

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE SUPERFUND PROGRAM
ECL § 27-1301 *et seq.*

In the Matter of an
Interim Remedial Measure for

**ORDER ON CONSENT AND
ADMINISTRATIVE SETTLEMENT**
Index No. CO 5-20180308-17

DEC Site Name: W. F. Lake Corporation

DEC Site No.: 558042

Site Address: 65 Park Road

Glens Falls, NY 12804

Hereinafter referred to as "Site"

by: W. F. Lake Corporation

Hereinafter referred to as "Respondent"

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

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

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

2. The Site is currently listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 558042 with a Classification of 02 ("Class 2") pursuant to ECL 27-1305.

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

4. Respondent and the Department agree that the primary goal of this Order is to provide a mechanism for Respondent to implement the necessary interim remedial measure described in the work plan attached as Exhibit B to this Order.

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

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

I. Real Property

The Site subject to this Order has been assigned number 558042, consists of approximately 4.14 acres, and is as follows:

Subject Property Description (A Map of the Site is attached as Exhibit A)

Tax Map/Parcel Nos.: 137.-2-32 and 137.-2-35
Address: 65 Park Road, Glens Falls, NY 12804
Owner: W. F. Lake Corporation

II. Work Plan

A. The IRM Work Plan attached as Exhibit B to this Order is hereby approved and shall be implemented by Respondent under this Order.

B. Respondent shall provide the Department with at least 7 days advance written notice of field work.

C. Field work in accordance with the approved IRM Work Plan shall commence within thirty (30) days of the effective date of this Order.

III. Payment of State Costs

Respondent shall pay all State Costs associated with this IRM and Consent Order. The Department is tracking State Costs associated with this IRM and Consent Order separately from other State Costs associated with this Site.

Invoices for State Costs associated with this Consent Order shall be sent to Respondent at the following address:

John Hodgkins
W. F. Lake Corporation

P.O. Box 4214
Queensbury, NY 12804
john@wflake.com

Provisions concerning payment of State Costs are set forth in Appendix "A" and are applicable to payment of State Costs associated with this Consent Order.

The Department fully reserves all rights regarding all other State Costs associated with this Site, including but not limited to its right to recover all such costs from Respondent.

IV. Communications

A. All written communications required by this Consent Order shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Respondent shall be sent to:

Anthony Bollasina (1 hard copy & 1 electronic copy)
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway, Albany, N.Y. 12233
anthony.bollasina@dec.ny.gov

Christine Vooris (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, N.Y. 12237
christine.vooris@health.ny.gov

Caryn Bower
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway, 14th Floor
Albany, NY 12233
caryn.bower@dec.ny.gov

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

John Hodgkins
W. F. Lake Corporation
P.O. Box 4214
Queensbury, NY 12804

john@wflake.com

with a copy to:

John Privitera
Whiteman Osterman & Hanna LLP
One Commerce Plaza
Albany, NY 12260
jprivitera@woh.com

B. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Respondent provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph III.

V. Miscellaneous

A. Appendix A - "Standard Clauses for All New York State, State Superfund Orders" is attached to and hereby made a part of this Order as if set forth fully herein.

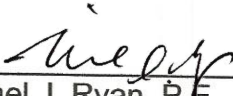
B. In the event of a conflict between the main body of this Order (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the main body of this Order shall control.

C. The effective date of this Order is the 5th day after it is signed by the Commissioner or the Commissioner's designee.

DATED: August 19, 2021

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Michael J. Ryan, P.E., Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

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

W. F. Lake Corporation

By: [Signature]

Title: Secretary Treasurer

Date: 7/27/2021

STATE OF NEW YORK)
COUNTY OF Warren) ss:

On the 27 day of July in the year 2021, before me, the undersigned, personally appeared John Leland Hodgkins (full name) 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, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Acknowledgment by a corporation, in New York State:

