



ALBANY COUNTY – STATE OF NEW YORK
 BRUCE A. HIDLEY COUNTY CLERK
 16 EAGLE STREET, ALBANY, NEW YORK 12207

COUNTY CLERK'S RECORDING PAGE

THIS PAGE IS PART OF THE DOCUMENT – DO NOT DETACH



INSTRUMENT #: R2024-6182

Receipt#: 20240693949
 Clerk: TR
 Rec Date: 04/18/2024 08:57:44 AM
 Doc Grp: D
 Descrip: DEED, EASEMENT
 Num Pgs: 42
 Rec'd Frm: WALKER TITLE, LLC

Party1: CSX TRANSPORTATION, INC.
 Party2: YORK PEOPLE OF THE STATE OF NEW

Recording:

Cover Page	5.00
Recording Fee	225.00
Cultural Ed	14.25
Records Management - Coun	1.00
Records Management - Stat	4.75
TP584	5.00

Sub Total: 255.00

Transfer Tax	
Transfer Tax - State	200.00

Sub Total: 200.00

Total: 455.00

**** NOTICE: THIS IS NOT A BILL ****

***** Transfer Tax *****

Transfer Tax #: 5323
 Transfer Tax

Transfer Tax - State	200.00
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Total: 200.00

Record and Return To:

WALKER TITLE, LLC
 118 A WEST MAIN STREET
 MOUNTAIN CITY, TN 37683

THIS PAGE CONSTITUTES THE CLERK'S
 ENDORSEMENT, REQUIRED BY SECTION 316-a (5)
 & 319 OF THE REAL PROPERTY LAW OF THE
 STATE OF NEW YORK.

Bruce A. Hidley
 Albany County Clerk

**DECLARATION OF COVENANTS, RESTRICTIONS
AND ENVIRONMENTAL EASEMENT**

This Declaration of Covenants, Restrictions and Environmental Easement is made this 11th day of April, 2024, by and between CSX Transportation, Inc., organized and existing under the laws of the State of Virginia, having its principal office at 500 Water Street, Jacksonville, Florida 32202 ("Grantor"), and the People of the State of New York acting through their Commissioner of the New York State Department of Environmental Conservation with its Central Office, located at 625 Broadway, Albany, New York 12233 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of land located in the Town of Guilderland, County of Albany, State of New York, known and designated on the tax map of the County Clerk of Albany as tax map parcel number: Parcel 53.05-1-16, being the same as that property conveyed to Grantor via the Notice of Merger dated August 26, 2004, and recorded in the Albany County Clerk's Office in Liber 51 and Page 500. A delineated portion of Grantor's parcel, which is capped with a clay barrier as required by law, is described in Exhibit A and depicted in Exhibit B (hereinafter, the "Property"). The Property is subject to this Declaration of Covenants, Restrictions and Environmental Easement. The Property is within the Mercury Refining Superfund Site ("Site") together with any buildings and improvements thereon and appurtenances thereto which the United States Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, as set forth in Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300, by publication in the Federal Register on September 8, 1983; and

WHEREAS, CSX and National Railroad Passenger Corporation ("Amtrak") are parties to a "Hudson Line Operating, Management and Land and Track Lease Agreement" dated September 23, 2011 ("Hudson Line Lease") with an initial twenty-five year term with an option for Amtrak to renew for an additional twenty-three years whereby Amtrak leases the "Hudson Line" as defined therein and partially located on the CSX Property; and

WHEREAS, Amtrak operates and maintains the Hudson Line right-of-way pursuant to the Hudson Line Lease; and

WHEREAS, Amtrak has agreed to join in this this Declaration of Covenants, Restrictions and Environmental Easement to subordinate its interests in the Property portion of the Hudson Line Lease to this Declaration of Covenants, Restrictions and Environmental Easement; and

WHEREAS, Amtrak's subordination of its interests in the Hudson Line Lease is limited to the Property as defined herein and any and all obligations mandated to any party or rights conferred to any party by this Declaration of Covenants, Restrictions and Environmental Easement does not apply to any other property subject to the Hudson Line Lease other than the Property as defined herein; and

WHEREAS, any subsequent modification of this Declaration of Covenants, Restrictions and Environmental Easement, as per Section 4 below, will not cause Amtrak's automatic subordination of any further property subject to the Hudson Line Lease other than the Property defined herein, such further subordination requiring Amtrak's written consent.

WHEREAS, in a Record of Decision dated September 30, 2008 ("ROD"), EPA selected, and the New York State Department of Environmental Conservation ("NYSDEC") concurred with, a remedial action for the Site pursuant to CERCLA, which provided for, in pertinent part: excavation and off-Site disposal of surface soils and subsurface soils above the water table from the Mercury Refining Property and adjoining properties (i.e., Albany Pallet and Box Company, Allied Building Products Corporation and Diamond W. Products Incorporated) which exceed the cleanup level for mercury; solidification/stabilization involving mixing or injection of treatment agents at certain properties to immobilize contaminants in surface soils, subsurface soils, and soils below the water table where the groundwater has a dissolved mercury concentration which exceeds the cleanup level for mercury; development and implementation of an EPA-approved Site Management Plan ("SMP") to address long-term operation and maintenance of the Site, future excavation of soils, and evaluation of the potential for vapor intrusion; removal, dewatering and disposal of the mercury-contaminated sediments in the Patroon Creek, the Unnamed Tributary and the I-90 Pond to assess impacts on the biota on an annual basis for five years; Site remedy review every five years; and imposition of institutional controls. Specifically, the ROD provided for institutional controls to limit the Site to industrial uses, preserve the integrity of the existing clay cap and the solidified/stabilized mass, prevent the excavation of soils unless the excavation follows the SMP, and restrict the use of groundwater at the Site; and

WHEREAS, the parties hereto have agreed that in accordance with the terms of the Consent Decree for Remedial Action and Recovery of Response Costs, Civ. No: 1:12-cv-01247-MAD-TWD, dated September 17, 2012, Grantor shall grant to the Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the NYS Environmental Conservation Law, covenant with respect to the restrictions on the use of the Property, and provide a right of access to the Property in favor of Grantee and EPA, all of which shall run with the land, for purposes of implementing, facilitating and monitoring the CERCLA response action in order to protect human health and the environment; and

WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of all response actions at the Site.

NOW, THEREFORE:

1. Grant: Grantor, on behalf of itself, its successors and assigns, for ten dollars and other good and valuable consideration, receipt whereof is hereby acknowledged, does hereby give, grant, covenant and declare in favor of the Grantee that the Property shall be subject to this Declaration of Covenants, Restrictions and Environmental Easement, and Grantor does further give, grant and convey to the Grantee the perpetual right to enforce said restrictions, covenants, right of access and Declaration of Covenants, Restrictions and Environmental Easement, all of which shall be of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.
2. Purpose: It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, facilitate the remediation of past environmental contamination

and to impose use restrictions and covenants to protect human health and the environment by reducing the risk of exposure to contaminants.

3. Restrictions on Use and Maintenance of Engineering Controls: The following restrictions, as provided below, run with the land, and are binding on the Grantor and its successors in title and assigns:
- a) **Industrial Use.** The Property may be used for: Industrial use as described in 6 NYCRR Part 375-1.8(g)(2)(iv), including its current industrial use for railroad-related purposes. The industrial use restriction will remain in place unless a further soil remediation action is conducted to reduce potential risks associated with alternate land uses.
 - b) **Control of Excavation of Soils.** Control of future excavation of soils which were not remediated is required to ensure that soils are properly tested and managed to protect workers and the community. The SMP, attached as Exhibit C details the requirements for any excavation/disturbance, management and disposal of any excavated materials including, but not limited to:
 - i. Retaining qualified firm/personnel
 - ii. Testing of soil in area of excavation for mercury
 - iii. Erosion and sedimentation controls (e.g. silt fence)
 - iv. Dust control (e.g. water)
 - v. Management of soils (e.g. reuse or disposal)
 - vi. Restoration of site (e.g. backfilling or replacement of the clay cap as applicable)
 - c) **Restriction of Use of Groundwater.** The use of groundwater underlying the Property is prohibited until applicable groundwater standards are satisfied and as otherwise determined by the NYSDOH or the Albany County Department of Health to be safe for use as drinking water or for industrial purposes.
 - d) **Preservation of Clay Cap.** Grantor will replace any portions of the clay cap removed for subsurface work. Mowing of the grass on the clay cap and periodic inspection and maintenance of the clay cap will not be the responsibility of Grantor or Amtrak.
4. Modification or termination of restrictions and covenants: The restrictions specified in the preceding paragraph of this instrument may only be modified or terminated, in whole or in part, in writing, by the Grantee with approval of EPA, provided, however, that any modification or termination of said restrictions shall not adversely affect the remedy selected by EPA and NYSDEC for the Site. If requested by the Grantor, such writing will be executed by Grantee in recordable form. Any request by Grantor for a modification or termination of this instrument shall be made, not less than 30-days in advance of any modification or termination, in writing by Grantor to NYSDEC and to EPA in accordance with paragraph 15 of this instrument.
- a) Right of access: Grantors hereby convey to Grantee and to EPA a right of access to the Property at all reasonable times for the following purposes, which right of

access shall run with the land and be binding on Grantor, its successors and /or assigns, and on any tenants or any other parties having an interest and/or rights to any portion of the Property:

- i. Implementing the response actions selected in the ROD.
 - ii. Verifying any data or information relating to the Site;
 - iii. Verifying that no action is being taken at the Site in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
 - iv. Conducting investigations under CERCLA relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils; and
 - v. Implementing additional or new response actions under CERCLA.
5. Reserved rights of Grantor: Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights, covenants and easements granted herein.
 6. Federal authority: Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.
 7. State authority: Nothing herein shall constitute a waiver of any rights the State may have pursuant to the Environmental Conservation Law, regulations and/or relevant provisions of statutory or common law.
 8. No public access and use: No right of access or use by the general public to any portion of the Site is conveyed by this instrument.
 9. Public notice: Grantor, on behalf of itself, its successors and assigns, agrees to include in each instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THIS PROPERTY IS SUBJECT TO A DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL EASEMENT DATED _____, 202~~3~~, RECORDED IN THE ALBANY COUNTY CLERK'S OFFICE ON _____, 202~~3~~, IN BOOK _____, PAGE _____, AND HELD BY THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION PURSUANT TO TITLE 36, ARTICLE 71 OF THE ENVIRONMENTAL CONSERVATION LAW. THE DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL EASEMENT SHALL BE ENFORCEABLE BY THE PEOPLE OF THE STATE OF NEW YORK AND BY THE UNITED STATES OF AMERICA AS THIRD-PARTY

BENEFICIARY.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor agrees to provide Grantee and EPA with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

- 10. Enforcement: The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Any forbearance, delay or omission to exercise Grantee's rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any of the rights of the Grantee under this instrument.
- 11. Damages: Grantee shall also be entitled to recover damages for breach of any covenant or violation of the terms of this instrument including any impairment to the remedial action that increases the cost of the selected response action for the Site as a result of such breach or violation.
- 12. Waiver of certain defenses: Grantor hereby waives any defense of laches, estoppel, or prescription.
- 13. Covenants: Grantor hereby covenants that the Grantor is lawfully seized in fee simple of the real property at the Site, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein and that the Site is free and clear of encumbrances, except for the Hudson Line Lease.
- 14. Notices: Any notice, demand, request, consent, approval, or communication under this instrument that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:
 CSX Transportation, Inc.
 500 Water Street
 Jacksonville, Florida 32202
 Attn: Legal Department

To Grantee:
 Office of General Counsel
 NYS Department of Environmental
 Conservation
 625 Broadway
 Albany, New York 12233-5500

NYS Department of Environmental
 Conservation
 Division of Environmental Remediation
 Bureau of Site Control
 625 Broadway
 Albany, New York 12233

To Amtrak:

National Railroad Passenger Corporation
1 Massachusetts Ave., NW
Washington, D.C. 20001
Attn: Legal Department

A copy of each such communication shall also be sent to EPA in the same manner as to Grantor or Grantee, and addressed to the following two addressees:

U.S. Environmental Protection Agency
Emergency & Remedial Response Division
New York Remediation Branch
Attention: Mercury Refining Superfund Site Remedial Project Manager
290 Broadway, 20th Floor,
New York, New York 10007-1866

U.S. Environmental Protection Agency
Office of Regional Counsel
Attention: Mercury Refining Superfund Site Attorney
290 Broadway, 17th Floor,
New York, New York 10007-1866

15. General provisions:

- a) Controlling law: The interpretation and performance of this instrument shall be governed by the laws of the State of New York, and with respect to other matters, shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the State of New York.
- b) Liberal construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to affect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d) No forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantors' title in any respect.
- e) Joint obligation: If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

- f) Successors: The covenants, easements, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the real property at the Site. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall mean the People of the State of New York acting through their Commissioner of NYSDEC or through any successor department or agency of the State of New York.
- g) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- h) Counterparts: The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- i) Third-Party Beneficiary: Grantor and Grantee hereby agree that the United States, through EPA, shall be, on behalf of the public, a third-party beneficiary of the benefits, rights and obligations conveyed to Grantee in this instrument; provided that nothing in this instrument shall be construed to create any obligations on the part of EPA.
16. Recordation: Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner of the New York State Department of Environmental Conservation or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

TO HAVE AND TO HOLD unto the Grantee and its assigns forever.

