extended.

#### XI. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, hand delivered or by facsimile with confirmation by any of the preceding methods.

1. Communication from Volunteer shall be sent to:

Martin Doster, P.E.  
Division of Environmental Remediation  
New York State Department of Environmental  
Conservation  
270 Michigan Avenue  
Buffalo, New York 14203-2999

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

James D. Charles, Esq.  
New York State Department of Environmental

Conservation  
Division of Environmental Enforcement  
270 Michigan Avenue  
Buffalo, New York 14203-2999

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

- Four copies (one unbound) to Martin Doster, P.E.
- Two copies to Dr. Carlson

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

Maureen Crough, Esq.  
Sidley & Austin  
875 Third Avenue  
New York, New York 10022

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 to the best of its knowledge and belief that Volunteer has fully and accurately disclosed to the Department all material information known to Volunteer and all material 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.

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; provided, however, that such determination shall be upon notice to Volunteer and shall be conditioned upon the Department's granting to Volunteer 30 days to investigate and cure any failure to provide materially accurate and complete information that is alleged by the Department, but this notice and opportunity to cure shall not be available to the Volunteer in the event of fraud; or

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 use its 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 (collectively, "Permissions"). For purposes of this Subparagraph XII.E.2 of this Agreement, "best efforts" include the payment of reasonable sums of money in consideration. If any Permissions required to perform this Agreement are not obtained despite best efforts within 45 days of the effective date of this Agreement, or within 45 days of the date the Department notifies the Volunteer in writing that additional Permissions beyond those previously obtained are necessary, Volunteer shall promptly notify the Department, and shall include in that notification a summary of the steps Volunteer has taken in its attempt to obtain such Permissions. The Department may, as it deems appropriate, assist Volunteer in obtaining such Permissions. Volunteer shall reimburse the Department, subject to the procedures and limits in Paragraph VI, for costs incurred by the Department in obtaining such Permissions.

2. In carrying out the activities identified in the Remediation 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 sublessees, 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 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 Martin Doster, P.E. and James D. Charles, Esq.

J. This Agreement concerning the Site's Remediation constitutes an exercise of the Department's prosecutorial discretion and accordingly, is not subject to review under the State Environmental Quality Review Act and its implementing regulations. ECL 8-0105.5(i), 6 NYCRR 617.5(c)(29).

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, or to pursue any other rights against, other potentially responsible parties or their insurers, or Volunteer's insurers, for payments made previously or in the future for response or any other costs.

L. Volunteer and Volunteer's employees, servants, agents, sublessees, 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.

### XIII. Dispute Resolution

A. The Department and Volunteer shall attempt to resolve expeditiously and informally any disagreements concerning submittals made pursuant to Paragraph III of this Agreement or the

amounts payable to the Department as a reimbursement for the State's expenses pursuant to Paragraph VI of this Agreement in the event such amounts are erroneously calculated or are unrelated to the Site.

B. 1. Without in any way affecting the ability of either party to this Agreement to terminate it pursuant to Paragraph I.A, if (a) the Department disapproves a revised submittal and no further revised submittal is made, (b) the Department disapproves the further revised submittal if made, or (c) Volunteer asserts that the Department's calculations of the amounts payable to the Department as a reimbursement for the State's expenses are erroneous or that the expenses are unrelated to the site, Volunteer may serve on the Department within 20 business days of receipt of the Department's notice of disapproval or itemized invoice a request for an appointment of an Administrative Law Judge ("ALJ"), and a written statement of the issues in dispute with copies to the parties indicated in subparagraph XI.A.1, containing the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting Volunteer's position, and all supporting documentation on which Volunteer relies (hereinafter called "Volunteer's Statement of Position"). The Department may send a similar statement of position to Volunteer within ten business days of receipt of Volunteer's Statement of Position ("Department's Statement of Position"). Volunteer shall be given an opportunity to meet with the appointed ALJ and the Department and to present its responses to the Department's objections or calculation of the amounts payable.