On the 27 day of July in the year 2021, before me, the undersigned, personally appeared John Leland Hodgkins (full name) personally known to me who, being duly sworn, did depose and say that he/she/they reside at 218 Lake Parkway Lake George NY (full mailing address) and that he/she/they is (are) the Secretary Treasurer (president or other officer or director or attorney in fact duly appointed) of the Wf Lake Corp. (full legal name of corporation), the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

[Signature]
Notary Public, State of New York

LISA DOYLE
NOTARY PUBLIC
STATE OF NEW YORK
WASHINGTON COUNTY
Reg. No. 01DO6170204
COMM. EXP. 07/02/2023

EXHIBIT A

W.F. Lake Corporation - 558042
Glens Falls, NY
Site Map



NEW YORK
STATE OF
OPPORTUNITY

Department of
Environmental
Conservation

7/27/2020

EXHIBIT B

APPROVED INTERIM REMEDIAL MEASURE WORK PLAN

The approved Interim Remedial Measure Work Plan (IRMWP) begins on the following page.

HANSON

VAN VLEET, PLLC

HYDROGEOLOGIC CONSULTANTS

902 ROUTE 146 CLIFTON PARK, NY 12065

INTERIM REMEDIAL MEASURE WORK PLAN

**WF LAKE COMPANY
65 Park Road
Town of Kingsbury
Washington County, New York
Site No.: 5-58-042**

Submitted To:
Mr. Anthony Bollasina
Project Manager
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, New York 12233

July 2, 2021

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1.0 INTRODUCTION

1.1 General

At the request of the WF Lake Company (WF Lake), Hanson Van Vleet, PLLC (HVV) has prepared this Work Plan (WP) for conducting a proposed Interim Remedial Measure (IRM) at the WF Lake property located at 65 Park Road in the Town of Kingsbury, Washington County, New York (Site; See Figure 1). This IRM Work Plan (IRMWP) was prepared based on information gathered during a previous site characterization completed at the Site by Camp Dresser McKee & Smith (CDM Smith), under New York State Department of Environmental Conservation (NYSDEC) contract. The findings provided by CDM Smith are summarized in the "Final Site Characterization Report" (FSCR), dated July 2020. This IRMWP was prepared in general conformance with the NYSDEC DER-10 (Technical Guidance for Investigation and Remediation).

An IRM is a cleanup activity performed to address site conditions, which can be undertaken without extensive investigation and evaluation, to prevent, mitigate or remedy environmental damage or the consequences of environmental damage attributable to a site. This IRMWP presents the activities and work to be completed by HVV and the WF Lake-selected Contractor in support of completing this Interim Remedial Measure (IRM). WF Lake will select a Contractor to complete the remedial activities in accordance with the requirements described in this IRMWP. HVV, as a representative of the WF Lake, will provide oversight, act as the regulatory liaison, and prepare a report.

This IRMWP is being prepared to address elevated concentrations of per- and polyfluoroalkyl substances (PFAS) compounds in stormwater catch basins at the Site identified by CDM Smith during previous site characterization activities.

1.2 Background

On August 7, 2017 A NYSDEC Spill Number 1704574 was assigned to the W F Lake Corp MFG0165, with the spill site address identified as 65 Park Road, Kingsbury, New York. The material listed as being spilled is PFOS with an unknown amount spilled and an unknown resource affected. The facility type is listed as "commercial/industrial", the spill cause is "other" and date spill closed is listed as "not closed". The Spill Number assigned to the Site indicates the alleged release of PFAS, identified after detections of Perfluorooctanic Acid (PFOA) were found to exceed United States (US) Environmental Protection Agency (EPA) Health Advisory Level concentrations at a residential drinking water well located less than 0.5 miles from the Site.

Previous site characterization activities were completed by CDM Smith and summarized in the FSCR, dated July 2020. Field activities completed by CDM Smith were conducted between December 31, 2019 and January 23, 2020. CDM Smith collected surface soil, subsurface soil, sediment, surface water, stormwater, debris, and groundwater samples on the Site to determine if volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs), pesticides, polychlorinated biphenyls (PCBs), metals, 1,4-dioxane, or PFAS are present in any of the media sampled. The FSCR identified elevated PFAS concentrations in catch basins located on the Site.