Signatures begin on the following page.

County: Albany

Site No: 401025

Order No:

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Executed this 23 day of FEBRUARY, 2024

GRANTOR: CSX Transportation, Inc.

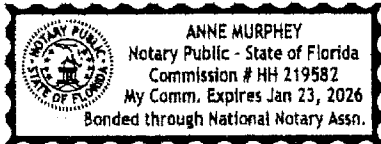
By: [Signature]

Title: VP REAL ESTATE & INDUSTRIAL DEVELOPMENT

Grantor's Acknowledgment

STATE OF FLORIDA)
) ss:
COUNTY OF DUVAL)

On the 23 day of FEBRUARY, in the year 2024, before me, the undersigned, personally appeared CHRISTINA W. BOTTOMLEY personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as VP REAL ESTATE & INDUSTRIAL DEVELOPMENT CSX TRANSPORTATION, and that by his/her signature on the instrument, the Grantor, upon behalf of which the individual acted, executed the instrument.



[Signature]
Notary Public - State of Florida

County: Albany

Site No: 401025

Order No:

The undersigned National Railroad Passenger Corporation has entered into this Declaration of Covenants, Restrictions and Environmental Easement for the purpose of acknowledging and confirming the subordination of the Hudson Line Lease to this Declaration of Covenants, Restrictions and Environmental Easement.

AMTRAK: National Railroad Passenger Corporation

By: [Signature]

Title: VP Real Estate & Council Dev.

Amtrak's Acknowledgment

STATE OF Pennsylvania
COUNTY OF Philadelphia) ss:

On the 28 day of February, in the year 2023⁴, before me, the undersigned, personally appeared Lans Wolfowitz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as Vice President of Amtrak, and that by his/her signature on the instrument, the National Railroad Passenger Corporation, upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public - State of Pennsylvania

Commonwealth of Pennsylvania - Notary Seal
Virginia Hart, Notary Public
Philadelphia County
My commission expires March 12, 2027
Commission number 1288743
Member, Pennsylvania Association of Notaries

County: Albany

Site No: 401025

Order No:

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner.

By: Andrew Guglielmi
Andrew Guglielmi, Director
Division of Environmental Remediation

Date: April 11, 2024

Grantee's Acknowledgment

STATE OF NEW YORK)

) ss:

COUNTY OF Albany

On the 11 day of April, in the year 2024, before me, the undersigned, personally appeared Andrew Guglielmi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument, the People of the State of New York, upon behalf of which the individual acted, executed the instrument.

Cheryl A. Salem
Notary Public State of New York
Registration No. 01SA0002177
Qualified in Albany County
My Commission Expires March 3, 2027

Cheryl A. Salem
Notary Public State of New York

County: Albany

Site No: 401025

Order No:

EXHIBIT A
Declaration of Covenants, Restrictions and Environmental Easement

Mercury Refining Superfund Site

Property Description



Engineering and
Land Surveying, P.C.

1533 Crescent Road
Clifton Park, NY 12065
Phone: 518.371.0799
mjelspc@mjels.com
mjels.com

PARCEL DESCRIPTION
Delineated Clay Cap Limits Over a
Portion of Lands Now or Formerly of
CSX Transportation INC
Town of Guilderland & Colonie

All that piece or parcel of land, situated in the Town of Guilderland and Colonie, County of Albany, State of New York, and being more particularly bounded and described as follows:

Commencing at the point on the southerly line of Railroad Avenue, at its intersection with the property division line between lands now or formerly of 30 Railroad Avenue, LLC, as described in Book 3046 of Deeds at Page 804, on the west and lands now or formerly of 26 Railroad Ave INC, as described in Book 2234 of Deeds at Page 471, on the east; thence along said property division line, South 22°05'00" West, a distance of 561.21 feet to a point in the northerly line of lands now or formerly of CSX Transportation Inc.; thence generally easterly along the north line of said CSX Transportation INC along a curve to the left having a radius of 3779.04 feet, arc length of 68.66 feet, chord bearing of South 73° 54' 41" East, and chord length of 68.66 feet to the Point or Place of Beginning; thence from said Point of Beginning continuing along the northerly line of said lands of CSX Transportation INC, along a curve to the left having a radius of 3779.04 feet, arc length of 136.18 feet, chord bearing of South 75° 27' 52" East, and chord length of 136.17 feet to a point in the westerly line of lands now or formerly of DJ Wholesales Building; thence along the property division line of said lands of DJ Wholesales Building to the north, and CSX Transportation Inc. to the south, South 77° 02' 06" East, 9.72 feet to a point; thence through said lands of CSX Transportation Inc. the following ten (10) courses and distances:

1. South 78° 54' 29" West, a distance of 6.39 feet to a point;
2. North 73° 25' 46" West, a distance of 11.90 feet to a point;
3. South 62° 37' 42" West, a distance of 6.01 feet to a point;
4. South 52° 56' 48" West, a distance of 16.55 feet to a point;
5. North 84° 21' 03" West, a distance of 9.99 feet to a point;
6. North 73° 31' 28" West, a distance of 23.67 feet to a point;
7. North 74° 42' 39" West, a distance of 21.61 feet to a point;
8. North 70° 48' 41" West, a distance of 20.44 feet to a point;
9. North 53° 03' 30" West, a distance of 25.87 feet to a point;
10. North 45° 49' 05" West, a distance of 16.18 feet to the point or place of beginning, containing 1971.8 square feet.

Subject to any rights, easements, covenants, or restrictions of record.

County: Albany

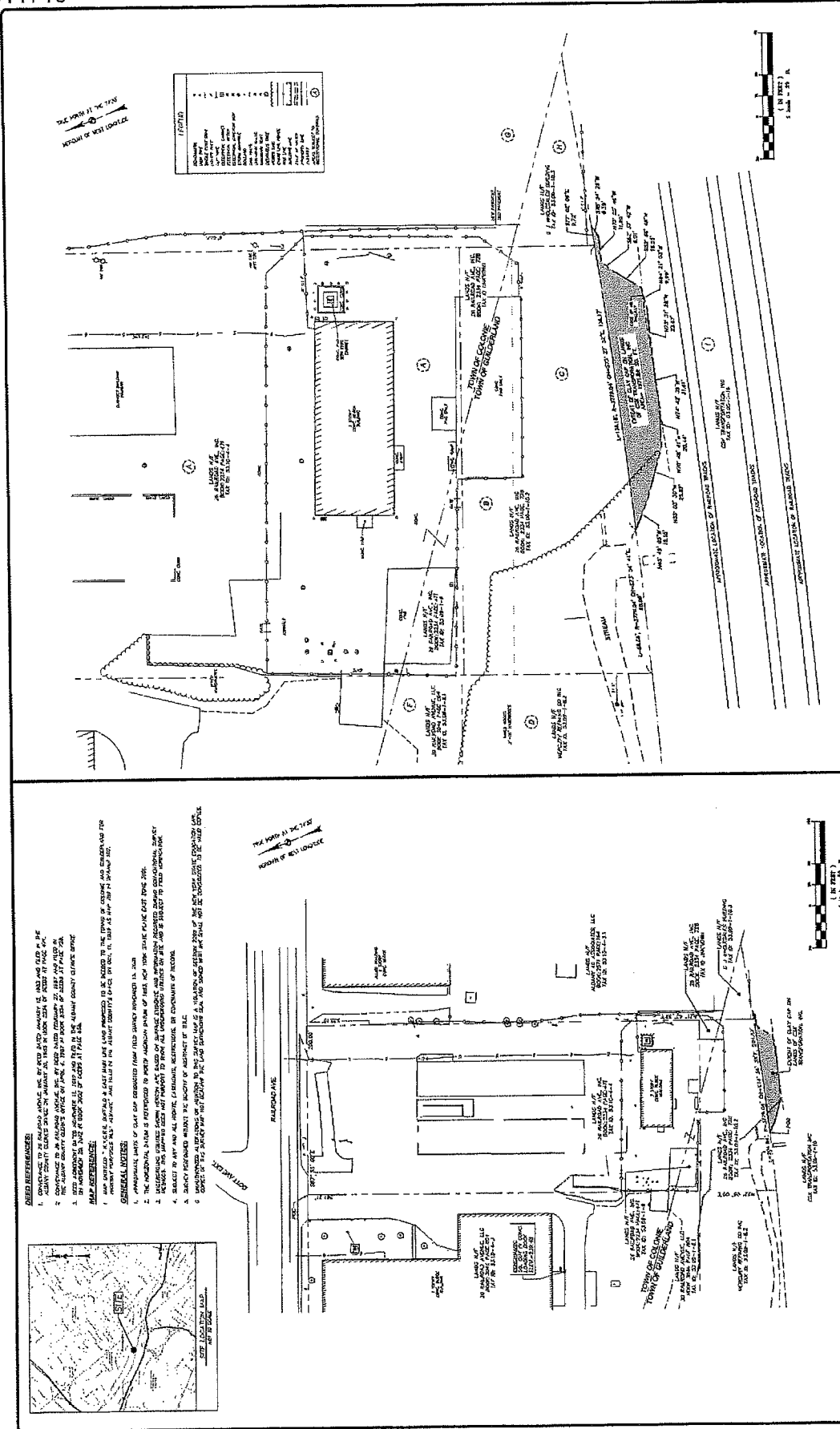
Site No: 401025

Order No:

EXHIBIT B
Declaration of Covenants, Restrictions and Environmental Easement

Mercury Refining Superfund Site

Property Survey



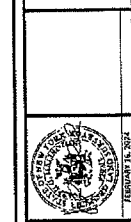
CONTRACT NO. CSX1011710
 DATE OF PLOTTING: 07/20/2011
 DATE OF PLOTTING: 07/20/2011

1 of 1

MERCURY REFINING SUPERFUND SITE
 SURVEY SHOWING DELINEATED CLAY CAP
 LIMITS OVER LANDS NOW OR FORMERLY
 OF CSX TRANSPORTATION INC
 28 RAILROAD AVENUE
 GUILDFORD/COLONIE, NEW YORK

Engineering and Land Surveying, P.C.
 1530 CUMMINS ROAD - CUMMINS PLANT, 12036

THIS IS A PORTION OF THE MATERIAL IN ANY FORM SUBMITTED TO THE STATE OF NEW YORK FOR THE PURPOSE OF OBTAINING A PROFESSIONAL ENGINEER'S LICENSE FOR AN ENGINEER OR ARCHITECT. IT IS THE PROPERTY OF THE ENGINEER OR ARCHITECT AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER OR ARCHITECT.



SUBMITTAL / REVISIONS			
NO.	DATE	BY	REVISIONS
1	07/20/2011	CSX	ISSUED FOR PERMIT
2	07/20/2011	CSX	ISSUED FOR PERMIT
3	07/20/2011	CSX	ISSUED FOR PERMIT

County: Albany

Site No: 401025

Order No:

EXHIBIT C
Declaration of Covenants, Restrictions and Environmental Easement

Mercury Refining Superfund Site

Site Management Plan

Section 3

Site Management Plan

This Site Management Plan (SMP) governs post RA activities on the Site properties, including:

- future excavation of soils including, but not limited to, soils beneath the Phase 1 and Container Buildings on the Mercury Refining Property, and soils on the Albany Pallet Property, the Allied Building Property, and the SealMaster property, which will not be remediated by the RA;
- the evaluation and mitigation of potential for vapor intrusion at existing buildings on-Site and/or those to be constructed in the future;
- proper management of all Site remedy components post-construction, including monitoring of groundwater to ensure that, following Site remediation, the contamination has attenuated and the groundwater has been remediated;
- operation and maintenance of the clay and asphalt/concrete cap;
- demolition or alteration of the existing buildings on-Site, to protect the health and safety of workers and the nearby community and to ensure proper disposal of any building debris; and
- periodic monitoring of the Unnamed Tributary, Patroon Creek and I-90 Pond.

Personnel requirements for implementing this SMP are detailed in Reporting requirements associated with the SMP are presented in Section 4.

3.1 Personnel Requirements

The work specified in this SMP must be supervised and performed by individuals with the appropriate training and experience. Section 1.3 describes key roles, responsibilities and qualifications. A summary of the roles, responsibilities and contact information for each individual also appears in the Quality Assurance Project Plan (see QAPP, Worksheets 5 and 7, RDR).

3.2 Data Quality

The work specified in this SMP includes the collection and analysis of samples of environmental media, including soil, soil vapor, air, building materials, groundwater, surface water, sediment and biota. Sample collection and handling, laboratory analysis, data validation, and data management will be conducted in compliance with the procedures specified in the Quality Assurance Project Plan (see RDR).

