

DECLARATION of COVENANTS and RESTRICTIONS

THIS COVENANT, made the 27 day of JUNE 2014, by The City of Buffalo, a municipal corporation of the State of New York with its principal office at 920 City Hall, Buffalo, New York 14202 ("City").

WHEREAS, the City is the reputed owner of a portion of certain real property which was the subject of an Order on Consent Index Number B9-0577-00-05(A), dated January 27, 2005, and an Order on Consent Modification ("Modification"), dated August 31, 2005 (copies of both of which are attached hereto for reference as Exhibit "A" and referred to herein as the "Order"), with the New York State Department of Environmental Conservation ("NYSDEC"), which said portion of City-owned real property subject to the Order is a portion of land that was conveyed to the City by a deed dated January 23, 1995, and recorded in the Erie County Clerk's Office on March 7, 1995 in Book 10883 of Deeds at Page 7297, and shown on tax map in Exhibit "B" attached to this Declaration for reference; and,

WHEREAS, for the portion of the City-owned property which constitutes all or any portion(s) of areas described as Operable Unit 2B (OU-2B) and Operable Unit 2C (OU-2C), hereinafter referred to as the "Property" and being more particularly shown on the map in Exhibit "C", attached hereto and made a part hereof; the NYSDEC set forth a remedy to eliminate or mitigate all significant threats to human health and the environment presented by hazardous waste disposal at the Property and such remedy requires that the Property be subject to restrictive covenants;

NOW, THEREFORE, the City, for itself and its successors and/or assigns, covenants for the limited purpose of subjecting the City's ownership interest in the Property to the following restrictions that:

First, the Property subject to this Declaration of Covenants and Restrictions ("Declaration") is shown on the site survey in Exhibit "D" and identified as "LOCATION OF NEW CONCRETE PAD". By way of further specific description, the LOCATION OF NEW CONCRETE PAD is as follows:

The property being described herein is Part of Inner Lot No. 155 in the City of Buffalo, County of Erie, State of New York. It is a 20' by 20' square of land located wholly within the bounds of the Waterfront Elementary School (No. 95) situate at 95 Fourth Street in the City of Buffalo, the southeast and southwest lines of which are along the inner faces of the walls of the School, as hereinafter described. The southerly corner of the parcel being described herein, herein called the "South Point of Parcel," is located as follows:

BEGINNING at the inner face of the most easterly corner of the Waterfront Elementary School as currently erected and along the

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ERIE COUNTY
CLERK'S OFFICE

inner faces of the walls of the School building, as currently erected, the following distances and directions:

- 1) Thence, 72.03' southwesterly to an angle point in the wall;
- 2) Thence, 24.02' southeasterly to an angle point in the wall;
- 3) Thence, 37.85' southwesterly to an angle point in the wall;
- 4) Thence, 12.03' northwesterly to an angle point in the wall;
- 5) Thence, 35.77' southwesterly to an angle point in the wall, being the South Point of Parcel.

The southeasterly line of the parcel being described is the southwesterly 20' of the last mentioned 35.77' course, and the southwesterly line of the parcel being described is the southeasterly 20' of the inner face of the wall of the School building going in a northwesterly direction from the South Point of Parcel.

The South Point of Parcel is also 4.93' southeasterly of the 15th course (370.0' in length) in the Deed recorded in Liber 10883 of Deeds at page 7297 as measured along the last mentioned wall of the School building.

Second, unless prior written approval by the NYSDEC or, if the NYSDEC shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State and the health of the State's citizens, hereinafter referred to as "the Relevant Agency," is first obtained, no person shall be permitted to engage in any activity that will, or that reasonably is anticipated to, prevent or interfere significantly with any proposed, ongoing or completed program at the Property, or that will, or is reasonably foreseeable to, expose the public health or the environment to a significantly increased threat of harm or damage.

Third, the owner of the Property shall prohibit the use of the groundwater underlying the Property for potable and non-potable purposes unless the user of the Property first obtains written approval from the Relevant Agency to use the groundwater for potable or non-potable purposes.

Fourth, in order to facilitate compliance with the requirements of the Order and the Operation, Maintenance and Monitoring Plan in Section 6 of the NYSDEC-approved Final Engineering Report, the owner of the Property shall, upon receipt and update of standard written indemnification and evidence of standard insurance coverage naming the City of Buffalo and the City School District of the City of Buffalo and the Board of Education thereof all as additional insureds for general liability in at least the amount of \$1,000,000 per occurrence, permit WSP Engineering of New York, P.C. ("WSP"), as a contractor to QLT Buffalo LLC on behalf of the Respondent, National Fuel Gas Distribution Corp., under the Order, such access to the Property as shall be required for such purpose. A copy of the pertinent section of the OM&M is attached hereto and made a part hereof as Exhibit "E" for clarity as to the direct obligations thereunder

being undertaken by parties other than the City and other than the City School District of the City of Buffalo.

Fifth, in accordance with the Operation, Maintenance and Monitoring Plan the owner of the Property shall prohibit the intentional destruction of the crawl space floor, including the epoxy coating and seal.

Sixth, the owner of the Property shall continue in full force and effect the institutional controls described herein and will allow WSP as a contractor to QLT Buffalo LLC on behalf of Respondent National Fuel Gas Distribution Corp. to and maintain said controls unless the owner first obtains permission to discontinue such controls from the Relevant Agency. The owner acknowledges that future activities at the Property require periodic visits to the Property by WSP or the Relevant Agency to confirm that the remedy and required restrictions remain in place. The owner of the Property shall permit the access necessary to carry out the periodic visits.

Seventh, this Declaration is and shall be deemed a covenant that shall run with the land and shall be binding upon all future owners of the Property and shall provide that the owner, and its successors and assigns, consents to the enforcement by the Relevant Agency of the prohibitions and restrictions that are required to be recorded, and hereby covenants not to contest the authority of the Relevant Agency to seek enforcement.

Eighth, any deed of conveyance of the Property, or any portion thereof, shall recite, unless the Relevant Agency has consented to the termination of such covenants and restrictions, that said conveyance is subject to this Declaration.

Ninth, notwithstanding **anything** contained in this Declaration which could be construed to the contrary, the City is entering into this Declaration for the sole and limited purpose of subjecting the title to the Property to the restrictions and covenants contained herein. To the extent that any portion of the remediation activities undertaken pursuant to the Order occurred on property not owned by the City, the City is not purporting to subject such property to this Declaration.

Tenth, further, notwithstanding anything contained in this Declaration which could be construed to the contrary, the City is entering into this Declaration based upon the premise that National Fuel Gas Distribution Corp. as Respondent under the Order will remain obligated thereunder to perform or contract to perform the Operation, Maintenance and Monitoring ("OM&M") in Section 6 of the NYSDEC-approved final Engineering Report and that the Order will remain in effect in accordance with its terms. Further, in the event that WSP and or QLT Buffalo LLC are no longer functionally responsive under the OM&M obligations for whatever reason, the City agrees to allow another responsible party to access the Property (under similar indemnity/ insurance provisions as set forth in section Fourth above) on behalf of the Respondent National Fuel Gas Distribution Corp. for OM&M purposes.

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

APPROVED
AS TO FORM ONLY

Corp
Corporation Counsel
By John Heffron

CITY OF BUFFALO

By: Byron W Brown

Title: MAYOR

Date: JUNE 27, 2014

STATE OF NEW YORK

COUNTY OF Erie

)
) ss:
)

On the 27 day of JUNE, in the year 2014, before me, the undersigned, personally appeared BYRON W. BROWN personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

John Vincent Heffron
Notary Public

JOHN VINCENT HEFFRON
Notary Public, State of New York
No. 02HE4860576
Qualified in Erie County 2013/11
My Commission Expires May 5, 2016

Doc #1838362.1

Authorization: Item 1233 of
Common Council Proceedings held
on June 10, 2014.

EXHIBIT

A

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Modification to a Consent Order for
Development and Implementation
of a Remedial Program for an
Inactive Hazardous Waste Disposal
Site under Article 27, Title 13
of the Environmental Conservation Law
by

National Fuel Gas Distribution Corp.

Respondent.

**ORDER ON CONSENT
MODIFICATION**

Index #B9-0577-00-05(A)

WHEREAS, the New York State Department of Environmental Conservation ("Department") is responsible for enforcement of the Environmental Conservation Law and such law provides the Department authority to enter into this Modification to an Order on Consent ("Modification");

WHEREAS, the Department and National Fuel Gas Distribution Corp. ("Respondent") entered into an Order on Consent ("Order"), dated January 27, 2005, for performance of a remedial program at property described as Operable Unit-2B ("OU-2B") and Operable Unit-2C ("OU-2C") of the National Fuel Gas Buffalo Service Center Site. A copy of the Order is attached to this Modification as Exhibit "A" and is incorporated into this Modification;

WHEREAS, Paragraph 2 of the Order describes the "Site" as follows:

The Site is described as Operable Unit-2B ("OU-2B") and Operable Unit-2C ("OU-2C") of the National Fuel Gas Buffalo Service Center Site which is the subject of Voluntary Cleanup Program Agreement ("Voluntary Agreement") Index Number B9-0577-00-05, December 11, 2000 ("Site"). The Site is more particularly described in Exhibit "A" which is a map of the Site.

WHEREAS, Respondent has requested pursuant to Paragraph XII.G.2.i of the Order to redefine the Site thereunder by expanding the Site to include a portion of Operable Unit-2A ("OU-2A") of the Voluntary Agreement.