The grated catch basin west of and adjacent to the building and loading dock identified as CB-01 by CDM Smith, located adjacent to the western wall of the manufacturing portion of the facility, was found to contain accumulated sediment exhibiting elevated levels of PFAS compounds. Concentrations of PFAS compounds were found to be far greater in sediment accumulated in catch basin CB-01 than elsewhere at the Site. Stormwater sampled and analyzed from catch basin CB-01 following a rain event on December 30, 2019 also identified elevated concentrations of PFAS compounds in excess of NYSDEC guidance levels. The sediment sample collected on January 23, 2020 from the base of catch basin CB-01 revealed a concentration of 14 parts per billion (ppb) when analyzed for PFOA Synthetic Precipitation Leaching Procedure (SPLP), and a total concentration of PFAS of 395.7 ppb. The stormwater sample collected from CB-01 on December 31, 2019 exhibited total PFAS concentrations of 3,426 parts per trillion (ppt).

Catch basin CB-01 is reported to discharge to a stormwater retention basin located adjacent to the northwest portion of the property that is shared and utilized by the stormwater systems of the adjacent and adjoining properties. Based on the results of the stormwater and stormwater sediment debris sampling conducted at CB-01, it is reasonable to assume that the accumulated PFAS impacted sediment in CB-01 may represent a source of PFAS contamination to stormwater that has the potential to migrate off-site in concentrations in excess of NYSDEC PFAS Guidance Levels.

1.3 Site Description

The Site is located at 65 Park Road in the Town of Kingsbury, County of Washington, New York. The Site is located west of and adjacent to Park Road. The Site consists of two parcels, identified by Washington County tax maps as tax map numbers 137.-2-32 and 137.-2-35, comprising approximately 4.14 acres of land. The Site covers a generally rectangular piece of land that is now located in a mixed commercial and industrial area.

The two existing structures are approximately 33,750 and 8,240 square feet. The Site is serviced by public water and sewer. No private supply wells, septic systems or floor drains exist or have existed at the Site. The Site is generally flat-lying and is largely occupied by structures and asphalt pavement. The eastern portions of the property are covered by wooded vegetation, small shrubs and grasses.

2.0 SCOPE OF WORK

The work described in this IRMWP will be conducted in conformance with the NYSDEC DER-10 (Technical Guidance for Investigation and Remediation) and *Sampling, Analysis, and Assessment of Per- and Polyfluoroalkyl Substances (PFAS)*, dated January 2021, and provided in Attachment A. Care will be taken to eliminate any off-site transfer of PFAS-containing material [e.g. aluminum foil, glass, polytetrafluorethylene (PTFE) Teflon®, low density polyethylene (LDPE), waterproof field books, synthetic water-resistant gear, plastic clipboards, Post-It Notes®, Chemical (blue) ice packs, Gore-Tex™, Tyvek®, etc.] during all on-site activities. Clothing worn by sampling personnel will be laundered multiple times without fabric softener. Permanent

markers will be avoided while sampling. Ball point pens will be utilized on Site. Packaged foods and drinks will be avoided during sampling.

2.1 Field Methods

HVV proposes vacuum removal and proper off-site disposal of the currently accumulated sediment and associated stormwater present in the catch basin identified as CB-01.

Waste characterization samples will be collected and analyzed prior to vacuum removal of the water and sediment. Waste characterization sediment samples will be collected with a stainless-steel scooping tool of sufficient length to not require any entry into the catch basin, and water samples will be collected with dedicated HDPE bailers.

As required by the disposal facility, the water and sediment samples will be analyzed for the 21 parameter PFAS list per Modified EPA Method 537 due to the ability to achieve 2 micrograms per liter (ng/L) or ppt detection limits.

Accumulated sediment and water samples to be collected for laboratory analysis for waste characterization will be placed in pre-cleaned laboratory provided 250 mL polypropylene sampling containers with wide screw caps and delivered to a NYS Environmental Laboratory Approval Program (ELAP) certified laboratory under formal chain-of-custody procedures. Samples collected from each of the catch basins. The samples will be analyzed for the 21 parameter PFAS list per Modified EPA Method 537 due to the ability to achieve 2 micrograms per liter (ng/L) or ppt detection limits.