2. The Department shall maintain an administrative record of any dispute under the preceding subparagraph. The record shall include the Statement of Position of each party served pursuant to the preceding Subparagraph, and any relevant information. The record shall be available for review of all parties and the public.

3. Upon review of the administrative record as developed pursuant to this Paragraph, the ALJ shall issue a final written decision and order resolving the dispute, which decision shall identify the reasons for the ALJ's determination. Volunteer shall revise the submittal in accordance with the Department's specific comments, as may be modified by the ALJ and except for those which have been withdrawn by the ALJ, and shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department shall control unless the ALJ revises the time frame in the ALJ's final decision and order. After receipt of the conformed revised submittal, the Department shall notify Volunteer in writing of its approval or disapproval of the conformed revised submittal. The Department shall make a reasonable effort to provide the written notification to Volunteer within 45 days of submittal to the Department. If the Department disapproves of the conformed revised submittal, the Department's notice shall state the reasons for the Department's disapproval. The Department's disapproval of the conformed revised submittal shall be a final agency action subject to judicial review under Article 78 of the Civil Practice Law and Rules of the State of New York ("Article 78"). Volunteer may exercise its rights under Article 78 to appeal the disapproval of the conformed revised submittal provided that such Article 78 petition is filed within thirty (30) days of Volunteer's receipt of the conformed revised submittal.

4. In the event that Volunteer does not invoke the procedures set forth in Subparagraph XIII.B, the Department and Volunteer remain free to pursue whatever remedies at law

or in equity (by declaratory relief) that may be available to them, without prejudice to any party's right to contest the same.

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

6. The ALJ's decision and order is a final agency action subject to judicial review under Article 78. Volunteer may exercise its rights to appeal the final decision and order provided that such Article 78 petition is filed within thirty (30) days of Volunteer's receipt of the ALJ's decision.

DATED: *March 9, 2000* JOHN P. CAHILL, COMMISSIONER  
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION

A handwritten signature in cursive script, appearing to read "John P. Cahill", 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.

Champion Products, Inc.

By:

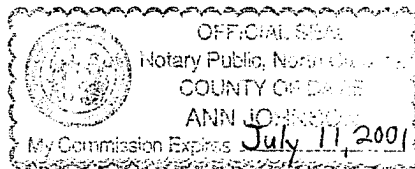
[Signature]  
[name and title of the signatory]  
VICE PRESIDENT

Date:

2/7/2000

NORTH CAROLINA  
STATE OF ~~NEW YORK~~ )  
 ) s.s.:  
COUNTY OF FORSYTH )