WHEREAS, Respondent agrees to be bound by the terms of this Modification and consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Modification and agrees not to contest the validity of this Modification.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT THE ORDER WILL BE MODIFIED AS FOLLOWS:**

I. Paragraph 2 of the Order is hereby modified to read as follows:

National Fuel Gas Distribution Corp. is a public utility corporation with its principal offices at 6363 Main Street, Williamsville, New York ("Respondent"). Respondent is the successor to the former operator responsible for the manufactured gas operations which were conducted adjacent to the Site. The Site is described as Operable Unit -2B ("OU-2B"), Operable Unit-2C ("OU-2C") and the northern-most section of the Operable Unit-2A ("OU-2A") area that is in approximate alignment with the Wilkeson slip, of the National Fuel Gas Buffalo Service Center Site which is the subject of Voluntary Cleanup Program Agreement Index Number B9-0577-00-05, December 11, 2000 ("Site"). The Site is more particularly described in Exhibit "B" which is a map of the Site.

II. Exhibit "B" of this Modification includes a map of the redefined Site which shall replace the map in Exhibit "A" to the Order.

III. This Modification shall control to the extent of a conflict between the provisions hereof and those of the Order. Except as provided in this Modification, the Order and the documents related thereto, shall continue in full force and effect.

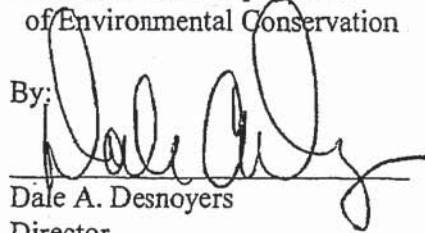
IV. No term, condition, understanding or agreement purporting to modify this Modification shall be binding unless subscribed to by both parties in accordance with the term of the Order.

V. The effective date of this Modification shall be the date on which it is signed by the Commissioner or the Commissioner's designee.

DATED: **AUG 31 2005**

Denise M. Sheehan
Acting Commissioner
New York State Department
of Environmental Conservation

By:


Dale A. Desnoyers
Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

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

By: P. M. Ciprich
National Fuel Gas Distribution Corp. *7th*
P. M. Ciprich

Title: Assistant Secretary & General Counsel

Date: August 17, 2005

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

On the 17th day of August, in the year 2005, before me, the undersigned, personally appeared P. M. Ciprich, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

P. M. Ciprich
Signature and Office of individual
taking acknowledgment

Notary Public
My Commission Expires 7.18.06

EXHIBIT "A"

**Order on Consent
January 27, 2005**

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program for an
Inactive Hazardous Waste Disposal
Site under Article 27, Title 13
of the Environmental Conservation Law
by

ORDER ON CONSENT

Index #B9-0577-00-05(A)

National Fuel Gas Distribution Corp.

Respondent.

WHEREAS,

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. - - This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL 3-0301.

2. National Fuel Gas Distribution Corp. is a public utility corporation with its principal offices at 6363 Main Street, Williamsville, New York ("Respondent"). Respondent is the successor to the former operator responsible for the manufactured gas operations which were conducted adjacent to the Site. The Site is described as Operable Unit -2B ("OU-2B") and Operable Unit-2C ("OU-2C") of the National Fuel Gas Buffalo Service Center Site which is the subject of Voluntary Cleanup Program Agreement Index Number B9-0577-00-05, December 11, 2000 (the "Site"). The Site is more particularly described in Exhibit "A" which is a map of the Site.

3. The Site is not currently listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State*.

4. Respondent consents to the issuance of this Order without (I) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

5. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Initial Submittal

Within thirty (30) Days after the effective date of this Order, Respondent shall submit to the Department a Records Search Report in accordance with the requirements of Exhibit "F" attached hereto. The Records Search Report can be limited if the Department notifies Respondent that prior submissions satisfy specific items required for the Records Search Report. Such Records Search Report shall be submitted in a format acceptable to the Department.

II. Development, Performance, and Reporting of Work Plans

A. Work Plans

All activities at the Site that comprise any element of an Inactive Hazardous Waste Disposal Site Remedial Program shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") and this Order. The Work Plan(s) under this Order shall address Site conditions and shall be developed and implemented in accordance with 6 NYCRR Part 375, "DER-10, Technical Guidance for Site Investigation and Remediation," and/or Exhibits G, H, I, J, and K. All Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order and shall be attached as Exhibit "B." Upon approval of a Work Plan by the Department, Respondent shall implement such Work Plan in accordance with the schedule contained in such Work Plan. Nothing in this Subparagraph shall mandate that any particular Work Plan be submitted.

Each Work Plan submitted shall use one of the following captions on the cover page:

1. "Site Characterization Work Plan" ("SC Work Plan"): a Work Plan whose objective is to identify the presence of any hazardous waste disposed of at the Site. Such Work Plan shall be developed in accordance with Exhibit "G";

2. "Remedial Investigation/Feasibility Study Work Plan" ("RI/FS Work Plan"): a Work Plan whose objective is to perform a Remedial Investigation and a Feasibility Study. Such Work Plan shall be developed and implemented in accordance with Exhibit "H";

3. "IRM Work Plan": a Work Plan whose objective is to provide for an Interim Remedial Measure. Such Work Plan shall be developed in accordance with Exhibit "I". A Department-approved IRM Scope of Work for OU-2B and OU-2C ("IRM Scope of Work") is attached to this Order in Exhibit "B";

4. "Remedial Design/Remedial Action Work Plan" ("RD/RA Work Plan"); a Work Plan whose objective is to provide for the development and implementation of final plans and specifications for implementing the remedial alternative set forth in the ROD. Such Work Plan shall be developed in accordance with Exhibit "J"; or

5. "OM&M Work Plan": a Work Plan whose objective is to provide for all activities required to maintain and monitor the effectiveness of the Remedial Action or an IRM. Such Work Plan shall be developed in accordance with Exhibit "K."

B. Submission/Implementation of Work Plans

1. (a) The IRM Work Plan developed in accordance with the IRM Scope of Work, shall be submitted to the Department in accordance with the schedule in the IRM Scope of Work

(b) The Department may request that Respondent submit additional or supplemental Work Plans for the Site. Within thirty (30) Days after the Department's written request, Respondent shall advise the Department in writing whether it will submit and implement the requested additional or supplemental Work Plan. Any such additional or supplemental Work Plan shall be submitted within sixty (60) Days after such election

©) Respondent may, at Respondent's option, propose one or more additional or supplemental Work Plans (including one or more IRM Work Plans) at any time, which the Department shall review for appropriateness and technical sufficiency.

2. A Professional Engineer must stamp and sign all Work Plans other than a Work Plan for an RI/FS or an SC.

3. During all field activities, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Respondent to perform such supervision.

C. Modifications to Work Plans

The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph II.A or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent may submit a Work Plan for such requested work to the Department within sixty (60) Days after the date of the Department's written notice pursuant to this Subparagraph.

D. Submission of Final Reports and Annual Reports

1. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report that includes the caption of that Work Plan on the cover page and a certification that all requirements of the Work Plan have been complied with and all activities have been performed in full accordance with such Work Plan. Such certification shall be by the person with primary responsibility for the day to day performance of the activities under this Order and, except for RI and SC final reports, shall be by a Professional Engineer.

2. Any final report that includes construction activities shall include "as built" drawings showing any changes made to the remedial design or the IRM.

3. In the event that any ROD or Work Plan for the Site requires operation, maintenance, and monitoring (OM&M), including reliance upon institutional or engineering controls, Respondent shall submit an annual report by the 1st Day of the month following the anniversary of the start of the OM&M. Such annual report shall be signed by a Professional Engineer or by such other expert as the Department may find acceptable and shall contain a certification under penalty of perjury that any institutional and/or engineering controls required by this Order are unchanged from the previous certification and that nothing has occurred that would impair the effectiveness of such control or constitute a violation of or failure to comply with the approved OM&M Plan. Respondent may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

E. Review of Submittals other than Progress Reports and Health and Safety Plans

1. The Department shall make a good faith effort to review and respond in writing to each submittal Respondent makes pursuant to this Order within sixty (60) Days. The Department's response shall include an approval or disapproval of the submittal, in whole or in part. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within sixty (60) days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall modify the submittal to address the Department's comments. In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order.

3. Within thirty (30) Days after the Department's approval of a final report, Respondent shall submit such final report, as well as all data gathered and drawings and submittals made pursuant to such Work Plan, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

F. Department's Issuance of a ROD

Respondent shall cooperate with the Department and provide reasonable assistance, consistent with the Citizen Participation Plan, in soliciting public comment on the proposed remedial action plan ("PRAP"), if any. After the close of the public comment period, the Department shall select a final remedial alternative for the Site in a ROD. Nothing in this Order shall be construed to abridge the rights of Respondent, as provided by law, to judicially challenge the Department's ROD.

III. Progress Reports

Respondent shall submit written progress reports to the parties identified in Subparagraph X.A.1 by the 10th Day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions taken pursuant to this Order during the reporting period and those anticipated for the upcoming reporting period; all approved modifications to work plans and/or schedules; all results of sampling and tests and all other data received or generated by or on behalf of Respondent in connection with the Site, during the reporting period, including quality assurance/quality control information; and information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, efforts made to mitigate such delays, and information regarding activities undertaken in support of the Citizen Participation Plan during the reporting period and those anticipated for the upcoming reporting period.

IV. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR Part 375. Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order.

2. Payment of any penalties shall not in any way alter Respondent's obligations under this Order.

B. 1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any event arising from causes beyond the reasonable control of Respondent, of any entity controlled by Respondent, and of Respondent's contractors, that delays or prevents the performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation ("Force Majeure Event"). The requirement that Respondent exercise best efforts to fulfill the obligation includes using best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Respondent shall notify the Department in writing within seven (7) Days after it obtains knowledge of any Force Majeure Event. Respondent shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such seven (7) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

~~3. Respondent shall have the burden of proving by a preponderance of the~~
evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Subparagraph IV.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for such time as is reasonably necessary to complete those obligations.

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraph IV.B, Respondent shall be in violation of this Order and Respondent shall have all rights and defenses available to it under applicable law.