Crystal Clean, a licensed hazardous waste hauler, will be contracted to vacuum the sediment and water to a tank truck, and transport the sediment and stormwater under signed waste manifest to an approved facility for proper disposal. All sediment and stormwater generated as part of the IRM will be self-contained within the catch basin and the vacuum truck equipment. HVV will provide supervision and documentation of the work completed.

At this time, no confirmatory sampling is planned after the implementation of the proposed IRM. It is assumed that future sampling of CB-01 and the downgradient stormwater retention basin (RP-01) will determine the effectiveness of the IRM.

2.2 Health and Safety Plan

All work at the Site will be performed in accordance with 29 CFR 1910.120 (OSHA Hazardous Waste Operations Training), the HVV Health and Safety Policy, and a site-specific Health and Safety Plan (HASP). The area surrounding catch basin CB-01 will be secured with cone delineators to prevent vehicle and pedestrian traffic from entering the area. All personnel entering the area will be required to have Level D personal protective equipment (PPE), including nitrile gloves, safety-toe boots, safety glasses, reflective safety vest, and a hard hat.

2.3 Decontamination

Any piece of equipment that can come in contact with the catch basin or the contents of the catch

basin will be cleaned with a standard two-step decontamination using an Alconox detergent mixture (or similar) and clean potable PFAS-free water rinse prior to the start of work and at completion of the work (before leaving the Site) to prevent any contamination from leaving the Site. All wash water will be recovered and vacuumed into the tank trunk for appropriate disposal.

2.4 Waste Management

All stormwater and stormwater sediment generated during the IRM will be collected and transferred by the vacuum truck operated by Crystal Clear, a contracted waste broker. The transportation of the waste material will be performed by Crystal Clear, a licensed transporter with NYSDEC 6 NYCRR 364 Waste Transporter Permits. The generator for the purposes of all shipping manifests shall be listed as "WF Lake Company".

A waste profile will be completed as part of the disposal process. As required by the disposal facility, the sample will be analyzed for the 21 parameter PFAS list per Modified EPA Method 537 due to the ability to achieve 2 micrograms per liter (ng/L) or ppt detection limits.

Accumulated sediment and water samples to be collected for laboratory analysis will be placed in pre-cleaned laboratory provided 250 mL polypropylene sampling containers with wide screw caps and delivered to a NYS Environmental Laboratory Approval Program (ELAP) certified laboratory under formal chain-of-custody procedures. Samples collected from each of the catch basins. The samples will be analyzed for the 21 parameter PFAS list per Modified EPA Method 537 due to the ability to achieve 2 micrograms per liter (ng/L) or ppt detection limits.