Implementation of this SMP requires satisfying the following Data Quality Objectives (DQOs):

- For soil, identify and, if present, define the vertical and lateral extent of soils with mercury concentrations in excess of 5.7 mg/kg (ppm) to be excavated and managed for off-Site disposal.
- For groundwater, verify that concentrations of dissolved mercury meet the remedial objective of 0.7 µg/L (ppb) after implementation of ISS.
- For soil vapor, assess whether sub-slab elemental mercury vapor concentrations beneath the Phase 1 Building meet the EPA OSWER screening guideline of 3.0 µg/m³ based on an attenuation factor of 0.1 and a Target Indoor Air Concentration to satisfy both the risk level ($R=10^{-5}$) and the target hazard index ($HI=1$).

- For indoor air, assess whether mercury vapor concentrations in the Phase 1 Building meet the EPA OSWER screening guideline of 0.3 ug/m³, the Target Indoor Air Concentration to satisfy both the risk level (R=10⁻⁵) and the target hazard index (HI=1).
- For wastes, determine hazardous/non-hazardous waste disposal requirements for on-Site soils.

DQOs for sediment, surface water and biota are specified in the Ecological Verification Sampling Plan (Attachment C).

3.3 Soil Excavation Plan

The purpose of this portion of the SMP is to prevent or control the future excavation of soils including, but not limited to, soils beneath the Phase 1 and former Container Storage Buildings on the Mercury Refining property, and soils on the former Albany Pallet Property, the Allied Building property, and the SealMaster property. Subsections describe requirements for community and worker health and safety, pre-excavation characterization of soils, excavation controls, waste management and disposal, and reporting.

3.3.1 Definitions

The following terms (listed in alphabetical order) are defined for use in this section:

- **Contaminated Debris:** Debris from the demolition, replacement or repair of any underground utilities located on the subject properties. Contaminated Debris includes but is not limited to sewer, water, gas or other piping which may consist of concrete, clay, plastic or metal. Contaminated Debris does not include pavement millings.
- **Excavated Material:** Existing soil, fill or buried utility bedding that has been moved or disturbed within subject properties, and Contaminated Debris. Excavated material does not include pavement millings.
- **Excavation:** The movement or disturbance of existing soil, fill or buried sewer pipe/bedding within the subject properties, or the demolition or movement of Contaminated Debris. Pavement millings are excluded from this definition.
- **Soil Excavation Officer (SEO):** The qualified environmental professional responsible for the proper implementation of this portion (Section 3.3) of the Site Management Plan.
- **Soil Excavation Plan (SEP):** A reference to the portion of this SMP governing future excavation or disturbance of soil (i.e., Section 3.3).

3.3.2 Community and Worker Health and Safety

Excavation activities will be conducted in accordance with the HSCP and the AAMP (see RDR) to protect on-Site workers and the surrounding community, respectively. Dust control action levels and mitigation measures during soil excavation are discussed in Section 3.3.4.4.

3.3.3 Pre-Excavation Sampling and Analysis

The Site history and previous soil investigations indicate a potential for concentrations of mercury in soil to exceed the 6NYCRR Part 375 Soil Cleanup Objective (Industrial Use) of 5.7 mg/kg (ppm) in unidentified areas of the MEREKO, Allied and SealMaster properties. Such areas might include limited portions of the margins of remedial excavations that were not included in post excavation or remedial design sampling, or randomly distributed, isolated mercury that was transported by vehicle tires or runoff

from past fire fighting episodes on the MEREKO property. Outside the area of MEREKO's former retorting operations, these potential soil impacts are likely to be shallow (less than 2 feet below grade). However, elevated mercury concentrations have been found at greater depths (as great as 7 feet bgs) in an area of the Allied property and the MEREKO parcel south of the SealMaster property.

Prior to excavating or otherwise disturbing any soil, the area proposed for excavation must be delineated and properly characterized to determine whether the particular soil to be excavated contains mercury concentrations in excess of the 5.7 ppm action level. Soil sampling work will be conducted by a qualified environmental professional in accordance with the HSCP (see RDR).

Samples should be collected via soil borings, test pitting and/or hand trowel, depending on the extent and depth of the proposed excavation. Depending on logistics, a direct-push rig (e.g., GeoProbe®) may be used to advance borings. Continuous soil samples will be collected from each soil boring using a macro-core sampler with a dedicated, clean acetate liner. Each macro-core sampler will be advanced only 2 feet before retrieval to improve overall recovery and depth control within the entire direct-push boring.

Samples from each sampler will be screened in the field using a Jerome 431-X mercury vapor analyzer (MVA) or equivalent. Readings for each sample interval will be recorded on a field log. Calibrating procedures and instructions for using an MVA will be as determined by the individual manufacturer. The samples will also be screened for noticeable signs of contamination (i.e., visible elemental mercury). Soil samples will be observed for physical properties such as color, sorting, etc. The grain size of the sampled soils will be visually characterized in the field by an experienced hydrogeologist and logged in accordance with a system after Burmister (1959). In addition, the Burmister classification will be converted to the Unified Soil Classification System (USCS) on the final boring log. Procedures for recording field data are provided in the QAPP (see RDR).

At a minimum, one soil sample will be collected from each two foot interval from surface to the base of the proposed excavation, at a rate not less than one boring per 100 ft² of excavation area.

Samples for chemical analysis will be immediately transferred from the acetate liners via the use of stainless steel scoops, trowels, or equivalent tools to appropriate laboratory-supplied containers and stored and handled according to procedures outlined in the QAPP. Sampling equipment will be disposed of or decontaminated after the collection of each sample in accordance with the procedures outlined in the QAPP.

Samples (including QA/QC samples) will be analyzed by a DOH ELAP-certified laboratory for Mercury by EPA Method SW-846 7471A. Previous data indicate that exceedances of the cleanup level (if any) are typically limited to depths of two feet or less. Therefore, the laboratory may be instructed to analyze the samples sequentially based on depth, with the two most surficial samples (0-2 ft. and 2-4 ft bgs) analyzed first. Analysis will continue to subsequent depths, if appropriate, until results indicate that mercury is detected at concentrations less than 5.7 mg/kg.

Each borehole will be backfilled with clean fill (sand) or bentonite pellets upon completion and any soil not used for chemical analysis will be handled in the same manner as investigation derived waste as outlined in Section 3.3.4. If the total mercury concentration in any soil slated for excavation indicates a potential for the soil to fail the Toxicity Characteristic Leaching Procedure (TCLP) limit of 0.2 mg/L in leachate (i.e., total mercury is greater than 20 times the TCLP limit, or 4 ppm), soil sample(s) will also be analyzed for TCLP Mercury by EPA Method SW-846 7470A.

Soil sample locations will be documented by field measurements within the area proposed for excavation unless more than four sample locations (400 ft²) are required, in which case soil sample locations will be surveyed by a New York State licensed land surveyor.

3.3.4 Investigation-Derived Waste Management

Investigation-derived waste (IDW) generated from field activities will be containerized in labeled 55-gallon DOT-approved steel drums and staged on the MEREKO property for characterization and disposal. Information contained on the label will include the drum contents, name, address and telephone number of generator; date(s) the material was placed in the drum; and a contact name/telephone number. Wastes will be separated based on type and inventoried. For example, separate drums will be filled for contaminated soil, decontamination wastewater, used personal protective equipment (PPE), and general trash.

Available analytical data from environmental media will be correlated with the particular contents of each IDW drum and the drums will then be classified into four categories as 1) non-hazardous (concentrations of TCLP mercury < 0.2 milligrams per liter (mg/L), 2) hazardous (concentrations of TCLP mercury > 0.2 mg/L), 3) hazardous and exceeding Land Disposal Restriction (LDR) limits and therefore requiring treatment (concentrations of TCLP mercury > 0.2 mg/L and total mercury concentrations > 260 mg/kg), or 4) containing free elemental mercury.

Based on the expected mercury concentrations in the unremediated area of the Site, IDW is expected to be classified as non-hazardous. A table displaying the comparison of analytical data, drum contents and hazardous classification will be prepared. IDW will be disposed of in accordance with applicable Federal, State, and Local regulations.

3.3.5 Excavation Controls

3.3.5.1 Supervision

An Soil Excavation Officer (SEO) will be in charge of proper implementation of the SEP. The SEO will be a qualified environmental professional trained under the appropriate OSHA regulations (i.e., 29 CFR 1910.120) and with appropriate experience supervising activities on contaminated sites. The SEO will be on Site as necessary to ensure proper implementation of the SEP.

3.3.5.2 Site Preparation

Several general Site preparation activities will be performed by the owner and contractors prior to initiating any Excavation activities. These preparation activities include utility clearances and identification, installation of erosion controls, provisions for Site security, clearing and removal of any vegetation, and preparation of a "clean" access area as described in this SEP.

Utility Clearance and Identification

Underground and above ground utilities that could affect or be affected by Excavation activities will be identified prior to the initiation of any intrusive soil activities. Locations of all utilities will be marked out by an independent company (UFPO / DIGSAFE or equivalent). When all utility locations have been identified, the owner and construction contractor will review the locations and determine if any utilities will be in conflict with the proposed construction plans. If any utility conflicts are identified the owner and construction contractor and the appropriate utility company will discuss what actions will need to be taken.

Erosion and Sedimentation Controls

The owner and construction contractor will carefully conduct Site-disturbing activities to minimize the erosion of soils and fill and impacts on the off-Site environment including man-made drainage channels, storm sewer systems and downstream waterways, etc. Erosion and sediment controls are an integral part of the construction sequence and SEP and will be required to be in place prior to commencing any intrusive soil activities. The owner and contractors will plan and conduct Site activities in a manner that

minimizes the extent of unprotected soil and protects as much of the natural vegetation as possible. In addition, the owner and contractors will minimize the time that soil is left unprotected. Erosion control and soil excavation activities will follow the construction sequencing to maximize the effectiveness of the erosion control strategy. The selection of specific erosion and sedimentation control measures during construction activities will depend on a number of parameters, including the type and duration of construction activities, Site topography, type of ground covers, and maintenance considerations. The measures will include the use and placement of silt fencing, impermeable liner material, geotextiles, rip rap, seed, and mulch. The sediment and erosion controls will be inspected on a daily basis and repaired as soon as practicable if damage is observed until a final surface cover has been provided in all areas.

Work Area Security

The owner and contractors will implement security measures at the Site that provide safeguards for the general public and create a protective barrier around Excavation and Excavated Material locations. Security measures may consist of temporary fencing or barriers, warning tape, maintenance of sign in / sign out sheets, and practicing safe work procedures. The type of work area security will depend on the type of construction activities being performed and the location of these activities.

Clearing and Removing of Vegetation

To facilitate construction activities, existing vegetation and other obstructions may be removed from the Site after notification and approval of the owner. Any vegetation, movable items or structures that may have been in contact with contaminated soil/fill or may be contaminated will need to be characterized for disposal prior to removal from the Site. No removal of trees or brush from the areas of construction will occur without authorization from the SEO. No ground cover will be permitted to be burned. Fugitive dust created as a result of any construction/excavation will be mitigated in accordance with the Dust Control procedures outlined in the AAMP and this SEP. Implementation of dust suppression will be determined by the SEO.

Clean Access Area

Due to the potential of encountering subsurface contamination during Excavation activities, a "clean" transition area will be established at various locations for access / egress to specific work areas. The "clean" area will be used for equipment / material deliveries, and loading of any contaminated material for off-Site treatment or disposal. The type of "clean" area will vary depending on the anticipated level of contamination, location of the work area, and the type of work to be completed at the location. The owner and contractors will evaluate the specific work required and upon approval of the SEO will construct a "clean" area to facilitate the progression of construction activities.

3.3.5.3 Soil Excavation, Handling, and Disposal During Excavation Activities

Due to the potential of discovering and handling contaminated soil on the subject properties, the owner and contractors will be required to execute construction activities in a manner that minimizes the potential for inadvertent releases to the environment, unsafe conditions for on-Site and off-Site personnel. During construction activities the owner and contractors will adhere to the following practices and precautions during any intrusive soil excavation or grading activities.

Personnel Training and Protection

Due to the presence of contaminated soils, fill and/or debris in the areas governed by this SEP, the owner and contractors will be required to use only personnel properly trained under the appropriate OSHA regulations (i.e., 29 CFR 1910.120) and provided with appropriate personal protection equipment. The types of required training and protection will be determined by the SEO.

Equipment

In general, the equipment used for any excavation or grading may involve one or more of the following: excavator, backhoe, grade-all, front-end loader, bulldozer, jackhammer or other suitable types of construction equipment. Other equipment used in the course of construction activities involving the disturbance of soils may include sheeting and shoring devices and drilling/augering equipment. All equipment used in the areas subject to the SEP will be properly decontaminated at the end of its use, in order to prevent any contamination from migrating from the Site. The owner and contractors will be responsible for implementing specific equipment cleaning procedures subject to approval of the SEO. These procedures should include the removal of any visible accumulations of soil on equipment tires or surfaces either manually or through the use of a high-pressure water spray. Any water generated during equipment decontamination will be managed in accordance with Section 3.3.9.

Limits of Excavation/Grading

Excavation and grading will only be completed for areas inside the limits identified on the approved construction plans. Any excavations or grading outside the limits shown on the plans will need to be discussed and approved by the SEO or oversight agency prior to any intrusive activities into the soil. During construction, all excavation limits, grading elevations, foundation elevations, and utility installations will be verified through the use of survey control and visual observations.

