

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the
Remediation of Real Property Pursuant to
Article 12 of the Navigation Law and Article
17 of the Environmental Conservation Law, by

Northway Plaza Associates

**VOLUNTARY
CLEANUP
AGREEMENT
RECEIVED**

MAY - 1 1998

DEPT. OF ENVIRONMENTAL CONSERVATION
OFFICE OF LEGAL AFFAIRS
RAYBROOK, NEW YORK

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the administration and enforcement of Article 12 of the Navigation Law ("NL") entitled "Oil Spill Prevention, Control and Compensation" and Article 17 of the Environmental Conservation Law ("ECL") entitled "Water Pollution Control," and is otherwise responsible for carrying out the environmental policy of the State and to provide for the prevention and abatement of all water, land and air pollution pursuant to ECL § 3-0301.

2. **Northway Plaza Associates** ("Volunteer") is a company created pursuant to the laws of the State of New York with offices located at 217 Montgomery Street, Suite 1100, Syracuse, New York 13202.

3. Volunteer owns the Northway Plaza Shopping Center, Route 9 and Quaker Ridge Road, Queensbury, Warren County, New York. The Monro Muffler Brake store site is located within the property boundaries of the Northway Plaza Shopping Center and is the source of the alleged contamination. Said parcel is identified in Exhibit "A" hereof, and hereinafter is referred to as the "Site".

4. Volunteer is desirous of completing the cleanup of the site as part of its plan to develop and expand a commercial enterprise, i.e. expansion by Traveler's Property Casualty Corporation at that location, or other commercial office or commercial retail use at that location ("Contemplated Use").

5. NL §173 prohibits the discharge of petroleum.

6. ECL §17-0501 provides that it is unlawful for any party to discharge any pollutant to the waters of the State of New York which causes or contributes to the contravention of water quality standards.

7. NL §176 permits, upon approval by the Commissioner, any person to clean up and remove a discharge of petroleum without admission of responsibility for such discharge and authorizes, upon approval by the Commissioner, any person whose property is threatened by a discharge of petroleum, to clean up and remove such discharge.

8. Contamination has been detected at the site from the discharge of petroleum, which the Department asserts to be in contravention of NL §173 and ECL §17-0501, and at levels which must be addressed by appropriate response measures. This assertion is based upon the

Department's review of Voluntary Cleanup Site Assessment Report and related data. The contamination described therein is hereinafter referred to as "Existing Contamination".

9. To the Department's knowledge, Volunteer did not cause or contribute to the contamination at the Site. Volunteer represents, and for the purposes of this Agreement, the Department relies on those representations, that Volunteer's involvement with the Site and with any facility on that Site is limited to the following: Volunteer is a non-discharging potentially responsible party ("PRP") because it is the current owner of the site, however, Volunteer did not cause the contamination and much of the contamination occurred prior to its ownership of the site.

10. Volunteer has expressed a willingness to complete, and at its own cost, without resort to any claim upon moneys in the New York State Environmental Protection and Spill Compensation Fund, the investigation and remediation of the site in accordance herewith.

11. The Department has embarked upon a Voluntary Cleanup Program which, inter alia, seeks to encourage the redevelopment or reuse of contaminated properties by allowing parties which are not responsible for the contamination to receive a conditional release from legal liability in return for complying with pre-determined cleanup requirements. The vehicle to implement this program and to formalize the rights, obligations, and conditions of conduct is this Agreement.

12. Volunteer, desirous of implementing a response program acceptable to the Department sufficient to allow Volunteer to proceed with its plans to use the site for the Contemplated Use, consents to the terms and conditions of this Agreement.

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

- A. for Volunteer to implement at its own cost a Department-approved Remedial Work Plan ("Work Plan" or "Corrective Action Plan") for the site (Exhibit "B");
- B. for Volunteer to reimburse the State's administrative costs and spill fund costs as provided in this Agreement; and
- C. for the Department to release Volunteer and its lessees, sublessees, successors, assigns, and their respective creditors, under the conditions set forth in this Agreement, from any and all claims, actions, suits, and proceedings by the Department which may arise under any applicable law as a result of the Existing Contamination.