3.0 PROJECT SCHEDULE AND REPORTING

3.1 Project Schedule

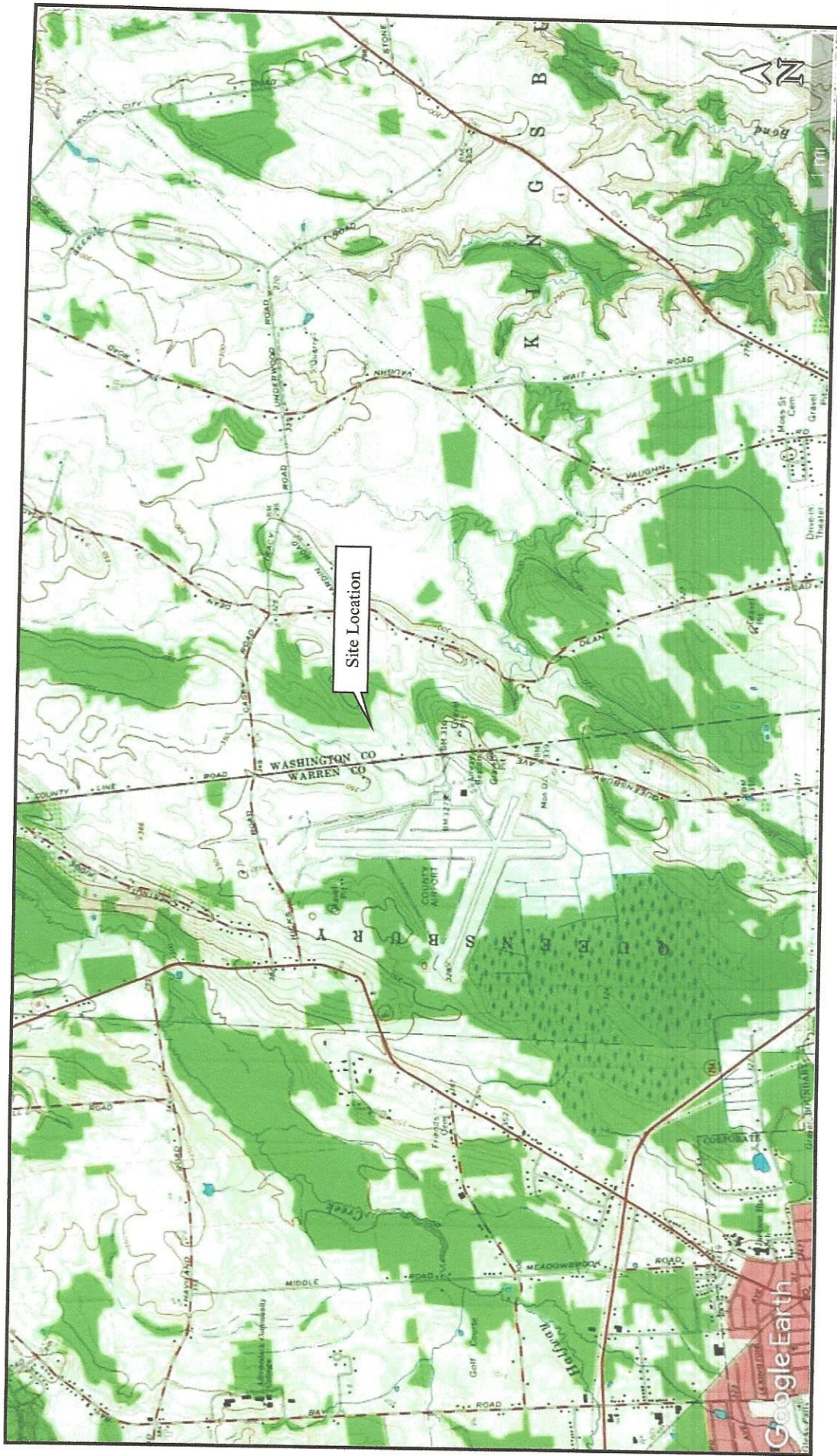
HVV estimates that the field tasks outlined in this IRMWP will take approximately nine weeks to complete. The IRM will include vacuuming and proper offsite disposal of the stormwater and stormwater sediment within catch basin CB-01. The table below shows the approximate project schedule. The actual project starting date will depend on obtaining NYSDEC's approval of this IRMWP and availability of the vacuum truck contractor. The NYSDEC will be notified at least seven days prior to the initiation of any field activities to be completed in support of the IRM.

Work Activity	Date	Duration
Submit IRM Work Plan	April 2021	--
IRM Work Plan Approval	May 2021	2 weeks
Characterization Sampling / Analysis	June 2021	2 Weeks
Schedule Vacuum Truck	June 2021	2 weeks
Implement IRM	June 2021	1 day
Submit Draft IRM Report	July 2021	2 days
NYSDEC Comments	July 2021	2 weeks
Submit Final IRM Report	July 2021	2 days

3.2 Report Preparation

Upon completion of the tasks described above, an IRM Report will be prepared that will be consistent with the general requirements set forth in the DER-10 Technical Guidance for Site Investigation and Remediation. The report will describe the methods used to perform the IRM including the following:

- Project summary;
- Discussion on the methods of IRM employed;
- Summary of waste characterization sampling, including physical state of the material (solid, liquid, sludge), the volume of material, number of samples collected, and laboratory analysis summary;
- A listing of all types and quantities of waste disposed of during implementation the IRM, as well as the name of the disposal facilities, transporters' dates of disposal, and the manifest numbers of each waste load;
- A general site location map consisting of a USGS topographic map with the Site identified;
- Conclusions section; and
- Recommendations section.