V. Entry upon Site

A. Respondent hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site (or areas in the vicinity of the Site which may be under the control of Respondent) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities necessary to ensure Respondent's compliance with this Order. Upon request, Respondent shall (i) provide the Department with suitable office space at the Site, including access to a telephone, to the extent available, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Respondent is unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such sampling and scientific measurements available to Respondent.

VI. Payment of State Costs

A. Within sixty (60) Days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs, for work performed at or in connection with the Site pursuant to this Order incurred on or after the effective date of this Order through and including the Termination Date.

B. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. 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 Department shall not be required to provide any other

documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Such invoice shall be sent to Respondent at the following address:

Tanya Alexander, CHMM, REM
Manager, Environmental Services
National Fuel Gas Distribution Corp.
6363 Main Street
Williamsville, New York 14221

D. Each such payment shall be made 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
625 Broadway
Albany, New York 12233-7010.

E. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

F. Respondent may contest, in writing, invoiced costs under Subparagraph VI.B if it believes that (i) the cost documentation contains clerical, mathematical, or accounting errors; (ii) the costs are not related to the State's activities with respect to the Remedial Program for the Site; or (iii) the Department is not otherwise legally entitled to such costs. If Respondent objects to an invoiced cost, Respondent shall pay all costs not objected to within the time frame set forth in Subparagraph VI.B and shall, within thirty (30) Days after its receipt of an invoice, identify, in writing, all costs objected to and the basis of the objection. This objection shall be filed with the BPM Director. ~~The BPM Director or the BPM Director's designee shall have the authority to~~ relieve Respondent of the obligation to pay invalid costs. Within forty-five (45) Days after the date of the Department's determination of the objection, Respondent shall either pay to the Department the amount which the BPM Director or the BPM Director's designee determines Respondent is obligated to pay or commence an action or proceeding seeking appropriate judicial relief.

G. If any negotiable instrument submitted to the Department pursuant to this Order is not honored when presented for payment, Respondent shall be in violation of this Order, provided that (i) the Department gives Respondent written notice of same, and (ii) the Department does not receive a certified check or bank check in the amount of the uncollected funds within fourteen (14) Days after the date of the Department's written notification.

VII. Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law.

VIII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all third-party claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns except for liability arising from (i) vehicular accidents occurring during travel to or from the Site; or (ii) willful, wanton, or malicious acts or omissions, and acts or omissions constituting gross negligence or criminal behavior by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Order. The Department shall provide Respondent with written notice no less than thirty (30) Days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Public Notice

A. Within thirty (30) Days after the effective date of this Order, Respondent shall cause to be filed a Department-approved Notice of Order, which Notice shall be substantially similar to the Notice of Order attached to this Order as Exhibit "D," with the recording officer of the county wherein the Site is to give all parties who may acquire any interest in the Site notice of this Order. Within sixty (60) Days of such filing, Respondent shall also provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, or becomes aware of such conveyance, Respondent shall, not

fewer than forty-five (45) Days before the date of conveyance, or within forty-five (45) Days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with Respondent to secure the repayment of money or the performance of a duty or obligation.

X. Communications

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

1. Communication from Respondent shall be sent to:

Martin Doster
Regional Hazardous Waste Remediation Engineer
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203

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

with copies to:

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

Maura C. Desmond, Esq.
New York State Department of Environmental Conservation
Division of Environmental Enforcement
270 Michigan Avenue
Buffalo, New York 14203

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

Tanya Alexander, CHMM, REM
Manager, Environmental Services
National Fuel Gas Distribution Corp.
6363 Main Street
Williamsville, New York 14221

with a copy to:

David P. Flynn, Esq.
Phillips, Lytle, Hitchcock, Blaine & Huber
3400 Marine Midland Center
Buffalo, New York 14203

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

C. Each party shall notify the other within ninety (90) Days after any change in the addresses in this Paragraph X or in Paragraph VI.

XI. Termination of Order

A. This Order will terminate upon the Department's written determination that Respondent has completed all phases of the IRM as required by the Department-approved IRM Work Plan (including OM&M, if any), in which event the termination shall be effective on the 5th Day after the date of the Department's approval of the final report relating to the final phase of the IRM.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VI and VIII shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, the ECL, and 6 NYCRR Part 375, subjecting Respondent to penalties as provided under Paragraph IV so long as such obligations accrued on or prior to the Termination Date.

XII. Miscellaneous

A. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators ("Respondent's Contractors") acceptable to the Department to perform its obligations under this Order. If the Department has not previously approved Respondent's Contractors for the work required by this Order, Respondent shall submit the Contractors' qualifications to the Department a minimum of thirty (30) Days before the start of any activities for which each such Contractor will be responsible. The Department's approval of each such Contractor shall be obtained prior to the start of work by that Contractor. The responsibility for the performance of all Contractors retained by Respondent shall rest solely with Respondent. Subject to the requirements of this Subparagraph, Respondent retains the right to select or change firms or individuals in its sole discretion.

B. Respondent shall allow the Department to attend and shall notify the Department at least seven (7) Days in advance of any field activities as well as any pre-bid meetings, job progress meetings, the substantial completion meeting and inspection, and the final inspection and meeting; nothing in this Order shall be construed to require Respondent to allow the Department to attend portions of meetings where privileged matters are discussed.

C. Respondent shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Respondent's obligations under this Order.

1. The Department may exempt Respondent from the requirement to obtain any state or local permit or other authorization for any activity on the Site needed to implement this Order that the Department determines is conducted in a manner which satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

2. If, despite Respondent's best efforts, any necessary Site access, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Order are not obtained within forty-five (45) Days after the effective date of this Order, or within forty-five (45) Days after the date the Department notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining access. If any interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Work Plan pursuant to Subparagraph II.C of this Order to reflect changes necessitated by the lack of access and/or approvals.

D. Respondent and Respondent's successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent shall in no way alter Respondent's responsibilities under this Order.

E. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and shall condition all contracts entered into pursuant to this Order upon performance in conformity with the terms of this Order. Respondent or its contractor(s) shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

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

G. 1. The terms of this Order constitute the entire agreement between the Department and Respondent concerning implementation of the activities required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order 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 shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and any Work

Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s) attached as Exhibit "B."

2. I. Except as set forth herein, if Respondent desires that any provision of this Order be changed, other than a provision of a Work Plan or a time frame, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph X.A.1. The Commissioner or the Commissioner's designee shall timely respond.

ii. Changes to a Work Plan shall be accomplished as set forth in Subparagraph II.C of this Order.

iii. Changes to a time frame set forth in this Order shall be sought by a written request to the Department's project attorney and project manager, which request shall be timely responded to in writing.

H. 1. Additional Respondents may, at Respondent's request, be added to this Order. If multiple parties sign this Order, the term "Respondent" shall be read in the plural where required to give meaning to this Order. Further, the obligations of such Respondents under this Order are joint and several and the insolvency of or failure by any Respondent to implement any obligations under this Order shall not affect the obligations of the remaining Respondent(s).

2. If Respondent is a partnership, the obligations of all general partners, including limited partners who act as general partners, to finance and perform obligations under this Order and to pay amounts owed to the Department under this Order are joint and several. In the event of the insolvency of or the failure of any of the general partners to implement the requirements of this Order, the remaining general partners shall implement all such requirements.

3. Notwithstanding the foregoing Subparagraphs XII.H. 1 and 2, if multiple parties sign this Order as Respondents but not all of the signing parties elect, pursuant to Subparagraph II.B, to implement a Work Plan, then all Respondents are jointly and severally liable for each and every obligation under this Order through the completion of the activities in such Work Plan that all such parties consented to.

I. To the extent authorized under 42 U.S.C. Section 9613, New York General Obligations Law § 15-108, and any other applicable law, Respondent shall be deemed to have resolved its liability to the State for purposes of contribution protection provided by CERCLA Section 113(f)(2) for "matters addressed" pursuant to and in accordance with this Order. "Matters addressed" in this Order shall mean all response actions taken by Respondent to implement this Order for the Site and all response costs incurred and to be incurred by any person or party in connection with the work performed under this Order, which costs have been paid by Respondent, including reimbursement of State Costs pursuant to this Order. Furthermore, to the extent authorized under 42 U.S.C. Section 9613(f)(3)(B), by entering into this administrative settlement of liability, if any, for some or all of the response action and/or for

some or all of the costs of such action, Respondent is entitled to seek contribution from any person except those who are entitled to contribution protection under 42 U.S.C. Section 9613(f)(2).

J. Respondent entered into Voluntary Cleanup Agreement, B9-0577-00-05, with the Department on December 11, 2000 for the National Fuel Gas-Buffalo Service Center Site V00362-9. The terms and conditions of that Agreement will continue to be in effect with the exception of the soils and urban fill being addressed in the IRM Scope of Work and performed to the Department's approval.

K. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27, Title 13, ECL Article 71, Title 36, or in regulations promulgated under such statute shall have the meaning assigned to them under said statute or regulations. Whenever terms listed in the Glossary attached hereto are used in this Order or in the attached Exhibits, the definitions set forth in the Glossary shall apply. In the event of a conflict, the definition set forth in the Glossary shall control.

L. Respondent's obligations under this Order represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

M. This Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which for all purposes shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

N. The effective date of this Order is the 10th Day after the date the Commissioner or the Commissioner's designee signs this Order.

DATED: JAN 27 2005

ERIN M. CROTTY

Commissioner

New York State Department
of Environmental Conservation

By:


Dale A. Desnoyers

Director

Division of Environmental Remediation

CONSENT BY RESPONDENT

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

By: Paul M. Cylich
National Fuel Gas Distribution Corp.