14. The Department will, within 21 days of the effective date of this Agreement, publish a notice of entry into this Agreement in an issue of the Department's Environmental Notice Bulletin and provide written notice to the Town of Queensbury and the County of Warren of the entry of this Agreement and will solicit comments from the public and from those local governments on this Agreement, including the Work Plan for the Site. The Department may receive comments which could alter the terms of the Work Plan.

15. Volunteer agrees to be bound by the terms of this Agreement. Volunteer consents to and agrees not to contest the authority or jurisdiction of the Department to enter into or enforce this Agreement, and agrees not to contest the validity of this Agreement or its terms.

NOW THEREFORE, in consideration of and in exchange for the Department's release and covenant not to sue set forth in this Agreement, and for the mutual covenants and promises contained herein, Volunteer agrees to the following:

I. PERFORMANCE AND REPORTING OF THE WORK PLAN

A. 1. Within 60 days after the effective date of this Agreement, Volunteer shall commence the activities contained in the Department-approved Work Plan attached to this Agreement and made a part of it as Exhibit "B". For purposes of this Agreement, the "Work Plan" shall include any modifications to Exhibit "B" approved by the Department in writing subsequent to the effective date of this Agreement.

2. The parties agree that the Work Plan will be modified in the event that contamination previously unknown or inadequately characterized is encountered during the Work Plan's implementation and that such modification(s) shall be incorporated into Exhibit "B". However, if after good faith negotiations, Volunteer and the Department cannot agree upon modifications to the Work Plan, then except with respect to Volunteer's obligations under Paragraph VII of this Agreement, this Agreement shall terminate on the date of the Department's written notification to Volunteer that negotiations have failed to develop an acceptable modification to the Work Plan. Volunteer shall not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which existed before remedial activities were commenced; and, except as noted above, both parties retain whatever rights they may have had respecting each other as they had before the effective date of this Agreement.

B. Volunteer shall carry out the Work Plan in accordance with its terms. Volunteer shall notify the Department of any significant difficulties, including but not limited to the discovery of previously unknown or inadequately characterized contamination, that may be encountered in implementing the Work Plan together with a proposal to address any such difficulty. Neither the Work Plan nor any obligation contained therein shall be modified unless such modification is first approved by the Department in writing.

C. During implementation of all construction activities identified in the Work Plan, Volunteer shall have on-site a full-time representative who is qualified to supervise the work done.

D. Within 30 days of completion of all activities described in the Work Plan, Volunteer shall submit to the Department a final engineering or summary report. If the Volunteer is required to perform only "Task 1" of the Work Plan, the required report can be a summary report prepared by and signed by a professional geologist. If, however, the Volunteer is required to initiate or perform "Task 2" of the Work Plan, the report must be an engineering report, and the report and any other required documents must be prepared by, signed and sealed by a professional engineer. The final engineering or summary report shall include a detailed post-remedial operation and maintenance plan ("O&M Plan"), to the extent necessary; "as-built" drawings showing all changes made during construction, to the extent necessary; a certification that all construction activities were completed in full accordance with the Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto, and this Agreement. The O&M Plan, "as built" drawings, final engineering or summary report, and certification must be prepared, signed, and sealed by a professional engineer or geologist, as appropriate.

E. Should post-response operation and maintenance prove to be necessary, upon the Department's approval of the O&M Plan, Volunteer shall implement the O&M Plan in accordance with the schedule and requirements of the Department-approved O&M Plan.

F. 1. Within 30 days after receipt of the final engineering or summary report and certification, the Department shall notify Volunteer in writing whether the Department is satisfied with the implementation of the Work Plan and with Volunteer's compliance with this Agreement.

2. Within 30 days after completion of the Department-approved O&M Plan, if any, Volunteer shall submit to the Department a final engineering or summary report and certification that the post-remedial operation and maintenance activities identified in the Department-approved O&M Plan were implemented in accordance with that plan. The Department shall notify Volunteer whether it is satisfied with the O&M Plan's implementation.