Handling and Storage of Excavated Material

Excavated Material will be stockpiled on polyethylene sheeting and covered securely with polyethylene sheeting at the end of each workday to prevent migration of contaminants due to wind or precipitation. Stockpiles are to be continuously maintained to promote proper drainage of precipitation off or around the stockpiles. Procedures for handling water that contacted contaminated material are identified in Section 3.3.8. All equipment, vehicles, materials, and personnel used to maintain the stockpile area will undergo decontamination procedures prior to leaving the stockpile area and accessing other "clean" areas of the Site. Handling of Excavated Material will be kept to a minimum to reduce the potential for contaminants being released to the environment.

Exposed Excavations

During construction activities the amount of exposed excavation is to be minimized whenever possible. At the end of each workday, exposed excavations are to be covered with polyethylene sheeting to prevent the potential migration of contaminants by precipitation or wind. In addition to covering exposed excavations, erosion and sediment control measures must be followed through the use of silt fencing, hay bales, mulch, or other methods approved by the SEO or the EPA and DEC.

Site Restoration

The contractor will be responsible for providing, placing and compacting suitable backfill material from a clean source approved by the EPA and DEC. Representative samples of material proposed for backfilling from any other source will be tested in accordance with DER-10 by submitting samples to a New York State Department of Health (DOH) approved laboratory for chemical analysis of the following parameters:

- Pesticides/PCBs;
- Target Compound List (TCL) volatile organic compounds;
- TCL semi-volatile organic compounds;
- Target Analyte List (TAL) inorganics;

- Physical analysis (sieve) if required; and
- pH.

The results of the chemical analyses will be submitted to the SEO for approval. If analysis of the backfill sample indicates unacceptable chemical or physical characteristics, the contractor will identify and provide an alternative backfill source.

Characterization of Excavated Material

Unless otherwise tested, all Excavated Material will be assumed to contain mercury above the 6NYCRR Part 375 Soil Cleanup Objective (Industrial Use) of 5.7 mg/Kg (ppm). Sampling and analysis of excavated soils will be done in conformance with the requirements of the permitted, off-Site disposal facility. These requirements typically specify the rate of sampling (no. samples/volume soil) as well as the particular analytical parameters and methodologies. The owner and contractors will be required to maintain accurate records for all sample analysis performed during construction activities.

A permitted waste disposal facility's waste approval requirements may require submittal of the results of Toxicity Characteristic Leaching Procedure (TCLP) analyses for mercury prior to acceptance of Excavated Material. The SEO will be responsible for the collection of representative samples from the stockpile(s) of Excavated Material. The samples will be submitted to a laboratory certified by DOH ELAP to perform TCLP analyses. The regulatory limit for mercury in the TCLP extract is 0.2 mg/L (ppm). In the unlikely event that one or more TCLP mercury results for a portion of the Excavated Material exceed this regulatory limit, that portion of Excavated Material will be managed as a RCRA characteristic hazardous waste and disposed of in a facility permitted to accept such material.

Off-Site Disposal

All Excavated Material will be disposed of off-Site. The owner will be responsible for the transportation and disposal of the Excavated Material in accordance with applicable regulations. Based on the analytical results obtained from soil during the RI and Remedial Design Investigation, it is anticipated that most or all soil will be classified and disposed of as non-hazardous waste. Waste soils must be transported by vehicles that have a valid 6NYCRR Part 364 permit or equivalent.

The DSR responsible for preparation of the annual PRR and Certification will be notified through documentation and reporting in accordance with all applicable requirements. Reportable information will include, at a minimum, the type and concentration of contamination present, the expected or known quantity of the contaminated material, and the method of treatment or disposal of the contaminated material.

The owner and contractors will set up a loading area alongside the stockpiled Excavated Material and load the trucks from the edge. The off-Site haul truck will be draped with polyethylene sheeting to protect the outside of the truck and tires from coming in contact with any Excavated Material. The trucks will be inspected prior to leaving the area to determine whether decontamination is required.

3.3.5.4 Dust Controls

During Excavation activity and handling of Excavated Material, real-time monitoring of dust will be performed in accordance with the Ambient Air Monitoring Plan (AAMP, see RDR). The current standard for fugitive dust is for an integrated (average) measurement over a 15 minute sampling time. Particulate concentrations will be monitored continuously directly downwind of the work area. The particulate monitoring will be performed using real-time monitoring equipment capable of measuring particulate matter less than 10 micrometers in size (PM-10) and capable of integrating over a period of 15 minutes

(or less) for comparison to the airborne particulate action level. The equipment will be outfitted with an audible alarm to indicate exceedance of the action level. In addition, fugitive dust migration will be visually assessed during all work activities. A background particulate level will be established for each work site.

If the work zone PM-10 particulate level is 0.1 milligram per cubic meter (mg/m^3) greater than background for the 15-minute period or if airborne dust is observed leaving the work area, then dust suppression techniques will be employed. Work will continue with dust suppression techniques provided that work zone PM-10 particulate levels do not exceed $0.15 \text{ mg}/\text{m}^3$ above the background level and provided that no visible dust is migrating from the work area.

If, after implementation of dust suppression techniques, work zone PM-10 particulate levels are greater than $0.15 \text{ mg}/\text{m}^3$ above the background level, work must be stopped and a re-evaluation of activities initiated. Work can resume provided that dust suppression measures and other controls are successful in reducing the work zone PM-10 particulate concentration to within $0.15 \text{ mg}/\text{m}^3$ of the background level and in preventing visible dust migration.

All readings will be recorded and be available for review by the EPA, DEC and the DSR responsible for preparation of the annual PRR and Certification. The particulate levels referenced herein are guidance values applicable at the time this document was created, and are subject to change in accordance with applicable standards, criteria and guidance values at the time the work is to be performed.

In the event that the action level is reached, or if there is visible dust leaving the Site, one or more of the following dust suppression techniques will be employed:

- Applying water on haul roads;
- Wetting equipment and excavation faces;
- Spraying water on buckets during excavation and dumping;
- Hauling materials in properly tarped containers;
- Restricting on-Site vehicle speeds to 5 mph;
- Covering excavated areas and staged material after excavation activity ceases with polyethylene sheeting;
- Closing or completing excavations as soon as practicable.

Atomizing water sprays may be used to prevent overly wet conditions. If the above dust suppression techniques do not lower particulates to an acceptable level, or if extreme wind conditions occur, work will be suspended until appropriate corrective measures are approved or the extreme wind conditions subside.

3.3.6 Pavement Repair/Replacement

3.3.6.1 General Repair Activities

Construction activities that may be conducted during the repair and/or replacement of the existing pavement, gravel sub-base and asphaltic layer(s) include the filling of potholes/cracks, the scarification and replacement of the asphalt layer(s), and seal coating and chipping of the roadway surface. Maintenance or replacement of storm drainage features, such as replacement of drainage culverts/manholes, etc. is not covered in this section, but included in Section 3.3.4 - Excavation Controls.

3.3.6.2 Surface Repair Activities

Surface repair activities that do not disturb the subgrade material may be conducted in accordance with standard procedures. This includes the application of a surficial seal compound to address surface cracking and the application of overall seal coating/chipping applications. The repair of potholes in the top and base layer of asphalt may also be conducted in accordance with standard procedures. If repair activities include excavation below the asphalt and the subbase gravel, construction activities should be conducted in accordance with the procedures in Section 3.3.4.

3.3.6.3 Removal/Scarification and Replacement of Asphalt

For removal and/or scarification of asphalt pavement top and/or base layer, general work area preparations will be performed by the contractor prior to initiating activities. These activities may include the delineation of utility valve boxes, manholes, and other structures/items located in the asphalt roadway, and delineation of the work area. Proper precautions should be conducted to ensure protection of existing features.

The removal/scarification activities of the asphalt base and top layer(s) may be conducted in accordance with standard procedures. The removed asphalt will be contained by the contractor and may be recycled/disposed of in accordance with standard procedures. Removed/scarified asphaltic materials are not considered contaminated and do not require contaminated material handling procedures. If removal of the existing soil beneath the asphalt/subbase gravel is required as part of the construction activities, then the contractor must conduct these removal/excavation activities in accordance with Section 3.3.4.

3.3.7 Augering/Drilling Activities

Construction activities may include augering or drilling into the subgrade for the installation of telephone poles, fencing, support posts, etc. When conducted on the subject properties, these activities will disturb subgrade materials that are assumed to be contaminated, and will require handling and disposal procedures as described below. In addition, the contractor will comply with the requirements for supervision, Site preparation, utility clearance and identification, erosion and sedimentation controls, work area security, clearing and removing of vegetation, and clean access area.

The equipment used for the installation of telephone poles, guard rail supports, or other support structures may involve augers, drill rigs or other suitable types of equipment used for drilling into the subsurface.

3.3.7.1 Handling of Auger/Drill Soil Cuttings

The contractor will conduct augering/drilling procedures in a manner such that the augered/drilled soil cuttings are contained as they are removed from the borehole. Once the location of the bore hole has been determined, and utilities have been identified in accordance with the requirements of this SEP, the contractor will place polyethylene sheeting in the area around where the augering/drilling will be located. The sheeting will include a berm around the perimeter, constructed by wrapping the polyethylene around a suitable material (e.g. 6" x 6" timber), to create a soil/water containment area. The purpose of the sheeting and berm is to contain the soil and water resulting from the augering/drilling operations as the drilling equipment is advanced into the subsurface, and to prevent contact of the subsurface soils with the surrounding areas. The contractor will advance the auger/drill at a continuous rate that prevents removal of excess soil and/or water from the borehole. As the augering/drilling progresses, the contractor will containerize the soil cuttings by transferring the soil into containers (e.g. drums) for subsequent sampling and disposal, in accordance with this SEP. Procedures for handling water that collects in the polyethylene sheeting bermed areas are included in Section 3.3.8.

3.3.7.2 Equipment Cleaning and Decontamination

Equipment used on the properties subject to the requirements of this SEP will be properly cleaned and decontaminated at the completion of the construction activities in order to prevent cross contamination from subsurface materials to areas or other equipment outside the designated area. The owner and contractors will be responsible for implementing specific equipment cleaning procedures subject to approval of the SEO. These procedures will include, but not be limited to, the removal of visible accumulations of soil on the augering or drilling equipment, tires and other surfaces either manually or by high pressure water spray. Any water, solids or sludge generated during equipment decontamination will be managed in accordance with Sections 3.3.5.3 and 3.3.8.

3.3.8 Stormwater Management and Dewatering

Construction activities may include subsurface utility installations and electrical ductbanks and manholes, sheeting, piling, and the installation of equipment foundations. During these activities and others which may impact stormwater runoff, stormwater management/sediment and erosion controls and discharge and necessary treatment will be installed. In addition to the stormwater management and control measures specified in this SEP, other local, state and federal regulations may apply.

3.3.8.1 Stormwater Run-On

Stormwater run-on will be controlled during Excavation activities through diversion to surface swales away from excavations. Run-on will be diverted from entering the excavations through the construction and maintenance of soil berms wrapped with liner at the limit of excavations, deflecting flows which are not impacted by construction or excavation activities to surface swales or natural drainage areas, or other equally effective methods.

As noted previously, Excavated Material will be, staged and shipped off-Site for disposal.

- **Soil Staging Area:** The soil staging area will be constructed to prevent Excavated Material and runoff from entering surrounding areas. A sump pit should collect all runoff from the staging area. Sediment collected in this sump will be added to stockpiled soils. Waters collected in the staging area sumps will be pumped to water storage tanks, treated if required and disposed of off-Site.
- **Erodible Soils:** The removal of existing ground cover may expose erodible soils or fill. During construction activities, dust control measures will be implemented as described in Section 3.3.5.4 and the AAMP, if required. Any landscaped areas disturbed during the project period will be treated in the appropriate manner by the placement of seed and mulch for grass areas.
- **Temporary Measures:** The owner and contractors will implement temporary stormwater control measures when the potential exists for erosion channels to form and/or measurable sediment deposits to wash into low lying areas. The owner and contractors will utilize such temporary stormwater control measures as silt fencing, diversion dikes, check dams and/or temporary seeding to provide effective stormwater management.
- **Vegetation and Mulch:** Soil exposed during construction activities that will not have an impervious layer applied will be covered by grass seed and mulch, or crushed stone upon completion of the project.

3.3.8.2 Dewatering Excavations During Construction Activities

The owner and contractors should to the greatest extent practicable prevent water resulting from precipitation from entering open excavations through the use of earthen berms, swales, or sedimentation basins. Any water that enters an open excavation will be classified and handled as contaminated water requiring treatment by a permitted facility prior to discharge or disposal. Water

which collects in the excavations as a result of groundwater intrusion will be pumped from excavations as necessary when it impedes excavation, sampling, or affects the ability to achieve compaction of backfilled soils.

Water pumped from excavations will be discharged to temporary holding tanks. The collected water will be sampled, treated if necessary, and disposed of off-Site in accordance with all applicable standards.