Title: General Counsel; Asst. Secretary

Date: January 18, 2005

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

On the 18 day of January, in the year 2005, before me, the undersigned, personally appeared Paula M. Cylich, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Mary Jo Ben
Signature and Office of individual
taking acknowledgment

MARY JO BEN
Notary Public, State of New York
Qualified in Niagara County
My Commission Expires 12/31/06

EXHIBIT "A"

Map of Site

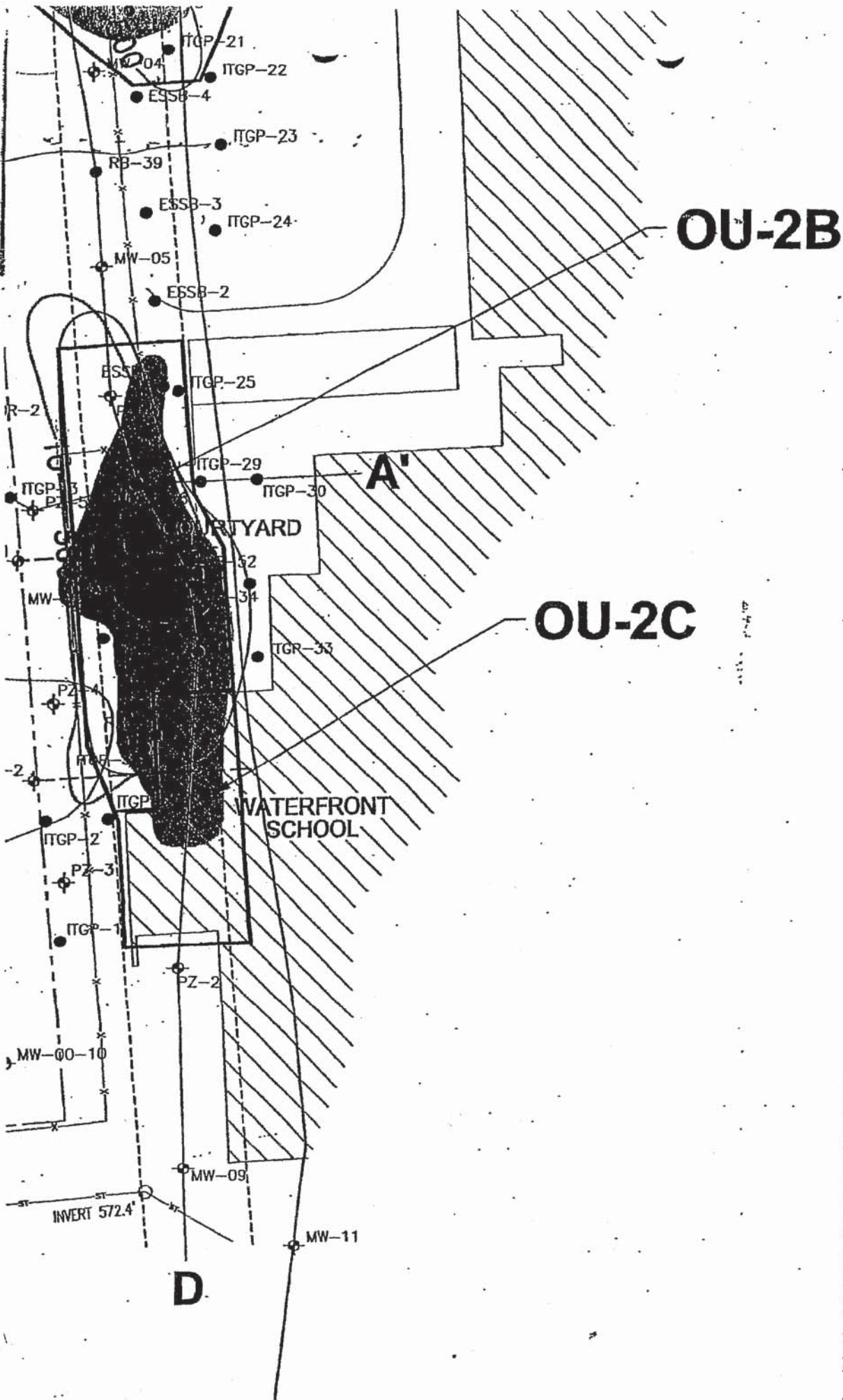


EXHIBIT "B"

**Department-Approved Work Plan(s)
and Department Approved
IRM Scope of Work**



ENVIRONMENTAL STRATEGIES CONSULTING LLC

11911 Freedom Drive, Suite 900 • Reston, Virginia 20190 • (703) 709-6500 • Fax (703) 709-8505

December 23, 2004
Revised January 14, 2005

Mr. David Flynn
Phillips Lytle LLP
3400 HSBC Center
Buffalo, New York 14203-2887

Re: Scope of Work, Waterfront School Property
Buffalo Service Center, Buffalo, New York

Dear David:

Environmental Strategies Consulting LLC has developed this scope of work for National Fuel Gas Distribution Corp. for the removal of soils and Urban Fill potentially impacted by constituents of concern from the Buffalo Service Center Site in Buffalo, New York that lie within Operable Units (OUs) 2B and 2C as shown on Figure 1 (Enclosed). The Scope of Work is as discussed and agreed to among the parties on December 15, 2004.

The proposed scope of work addresses the areas of the Waterfront School property that will be more accessible after the demolition proposed by Kideney Architects (Figure 1).

Scope of Work

Consistent with the schedule attached as Figure 3, the scope of work required to complete the OU-2B and OU-2C removal actions include:

1. Develop Work Plan and Health and Safety Plan. During development of the Work Plan available contingencies, if any, for the northern wall of the excavation will be evaluated. The evaluation will include an analysis of "perozone".
2. Prepare permit applications and gain approval
3. Select and gain approval for offsite disposal at permitted facilities
4. Gain approval for discharge of groundwater from dewatering system to the Buffalo Sewer Authority (BSA)
5. Install Dewatering System along proposed excavation
6. School closing (by others).
7. Install sheet pile barrier to prevent flow along the Wilkeson Slip (Figure 1). The sheet pile barrier shall be installed along the eastern boundary of OU-2A to (1) segregate flow between OU-2A and OU-2b and (2) to provide support for the school property during the remediation of OU-2A.

8. Demolition (by others). Demolition is to include the bus loading/unloading canopy, the courtyard walls, and all above grade school structures in the area highlighted on Sheet 1.
9. Initiate dewatering of area around excavation
10. Delineate work zones inside and outside building. (Note: no access to the portion of the building over the excavation will be allowed during the removal action.)
11. Clear surface soils that meet Site Specific Action Levels (SSALs [see 20 below]); stockpile for potential reuse on Buffalo Service Center Property.
12. Remove pavement within the limits of the excavation (Figure 1) around sides of school outside limits of previous demolition
13. Cut crawl space slab (Figure 1) into manageable units
14. Install polyethylene sheeting to isolate crawl space over excavation from rest of crawl space
15. Cross brace structure as needed (Note: plans of existing structure have been requested from Kideney to determine what if any cross bracing is required.)
16. Air monitoring shall be conducted to insure no release of constituents of concern above levels of regulatory concern. Vapor mitigation will be implemented if any exceedence of standards at the property line is detected.
17. Excavate soils and Urban Fills as shown on Figure 1. Excavation to the North will be limited by the location of the North wall of the Wilkeson Slip and protection of the second row of caissons. (Notes: (1) urban fill that meets SSALs will not be excavated and will be left in place and (2) samples that exceed the SSALs along the north face of the excavation, if any, will be identified on an as-built drawing.)
18. Excavated soils that do not meet SSALs will be transported offsite for proper disposal.
19. Excavated urban fill that is not soil-like, shall be shipped offsite for disposal.
20. The sides and bottom of the excavation shall be sampled. The samples will be analyzed for the SSAL's defined in the Remedial Alternatives Report:

OU-2B and OU-2C	
Surface Soil (24 inches)	TAGM 4046 levels (including lead and mercury)
Subsurface Soil	10 mg/Kg total BTEX, 500 mg/Kg total PAHs, 1 mg/Kg (or TAGM value, whichever is greater) individual BTEX compounds, 50 mg/Kg individual PAHs, Presence of NAPL

21. If the SSALs are exceeded to the east the excavation will be continued until the SSALs are met or the school property line is reached.
22. If the SSALs are exceeded to the west, the excavation will be continued until the SSALs are met or the sheet pile barrier is reached.
23. If the SSALs are exceeded on the south wall, the excavation will be continued until the SSALs are met or the bottom of the excavation extends off the school property.
24. The bottom of the excavation, to within 15 feet of the ground surface will be filled with flowable fill or clay.

25. The excavation under the building (between the columns) will be filled to within 10 feet below ground surface with gravel to allow groundwater flow along the axis of the Wilkeson Slip.
26. The surface of the gravel will be covered with non-woven geotextile.
27. The excavation will be filled to the elevation of the base of the floor slab with flowable fill or clay.
28. Perforated tubing shall be placed along the length (west to east) of the structure (Figure 2).
29. The zone under the sloped mud slab will be filled with gravel (Figure 2).
30. The zone outside the building will be backfilled with compacted certified clean fill.
31. All storm water and foundation drainage facilities will be replaced in kind.
32. The crawl space floor slab and mud slab will be replaced in kind.
33. The crawl space floor and mud slab within the area shown on Figure 2 will be sealed with epoxy.
34. The sump and perforated tubing will be manifolded together and tied into a discharge pipe rising through a pipe chase to be designated by others (Figure 2).
35. An inline fan will be installed near the roofline on the vent riser.
36. The fan will be operated for a minimum period of 30 days prior to sampling. A summa canister sample will be collected to determine the concentration of BTEX and PAHs in the crawl space.
37. Work with the Buffalo Public Schools to put in place institutional controls prohibiting removal of the sealed crawlspace slab and requiring operation of the inline fan.

Summary

A preliminary schedule is presented as Figure 3. The schedule is dependent on effective communication and timely approval of work plans and documents and demolition of the school structures immediately after the school closes in June. Please contact Environmental Strategies if you have any questions about this Scope of Work.