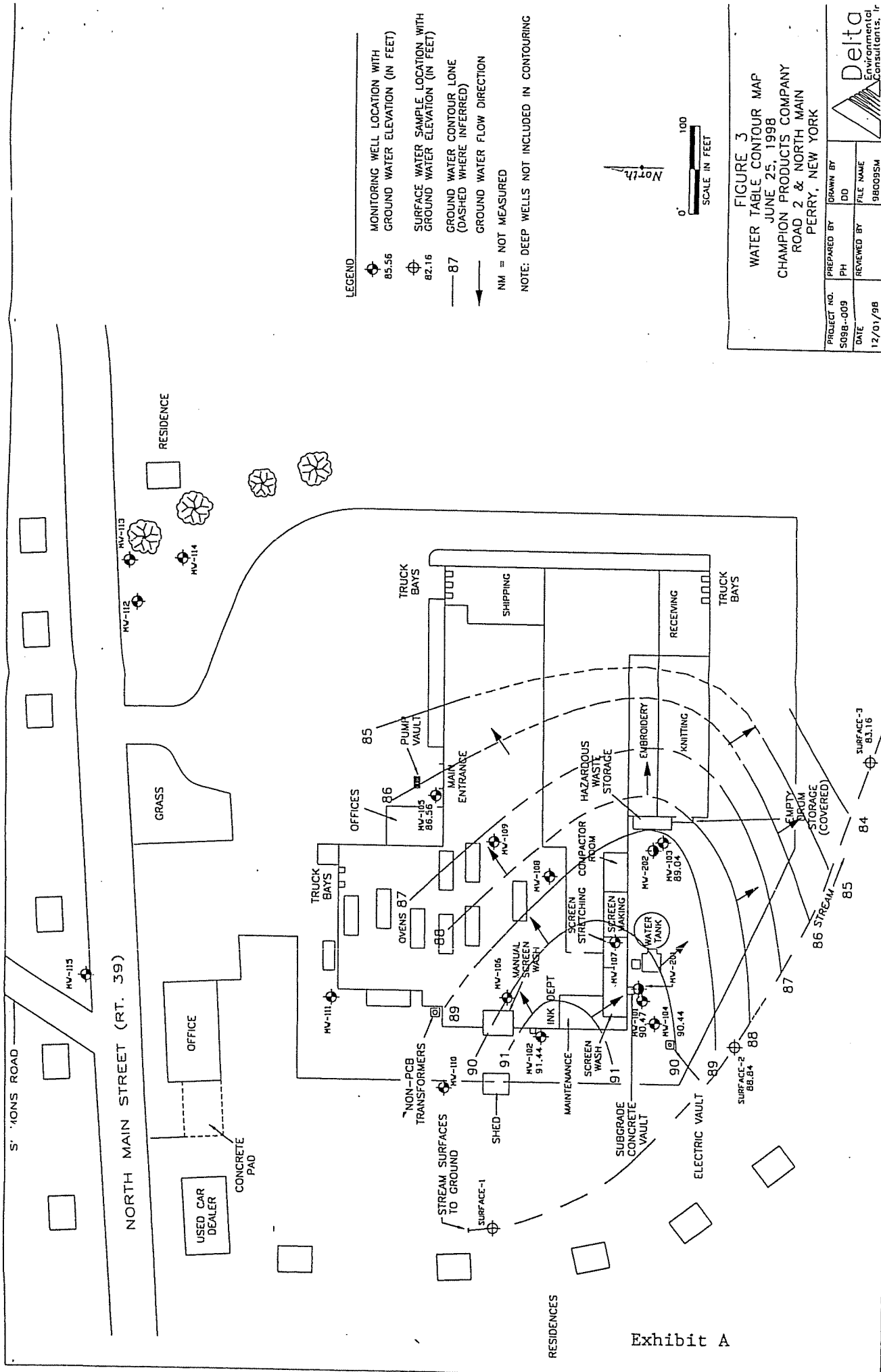
On this 4th day of February, 192000, before me personally came GARY PILLNICK, to me known, who being duly sworn, did depose and say that resides in NC that HE is VICE PRESIDENT, the corporation described in and which executed the foregoing instrument; and that HE signed HIS name on behalf of Champion Products, Inc. and was authorized to do so.



[Signature]  
Notary Public

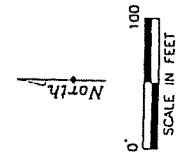
**EXHIBIT "A"**

**Map of Site**



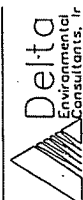
- LEGEND**
- Monitoring Well Location with Ground Water Elevation (in Feet)
  - Surface Water Sample Location with Ground Water Elevation (in Feet)
  - Ground Water Contour Line (Dashed Where Inferred)
  - Ground Water Flow Direction
  - NM = NOT MEASURED

NOTE: DEEP WELLS NOT INCLUDED IN CONTOURING



**FIGURE 3**  
**WATER TABLE CONTOUR MAP**  
 JUNE 25, 1998  
 CHAMPION PRODUCTS COMPANY  
 ROAD 2 & NORTH MAIN  
 PERRY, NEW YORK

PROJECT NO.	5098-009	DATE	12/01/98	PREPARED BY	PH	REVIEWED BY	DD	FILE NAME	98009SM
				DRAWN BY	DD				



**EXHIBIT "B"**

**Remediation Work Plan**



**EXHIBIT "B-1"**  
**Final Remediation Work Plan Revision**

## EXHIBIT "C"

### Assignable Release and Covenant Not To Sue

[On Department Letterhead]

[Insert Date]

Champion Products, Inc.  
c/o Gary Pilnick  
470 West Hanes Mill Road  
Winston-Salem, North Carolina 27105

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 Champion Products, Inc. ("Volunteer"), Index No.B9-0539-98-09 (the "Agreement").