3.3.9 Equipment Decontamination Water

Water utilized for decontamination of equipment will be supplied by fire hydrants located on the Site, potable water from the Town, or potable water from another off-Site source.

Water utilized in equipment decontamination will be treated at a permitted facility and discharged in accordance with all applicable standards. The owner and contractors will set up portable decontamination stations to decontaminate heavy equipment or parts of heavy equipment (e.g., excavator bucket) at specific work areas.

3.3.10 Emergency Repairs

If, at any time, emergency repairs are required for subgrade utilities, the owner and contractors will follow the requirements of this plan to the extent practicable. However, if the repairs, including excavation, must be conducted on an emergency basis, and it is not practical to follow the requirements due to an imminent danger or threat to human health and safety, the contractor may make the repairs as necessary. Once the danger or threat is mitigated and/or the emergency repairs are conducted, the contractor must then conduct any additional activities in accordance with this plan.

For example, if it is not possible to construct a soil/water containment area for placement of excavated soil/water due to time constraints while addressing an emergency repair of a gas line, then the contractor may forgo this requirement in order to conduct the emergency repair. However, once the emergency situation is abated, the contractor must containerize the excavated soil and dispose of the material in accordance with the requirements of Section 3.3.5. The contractor must remove any excavated subgrade materials from the surrounding work area in accordance with the requirements of this plan and obtain approval from the SEO.

In the event emergency repairs are necessary, the owner will notify the DSR responsible for preparation of the annual PRR and Certification as soon as possible and no later than 5 days after the repairs are complete, and provide a written report within 30 days detailing the reason for the emergency repairs, how this SEP was followed, any necessary deviations, and measures taken to evaluate/mitigate any potential exposures and/or release of contaminants.

3.3.11 Health And Safety

There are potential health and safety concerns associated with the presence of mercury on the subject properties. These and other concerns, including but not limited to general safety practices, work permits, excavation shoring/bracing requirements, ladders, excavation barriers, confined space entry procedures, explosive gas monitoring, mechanical/electrical lock-out procedures, back-flow prevention, notifications, and so forth are not addressed herein. It is the responsibility of the owner, contractor, utility company or any others involved in Excavation activity to identify and comply with the applicable requirements of, OSHA, and other local, state and federal agencies. These requirements will include, at a minimum, the preparation of a Site-specific, activity-specific Health and Safety Plan (HASP), ensuring that workers have appropriate training and medical monitoring, the use of appropriate personal protective equipment, etc. Proper health and safety procedures must be followed at all times. The requirements of the activity-specific HASP will be no less protective than those of the HSCP (see RDR).



Invasive work performed at the property will be conducted in accordance with the applicable local, state, and federal regulations to protect worker health and safety, and in accordance with the AAMP (see RDR).

3.3.11.1 Construction Personnel Protection

The owner, its employees, and contractors engaged in subsurface construction or maintenance activities (e.g., utility workers) will be required to implement appropriate health and safety procedures. These procedures will involve, at a minimum, donning adequate personal protective equipment, performing appropriate air monitoring, and implementing other engineering controls as necessary to mitigate potential ingestion, inhalation and contact with residual constituents in the soils. Recommended health and safety procedures include, but may not be limited to, the following:

- While conducting invasive work at the Site, the owner and any contractors will provide safe and healthful working conditions.
- The owner and contractors will comply with the New York State Department of Labor regulations and published recommendations and regulations promulgated under the Federal Occupational Safety and Health Act of 1970 and the Construction Safety Act of 1969, as amended, and with laws, rules, and regulations of other authorities having jurisdiction. Compliance with governmental requirements is mandated by law and considered only a minimum level of safety performance. The owner and contractors will insure that the work is performed in accordance with recognized safe work practices.
- The owner and contractors will be responsible for the safety of the owner's and contractor's employees and the public. The owner and contractors will be solely responsible for the adequacy and safety of the construction methods, materials, equipment and the safe prosecution of the work.
- The owner and contractors are responsible to ensure that the project personnel have been trained in accordance with 29 CFR 1910.120.
- The owner and contractors will have a HASP, written in accordance with 29 CFR 1926.65, prepared, signed and sealed by a safety professional; a safety professional and/or a trained safety representative(s) active on the job whenever the work is in progress; an effective and documented safety training program; and a safety work method check list system. Recognition as a safety professional will be based on a minimum of certification by the Board of Certified Safety Professionals as a Certified Safety Professional and 5 years of professional safety management experience in the types of construction and conditions expected to be encountered on the Site.
- Personnel employed by the owner and contractors or subcontractors or any visitors whenever entering the job site, will be required to wear appropriate personal protection equipment required for that area.

3.3.11.2 Community Air Monitoring Program

Air monitoring will be performed during Excavation activities and movement of Excavated Material in accordance with the AAMP (see RDR) and the DOH Generic Community Air Monitoring Plan included therein. All air monitoring readings will be recorded in a logbook and will be available for review by the EPA, DEC, and DOH.

3.3.12 Notification Requirements

The protocols of this SEP are activated by any Excavation activity or movement of Excavated Material. The SEP protocols do not apply to repaving or the movement of pavement millings or subbase material.

Except in emergencies, the owner will notify the DSR responsible for preparation of the annual PRR and Certification a minimum of five business days in advance of the planned activity. The SEO and owner will provide this activity specific SEP to the contractors and subcontractors and be sure the contractors and subcontractors implement the activity specific SEP.

In the event of an emergency, the owner will notify the DSR responsible for preparation of the annual PRR and Certification as soon as possible and then submit a report detailing how this SEP was followed and any necessary deviations.

3.4 Evaluation of Vapor Intrusion

Given the volatility of elemental mercury, a potential exists for mercury vapor intrusion in the Phase 1 Building and any buildings to be constructed in the future. This potential exists primarily in the vicinity of the mass stabilized by ISS, where the greatest concentrations of elemental mercury have been observed, but cannot be definitively ruled out in other areas without measurement of mercury concentrations in soil vapor. Mercury soil vapor measurements were obtained under and adjacent to the Phase 1 Building during the RDI to establish baseline conditions prior to implementation of ISS. During ISS, soil vapor and indoor air will be monitored to evaluate whether the physical and thermal effects of ISS are exacerbating the potential for mercury vapor intrusion. Upon completion of the remedial construction, mercury concentrations will be measured in soil vapor beneath and adjacent to the Phase 1 Building slab to assess whether vapor intrusion has a potential to adversely affect indoor air quality, and whether mitigation measures are warranted.

Before the completion of the design for any new building on the properties subject to this O&M Plan, mercury concentrations in soil vapor will be measured within the footprint of the proposed structure to ascertain whether the building design should include vapor intrusion mitigation measures such as a sub-slab depressurization system.

The following sections detail procedures for the installation of soil vapor probes and collection of soil vapor and indoor/ambient air samples.

3.4.1 Community and Worker Health and Safety

Soil vapor probe installation activities will be conducted in accordance with the provisions of the Health and Safety Contingency Plan (see Final RDR) and the Ambient Air Monitoring Plan (see Final RDR). Community air monitoring will not be required for the sampling of probes and ambient/indoor air as there is no potential for particulate or vapor emissions that could impact the area beyond the immediate work zone.

3.4.2 Post-Remediation Monitoring

Soil vapor samples will be collected from locations adjacent to the Phase 1 Building and beneath the floor slab of the building for the purpose of evaluating mercury vapor concentrations in soil gas after implementation of ISS. The locations will be selected in the field based on proximity to the stabilized mass and to avoid interfering with present-day usage of the MEREKO facility. A minimum of four permanent soil vapor probes will be installed, with two targeting sub-slab conditions and two targeting conditions between the building and the stabilized mass. Sampling will be conducted during two sequential heating seasons (November to March), at which point a recommendation will be made to the EPA and DEC whether to discontinue monitoring, continue monitoring, or institute mitigation measures. During each sampling event, a contemporaneous indoor air and ambient (outdoor) air sample will also be collected. These will facilitate the evaluation of ongoing operations (off- or on-Site) that may contribute to indoor air contamination.

3.4.3 Installation of Soil Vapor Probes

Soil vapor probes will be installed as follows:

- A direct-push drill rig (e.g., GeoProbe®) will be used to advance a 2-inch diameter borehole to a depth of 5 feet bgs.

- Once the borehole is complete a 2 foot long, 1-inch diameter PVC slotted screen (0.010") will be set in the borehole with clean silica sand filter pack material placed in the annulus surrounding the screen. The screened interval will be from 3 to 5 feet.
- A hydrated bentonite slurry will be placed in the annular space above the filter pack to provide a seal in the borehole from surface contamination and to minimize infiltration of ambient air.
- The top of the soil vapor probe will be completed with a male-threaded, appropriately sized tubing-barb to be used with the sampling tubing. The barb will be completed with a cap so that infiltration by outside air will be minimized.
- Soil vapor probes will be fitted with flush mount protective casings.

Probe installation work and will be conducted in accordance with the QAPP and HSCP.

3.4.4 Collection of Soil Vapor Samples

Soil vapor samples will be collected no less than two weeks following the installation of the soil vapor probes. Samples will not be collected on days when high humidity or rainfall may impact the readings from the field monitoring equipment.

- One (1) Teflon®-lined polyethylene sampling tube will be connected to the tubing-barb for use in sampling. The tube will be secured to not allow debris to clog the tube and/or potentially contaminate the sample. The sampling point will be sealed around the tubing using modeling clay.
- Prior to collecting the sub-slab soil gas sample, a "leak-test" will be performed to ensure tightness of the seal. A 3-gallon modified plastic bucket will be placed over the top of the sample point. The soil vapor sampling tube will be threaded through a gas-tight fitting in the bucket to allow for sample collection without removing the bucket. The base of the bucket will be suitably sealed to the ground or floor surface (e.g., using bentonite clay). The bucket will have tubing at the top of the chamber to introduce the tracer gas (helium) into the chamber and a valved fitting at the bottom to let the ambient air out while introducing tracer gas. A helium detector will be attached to the valve fitting at the bottom of the chamber to verify the presence of the tracer gas. The valve will be closed after the chamber has been enriched with helium at concentrations >50%. After the test set-up, the sample point will be purged of three volumes (inner volume of sample point and sample tubing) of soil gas. Purging will be conducted using an air pump adjusted to a low rate of 200 ml/min or less. During purging, the helium concentration will be monitored at the vent of the air pump. A helium reading of greater than 5% of the concentration within the bucket surrounding the sample point is indicative of a leak in the seal. If the readings indicate a poor seal, the sample point will be reset and the leak detection process repeated until it is found to be free of leaks.
- The sampling probe will be purged for approximately 10 minutes. This is intended to exchange air from the sampling tubing, which could potentially dilute or otherwise bias the sample.
- A reading will be taken with the mercury vapor analyzer to measure mercury vapors. At locations with mercury below the detection capability of the meter, selected samples will be analyzed by Method 10-5 to quantify the lower levels.
- To collect a sample for laboratory analysis for total mercury by 10-5, gold-coated bead traps will be used with a Teflon particulate filter before the trap so that no particulate can be trapped and skew results. When assembling, installing and removing the traps particle-free gloves will be worn at all times and samplers will stand down-wind to prevent contamination by shedding particles from clothing, etc.

- The trap with filter will be connected to a pump which will draw air through the trap at a constant rate of 0.3 L/min. The calibrated range of the method is 5 ng to approximately 7.5 mg depending on the variety of trap used in sampling. Therefore, to target the method range, the pumping duration will likely be the minimum practical.
- The samples will be sent to a DOH ELAP certified laboratory for analysis.

3.4.5 Data Evaluation

All data will be validated and managed in accordance with the QAPP (see RDR). New York State currently does not have any standards, criteria or guidance values for concentrations of mercury in soil vapor (DOH, 2006). Sub-slab mercury vapor concentrations beneath the Phase 1 Building will be compared with the EPA OSWER screening guideline of 3.0 ug/m³ based on an assumed attenuation factor of 0.1 and a Target Indoor Air Concentration that satisfies both the prescribed risk level (R=10⁻⁵) and the target hazard index (HI=1). Indoor/ambient air concentrations will be compared to the EPA OSWER screening guideline of 0.3 ug/m³, which is the Target Indoor Air Concentration that satisfies both the prescribed risk level (R=10⁻⁵) and the target hazard index (HI=1).

3.4.6 Mitigation

In the event that soil vapor concentrations of mercury indicate that vapor intrusion mitigation is needed, the property owner will be responsible to design, install and operate a system in accordance with available guidance, including that provided by the New York State Department of Health (DOH, 2006). An active sub-slab depressurization system (SSDS) is the preferred mitigation method for buildings with a basement slab or a slab-on-grade foundation. An SSDS would involve retrofitting the existing Phase 1 Building or, in the case of new buildings, be installed during the construction of the building. Buildings having more than one foundation design feature (e.g., a basement under one portion and a crawl space beneath the remainder) may require a combination of mitigation methods.