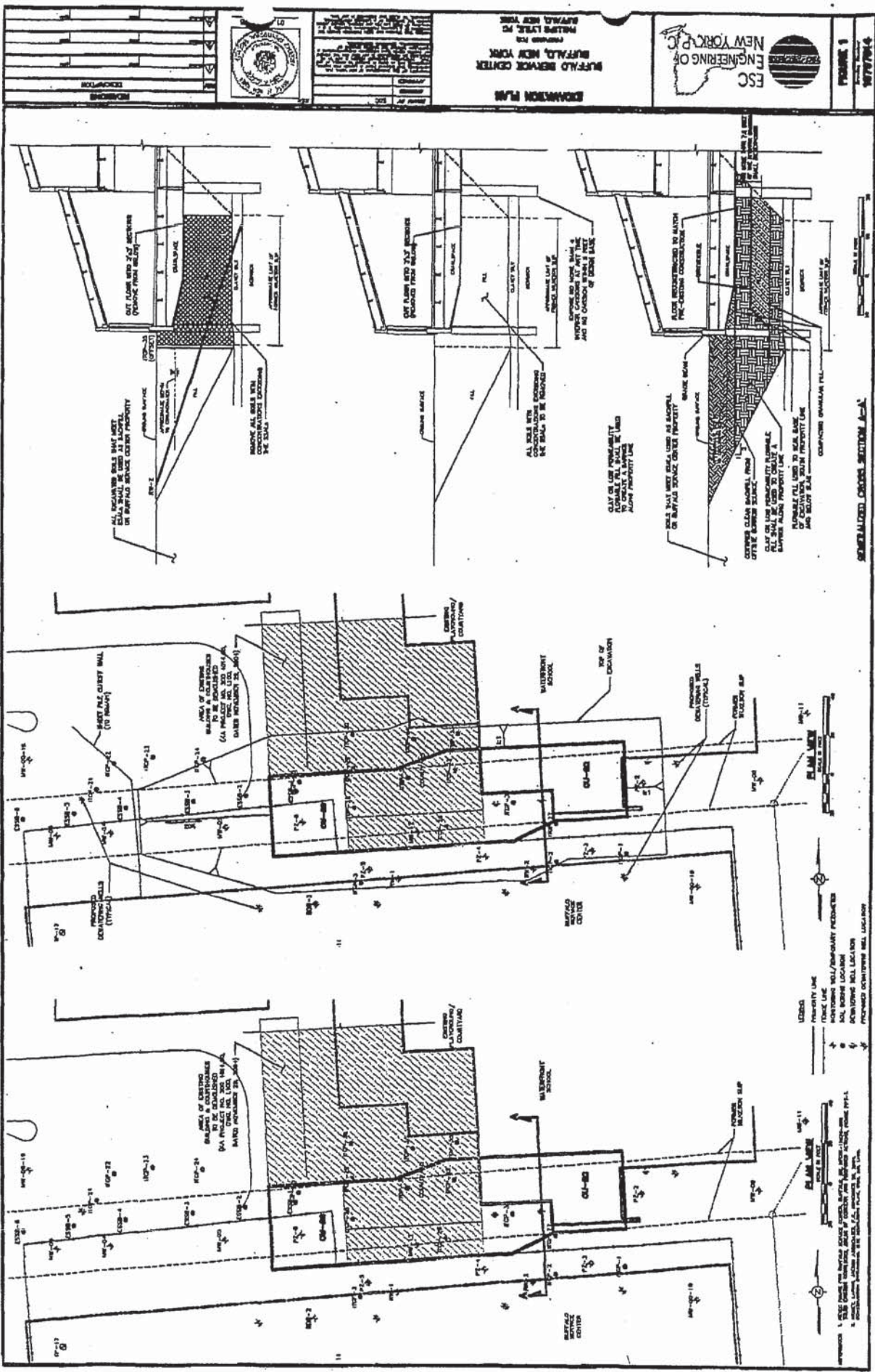
Sincerely yours,



John P. Black, P.E.
Executive Partner

JPB:lrp

Enclosures



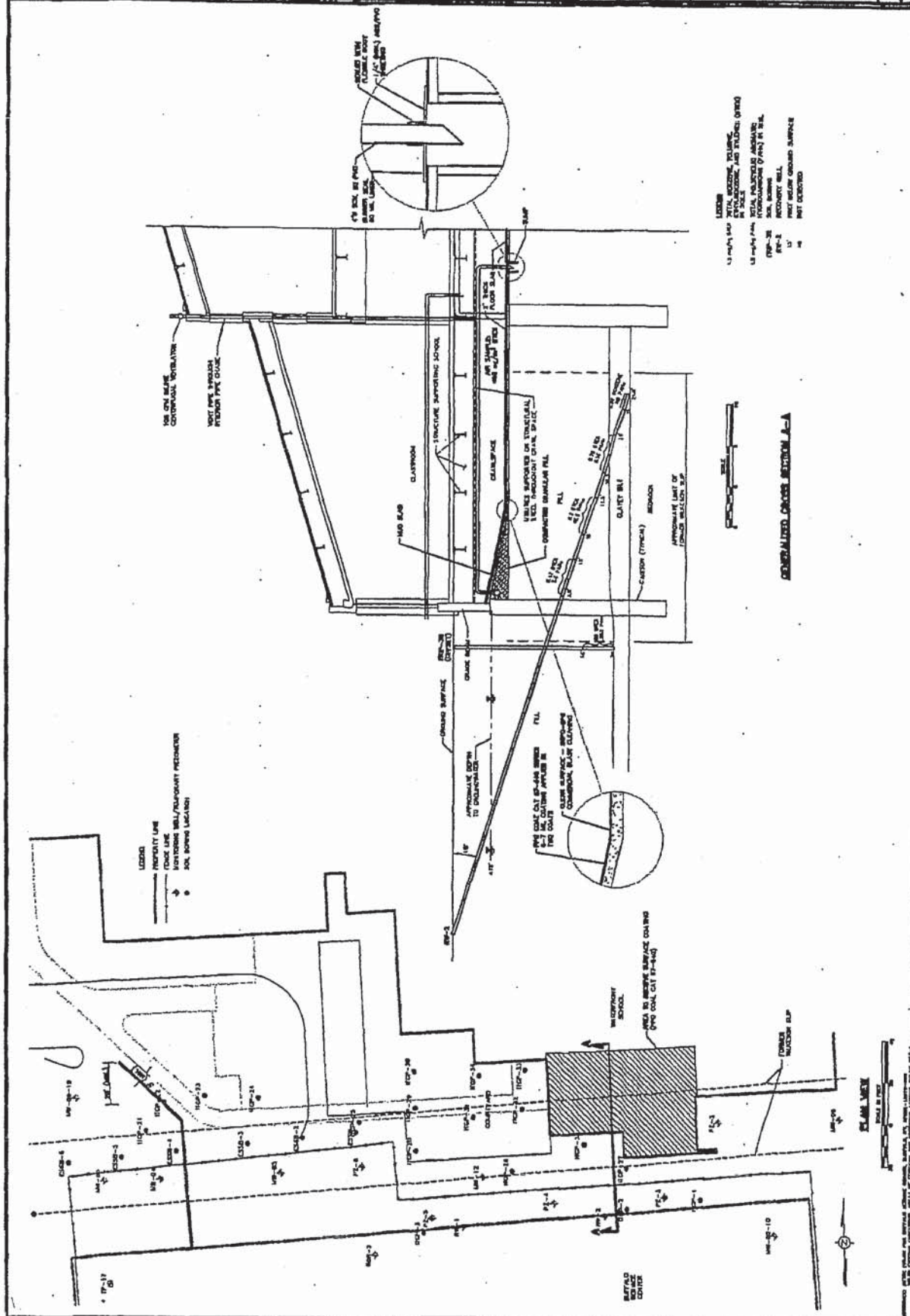


FIGURE 3
PRELIMINARY SCHEDULE

ID	Task Name	Duration	Start	Finish
1	Meeting with Buffalo Public Schools	0 days	Tue 11/30/04	Tue 11/30/04
2	Meeting with Buffalo Public Schools, NYSDOC, and NYSDOH	1 day	Wed 12/15/04	Wed 12/15/04
3	Draft Scope of Work	2 days	Thu 12/16/04	Fri 12/17/04
4	Remedial Design	80 days	Mon 1/17/05	Fri 3/23/05
5	Remedial Design	20 days	Mon 1/17/05	Fri 2/11/05
6	Submit to NYSDOC	0 days	Fri 2/11/05	Fri 2/11/05
7	Permit Applications	10 days	Mon 1/31/05	Fri 2/11/05
8	Application Approval Process	20 days	Mon 2/14/05	Fri 3/11/05
9	Final Design	10 days	Mon 3/14/05	Fri 3/25/05
10	Remedial Action Preparations	80 days	Mon 2/28/05	Fri 5/20/05
11	Contracts with RD Contractor and Suppliers	16 days	Mon 2/28/05	Fri 3/18/05
12	OSC	10 days	Mon 2/28/05	Fri 3/11/05
13	Laboratory	10 days	Mon 2/28/05	Fri 3/11/05
14	MAE (Groundwater Treatment Equipment)	10 days	Mon 3/7/05	Fri 3/18/05
15	Access Agreements	20 days	Mon 3/28/05	Fri 4/22/05
16	Secure Landfill Disposal Approval	20 days	Mon 4/25/05	Fri 5/20/05
17	Material and Equipment Procurement	20 days	Mon 3/14/05	Fri 4/8/05
18	Public Outreach Program	61 days	Mon 3/28/05	Mon 6/20/05
19	Initial Public Meeting	1 day	Mon 3/28/05	Mon 3/28/05
20	Ongoing Information Flow	80 days	Tue 3/29/05	Mon 6/20/05
21	Site Mobilization	10 days	Mon 4/25/05	Fri 5/6/05
22	Dewatering Well System	5 days	Mon 4/25/05	Fri 4/29/05
23	Equipment	10 days	Mon 4/25/05	Fri 5/6/05
24	Vapor Management and Suppression Equipment	2 days	Mon 4/25/05	Tue 4/26/05
25	Erosion and Sediment Control	6 days	Mon 4/25/05	Mon 5/2/05
26	Work Zone Delineation/Security Fencing	5 days	Mon 4/25/05	Fri 4/29/05
27	Groundwater Management	98 days	Mon 5/2/05	Thu 9/15/05
28	Drilling	5 days	Mon 5/2/05	Fri 5/6/05
29	Treatment System	10 days	Mon 5/9/05	Fri 5/20/05
30	Plumbing	9 days	Mon 5/23/05	Thu 5/26/05
31	Extraction and Treatment	75 days	Fri 5/3/05	Thu 9/15/05
32	School Property Preparation	21 days	Fri 6/24/05	Fri 7/22/05
33	School Closing Day	1 day	Fri 6/24/05	Fri 6/24/05
34	School Demolition (by others)	20 days	Mon 6/27/05	Fri 7/22/05
35	OU2B	60 days	Mon 7/25/05	Fri 9/30/05
36	Clearing SSL Compliant Surface Soils	5 days	Mon 7/25/05	Fri 7/29/05
37	Sheet Pile Barrier Installation	5 days	Mon 8/1/05	Fri 8/5/05
38	Screening Surface Soils	7 days	Mon 7/25/05	Tue 8/2/05
39	Remove Subsurface Soils	20 days	Wed 8/3/05	Tue 8/30/05
40	Verification Sampling	15 days	Wed 8/17/05	Tue 9/6/05
41	Backfill	5 days	Mon 8/28/05	Fri 9/30/05
42	OU2C	108 days	Mon 8/1/05	Wed 12/28/05
43	Clearing SSL Compliant Surface Soils	5 days	Mon 8/1/05	Fri 8/5/05
44	Screening Surface Soils	7 days	Mon 8/1/05	Tue 8/9/05
45	Removal of Impacted Soils	30 days	Mon 8/8/05	Fri 9/16/05
46	Verification Sampling	25 days	Wed 8/24/05	Tue 9/27/05
47	Backfill with Flowable Fill, Gravel, and SSAL Compliant Soils	25 days	Mon 8/22/05	Fri 9/23/05
48	Backfill Vapor Collection Zone	4 days	Mon 9/26/05	Thu 9/29/05
49	Replace Crawl Space Floor	6 days	Fri 9/30/05	Fri 10/7/05
50	Plumbing and Electrical for Venting System	5 days	Mon 10/31/05	Fri 11/4/05
51	Seal Crawl Space Floor	2 days	Mon 11/14/05	Tue 11/16/05
52	Seal Sump	1 day	Wed 11/16/05	Wed 11/16/05
53	Operate Venting System	20 days	Thu 11/17/05	Wed 12/14/05
54	Air Sampling and Testing - Crawl Space	10 days	Thu 12/15/05	Wed 12/28/05
55	Closureout	70 days	Mon 11/7/05	Fri 2/10/06
56	Walkthrough and Punch List	10 days	Mon 11/7/05	Fri 11/18/05
57	Draft Final Report	20 days	Mon 11/21/05	Fri 12/16/05
58	NYSDOC and BPS Review	30 days	Mon 12/19/05	Fri 1/27/06
59	Final Report and Approval	10 days	Mon 1/30/06	Fri 2/10/06

Project: Waterfront
Date: Fri 1/14/05

Task: _____ Progress: _____ Summary: _____ External Tasks: _____ Deadline: _____

Split Milestones Project Summary External Milestones

Page 1

EXHIBIT "C"

Cost Summary

EXHIBIT "D"

NOTICE OF ORDER

_____ ("Respondent") is subject to an Order On Consent (Index # _____) (the "Order") issued by the Commissioner of the New York State Department of Environmental Conservation (the "Department" under Article 27, Title 13, and Article 71, Title 27 of the Environmental Conservation Law of the State of New York ("ECL") for a site located at _____, New York (the "Site").

The Site has been designated by the Department as an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301.2, and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site # _____. The Department has classified the Site as a Class "____" site pursuant to ECL Section 27-1305.4.b. This classification means that the Department has determined that the Site [presents a significant threat to the public health or environment]. The Site is more particularly described in the legal description that is attached hereto as Schedule "A." [This paragraph can be changed to set forth the status of the site]

The purpose of the Order is to provide for the development and implementation of an inactive hazardous waste disposal site remedial program for the Site. The effective date of the Order was _____. A copy of the Order, as well as any and all Department-approved Work Plans under this Order can be reviewed at the Department's _____ office located at _____ by contacting _____.

This Notice of Order is being filed with the _____ recording officer in accordance with Paragraph IX of the Order to give all parties who may acquire any interest in the Site notice of this Order.

WHEREFORE, the undersigned has signed this Notice of Order in compliance with the terms of the Order.

Respondent

By: _____

Title: _____

Date: _____

STATE OF NEW YORK

) ss.:

COUNTY OF _____

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

Notary Public

Appendix "A"

(to Exhibit "D")

Map of the Property

EXHIBIT "E"

(Intentionally left blank)

EXHIBIT "F"

RECORDS SEARCH REPORT

1. Detail all environmental data and information within Respondent's or Respondent's agents' or consultants' possession or control regarding environmental conditions at or emanating from the Site.