HANSON

VAN VLEET, PLLC

HYDROGEOLOGIC CONSULTANTS

Figure 1
Site Location Map
65 Park Road
Kingsbury, New York



HANSON

VAN VLEET, PLLC

HYDROGEOLOGIC CONSULTANTS

Figure 2
Storm Water and Sediment Vacuum Removal Location Map
65 Park Road
Kingsbury, New York

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE SUPERFUND ADMINISTRATIVE ORDERS

The parties to the State Superfund Order (hereinafter "Order") agree to be bound by the following clauses which are hereby made a part of the Order. The word "Respondent" herein refers to any party to the Order, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. Citizen Participation Plan

Within twenty (20) days after the Department places the site on the registry, Respondent shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of ECL §27-1417 and 6 NYCRR sections 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Order.

II. Initial Submittal

Within thirty (30) days after the effective date of this Order, Respondent shall submit to the Department a Records Search Report prepared in accordance with Exhibit "B" attached to the Order. The Records Search Report can be limited if the Department notifies Respondent that prior submissions satisfy specific items required for the Records Search Report.

III. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

All activities at the Site that comprise any element of an Inactive Hazardous Waste Disposal Site Remedial Program shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") and this Order and all activities shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, as required under CERCLA, 42 U.S.C. § 9600 *et seq.* The Work Plan(s) under this Order shall address both on-Site and off-Site conditions and shall be developed and implemented in accordance with 6 NYCRR § 375-1.6(a), 375-3.6, and 375-6. All Department-approved Work Plans shall be incorporated into and become

enforceable parts of this Order. Upon approval of a Work Plan by the Department, Respondent shall implement such Work Plan in accordance with the schedule contained therein. Nothing in this Subparagraph shall mandate that any particular Work Plan be submitted.

The Work Plans shall be captioned as follows:

1. Site Characterization ("SC") Work Plan: a Work Plan which provides for the identification of the presence of any hazardous waste disposal at the Site;

2. Remedial Investigation/Feasibility Study ("RI/FS") Work Plan: a Work Plan which provides for the investigation of the nature and extent of contamination within the boundaries of the Site and emanating from such Site and a study of remedial alternatives to address such on-site and off-site contamination;

3. Remedial Design/Remedial Action ("RD/RA") Work Plan: a Work Plan which provides for the development and implementation of final plans and specifications for implementing the remedial alternative set forth in the ROD;

4. "IRM Work Plan" if the Work Plan provides for an interim remedial measure;

5. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy; or

6. "Supplemental" if additional work plans other than those set forth in Subparagraph III.A.1-5 of Appendix A of this Order are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

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

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan.

i. The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph III.A or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall, subject to dispute resolution pursuant to Paragraph XV, modify the Work Plan.

ii. The Department may request, subject to dispute resolution pursuant to Paragraph XV, that Respondent submit additional or supplemental Work Plans for the Site to complete the current remedial phase within thirty (30) Days after the Department's written request.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

4. During all field activities conducted under a Department-approved Work Plan, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken in accordance with the provisions of 6 NYCRR 375-1.6(a)(3).

5. A Professional Engineer licensed and registered in New York State must stamp and sign all Work Plans other than SC or RI/FS Work Plans.

C. Submission of Final Reports and Periodic Reports

1. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report as provided at 6 NYCRR 375-1.6(b) and a final engineering report as provided at 6 NYCRR 375-1.6(c).