The mitigation measure(s) will be designed by a New York State licensed professional engineer with appropriate training and experience in mitigating soil vapor intrusion. Detailed technical guidance on designing and installing mitigation systems is provided in various documents, including but not limited to the following:

1. References provided in ASTM's E-2121 and the EPA's Model Standards and Techniques for Control of Radon in New Residential Buildings;
2. Radon Reduction Techniques for Existing Detached Houses: Technical Guidance (Third Edition) for Active Soil Depressurization Systems EPA [EPA 625/R-93-011, October 1993];
3. Radon Prevention in the Design and Construction of Schools and Other Large Buildings EPA [EPA 625-R-92-016, June 1994].

If mitigation systems are implemented, the operation, maintenance and monitoring (OM&M) protocols for the system will be submitted to the EPA, DEC and the DSR responsible for preparing the annual PRR and Certification. The mitigation system OM&M activities will also be documented and reported in the annual PRR and Certification.

3.5 Groundwater Monitoring

After implementation of ISS, periodic monitoring of groundwater will be conducted to ensure that the dissolved mercury concentrations in the vicinity of the stabilized mass have attenuated and the groundwater has been remediated. In accordance with the ROD, the compliance standard is 0.7 ug/L (ppb) dissolved mercury. Laboratory analyses of groundwater samples containing suspended solids (turbidity) are likely to significantly overstate the actual concentration of dissolved mercury in groundwater. Therefore, as was the case with the Remedial Design Investigation, measures will be

employed during construction and subsequent sampling of compliance monitoring wells to ensure that sample turbidity is minimized. This section specifies the locations, depths and construction methods for compliance monitoring wells, as well as the methods to be used for sampling, analysis and data evaluation. The work will be conducted in accordance with the QAPP (see RDR).

The performance monitoring wells will be sampled quarterly for an initial period of two years. Samples will be analyzed for mercury by EPA Method 7470A. If the analytical results indicate the performance standard has been achieved, sampling frequency will, with the concurrence of the EPA and DEC, be reduced to an annual basis thereafter.

3.5.1 Community and Worker Health and Safety

The monitoring well installation and groundwater monitoring field activities will be conducted in accordance with the provisions of the HSCP (see RDR) and the AAMP (see RDR). Community air monitoring will not be required for well sampling events as there is no potential for particulate or vapor emissions that could impact the area beyond the immediate work zone.

3.5.2 Proposed Performance Monitoring Wells

A total of four well clusters, each consisting of a shallow, intermediate and deep well, are proposed for performance monitoring of groundwater (Figure 3-1). Two of the well clusters, MW-ISS-12 (S,I,D) and MW-ISS-13 (S,I,D), were installed in downgradient locations during the RDI. A third monitoring well cluster (MW-ISS-14 (S,I,D)) will be installed at a location east of these wells to monitor groundwater quality downgradient from the eastern portion of the stabilized mass. The fourth monitoring well cluster, MW-ISS-15 (S,I,D), will be installed north of the stabilized mass to monitor upgradient groundwater quality. The proposed locations of the downgradient monitoring wells are based on pre-ISS groundwater flow directions reported in the Supplemental RDI Report (BC, 2013), and on the expectation that groundwater flow lines will be altered by the presence of the solidified mass. Contoured water table elevations obtained from the shallow monitoring wells, and intermediate and deep potentiometric surfaces indicated that groundwater in the shallow, intermediate and deep portions of the aquifer flows in a south-southwest direction, towards the Unnamed Tributary. This is consistent with the groundwater flow directions identified earlier in the RI.

The location of MW-ISS-14 (S,I,D) shown on Figure 3-1 is considered preliminary. After implementation of ISS and before new monitoring wells are installed, post-ISS groundwater data will be evaluated to determine whether the proposed locations relative to the stabilized mass and altered flow patterns are appropriate. The final location of MW-ISS-14 (S,I,D) will be determined after evaluating three rounds of post-ISS water level measurements obtained from monitoring wells MW-ISS-12 (S,I,D) and MW-ISS-13 (S,I,D). The three rounds will be conducted at approximately two-day intervals in order to confirm that water levels have equilibrated after ISS. In addition, prior to finalizing well locations, groundwater samples may be collected and analyzed for mercury and other parameters to evaluate potential changes in groundwater chemistry caused by the ISS. The water level measurements and any collection and analysis of groundwater samples will be conducted in accordance with the QAPP.

The new wells will be located no closer than approximately 20 feet from any abandoned wells so that they will not be influenced by grout used in the abandonment. It should be noted that early monitoring wells OW-2, OW-3, and MW-2D, which are slated for abandonment, are located downgradient from the proposed performance monitoring wells and are therefore unlikely to influence groundwater characteristics at the performance monitoring wells. Monitoring well OW-4, also slated for abandonment, is located side-gradient from upgradient performance monitoring well cluster MW-ISS-15 (S,I,D). In the event that initial performance monitoring data indicate that chemical effects of ISS (e.g., elevated pH) are affecting the chemical properties of groundwater samples such that the samples do not accurately reflect dissolved mercury concentrations downgradient from the stabilized mass, it may be

necessary to install one or more substitute monitoring well clusters for continued performance monitoring.

3.5.3 Monitoring Well Installation

Conventional 2" PVC monitoring wells will be installed utilizing the Drive and Wash Casing method. The Drive and Wash Casing method minimizes "drag down" of potential mercury contamination from shallower intervals, and allows for better control over the placement of a secondary sand pack around the pre-packed well screen, a key element in minimizing the migration of suspended solids into the well.

Prior to drilling in paved areas, a concrete saw will be used to create space for installation and completion of the wells. A 5-inch ID steel casing will be advanced in five-foot intervals to isolate the surrounding formation during the boring and well construction process. After each interval, the soil in the casing will be cleaned out with a roller bit and flushed with clean, potable water. Continuous split-spoon soil samples will be collected only from the boring for the deep well in each cluster.

Upon reaching the target depth, a 10 foot long, 2 inch diameter PVC pre-packed well screen (0.010 inch slot size) and two-inch diameter PVC riser casing will be installed and additional sand pack material placed in the annulus surrounding the pre-pack screen as the 5-inch casing is withdrawn. For hydrogeological comparability with the zones monitored during the RDI, the newly-installed performance monitoring wells will be screened in the depth intervals shown in the following table:

TABLE 3-1. ADDITIONAL MONITORING WELLS AND SCREENED INTERVALS

Monitoring Well ID	Top of Screen (ft bgs)	Bottom of Screen (ft bgs)
MW-ISS-14S	12.0	22.0
MW-ISS-14I	32.0	42.0
MW-ISS-14D	53.0	63.0
MW-ISS-15S	14.0	24.0
MW-ISS-15I	34.0	44.0
MW-ISS-15D	55.0	65.0

The remainder of monitoring well construction will include the following:

- Measurements of material depths will be made by frequently sounding the annulus with a weighted tape measure during installation. The volume of materials needed will be calculated and compared to the actual volume used.
- In monitoring wells which exhibit a water table elevation above the top of the sand pack, a layer of bentonite pellets, at least two feet thick will be placed above the sand pack to form an annular seal. The depths of the monitoring wells should allow for placement of these materials by hand.
- In monitoring wells where the top of the sand pack is above the water table, bentonite pellets will not be used to form an annular seal, since complete hydration cannot be guaranteed. In those instances, granular bentonite will be mixed with water (as thick as possible) to form a pre hydrated slurry which will be used in place of the pellets.
- Cement/bentonite grout will be placed from the top of the bentonite pellet (or slurry) seal to a point approximately two feet below existing ground surface. The grout will consist of one bag (94 pounds) of Portland cement and five pounds of bentonite mixed with six gallons of potable water.
- An 8-inch diameter heavy duty flush-mount well vault will be placed in the remaining annulus. Wells in paved areas will be completed with flush mount protective well vaults. A compression cap will be placed on the PVC riser. The protective casing will be equipped with a secure lockable cap to prevent

entry to the monitoring well. For stick-up completions, a vent hole will be cut in the casing above the grout level to allow fluids to drain.

- The protective casing will be set in place with concrete. The concrete will be set in a four foot square form at a thickness of at least four inches within the existing pavement and will fill-in areas of the pavement that were cut prior to drilling. Steel reinforcing wire will be used within the concrete.

Efforts to minimize turbidity will be undertaken during monitoring well development. Well development will be performed using the surge and evacuate method after a period of at least 24 hours following well construction. Well development will be considered complete when there is no visible increase in the clarity of the evacuated water and turbidity of the evacuated water is below 50 NTU.

The proposed monitoring well locations will be staked in the field by a New York State licensed land surveyor. Following completion of the well installations, the location and elevations (surface and casing) of each well will be surveyed. Survey accuracy will be ± 0.01 feet vertically and ± 0.1 feet horizontally.

The monitoring well installation and development equipment will be decontaminated before and after use in accordance with Section 3.5.5 – Decontamination Procedures.

3.5.4 Groundwater Sampling

Groundwater samples will be collected from the performance monitoring wells using the low flow groundwater procedure. All samples, including field QA/QC samples will be collected and analyzed in accordance with the QAPP (see RDR).

The low-flow purging and sample collection technique follows the technique described within the EPA documents titled "Ground Water Sampling Procedure, Low Stress (Low Flow) Purging and Sampling", (USEPA, Region 2, March 16, 1998) and "USEPA Ground Water Issue: Low flow (Minimal Drawdown) Ground-water Sampling Procedures" (EPA/540/S-95/504, April 1996). The general approach is to minimize the drawdown in the well during purging, thereby reducing disturbance prior to and during sampling. Typically this is accomplished by limiting the flow rate during purging and sampling to rates in the 100 to 250 milliliters per minute (mL/min) range. If well sampling or purging results do not meet the low-flow criteria (such that drawdown enters the screened zone or exceeds 0.3 feet) it will be noted in the field data sheets.

Prior to sampling, the depth to groundwater (static water level) will be measured to within the nearest 0.01 foot within at each well.

Equipment

- A submersible bladder pump.
- The discharge tubing will be laboratory- or food grade- polyethylene.
- Monitoring equipment during purging will include a flow through cell equipped with field measuring devices for pH, turbidity, specific conductance, temperature, oxidation-reduction potential (ORP), and dissolved oxygen (DO).
- Water level measuring device, accurate to ± 0.01 foot.
- Flow-rate measurement supplies such as graduated cylinders and stopwatch.
- Decontamination equipment and supplies.
- Well construction data.

Preliminary Site Activities

- Remove well cap and identify the pre-established elevation reference point on top of inside well casing.

- Measure and record the depth to groundwater (static water level) to within the nearest 0.01 foot from the reference point. Take care to minimize disturbance to the water column and avoid dislodging particulates attached to the sides of the well casing.
- In no case should any well be sounded prior to sampling as this may mobilize sediment in the bottom of the well.
- If dedicated equipment such as bladder pumps are not used, consideration should be given to placing the pump in the well 24 hours prior to sampling to allow any sediments in the well to settle.

Sampling Procedure

- **Install Pump** - Slowly lower the pump and downhole measuring device, as applicable, into the well to a depth corresponding to the center of the screened interval. The intake should be kept within the well screen but no deeper than two feet below the top of the screen to prevent mobilization of sediment from the bottom. If less than two feet of water is present in the well prior to sampling, the intake will be centered in the water column. For problematic monitoring wells, consideration should be given to installing the pump approximately 24 hours before initiating purging.
- **Re-measure Groundwater Level** - Before starting the pump, measure the water level again with the pump in the well. Do not proceed until the water level has returned to within approximately 0.3 feet of the static level.
- **Purging** - Start pumping the well at approximately 200 to 500 milliliters per minute. The water level should be monitored as frequently as feasible immediately after the start of purging and then at least as frequently as every three to five minutes once the level has generally stabilized. Ideally, a steady flow rate should be maintained which results in a stabilized water level. The goal should be to not induce a drawdown in excess of approximately 0.3 feet (or approximately 2 percent of saturated thickness in low permeability formations). Pumping rates should, if needed, be reduced to the minimum capabilities of the pump to effect stabilization of the water level. However, care should be taken to maintain pump suction and to avoid entrainment of air in the tubing. If the recharge rate of the well is very low, care should be taken to avoid loss of pressure in the tubing line, cascading through the sand pack, or pumping the well dry. Record each adjustment made to the pumping rate, observation of changes in appearance of the water collected (e.g., increased turbidity or color) and the water level measured immediately after each adjustment.
- **Monitor Indicator Parameters** - During purging of the well, monitor the following field indicator parameters at the frequencies stated above; turbidity, temperature, specific conductance, pH, ORP and/or D.O. In line analyzers and continuous readout displays are recommended for all parameters so that the sample is not exposed to air prior to the measurement. However, if this is not feasible, temperature and/or ORP may be omitted from the list of in line parameters. The well is considered stabilized and ready for sample collection when three consecutive readings are within a maximum range (from minimum to maximum measurements) as follows: ± 0.1 for pH, 3% for specific conductance, $\pm 10\%$ for D.O., ± 10 mV for ORP, and $\pm 10\%$ for turbidity. Measurement of the indicator parameters should continue every three to five minutes until these measurements indicate stability in the water quality. If the parameters have not stabilized after about an hour, purge the well until a minimum of 3 well volumes have been removed and proceed to collect the samples. This alternate procedure should be noted on the field data sheet.
- **Collect Samples** - Samples should be collected at flow rates of between 100 and 250 mL/min, or under flow conditions such that drawdown of the water level within the well is not induced beyond the tolerances specified above. Sample containers should be filled by allowing the pump discharge to flow gently down the inside of the container with minimal turbulence. If turbidity levels are elevated (greater than 50 NTU), samples may be field filtered. In this case, an unfiltered sample will

be submitted along with the field filtered sample to enable comparison of the potential contribution of turbidity to the analytical results.