2. A comprehensive list of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and of areas immediately surrounding the Site which are or might be affected by contamination at the Site, including all available topographic and property surveys, engineering studies, and aerial photographs.
3. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to:
 - (I) a history and description of the Site, including the nature of operations;
 - (ii) the types, quantities, physical state, locations, methods, and dates of disposal or release of hazardous waste at or emanating from the Site;
 - (iii) a description of current Site security (i.e. fencing, posting, etc.); and
 - (iv) the names and addresses of all persons responsible for disposal of hazardous waste, including the dates of such disposal and any proof linking each such person responsible with the hazardous wastes identified.

EXHIBIT "G"

SC WORK PLAN REQUIREMENTS

The SC Work Plan shall include but not be limited to:

1. A chronological description of the anticipated SC activities together with a schedule for the performance of these activities.
2. A Sampling and Analysis Plan that shall include:
 - (i) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience;
 - (ii) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Field Methods Compendium," OSWER Directive 9285.2-11 (draft June 1993), as supplemented by the Department; and
 - (iii) A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the SC which shall be prepared in accordance with 29 CFR 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.
3. The Work Plan shall incorporate all elements of an SC as set forth in Department technical and administrative guidance documents including, but not limited to, investigations of surface and subsurface soils, surface waters, ground water, and air.
4. The SC must be sufficiently comprehensive to allow the Department to determine whether a consequential amount of hazardous waste has been disposed at the Site and, if so, whether the contamination presents a significant threat to public health and/or the environment.

EXHIBIT "H"

RI/FS WORK PLAN REQUIREMENTS

The Investigation Work Plan shall include but not be limited to:

1. A chronological description of the anticipated RI/FS activities together with a schedule for the performance of these activities.

2. A Sampling and Analysis Plan that shall include:

(i) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience;

(ii) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Field Methods Compendium," OSWER Directive 9285.2-11 (draft June 1993), as supplemented by the Department;

(iii) A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the RI/FS which shall be prepared in accordance with 29 CFR 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order; and

(iv) A citizen participation plan that is, at a minimum, consistent with the Department's publication "Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook," dated June 1998, any subsequent revisions thereto, and 6 NYCRR Part 375.

3. The Work Plan shall incorporate all elements of an RI/FS as set forth in CERCLA, as amended, the NCP, the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions thereto in effect at the time the RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.

4. The Work Plan shall provide for an FS evaluating on-Site and off-Site remedial actions to restore the Site to pre-disposal conditions, to the extent feasible and authorized by law. At a minimum, alternatives shall evaluate the elimination or mitigation of all significant threats to the public health and to the environment presented by hazardous waste disposed at the Site through the proper application of scientific and engineering principals.

EXHIBIT "I"

IRM WORK PLAN REQUIREMENTS

The IRM Work Plan shall include, at a minimum, the following:

1. a summary of the data supporting the extent of the proposed IRM;
2. a chronological description of the anticipated IRM activities;
3. a schedule for performance of the IRM activities;
4. detailed documents and/or specifications prepared, signed, and sealed by a Professional Engineer providing sufficient detail to implement the Department-approved IRM, including, as appropriate, a description of soil and sediment erosion control, storm water management and monitoring, and dust, odor, and organic vapor control and monitoring procedures to be implemented during remedial activities, and a detailed description of confirmation sampling and site restoration plans;
5. a health and safety plan, including a community air monitoring plan;
6. a contingency plan, including a description of procedures for dismantling and removing remedial structures and equipment from the Site, if applicable;
7. a citizen participation plan, if required, that incorporates appropriate activities outlined in the Department's publication "Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook," dated June 1998, any subsequent revisions thereto, and 6 NYCRR Part 375;
8. an OM&M Plan, if the performance of the Department-approved IRM results in a treatment system which is expected to operate for greater than 18 months. If the system will not operate for greater than 18 months, or if only monitoring is required, only a monitoring plan will be needed; and
9. a description of institutional controls to be implemented as well as written approval from the owner of the affected property if the remedy selected requires implementation of an institutional control at an off-Site location or if the person responsible for the remedy is not the Site owner.

EXHIBIT "J"

REMEDIATION WORK PLAN REQUIREMENTS

The Remediation ("RD/RA") Work Plan shall include the following:

1. A detailed description of the remedial objectives and the means by which each element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:

- (I) the construction and operation of any structures;
- (ii) the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;
- (iii) the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;
- (iv) physical security and posting of the Site;
- (v) quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Construction; and
- (vi) monitoring which integrates needs which are present on-Site and off-Site during implementation of the Department-selected remedial alternative.