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

3. In the event that the final engineering report for the Site requires Site management, Respondent shall submit an initial periodic report by in accordance with the schedule in the Site Management Plan and thereafter in accordance with a schedule determined by the Department. Such periodic report shall be signed by a Professional Engineer or by such other qualified environmental professional as the Department may find acceptable and shall contain a certification as provided at 6 NYCRR 375-1.8(h)(3). Respondent may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

4. Within sixty (60) days of the Department's approval of a Final Report, Respondent shall submit such additional Work Plans as is required by the Department in its approval letter of such Final Report. Failure to submit any additional Work Plans within such period shall be a violation of this Order.

D. Review of Submittals

1. The Department shall make a good faith effort to review and respond in writing to each submittal Respondent makes pursuant to this Order within sixty (60) Days. The Department's response shall include, in accordance with 6 NYCRR 375-1.6(d), an approval, modification request, or disapproval of the submittal, in whole or in part.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Order and shall be implemented in accordance with the schedule contained therein.

ii. If the Department modifies or requests modifications to a submittal, it shall specify the reasons for such modification(s). Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall notify the Department of its election in accordance with 6 NYCRR 375-1.6(d)(3). If Respondent elects to modify or accept the Department's modifications to the submittal, Respondent shall make a revised submittal that incorporates all of the Department's modifications to

the first submittal in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(3). In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

iii. If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall notify the Department of its election in accordance with 6 NYCRR 375-1.6(d)(4). If Respondent elects to modify the submittal, Respondent shall make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(4). In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

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

E. Department's Issuance of a ROD

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

2. Respondent shall have 60 days from the date of the Department's issuance of the ROD to notify the Department in writing whether it will

implement the remedial activities required by such ROD. If the Respondent elects not to implement the required remedial activities, then this order shall terminate in accordance with Paragraph XIV.A. Failure to make an election or failure to comply with the election is a violation of this Order.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Respondent shall submit a written certification in accordance with 6 NYCRR 375-1.8(h)(3) and 375-3.8(h)(2).

IV. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4). Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order.

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

B. 1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Respondent must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Respondent shall notify the Department in writing within five (5) Days of the onset of any Force Majeure Event. Failure to give such notice within such five (5) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

3. Respondent shall have the burden of proving by a preponderance of the evidence that (i)

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

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the force majeure event, in accordance with 375-1.5(4).

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraph IV.B, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XV and Respondent's position prevails.

V. Entry upon Site

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

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondent shall each have the right

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

VI. Payment of State Costs

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR 375-1.5 (b)(3)(i). Failure to timely pay any invoice will be subject to late payment charge and interest at a rate of 9% from the date the payment is due until the date the payment is made.

B. Costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the "Commissioner of NYSDEC" and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7012

D. The Department shall provide written notification to the Respondent of any change in the foregoing addresses.

E. If Respondent objects to any invoiced costs under this Order, the provisions of 6 NYCRR 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph VI.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph IV or the Department may commence an enforcement action for non-compliance with ECL '27-1423 and ECL 71-4003.

VII. Release and Covenant Not to Sue

Upon the Department's issuance of a Certificate of Completion as provided at 6 NYCRR 375-1.9 and 375-2.9, Respondent shall obtain the benefits conferred by such provisions, subject to the terms and conditions described therein.

VIII. Reservation of Rights

A. Except as provided at 6 NYCRR 375-1.9 and 375-2.9, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this Order, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

IX. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless as provided by 6 NYCRR 375-2.5(a)(3)(i).

X. Notice of Transfer

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

XI. Change of Use

Respondent shall notify the Department at least sixty (60) days in advance of any change of use, as defined in 6 NYCRR 375-2.2(a), which is proposed for the Site, in accordance with the provisions of 6 NYCRR 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Respondent of such determination within forty-five (45) days of receipt of such notice.

XII. Environmental Easement

A. If a Record of Decision for the Site relies upon one or more institutional and/or engineering controls, Respondent (or the owner of the Site) shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2). Upon acceptance of the Environmental Easement by the State, Respondent shall comply with the requirements of 6 NYCRR 375-1.8(h)(2).

B. If the ROD provides for no action other than implementation of one or more institutional controls, Respondent shall cause an environmental easement to be recorded under the provisions of Subparagraph XII.A.