3. Upon being satisfied with the implementation of the Work Plan, the Department shall notify Volunteer in writing of its satisfaction [see paragraph I.(G.)] and the Department shall, except for the reservations identified below, release, covenant not to sue and forbear from bringing any action, proceeding, or suit against Volunteer, or the Volunteer's lessees, sublessees, successors, assigns and their respective creditors, for the further investigation and remediation of the Site based upon the release or threatened release of any Existing Contamination provided that (a) appropriate notices and deed restrictions have been recorded in accordance with Paragraph IX of this Agreement, and (b) the Volunteer and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved post-response operation and maintenance plan, if any. Nonetheless, the Department hereby reserves all of its rights concerning, and such release, covenant not to sue, and forbearance shall not extend to natural resource damages nor to any further investigation or remedial action the Department deems necessary:

i. due to off-Site migration of contaminants other than petroleum resulting in impacts to environmental resources, to human health, or to other biota that are not inconsequential and to off-Site migration of petroleum, irrespective of whether the information available to Volunteer and the Department at the time of the development of the Work Plan disclosed the existence or potential existence of such off-Site migration;

ii. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan or the last written Department approved modification thereto which indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Use;

iii. due to information received, in whole or in part, after the Department's approval of the final engineering or summary report and certification, which indicates that the Work Plan performed under this Agreement is not sufficiently protective of human health for the Contemplated Use;

iv. due to Volunteer's failure to implement this Agreement to the Department's satisfaction; or

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

Additionally, the Department hereby reserves all of its rights concerning, and any such release, covenant not to sue and forbearance shall not extend to any person, including Volunteer, or any of its lessees, sublessees, successors, or assigns who causes or suffers the release or threat of release at the Site of any hazardous substance or petroleum after the effective date of this Agreement or who causes or suffers the use of the Site to change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment.

4. Notwithstanding any other provision in this Agreement, if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any person, nothing in this Agreement shall be construed, or deemed, to preclude the State of New York from recovering such claim.

G. If the Department is satisfied with the implementation of the Work Plan, the Department shall provide Volunteer with the separate written "no further action" letter substantially similar to the model letter that is attached to this Agreement and incorporated in this Agreement as Exhibit "C".

H. 1. Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of the forbearance, covenant not to sue, or release set forth in Subparagraph I.F or in the "no further action" letter issued under Subparagraph I.G of this Agreement shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

2. Except as provided in Subparagraph I.F of this Agreement and in the "no further action" letter issued under Subparagraph I.G of this Agreement, nothing in this Agreement is intended as a release, forbearance or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the Department or the State of New York may have against any person, firm, corporation, or other entity not a party to this Agreement. In addition, notwithstanding any other provision in this Paragraph I of this Agreement, the forbearance, covenant not to sue, and release described in Subparagraph I.F and in the "no further action" letter issued under Subparagraph I.G of this Agreement shall not, except as to the Volunteer, extend to parties that were responsible under law before the effective date of this Agreement to address the Existing Contamination.

II. PROGRESS REPORTS

A. Volunteer shall submit to the Department written bi-monthly progress reports that:

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

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

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

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

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

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

B. Volunteer shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Agreement and Volunteer's obligation to submit the progress reports shall terminate upon its receipt of the notification described at Subparagraph I.F.1 hereof. A schedule for reporting periods subsequent to completion of Work Plan activities shall be included in the O & M plan, if one is required.

C. Volunteer shall allow the Department to attend, and shall provide the Department at least five days advance notice of any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

III. REVIEW OF SUBMITTALS

A. The Department shall review each of the submittals Volunteer makes pursuant to this Agreement to determine whether it was prepared, and whether work done to generate the data and other information in the submittal was done, in accordance with this Agreement and generally accepted technical and scientific principles. The Department shall notify Volunteer in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become a part of this Agreement.

B. 1. If the Department disapproves a submittal, it shall so notify Volunteer in writing and shall specify the reasons for its disapproval within 30 days after its receipt of the submittal (in the case of the review of the final engineering or summary report and certification, however, the period shall be 60 days), and may request Volunteer to modify or expand the submittal; provided, however, that the matters to be addressed by such modification or expansion are within the specific scope of work as described in the Work Plan. Within 30 days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall make a revised submittal to the Department which endeavors to address and resolve all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal, the Department shall notify Volunteer in writing within 30 days of its approval or disapproval. In the event that the Department disapproves a revised submittal, Volunteer may notify the Department within 10 days of receipt of the notification of disapproval from the Department that it will further revise the submittal and Volunteer may submit one further revised submittal within 21 days of receipt of notification of disapproval from the Department. If the Department disapproves the revised submittal and no further revised submittal is made, or if the Department disapproves the further revised submittal once made, the Department and the Volunteer may pursue whatever remedies may be available at law or in equity to them

without prejudice to either's right to contest the same. If the Department approves the revised submittal, it shall be incorporated into and become a part of this Agreement.