2. A schedule for submission of "Biddable Quality" documents for the Remedial Design including, but not limited to, documents and specifications prepared, signed, and sealed by a Professional Engineer. These plans shall satisfy all applicable local, state, and federal laws, rules, and regulations;

3. A time schedule to implement the Remedial Design;

4. The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design, including a schedule for periodic sampling of all media of concern, including groundwater monitoring wells on-Site and off-Site;

5. A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design, including the number of years during which such activities will be performed (where appropriate) and a specific description of the criteria to be used to decide when operation of such activities may be discontinued.

6. A contingency plan to be implemented if any element of the Remedial Design fails to achieve any of its objectives or otherwise fails to protect human health or the environment;

7. A health and safety plan for the protection of persons at and in the vicinity of the Site during and after construction. This plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional; and

8. A citizen participation plan which incorporates appropriate activities outlined in the Department's publication "Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook," dated June 1998, any subsequent revisions thereto, and 6 NYCRR Part 375.

EXHIBIT "K"

OM&M WORK PLAN REQUIREMENTS

The OM&M Work Plan shall provide for:

1. Operation and maintenance of engineering controls and/or treatment systems;
2. Maintenance of institutional controls, where applicable;
3. Yearly certification by a Professional Engineer of the continued effectiveness of any institutional and/or engineering controls, where applicable. The certification must identify the required controls and evaluate whether the controls should remain in place and effective for the protection of public health and/or the environment;
4. A monitoring plan which describes the measures for monitoring the performance and effectiveness of the remedy at the Site;
5. A contingency plan which describes procedures which may be required to protect and/or maintain the operation of the remedy in the event of an emergency, such as a fire, spill, tank or drum overflow or rupture, severe weather, or vandalism;
6. A health and safety plan and a list of records and references;
7. Monitoring and reporting of the performance and effectiveness of the remedy, both short and long-term, by:
 - (i) Assessing compliance with actual or equivalent discharge permit limits;
 - (ii) Assessing achievement of the remedial performance criteria; and,
 - (iii) Sampling and analysis of appropriate media.
8. A determination that the remedy is complete by demonstrating that the remedial action objectives have been achieved.

EXHIBIT "L"

RECORD OF DECISION

Glossary of Terms

The following terms shall have the following meanings:

"BPM Director": the Director of the Bureau of Program Management within the Division of Environmental Remediation.

"CERCLA": the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

"Day": a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday or State holiday, the period shall run until the close of business of the next working day.

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

"Director": the Division Director, Division of Environmental Remediation.

"ECL": the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended.

"Feasibility study": a study undertaken to develop and evaluate options for remedial action. The feasibility study emphasizes data analysis and is generally performed concurrently and in an interactive fashion with the remedial investigation, using data gathered during the remedial investigation. The term also refers to a report that describes the results of the study. (See 6 NYCRR Part 375)

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

"Inactive Hazardous Waste Disposal Site Remedial Program" or "Remedial Program": activities undertaken to eliminate, remove, abate, control, or monitor existing health hazards, existing environmental hazards, potential health hazards, and/or potential environmental hazards in connection with the Site and all activities to manage wastes and contaminated materials at or removed from the Site. (See ECL 27-1301(3) and 6 NYCRR Part 375)

"Interim Remedial Measure" or "IRM": a discrete set of activities, including removal activities, to address both emergency and non-emergency Site conditions, which can be undertaken without extensive investigation or evaluation, to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to the Site. (See 6 NYCRR Part 375)

"National Contingency Plan" or "NCP": the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. 9605, and codified at 40 C.F.R. Part 300, and any amendments thereto.

"NL": the Navigation Law, Chapter 37 of the Consolidated Laws of New York, as amended.

"OH&M": the Office of Hearings and Mediation Services.

"OM&M": post-construction operation, maintenance, and monitoring; the last phase of a remedial program, which continues until the remedial action objectives for the Site are met.

"Order": this Order and all exhibits attached hereto.

"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.

"Record of Decision" or "ROD": the document reflecting the Department's selection of a remedy relative to the Site or any Operable Unit thereof. The ROD shall be attached to and made enforceable under this Order as Exhibit "L."

"Remedial Action": those activities, except for OM&M, to be undertaken under this Order to implement the ROD.

"Remedial Investigation" or "RI": a process undertaken to determine the nature and extent of contamination. The remedial investigation emphasizes data collection and site characterization and generally is performed concurrently with the feasibility study. It includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for and the proposed extent of the program and to support the evaluation of proposed alternatives. (See 6 NYCRR Part 375)

"Site Characterization" or "SC": a process undertaken to allow the Department to determine whether a consequential amount of hazardous waste has been disposed at a Site and, if so, whether the contamination presents a significant threat to public health and/or the environment.

"Spill Fund": the New York State Environmental Protection and Spill Compensation Fund as established by Article 12, Part Three of the NL.

"State Costs": all the State's response expenses related to this Site, including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating, implementing, overseeing, administering, or enforcing this Order, and any other response costs as defined under CERCLA. Approved agency fringe benefit and indirect cost rates will be applied.

"Termination Date": the date that this Order is terminated pursuant to Paragraph XIII.

"USEPA": the United States Environmental Protection Agency.

EXHIBIT "B"

Map of Site

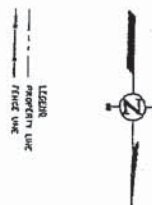


EXHIBIT E



11911 Freedom Drive, Suite 900
Reston, Virginia 20190
703-709-6500

PREPARED FOR
PHILLIPS LYTLE LLP AND
JAECKLE FLEISCHMANN & MUGEL, LLP
BUFFALO, NEW YORK

NOTE: The above are not true frequency values. They are only a rough indication of the number of times a particular value has occurred in the data set.

REVISIONS			
NO.	DESCRIPTION		
①	As noted	See	Spec.
②	As noted	See	Spec.
③	As noted	See	Spec.

EXHIBIT

B

Erie County On-Line Mapping System

Parcel Detail Report

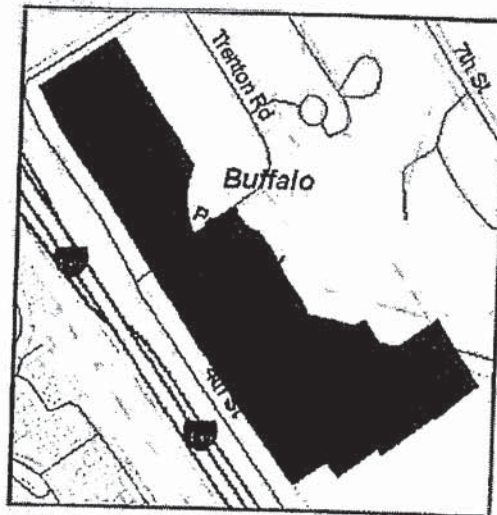
Address: 95 FOURTH

SBL: 110.12-1-23.11

Report generated: 4/16/2013 3:21:53 PM



Parcel Overview Map



Parcel Detail Map

PIN: 1402001101200001023110

SBL: 110.12-1-23.11

Address: 95 FOURTH

Owner 1: CITY OF BUFFALO

Owner 2:

Mailing Address: 920 CITY HALL

City/Zip: BUFFALO NY 14202

Municipality: City of Buffalo

Property Class: 612

Class Description: C - School

Front: 1.5

Depth: 288

Deed Roll: 8**Deed Book:****Deed Page:****Deed Date:**

Acreage: 13.61

Total Assessment: \$4,932,190

Land Assessment: \$674,590

County Taxes: \$0

Town Taxes: \$0

School Taxes: \$0

Village Taxes: \$0

School District: CITY OF BUFFALO

Year Built: 0

Sqft Living Area: 0

Condition: 0

Heating: 0

Basement: 0

Fireplace: 0

Beds: 0

Baths: 0

General Property Description

Prop. Address: 95 FOURTH	Municipality: CITY OF BUFFALO	Town Swis Code: 140200 / BUFFALO CITY
Owner: CITY OF BUFFALO	Tax / Map Acct#: 110.120-0001-023.1100000	School Dist: BUF CITY
Owner 2:	Print Key: 110.12-1-23.11	School Code: 140200
Owner Mailing: 920 CITY HALL	Deed Book / Page: /	Phone Number:
BUFFALO, NY 14202	Sub Div:	
	Misc:	

Structural Characteristics

Bldg Sq Feet: 177752	Built: 0	Uses As 1:
1st Floor: 0	Story Height: 15	Uses As 2:
2nd Floor: 0	Heat:	No. Of Bldgs:
House Type:	Fireplaces: 0	Residential Units: 1
Bedrooms: 0.0	Fuel:	Exterior:
Bath: 0.0	Water: PUBLIC	Garage: 0
Basement:	Sewer: PUBLIC	Number Stories: 2.0
Basement SF: 0	Utilities: GAS & ELEC	Central Air: NO
Improve 1 / YR:	Size 1: 0 X 0	Total SqFT 1: 0
Improve 2 / YR:	Size 2: 0 X 0	Total SqFT 2: 0
Improve 3 / YR:	Size 3: 0 X 0	Total SqFT 3: 0
Improve 4 / YR:	Size 4: 0 X 0	Total SqFT 4: 0

Land Characteristics

Acreage : 15.53	Land SqFt: 676487	
Class Code: 612	Class Name: SCHOOL	Lot Size: 1514 X 288
East / Longitude: 1067360 / -78.8853326	North / Latitude 1052210 / 42.8874672	

Tax / Assessment Data

Tax / Map Acct #: 110.120-0001-023.1100000	School Tax: \$62,540.17	
Total Assessment: \$4,932,190.00	County Tax: \$0.00 actual	
Land: \$674,590.00	City Tax: \$0.00	STAR Exemption: 4,932,190
Old Assessment: \$4,932,190.00	Account #: 1040050	
Assessor Full Market Value: \$4,982,010.00		

Sales Information

Sales Price:	Sales Date:	Grantor:	Deed Book / Page:	Deed Type:	Deed Valid:	ARMS Length:
\$0.00	//		/			

EXHIBIT

C

EXHIBIT

D

THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF AN ABSTRACT OF TITLE AND IS SUBJECT TO ANY STATEMENT OF FACTS THAT MAY BE REVEALED BY AN EXAMINATION OF BOOKS.