C. If Respondent does not cause such environmental easement to be recorded in accordance with 6 NYCRR 375-1.8(h)(2), Respondent will not be entitled to the benefits conferred by 6 NYCRR

375-1.9 and 375-2.9 and the Department may file an Environmental Notice on the site.

XIII. Progress Reports

Respondent shall submit a written progress report of its actions under this Order to the parties identified in Subparagraph IV.A.1 of the Order by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination date as set forth in Paragraph XIV, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Respondent in connection with this Site, whether under this Order or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XIV. Termination of Order

A. This Order will terminate upon the earlier of the following events:

1. Respondent's election in accordance with Paragraph III.E.2 not to implement the remedial activities required pursuant to the ROD. In the event of termination in accordance with this Subparagraph, this Order shall terminate effective the 5th Day after the Department's receipt of the written notification, provided, however, that if there are one or more Work Plan(s) for which a final report has not been approved at the time of Respondent's notification of its election not to implement the remedial activities in accordance with the ROD, Respondent shall complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein. Thereafter, this Order shall terminate effective the 5th Day after the Department's approval of the final report for all previously approved Work Plans; or

2. The Department's written determination that Respondent has completed all phases of the

Remedial Program (including Site Management), in which event the termination shall be effective on the 5th Day after the date of the Department's letter stating that all phases of the remedial program have been completed.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VI and IX shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4), subjecting Respondent to penalties as provided under Paragraph IV so long as such obligations accrued on or prior to the Termination Date.

C. If the Order is terminated pursuant to Subparagraph XIV.A.1, neither this Order nor its termination shall affect any liability of Respondent for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA, nor shall it affect any defenses to such liability that may be asserted by Respondent. Respondent shall also ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which existed before any activities under this Order were commenced. Further, the Department's efforts in obtaining and overseeing compliance with this Order shall constitute reasonable efforts under law to obtain a voluntary commitment from Respondent for any further activities to be undertaken as part of a Remedial Program for the Site.

XV. Dispute Resolution

A. In the event disputes arise under this Order, Respondent may, within fifteen (15) Days after Respondent knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Order.

C. Nothing contained in this Order shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy.

XVI. Miscellaneous

A. Respondent agrees to comply with and be bound by the provisions of 6 NYCRR Subparts 375-1 and 375-2; the provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Order to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Order.

B. The Department may exempt Respondent from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Order in accordance with 6 NYCRR 375-1.12(b), (c), and (d).

C. 1. Respondent shall use best efforts to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Respondent's obligations under this Order, including all Department-approved Work Plans and the schedules contained therein. If, despite Respondent's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Respondent's inability to obtain such interest.

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

E. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondent concerning the implementation of the activities required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving

Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s). Respondent consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Order.

2. i. Except as set forth herein, if Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph IV.A.1.

ii. If Respondent seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph IV.A.1.

iii. Requests for a change to a time frame set forth in this Order shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Respondent promptly.

F. 1. If there are multiple parties signing this Order, the term "Respondent" shall be read in the plural, the obligations of each such party under this Order are joint and several, and the insolvency of or failure by any Respondent to implement any obligations under this Order shall not affect the obligations of the remaining Respondent(s) under this Order.

2. If Respondent is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Order are joint and several and the insolvency or failure of any general partner to implement any obligations under this Order shall not affect the obligations of the remaining partner(s) under this Order.

3. Notwithstanding the foregoing Subparagraphs XVI.F.1 and 2, if multiple parties sign this Order as Respondents but not all of the signing parties elect to implement a Work Plan, all Respondents are jointly and severally liable for each and every obligation under this Order through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Respondents electing to perform additional work shall be jointly and severally liable under this Order for the obligations and activities under such

additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Order relative to the activities set forth in such Work Plan(s). Further, only those Respondents electing to implement such additional Work Plan(s) shall be eligible to receive the release and covenant not to sue referenced in Paragraph VII.

G. Respondent shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL 27-1421(6) and 6 NYCRR 375-1.5(b)(5).

H. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

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

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

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