IV. ENFORCEMENT

A. This Agreement shall be enforceable as a contract pursuant to the laws of the State of New York.

B. Volunteer shall not suffer any penalty under this Agreement or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement because of fire, lightning, earthquake, flood, adverse weather conditions, strike, war, shortages of labor and materials, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Volunteer's reasonable control ("force majeure event"). Volunteer shall, within five working days of when it obtains knowledge of any such force majeure event, notify the Department in writing. Volunteer shall include in such notice the measures taken and to be taken by Volunteer to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Volunteer shall have the burden of proving by a preponderance of the evidence that an event is a defense to a claim of non-compliance with this Agreement pursuant to this Subparagraph.

V. ENTRY UPON SITE

Volunteer hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer by any duly designated employee, consultant, contractor, or agent of the Department or any State agency having jurisdiction with respect to the activities performed pursuant to the Work Plan for purposes of inspection, sampling, and testing, and to ensure Volunteer's compliance with this Agreement. The Department shall abide by the health and safety rules in effect for work performed at the Site under the terms of this Agreement. Upon request, Volunteer shall permit the Department full access to all records relating to matters addressed by this Agreement and job meetings.

VI. PAYMENT OF STATE COSTS

Within thirty days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to the effective date of this Agreement, as well as for negotiating this Agreement, reviewing and revising submittals made pursuant to this Agreement, overseeing activities conducted pursuant to this Agreement, collecting and analyzing samples, and administrative costs associated with this Agreement, but not including the State's expenses incurred after the Department's notification identified in Subparagraph I.F.2 of this Agreement of its approval of the final engineering or summary report and certification pertaining to the implementation of the Work Plan or, if any, of the Department-approved O&M Plan, whichever is later. Volunteer must pay and reimburse the State for all costs and expenses incurred pursuant to, under or by the New York State Environmental Protection and Spill Compensation Fund. Volunteer will be responsible to pay the State for other costs and expenses up to Ten Thousand Dollars (\$10,000.00). Each such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7010

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports.

B. Upon payment, the Department shall deliver to the appropriate party(s) a release(s) of the environmental liens, if any, which have been filed against the Site.

VII. DEPARTMENT RESERVATION OF RIGHTS

A. Except as provided in Subparagraph I.F of this Agreement, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, nor exemplified by, the right to recover natural resource damages) with respect to any party, including Volunteer.

B. Nothing contained in this Agreement shall prejudice any rights of the Department to take any investigatory or remedial action it may deem necessary if Volunteer fails to comply with this Agreement or if environmental conditions unknown or unforeseen as of the effective date of this Agreement are encountered at the Site.

C. Nothing contained in this Agreement shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

D. Nothing contained in this Agreement shall be construed to affect the Department's right to terminate this Agreement at any time if Volunteer fails to comply with the terms and conditions of this Agreement.

VIII. INDEMNIFICATION

Volunteer shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Volunteer and/or any of Volunteer's directors, officers, employees, servants, agents, successors, and assigns.

IX. NOTICE OF SALE OR CONVEYANCE

If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in the Site, Volunteer shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Agreement.

X. DEED RESTRICTION

A. Within 30 days of its receipt of the Department's notification pursuant to Subparagraph I.F. of this Agreement approving Volunteer's final engineering or summary report and certification concerning the Work Plan, Volunteer shall record an instrument with the Warren County Clerk, to run with the land, that:

1. Shall prohibit the Site from ever being used for purposes other than for the Contemplated Use without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department;

2. Shall provide and create on the part of the Department third party enforcement rights of the restrictions established by this instrument and shall provide that Volunteer, on behalf of itself and its successors and assigns, hereby consents to the enforcement by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department, of the prohibitions and restrictions that this Paragraph requires to be recorded, and hereby covenants not to contest such enforcement.

3. Shall prohibit any party, including Volunteer and its successors and assigns, from rescinding or altering in any way the instrument or any restriction, prohibition, or consent contained therein without the express written authorization by the Department.

B. Volunteer shall provide the Department with a copy of such instrument certified by the Warren County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Warren County Clerk.