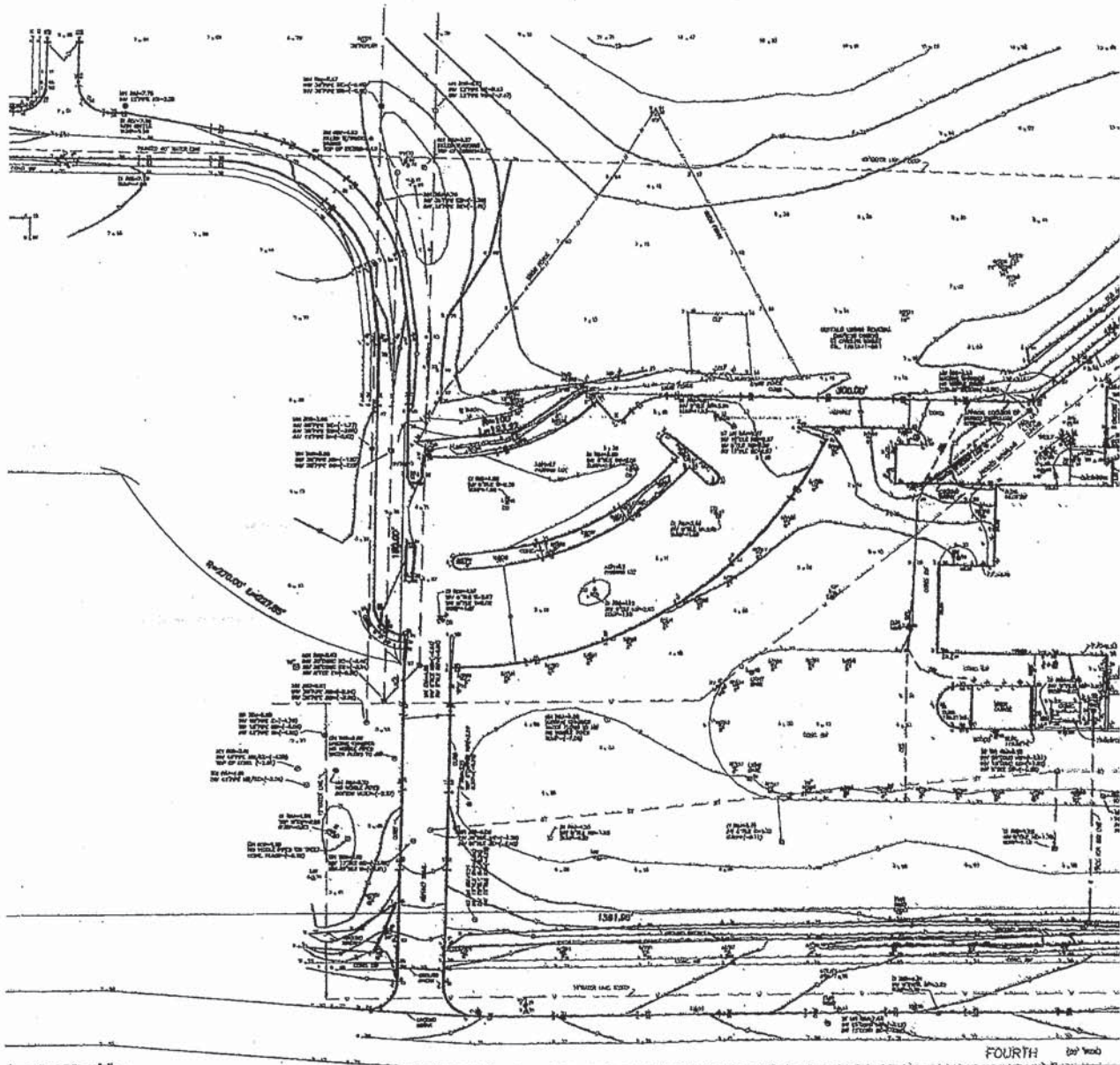
WARNING: ALTERING THIS DOCUMENT IS IN VIOLATION OF THE LAW EXCEPTED AS PROVIDED IN SECTION 2206, PART 2 OF THE NEW YORK STATE EDUCATION LAW.

ALL UNDERGROUND UTILITY LOCATIONS ARE APPROXIMATE. BEFORE YOU DIG, DRILL, OR BLAST, CALL 800-452-7532.

CAD00004: 2004041 \ 2004041.DWG

TOPOGRAPHIC SURVEY BUFFALO PUBLIC SCHOOL NO. 35 - WATERFRONT PART OF PIERCE LOT NO. 155 CITY OF BUFFALO COUNTY OF ERIE - STATE OF NEW YORK			
Deborah A. Naybor PLS, P.C. Land Surveying - Land Planning 1480 Church Street Alden, New York 14004 PH (716) 837-8446 FAX (716) 837-8526			
DATE: 5/14/2004	SHEET: 3 OF 3	DRN BY: TUN	
JOB NO: 2004041	SCALE: 1" = 40'	CRD BY: GAW	

NOTE: IN RESOURCES WHERE DIGITAL INFORMATION IS SUPPLIED TO A CLIENT OR MAGNETIC MEDIA, WE CAN NOT BE RESPONSIBLE FOR THE ACCURACY OF ANY BACKGROUND COMPUTER GENERATED MAPPING, BEYOND THE ORIGINAL INTENDED MAP SCALE.



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**JOINT SCHOOLS
 CONSTRUCTION BOARD**
JSCB
 PHASE 2
 CONSTRUCTION PROJECTS

Division of Plant Services
 & School Planning
 Board of Education
 City Hall
 Buffalo, N.Y. 14202

LPCiminelli
 Buffalo Public School Program Office
 325 Delaware Avenue
 Buffalo, NY 14202

**KIDNEY LARING JARIC
 ASSOCIATES, INC.**
ARCHITECTS
 200 Audubon Parkway
 West Amherst, NY 14228
 636-9700 fax 636-9783

EXHIBIT

E

6.0 Operation, Maintenance, and Monitoring (OM&M) Plan

The Order on Consent requires an Operation, Maintenance, and Monitoring (OM&M) Plan to provide for all activities required to maintain and monitor the effectiveness of the IRM at the Site. The project involved complete removal of soil and fill within the limits of the former Wilkeson Slip that exceeded the SSALs. Although data from previous characterizations suggested there was a zone between OU-2A and OU-2B that met the SSALs; the project included removal of this material. At each end of the project, a flowable fill and clay plug was placed to isolate the clean fill from future groundwater migration from the abandoned sewer to the east and the former Erie Canal to the west. As a result of the complete removal, any potential threat associated with the former Service Center Site to the public and environment associated with the Site has been eliminated. Groundwater monitoring is being evaluated in conjunction with the related Brownfield project.

6.1 Vapor Extraction System/Concrete Slab

As required by the approved IRM Work Plan, a sub-slab depressurization/vapor extraction system was installed (see Sheet 5 of the As-Built Drawings [bound separately]), although there was no accumulation of site related vapors in the crawl space of the school prior to the IRM. This system was installed as a conservative measure (in case vapors developed after the remediation). The potential for vapors to migrate under the building was further limited by the removal of all potentially site related materials from beneath the building, placement of flowable fill in the excavation under the building, and placement of flowable fill within the 5-foot diameter culvert in OU-2C. After startup and testing, the system will be monitored and maintained by WSP Engineering as a contractor to QLT Buffalo LLC on behalf of the Respondent under the Order on Consent. The institutional controls will ensure the replaced section of the concrete crawl space floor will not be removed or damaged without adequate alternative protections.

A WSP Engineering representative will periodically (not to exceed 12 months between inspections) check to ensure that the system is operating and the concrete slab remains in good condition. The inspection form (at the end of this section) will be completed and signed by the

WSP Engineering representative conducting the inspection. In the event that the inspection reveals that the fan is no longer operating or major cracks in the replaced floor slab are present, WSP Engineering will make arrangements for the fan to be replaced and/or cracks repaired. The fan will be replaced to match existing equipment (existing fan product information is provided as Appendix R) or use of updated equipment if the existing model is no longer reasonably available. Cracks in the concrete will be repaired with common concrete repair materials (grout) and sealant (Appendix N).

A true and accurate copy of the filed institutional controls is provided as Appendix R.

6.2 Groundwater Monitoring Program

A groundwater monitoring program [Site Management Plan for Former Buffalo Service Center Site (C915194) and Buffalo Urban Renewal Agency West Site (C915195), dated October 2, 2006, prepared by ESC Engineers of New York)] was developed in conjunction with the related Brownfield Project. The groundwater at the Site was pumped and treated to depress the groundwater table during excavation activities. Groundwater flow toward the school from the east and west is limited by the flowable fill and clay plugs installed in the former slip as part of the remedy.

Groundwater monitoring relating to the Brownfield Site will be conducted for two years on an annual basis. Based on the findings from the first two years of monitoring, NYSDEC will evaluate the need for any additional monitoring based on data and information provided by WSP Engineering.

6.3 Reporting

WSP Engineering will prepare a brief letter report for annual submittal to the NYSDEC. The timing of submittal of the first report will be approximately 1 year from approval of this Certification Report. The report will include a description of the inspections and any maintenance required. The inspection forms completed by the WSP Engineering representatives will be attached to the report.

Appendix S – Construction Completion Report
Fourth Street Utility Corridor Excavation