- Remove Pump and Tubing - After collection of the samples, the pump's tubing will be properly decontaminated or discarded.
- Well Depth - Measure and record well depth.
- Close Down - Secure the well.

The sampling equipment will be decontaminated between use at each well in accordance with Section 3.5.5 - Decontamination Procedures.

3.5.5 Decontamination Procedures

Downhole drilling equipment (e.g., casings, rods, etc.) will be decontaminated before beginning drilling activities at the Site, and after completion of each monitoring well. Decontamination of the drilling equipment will be conducted over a decontamination pad using a high pressure steam cleaner. Rinsate accumulated in the decontamination pad will be pumped into DOT-approved 55-gallon steel drums pending waste characterization and appropriate off Site disposal.

Sampling equipment decontamination procedures will vary depending on the field task. The various levels of decontamination to be performed between sampling locations for the various types of field activities are described below.

- Level 1 (Trowels, split spoons, etc.)
 - If Level 1 sampling equipment, has come in contact with elemental mercury, preliminary decontamination of the equipment will be conducted over a decontamination pad using a hot water pressure washer.
 - Wash/scrub with laboratory detergent/potable water; and
 - Potable water rinse.
- Level 2 (IP, Water Level Meter and Probes)
 - Rinse with laboratory detergent/distilled water solution; and
 - Rinse with distilled water.
- Level 3 (non-dedicated sampling equipment that comes in direct contact with the analytical sample media)
 - Wash/scrub with laboratory detergent/distilled water solution;
 - Distilled water rinse;
 - Laboratory-grade 10% nitric acid rinse; and
 - Final distilled water rinse.

The waste water generated from the decontamination procedures will be containerized and managed as described in Section 3.5.6.

3.5.6 Investigation-Derived Waste Management

Investigation-derived waste (IDW) generated from field activities will be containerized in labeled 55-gallon DOT-approved steel drums and staged on the MEREKO property for characterization and disposal. Information contained on the label will include the drum contents, name, address and telephone number of generator; date(s) the material was placed in the drum; and a contact name/telephone number. Wastes will be separated based on type and inventoried. For example,

separate drums will be filled for contaminated soil and/or sediment, monitoring well development and purge water, decontamination wastewater, used personal protective equipment (PPE), and general trash.

Available analytical data from environmental media will be correlated with the particular contents of each IDW drum and the drums will then be classified into four categories as 1) non-hazardous (concentrations of TCLP mercury < 0.2 milligrams per liter (mg/L), 2) hazardous (concentrations of TCLP mercury >0.2 mg/L), 3) hazardous and exceeding Land Disposal Restriction (LDR) limits and therefore requiring treatment (concentrations of TCLP mercury >0.2 mg/L and total mercury concentrations >260 mg/kg), or 4) containing free elemental mercury.

Based on mercury concentrations expected in the locations of the performance monitoring wells, the IDW is expected to be classified as non-hazardous. A table displaying the comparison of analytical data, drum contents and hazardous classification will be prepared. IDW will be disposed of in accordance with applicable federal, State, and local regulations.

3.5.7 Data Validation and Reporting

Data will be collected, managed and validated in accordance with the QAPP (see RDR). Quarterly results will be submitted to the EPA and DEC in tabulated form, with a letter report describing the sampling event (including any departures from the Site Management Plan), summarizing analytical results, and presenting conclusions and recommendations. Groundwater monitoring data will be reported annually in the PRR and Certification. The PRR will present and summarize the results of the groundwater monitoring. Figures will be included that show

- sample locations,
- inferred water table/potentiometric contours and groundwater flow paths,
- isoconcentration contours of dissolved mercury (if detected), and
- graphs of mercury concentrations over time.

3.6 Preservation of Clay/Asphalt Cap and Stabilized Mass

The property owners will maintain and preserve the integrity of the clay and asphalt cap, including the paving and fill placed over the area of ISS to protect the stabilized mass. The southern portion of the MERECO property is covered by a single-layer clay cap which was installed after the excavation and off-Site disposal of mercury and polychlorinated biphenyl (PCB)-contaminated soils in 1985. The northeastern portion of the MERECO Property is currently covered by a concrete and asphalt cap which is a single-layer cap that was installed to reduce the infiltration of rain water and to prevent direct contact with underlying soils which are contaminated with mercury. Portions of the concrete/asphalt cap will be removed during remedial construction to enable excavation of mercury contaminated soils and implementation of ISS. These areas will be repaved upon completion of the remedial construction.

ISS conducted during remedial construction will create a stabilized mass of soil extending from surface to an average depth of approximately 65 feet bgs on both the current Mercury Refining and Allied properties. The physical integrity of the stabilized mass must be preserved because its ability to immobilize mercury depends significantly on reducing the ability of groundwater to flow through the mass and contact the mercury contained within. Upon completion of ISS, the solidified mass will be covered with a minimum of two feet of clean structural fill and paving to protect it from mechanical disturbance and reduce weathering by freeze/thaw cycles. Excavation, trenching or boring within the stabilized mass is prohibited.

3.6.1 Inspection and Maintenance

The clay cap will be maintained by regular mowing to prevent establishment of vegetation with deep root systems (i.e., shrubs, trees). The established grass cover will be watered and fertilized as necessary to maintain its viability. The clay cap will be inspected monthly to identify any new erosion of the cover. Any damage will be repaired by filling the damaged area with top soil and re-seeding. The cause of the erosion will be eliminated as soon as is practical. Temporary measures can be employed until repairs are completed. For example, storm runoff from the remaining portion of the Container Storage Building slab may be directed away from the affected area.

Concrete or asphalt pavement covering the soil that was solidified/stabilized by ISS will be inspected quarterly to identify indications of loss of integrity such as potholes, cracking, subsidence or frost heaving. Any breaches in the pavement's integrity will be repaired using permanent materials and paving as soon as is practical. If necessary, temporary patching materials will be used only until seasonal conditions are suitable for permanent repairs. Pavement seams and cracks will be filled with bitumen sealing compound. Asphalt paving will be sealed at least every five years to minimize weathering and deterioration of the paving.

3.6.2 Reporting

The owners will maintain records of inspections, noting any identified deficiencies and providing details and documentation of corrective measures. Deficiencies and repairs will also be documented with photographs. Copies of these documents will be provided quarterly to the DSR responsible for preparing the PRR and Certification. Maintenance and repairs will be verified by the DSR responsible for preparing the PRR and Certification through annual on-Site inspection.

3.7 Demolition or Alteration of Buildings

The demolition or alteration of the existing buildings, if necessary in the future, will be managed in order to protect the health and safety of workers and the nearby community and to ensure proper disposal of building debris. This section of the SMP applies to the following existing structures:

- Phase 1 Building
- Remnants of Container Storage Building pad
- "Quonset Hut" structure (former Albany Pallet building)

These three structures are, or have a potential to be impacted by mercury, either from past processing and storage of mercury-containing materials, or by mercury released and transported by runoff during earlier fire fighting events, or by deposition of airborne mercury vapor from early retorting emissions.

3.7.1 Community and Worker Health and Safety

All pre-demolition sampling will be conducted in accordance with the HSCP (see RDR). Demolition activities will be conducted in accordance with the HSCP (see RDR) to protect on-Site workers, and the AAMP (see RDR) to protect the surrounding community,

3.7.2 Environmental Assessment and Pre-Demolition Survey

Prior to any disturbance or demolition of the three structures regulated by this SMP, the portions of the structures to be disturbed or demolished will be evaluated to identify and document potential environmental concerns that may need to be addressed before or during demolition, and to characterize building materials to determine the appropriate handling and disposal requirements, regulatory requirements, and worker health and safety considerations associated with the demolition work.

Environmental conditions that may impact all or portions of the three structures regulated by this SMP may include:

- The presence of mercury residues on internal and external impermeable surfaces such as steel columns and sheathing;
- The presence of mercury residues within porous materials such as wood framing, wood roof trusses and sheetrock;
- The presence of EPA Universal Wastes such as fluorescent lights, emergency exit lights, mercury switches and thermostats;
- Asbestos-containing materials (ACM) such as floor tiles, insulation, roofing and mastics;
- Polychlorinated biphenyl (PCB) residues from the historical mercury recovery operations; and
- Lead-based paint.

To evaluate potential conditions such as these, a combination environmental assessment and pre-demolition survey will be completed. The environmental assessment and pre-demolition survey will consist of the following activities:

- Review of available documentation and construction drawings (if any) to confirm the historical building use and document potential environmental concerns that may impact the demolition of the structure. Materials identified as or containing regulated materials at the time of construction will be field verified during the visual assessment and on-Site sampling activities and recorded.
- Visual assessment of the structure to include an inspection of readily visible components of the building. Assumptions will be made based on facility use for areas not accessible or visible due to obstructions. In such instances, it may be appropriate to confirm those assumptions during the demolition work as the areas become accessible for inspection and/or sampling. The objectives of the visual assessment include the following:
 - Confirm the locations of potentially impacted areas identified during the review of Site construction documents;
 - Identify and quantify potential items of environmental concern;
 - Determine the potential presence and quantity of hazardous and/or regulated materials within the building (excluding the actual building materials of construction) that will need to be addressed prior to or as part of demolition activities;
 - Investigate the nature of the materials of construction and obtain measurements to facilitate quantification of the various types of building materials;
 - Confirm potential locations for ACM, PCBs, lead-based paint, and mercury (bulk and wipe) sampling. Areas of concern will be recorded on a survey form and entered into a searchable Excel database. Each entry will have a unique identifier containing Site specific information as follows: EA<date of EA>_<Sequential Number starting at 001>. The identifier will allow for correlation between the survey results and the areas requiring remediation or abatement. The sample locations and associated sample results will be recorded; and
 - Areas reviewed and sampled during the visual assessment will be tagged with a physical tag or marking in the field, photo-documented, and identified on a Site layout drawing.
- An appropriately licensed contractor or contractors will perform an asbestos inspection, OSHA-lead-based paint assessment, PCB sampling and testing and mercury-containing devices assessment. The contractor must hold a New York State Department of Labor (DOL) Asbestos Handling License and an EPA/State License for Lead, and employ DOL Certified Asbestos Inspectors and licensed lead based paint professionals. Samples of potential asbestos-containing material (ACM) will be collected and sent to a DOH ELAP certified laboratory for asbestos analysis by Polarized Light

Microscopy (PLM) and Transmission Electron Microscopy (TEM) methods. Building materials may be tested in-situ for lead using an X-Ray Fluorescence (XRF) detector. Sampling activities will be documented on the survey form and the sampling points will be tagged. The exact number and type of samples that will be collected will be dependent upon the findings of the construction documents review and visual assessment.

- Aqueous wipe samples of interior impermeable building materials (e.g., steel columns and sheathing) and exterior impermeable materials (e.g., building siding) for analysis of total mercury by EPA Method SW 846 7471A. The number and type of samples that will be collected is dependent upon the findings of the review of available documentation and visual assessment. Samples will be collected in accordance with the QAPP (see RDR), specifically Attachment A, UFP Worksheet #19; Attachment A-2, Sampling SOPs, EPA SOP #2011. Per Worksheet No. 19, the mercury wipes will be moistened with DI water. A standard wipe sampling area is 10 cm by 10 cm (100 sq cm). Per the EPA SOP each part of the sampling area is covered by a vertical pass and a horizontal pass as follows: "Wipe the marked surface area using firm strokes. Wipe vertically, then horizontally to insure complete surface coverage." The total number of vertical passes and horizontal passes depends on what is necessary to cover the 10cm x 10cm area twice (once vertically, once horizontally).
- Collect bulk samples of porous building materials (e.g., wood framing, wood roof trusses and sheetrock) for analysis of total and TCLP mercury by EPA Method SW-846 7470A. The number and type of samples that will be collected is dependent upon the findings of the review of available documentation and visual assessment. Details concerning collection of building material samples are provided in the QAPP (UFP Worksheet No. 19) and Attachment A-2, Sampling SOPs, EPA SOP #2011. Samples of building materials will be collected in accordance with the procedures used for chip sampling, with a wood chisel, razor knife, saw blade or similar implement substituted for an ordinary chisel.
- Collect hexane wipe samples of the impermeable building materials (e.g., steel columns and sheathing) for analysis of PCBs by EPA Method SW 846 8082. Samples will be collected in accordance with the QAPP, specifically Attachment A, UFP Worksheet #19; Attachment A-2, Sampling SOPs, EPA SOP #2011. Per Worksheet No. 19, PCB wipes will be moistened with hexane. A standard wipe sampling area is 10 cm by 10 cm (100 sq cm). Per the EPA SOP, each part of the sampling area is covered by a vertical pass and a horizontal pass as follows: "Wipe the marked surface area using firm strokes. Wipe vertically, then horizontally to insure complete surface coverage." The total number of vertical passes and horizontal passes depends on what is necessary to cover the 10cm x 10cm area twice (once vertically, once horizontally).
- In the event that potentially regulated building materials other than mercury, ACM, PCBs or lead-based paint are identified, locations will be documented on the survey form, tagged in the field, and photo documented. These areas will also be recorded for tracking purposes. Representative samples of the building materials may be collected, after discussion with and approval by EPA and DEC, and submitted for analysis.
- To assist in disposal of any concrete, including the CSB slab, fragments of concrete will be collected from near the surface of the concrete and submitted for analyses of total mercury by EPA Method SW 846 7471 and TCLP Mercury by EPA Method SW 846 7470A.