The Department is pleased to report that the Department is satisfied that the Agreement's Remediation Work Plan, covering the Remediation of the Site, located at 200 North Main Street in Perry, New York 14530 in the County of Wyoming, having the Wyoming County Tax Map Identifier number 88.20-3-15, (as more particularly described on Appendix "A" attached hereto (the "Property")), has been successfully implemented.

The Department, therefore, effective the date of this notification hereby releases, covenants not to sue, and shall forbear from asserting or bringing any claim, action, proceeding, or suit against Volunteer and Volunteer's 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 any 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 are recorded in accordance with Paragraphs IX and X of the Agreement, and (c) Volunteer and/or Volunteer's 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 Remediation the Department deems necessary:

- 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 Remediation 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 Remediation Work Plan which demonstrate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Use for the Site;
- due to reliable information received, in whole or in part, after the Department's approval of the final engineering report, which demonstrates that the activities carried out in accordance with the Remediation Work Plan are not sufficiently protective of human health and the environment for the Contemplated Use of the Site;
- due to Volunteer's failure to implement the Agreement to the Department's satisfaction; provided, however, that any such reservation of rights by the Department and any such determination by the Department not to extend the release, covenant not to sue, and forbearance, as set forth in Subparagraph I.D.2.iv of this Agreement, shall be upon notice to Volunteer and shall be conditioned upon the Department's granting to Volunteer 30 days to investigate and cure any failure to implement this Agreement that is alleged by the Department, but this notice and opportunity to cure shall not be available to the Volunteer in the event of fraud under the circumstances noted in Subparagraph I.D.2.v of this Agreement; 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 Remediation Work Plan were reached.

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

- Volunteer if 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 sublessees, successors, or assigns who causes a, or suffers the, Release or threat of Release at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination, after the effective date of the Agreement; who 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; 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.D 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 action or Remediation 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: \_\_\_\_\_

cc: Maureen Crough, Esq.

**Appendix "A"**

**(to Exhibit "C")**

**Map of the Site**

## Exhibit "D"

### NOTICE OF AGREEMENT

**This Notice** is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 19-- by, Champion Products, Inc., the tenant of a parcel of real property located at 200 North Main Street in Perry, New York 14530 in the County of Wyoming, having the Wyoming County Tax Map Identifier number 88.20-3-15, as more particularly described on Appendix "A" attached hereto (the "Property"); and

**WHEREAS**, Champion Products, Inc. ("Volunteer"), by authorized signature, entered into an agreement with the Department, Index # B9-0539-98-09 ( the "Agreement"), concerning the Remediation (as defined in Definition I of the Agreement) of contamination present on the Property, which Agreement was signed by the Commissioner of the Department 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 Champion Products, Inc. and Volunteer's sublessees and Volunteer's successors and assigns, including their respective secured creditors, with a release, covenant not to sue, and forbearance from bringing any claim, 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, Champion Products, Inc. agreed that it would give notice of the Agreement to all parties who may acquire any interest in the Property by filing or having filed this Notice with the Wyoming County Clerk,

**NOW, THEREFORE**, Champion Products, 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 Champion Products, Inc., or its successors and assigns or the owner of the Property acting at Champion Products, Inc.'s instruction , filing or having filed 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**, Champion Products, Inc. has executed this Notice of Agreement by its duly authorized representative.

**Champion Products, Inc.**

Dated:

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

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

[acknowledgment]

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