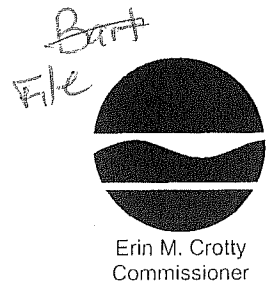


New York State Department of Environmental Conservation
Deputy Commissioner & General Counsel
Office of General Counsel, 14th Floor
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Assignable Release and Covenant Not To Sue

February 24, 2003

Mark D. Gregor
City of Rochester
Department of Environmental Services
City Hall, Room 300-B
30 Church Street
Rochester, New York 14614

RECEIVED

MAR 04 2003

DER/HAZ. WASTE REMED
REGION 8

Re: Erie Canal Industrial Park
Voluntary Cleanup Agreement,
Index # B8-0490-96-03

Dear Mr. Gregor:

The Departments of Law and Environmental Conservation are pleased to report that the State is satisfied that the approved Work Plan to implement a response program at the Erie Canal Industrial Park, located in the City of Rochester, Monroe County, a map and description which is attached hereto as Appendix "A" (the "Site") has been successfully implemented. So long as no information has been withheld from the Departments or mistake made as to the hazard posed by the Site-related compounds or analytes of concern, the Departments believe that no further investigation or response will be required at the Site for any contamination existing as of June 17, 1997, to render the Site safe for use as light industrial and commercial development.

Assignable Release and Covenant Not To Sue By the Departments

The State, therefore, hereby releases, covenants not to sue, and forbears from bringing any action, proceeding, or suit against the City of Rochester ("Volunteer"), Volunteer's lessees, sublessees, successors, and assigns and their respective secured creditors, for further investigation or remediation of the Site based upon the release or threatened release of petroleum, petroleum products, volatile organic solvents or polychlorinated biphenyls from the soils present or existing in, on, at, or under the Site as of June 17, 1997 ("Existing Contamination"); provided that (a) timely payments of the amounts specified in Paragraph VI of the Agreement dated June 17, 1997, between the State and Volunteer and bearing the index number B8-0490-96-03 (the "Agreement") continue to be, or have been, made to the Departments, and (b) Volunteer and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to

completion the approved post-response operation and maintenance plan (the "O&M Plan"), if any is required by the Departments.

Nevertheless, the State hereby reserves all of its rights concerning, and such forbearance shall not extend to, any further investigation or remedial action the Departments deem necessary:

due to offsite migration of petroleum or any other contaminants that was not addressed in the remedial work plan contained in the Agreement (the "Work Plan");

due to environmental conditions related to the Site that were unknown to the Departments, or either of them, at the time of their approval of the Work Plan which indicates that the Site conditions are not sufficiently protective of human health and the environment for the reasonably anticipated prospective uses of the Site;

due to information received, in whole or in part, after the Departments' approval of the final engineering report and certification pertaining to the Work Plan's implementation, which indicates that the remedial activities identified in the Work Plan and performed under the Agreement are not sufficiently protective of human health and the environment for the reasonably anticipated prospective uses of the Site;

due to Volunteer's failure to implement the Agreement to the State's satisfaction;
or

due to fraud or mistake committed by Volunteer in demonstrating that the Site-specific clean-up levels identified in, or identified in accordance with, the Work Plan were reached.

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

Volunteer, if it 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]) after June 17, 1997; or if it causes a, or suffers the use of the Site to change from the reasonably anticipated commercial and light industrial uses to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to

any of Volunteer's lessees, sublessees, successors or assigns who cause a, or suffer the release or threat of release at the Site of any such hazardous substance or petroleum after June 17, 1997; or who cause a, or suffer the use of the Site to change from the reasonably anticipated commercial or light industrial uses 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 are otherwise parties responsible under law for the remediation of the Existing Contamination independent of any obligation they may have respecting the same resulting solely from the Agreement.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the State, the one seeking the benefit of this release shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

Notwithstanding any other provision in this release, if, with respect to the property, 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.