An Environmental Assessment and Pre-demolition Survey Report will be prepared to summarize the activities and results of the environmental assessment and pre-demolition survey. The report will include building material quantities, areas of concern, waste types and quantities, and potential disposal options for various materials. The report will present:

- A comprehensive listing of the identified hazardous and regulated materials in an Excel tabular format organized by identifier and environmental concern;



- A photographic log of areas of environmental concern;
- The analytical results from the sampling efforts;
- Marked up copies of relevant Site drawings to indicate locations of identified hazardous and regulated materials and other pertinent field observations; and
- Recommendations for managing the identified hazardous and regulated materials.

Prior to finalizing plans for any demolition or disturbance, the Environmental Assessment and Pre-demolition Survey Report will be provided to the EPA, DEC and the DSR responsible for preparation of the annual PRR Report and Certification.

3.7.3 Demolition Requirements

Technical documents (plans and specifications) will be prepared by a New York State licensed professional engineer for use in the procurement of a qualified demolition contractor. The demolition contract will include removal of asbestos and loose lead based paints (as may be found by the Pre-Demolition Survey) as well as regulated and potentially regulated materials and other hazardous and non-hazardous materials, and demolition of the building. The demolition contractor will be required to submit to the EPA and the DSR responsible for preparing the annual PRR and Certification the following plans:

- Demolition Work Plan to describe site preparation, utility isolation/disconnection, demolition procedures, removal procedures, dust control, sequences, schedules, and debris stockpiling. In addition;
- Erosion and Sediment Control Plan;
- Asbestos and Lead Abatement Work Plan (if required);
- Waste Handling and Disposal Plan and Health & Safety Contingency Plan.

The demolition contractor will secure the necessary permits, including a demolition permit from the Town of Colonie Building Department. The demolition contractor will implement the required Site control measures, including but not limited to the Ambient Air Monitoring Plan (see RDR). The demolition contractor will maintain the following documentation:

- a complete record of air monitoring data (VOC, particulate, mercury, asbestos);
- waste profiles, bills of lading and manifests;
- certificates of waste destruction (if applicable);
- scale tickets from the disposal facilities;
- a photographic log of the demolition and waste load-out activities;
- copies of permits and notifications;
- copies of required certifications and licenses;
- daily reports;
- asbestos air sample analyses, data sheets and clearance letters (if applicable); and
- record drawings and survey (if applicable).

All of the above documentation will be provided to the DSR responsible for preparing the annual PRR and Certification.

3.8 Monitoring of Unnamed Tributary, Patroon Creek and I-90 Pond

Following completion of the RA, including the removal of the mercury-contaminated sediments in the Unnamed Tributary that exceed the cleanup level for mercury in sediments of 1.3 ppm, monitoring will be performed to confirm the effectiveness of the remedy. This monitoring will consist of annual sampling of the fish, surface water and sediments in the Unnamed Tributary, the Patroon Creek, and the I-90 Pond to assess the potential impact on the biota for five years. Sampling thereafter will be based on the results of the five annual sampling rounds, as reported within the first five-year review.

The periodic sampling will be conducted and reported by the Mercury Refining Site Remedial Action Group in accordance with the Ecological Verification Sampling Plan (Attachment C).

Schedule B – Real estate transfer tax return (Tax Law Article 31)

Part 1 – Computation of tax due

1	Enter amount of consideration for the conveyance (if you are claiming a total exemption from tax, mark an X in the Exemption claimed box, enter consideration and proceed to Part 3) <input type="checkbox"/> Exemption claimed	1.	50000	00
2	Continuing lien deduction (see instructions if property is taken subject to mortgage or lien)	2.	0	00
3	Taxable consideration (subtract line 2 from line 1)	3.	50000	00
4	Tax: \$2 for each \$500, or fractional part thereof, of consideration on line 3	4.	200	00
5	Amount of credit claimed for tax previously paid (see instructions and attach Form TP-584.1, Schedule G)	5.	0	00
6	Total tax due* (subtract line 5 from line 4)	6.	200	00

Part 2 – Computation of additional tax due on the conveyance of residential real property for \$1 million or more

1	Enter amount of consideration for conveyance (from Part 1, line 1)	1.	50000	00
2	Taxable consideration (multiply line 1 by the percentage of the premises which is residential real property, as shown in Schedule A)	2.	0	00
3	Total additional transfer tax due* (multiply line 2 by 1% (.01))	3.	0	00

Part 3 – Explanation of exemption claimed on Part 1, line 1 (mark an X in all boxes that apply)

The conveyance of real property is exempt from the real estate transfer tax for the following reason:

- a. Conveyance is to the United Nations, the United States of America, New York State, or any of their instrumentalities, agencies, or political subdivisions (or any public corporation, including a public corporation created pursuant to agreement or compact with another state or Canada) a
- b. Conveyance is to secure a debt or other obligation..... b
- c. Conveyance is without additional consideration to confirm, correct, modify, or supplement a prior conveyance..... c
- d. Conveyance of real property is without consideration and not in connection with a sale, including conveyances conveying realty as bona fide gifts..... d
- e. Conveyance is given in connection with a tax sale..... e
- f. Conveyance is a mere change of identity or form of ownership or organization where there is no change in beneficial ownership. (This exemption cannot be claimed for a conveyance to a cooperative housing corporation of real property comprising the cooperative dwelling or dwellings.) Attach Form TP-584.1, Schedule F f
- g. Conveyance consists of deed of partition g
- h. Conveyance is given pursuant to the federal Bankruptcy Act..... h
- i. Conveyance consists of the execution of a contract to sell real property, without the use or occupancy of such property, or the granting of an option to purchase real property, without the use or occupancy of such property i
- j. Conveyance of an option or contract to purchase real property with the use or occupancy of such property where the consideration is less than \$200,000 and such property was used solely by the grantor as the grantor's personal residence and consists of a one-, two-, or three-family house, an individual residential condominium unit, or the sale of stock in a cooperative housing corporation in connection with the grant or transfer of a proprietary leasehold covering an individual residential cooperative apartment..... j
- k. Conveyance is not a conveyance within the meaning of Tax Law, Article 31, § 1401(e) (attach documents supporting such claim) k

* The total tax (from Part 1, line 6 and Part 2, line 3 above) is due within 15 days from the date of conveyance. Make check(s) payable to the county clerk where the recording is to take place. For conveyances of real property within New York City, use Form TP-584-NYC. If a recording is not required, send this return and your check(s) made payable to the NYS Department of Taxation and Finance, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, Designated Private Delivery Services.

Schedule C – Credit Line Mortgage Certificate (Tax Law Article 11)

Complete the following only if the interest being transferred is a fee simple interest.
This is to certify that: (mark an X in the appropriate box)

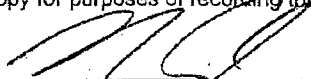
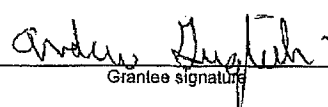
1. The real property being sold or transferred is not subject to an outstanding credit line mortgage.
2. The real property being sold or transferred is subject to an outstanding credit line mortgage. However, an exemption from the tax is claimed for the following reason:
 - a The transfer of real property is a transfer of a fee simple interest to a person or persons who held a fee simple interest in the real property (whether as a joint tenant, a tenant in common or otherwise) immediately before the transfer.
 - b The transfer of real property is (A) to a person or persons related by blood, marriage or adoption to the original obligor or to one or more of the original obligors or (B) to a person or entity where 50% or more of the beneficial interest in such real property after the transfer is held by the transferor or such related person or persons (as in the case of a transfer to a trustee for the benefit of a minor or the transfer to a trust for the benefit of the transferor).
 - c The transfer of real property is a transfer to a trustee in bankruptcy, a receiver, assignee, or other officer of a court.
 - d The maximum principal amount secured by the credit line mortgage is \$3 million or more, and the real property being sold or transferred is not principally improved nor will it be improved by a one- to six-family owner-occupied residence or dwelling.

Note: for purposes of determining whether the maximum principal amount secured is \$3 million or more as described above, the amounts secured by two or more credit line mortgages may be aggregated under certain circumstances. See TSB-M-96(6)-R for more information regarding these aggregation requirements.

- e Other (attach detailed explanation).
3. The real property being transferred is presently subject to an outstanding credit line mortgage. However, no tax is due for the following reason:
 - a A certificate of discharge of the credit line mortgage is being offered at the time of recording the deed.
 - b A check has been drawn payable for transmission to the credit line mortgagee or mortgagee's agent for the balance due, and a satisfaction of such mortgage will be recorded as soon as it is available.
4. The real property being transferred is subject to an outstanding credit line mortgage recorded in _____ (insert liber and page or reel or other identification of the mortgage). The maximum principal amount of debt or obligation secured by the mortgage is _____. No exemption from tax is claimed and the tax of _____ is being paid herewith. (Make check payable to county clerk where deed will be recorded.)

Signature (both the grantors and grantees must sign)

The undersigned certify that the above information contained in Schedules A, B, and C, including any return, certification, schedule, or attachment, is to the best of their knowledge, true and complete, and authorize the person(s) submitting such form on their behalf to receive a copy for purposes of recording the deed or other instrument effecting the conveyance.

 _____ Grantor signature	4/10/24 _____ Title	 _____ Grantee signature	Director of Remediation _____ Title
Grantor signature	Title	Grantee signature	Title

Reminder: Did you complete all of the required information in Schedules A, B, and C? Are you required to complete Schedule D? If you marked e, f, or g in Schedule A, did you complete Form TP-584.1? Have you attached your check(s) made payable to the county clerk where recording will take place? If no recording is required, send this return and your check(s), made payable to the **NYS Department of Taxation and Finance**, directly to the NYS Tax Department, RETT Return Processing, PO Box 5045, Albany NY 12205-0045. If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Schedule D – Certification of exemption from the payment of estimated personal income tax (Tax Law, Article 22, § 663)

Complete the following only if a fee simple interest or a cooperative unit is being transferred by an individual or estate or trust.

If the property is being conveyed by a referee pursuant to a foreclosure proceeding, proceed to Part 2, mark an X in the second box under *Exemption for nonresident transferors/sellers*, and sign at bottom.

Part 1 – New York State residents

If you are a New York State resident transferor/seller listed in Form TP-584, Schedule A (or an attachment to Form TP-584), you must sign the certification below. If one or more transferor/seller of the real property or cooperative unit is a resident of New York State, each resident transferor/seller must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all resident transferors/sellers.

Certification of resident transferors/sellers

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller as signed below was a resident of New York State, and therefore is not required to pay estimated personal income tax under Tax Law § 663(a) upon the sale or transfer of this real property or cooperative unit.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date

Note: A resident of New York State may still be required to pay estimated tax under Tax Law § 685(c), but not as a condition of recording a deed.

Part 2 – Nonresidents of New York State

If you are a nonresident of New York State listed as a transferor/seller in Form TP-584, Schedule A (or an attachment to Form TP-584) but are not required to pay estimated personal income tax because one of the exemptions below applies under Tax Law § 663(c), mark an X in the box of the appropriate exemption below. If any one of the exemptions below applies to the transferor/seller, that transferor/seller is not required to pay estimated personal income tax to New York State under Tax Law § 663. Each nonresident transferor/seller who qualifies under one of the exemptions below must sign in the space provided. If more space is needed, photocopy this Schedule D and submit as many schedules as necessary to accommodate all nonresident transferors/sellers.

If none of these exemption statements apply, you must complete Form IT-2663, *Nonresident Real Property Estimated Income Tax Payment Form*, or Form IT-2664, *Nonresident Cooperative Unit Estimated Income Tax Payment Form*. For more information, see *Payment of estimated personal income tax*, on Form TP-584-I, page 1.

Exemption for nonresident transferors/sellers

This is to certify that at the time of the sale or transfer of the real property or cooperative unit, the transferor/seller (grantor) of this real property or cooperative unit was a nonresident of New York State, but is not required to pay estimated personal income tax under Tax Law § 663 due to one of the following exemptions:

- The real property or cooperative unit being sold or transferred qualifies in total as the transferor's/seller's principal residence (within the meaning of Internal Revenue Code, section 121) from _____ Date _____ to _____ Date _____ (see instructions).
- The transferor/seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure, or in lieu of foreclosure with no additional consideration.
- The transferor or transferee is an agency or authority of the United States of America, an agency or authority of New York State, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.

Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date
Signature	Print full name	Date