In conclusion, the State is pleased to be part of this effort to return the subject property to commercial use, a use of benefit to the entire community.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: James H. Ferreira
James H. Ferreira, Esq.
Deputy Commissioner and General Counsel

and

NEW YORK STATE DEPARTMENT OF LAW

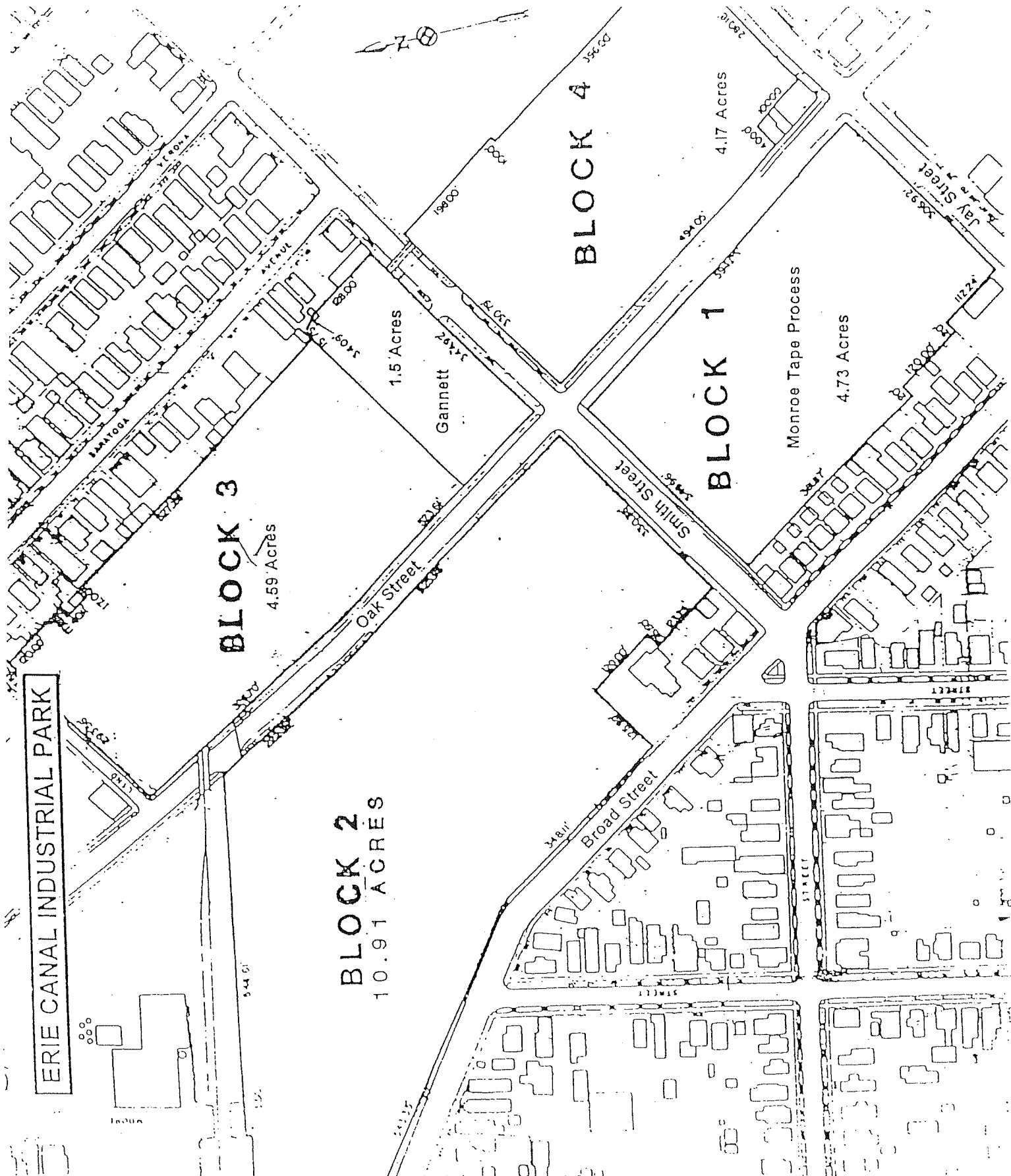
By: David A. Munro
Its: Assistant Attorney General

JHF:mjl/61256 v1

Attachment (Appendix "A")

cc:	Andrew English	(w/ attachment)
	Donnal Weigel	"
	Todd Caffoe (R8)	"
	Glen Bailey (R9)	"
	Anthony Quatararo	"
	Elissa Armater	"
	Michael Lesser	"
	M. Van Valkenburg (NYSDOH)	"

EXHIBIT
"A"



DESCRIPTION OF LANDS
TO BE INCLUDED IN
CLEAN UP AGREEMENT
(AREA 1)

All that tract or parcel of land situate in the City of Rochester, County of Monroe, State of New York and being known and described as follows:

Beginning at a point on the southeasterly line of Lind Street, said point being 100.00 feet southwesterly from the southwesterly line of Saratoga Avenue;

- Thence 1) Southeasterly and parallel to the southwesterly line of Saratoga Avenue a distance of 120.15 feet more or less to the north westerly corner of Lot 20 of the John Williams Tract as filed in the Monroe County Clerk's Office in Liber 2 of maps at page 65;
- Thence 2) Southwesterly along the northwesterly line of Lot 27 of said Tract a distance of 17.0 feet to a point;
- Thence 3) Southeasterly and parallel to the northeasterly line of said Lot 27 a distance of 40 feet more or less to the southeasterly line of said Lot;
- Thence 4) Northeasterly along the southeasterly line of said Lot 27 a distance of 17.0 feet to a point;
- Thence 5) Southeasterly and parallel to the southwesterly line of Saratoga Avenue a distance of 497 feet more or less to a point, said point being 192 feet northwesterly from the northwesterly line of Smith Street as measured parallel to the southwesterly line of Saratoga Avenue.
- Thence 6) Southwesterly and parallel to the northwesterly line of Smith Street a distance of 320.98 feet more or less to the northeasterly line of Oak Street;
- Thence 7) Northwesterly along the northeasterly line of Oak Street a distance of 331.60 feet to an angle point in said street line;
- Thence 8) Northwesterly continuing along the northeasterly line of Oak Street a distance of 327.32 feet to the southeasterly line of Lind Street;
- Thence 9) Northeasterly along the southeasterly line of Lind Street a distance of 293 51 feet to the point or place of beginning.

2.28.96

DESCRIPTION OF LAND
TO BE INCLUDED IN
CLEANUP AGREEMENT
(AREA 2)

All that tract or parcel of land situate in the City of Rochester, County of Monroe, State of New York and being known and described as follows:

Beginning on the northwesterly line of Smith Street at a point 100.00 feet northeasterly from the northeasterly line of West Broad Street as measured along the northwesterly line of Smith Street;

- Thence 1) Northwesterly and parallel to the northeasterly line of West Broad Street a distance of 123.25 feet to a point;
- Thence 2) Northeasterly and parallel to the northwesterly line of Smith Street a distance of 25.50 feet to a point;
- Thence 3) Northwesterly and parallel to the northeasterly line of West Broad Street a distance of 120.00 feet to a point;
- Thence 4) Southwesterly and parallel to the northwesterly line of Smith Street a distance of 125.50 feet to the northeasterly line of West Broad Street;
- Thence 5) Northwesterly along the northeasterly line of West Broad Street a distance of 348.11 feet to an angle point in said street line;
- Thence 6) Northwesterly continuing along the northeasterly line of West Broad Street a distance of 543.35 feet to a second angle point in said street line;
- Thence 7) Northwesterly continuing along the northeasterly line of West Broad Street a distance of 132.64 feet to a third angle point in said street line;
- Thence 8) Northwesterly continuing along the northeasterly line of West Broad Street a distance of 83.77 feet to a fourth angle point;
- Thence 9) Northwesterly continuing along the northeasterly line of West Broad Street a distance of 39.13 feet to a point;
- Thence 10) Easterly and forming an interior angle of 52° 11' 39" with Course 9 a distance of 330.5 feet more or less to the westerly line of the former Moore Street;
- Thence 11) Easterly and at right angles to the former centerline of the Moore Street a distance of 24.75 feet to the centerline of said street;
- Thence 12) Northerly along the said centerline a distance of 4 feet more or less to a point at

right angles to a point on the easterly line of the former Moore Street and being 40.18 feet northerly from the southerly line of said Moore Street;

- Thence 13) Easterly and at right angles to the easterly line of the former Moore Street a distance of 24.75 feet to a point on said easterly line;
- Thence 14) Easterly along the southerly line of the former New York Central Railroad and now owned by Kleen-Brite Properties, Inc. a distance of 499.16 feet to the southwesterly line of Oak Street;
- Thence 15) Southeasterly along the southwesterly line of Oak Street a distance of 222.22 feet to an angle point;
- Thence 16) Southeasterly continuing along the southwesterly line of Oak Street a distance of 516.01 feet to a second angle point;
- Thence 17) Southerly along the street line of Oak Street a distance of 14.12 feet to the northwesterly line of Smith Street;
- Thence 18) Southwesterly along the northwesterly line of Smith Street a distance of 320.32 feet to the point or place of beginning.