XI. COMMUNICATIONS

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

1. Communication from Volunteer shall be sent to:

Richard Wagner
Project Manager
Spill Response Unit
NYS Department of Environmental Conservation
P.O. Box 296
Ray Brook, New York 12977

with a copy to:

Steven L. Brewer, Esq.
Assistant Regional Attorney
NYS Department of Environmental Conservation
Route 86, P.O. Box 296
Ray Brook, New York 12977

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

·Four copies to Richard Wagner ("project manager")

·One copy to Steven L. Brewer ("case attorney")

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

GeoLogic NY, Inc.
ATT: Sarah McCulloch
P.O. Box 5080
Cortland, New York 13045

With copies to:

Barry M. Schreibman, Esq.
Green & Seifter Attorneys, P.C.
One Lincoln Center
Syracuse, New York 13202

B. The Department and Volunteer reserve the right to designate additional or different addressees for communication on written notice to the other given in accordance with this Paragraph.

XII. MISCELLANEOUS

A. 1. By entering into this Agreement, Volunteer certifies that to the best of Volunteer's knowledge and belief:

(a) Volunteer has fully and accurately disclosed to the Department all information known to Volunteer and all information in the possession or control of Volunteer's officers, directors, members, partners, employees, contractors, and agents which relates in any way to contamination existing on the effective date of this Agreement, or any past or potential future release of hazardous substances, pollutants, or contaminants at or from the Site and to their application for this Agreement.

(b) Volunteer also certifies that to the best of Volunteer's knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site.

2. If the Department determines that information Volunteer provided is not materially accurate and complete, this Agreement, within the sole discretion of the Department, shall be null and void, and the Department shall reserve all rights that it may have.

B. Volunteer shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Agreement. The responsibility for the performance of the professionals retained by Volunteer shall rest solely with Volunteer.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Volunteer, and the Department also shall have the right to take its own samples. Volunteer shall make available to the Department the results of all sampling and/or tests or other data generated by Volunteer with respect to implementation of this Agreement and shall submit these results in the progress reports required by this Agreement.

D. Volunteer shall notify the Department at least five working days in advance of any field activities to be conducted pursuant to this Agreement.

E. 1. Subject to Subparagraph XII.E.2 below, Volunteer shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Volunteer's obligations under this Agreement.

2. In carrying out the activities identified in the Work Plan, Volunteer shall be exempt from the requirement to obtain any Department permit for any activity that is conducted on the Site and that satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

F. Volunteer, Volunteer's officers, directors, agents, members, partners, servants, and employees (in the performance of their designated duties on behalf of Volunteer), and Volunteer's lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership or corporate status of Volunteer including, but not limited to, any transfer of assets or real or personal property shall in no way alter Volunteer's responsibilities under this Agreement. Volunteer's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Agreement in the performance of their designated duties on behalf of Volunteer.

G. Volunteer shall provide a copy of this Agreement to each contractor hired to perform work required by this Agreement and to each person representing Volunteer with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Agreement upon performance in conformity with the terms of this Agreement. Volunteer or Volunteer's contractors shall provide written notice of this Agreement to all subcontractors hired to perform any portion of the work required by this Agreement. Volunteer shall nonetheless be responsible for ensuring that Volunteer's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

H. All references to "professional engineer" in this Agreement are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

I. All references to "days" in this Agreement are to calendar days unless otherwise specified.

J. The section headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement.

K. 1. The terms of this Agreement shall constitute the complete and entire Agreement between the Department and Volunteer concerning the Work Plan for the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Volunteer of Volunteer's obligation to obtain such formal approvals as may be required by this Agreement.

2. If Volunteer desires that any provision of this Agreement be changed, or if Volunteer wishes to withdraw from the commitments it has made in this Agreement, Volunteer shall make timely written application, signed by the Volunteer, to the Department setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to the project manager and to the case attorney.

Any proposed changes or modification shall not become effective unless specifically approved and set forth by written order of the Commissioner or his designee.

If Volunteer seeks to withdraw and demonstrates to the Department that the nature and cost of remediation is significantly greater than was reasonably expected by Volunteer (for example, such cost exceeds 50 percent of the estimate set forth in the Work Plan), the Department shall permit the Volunteer to withdraw.

Upon withdrawal, Volunteer must leave the site no worse than before it entered into the Agreement. If Volunteer withdraws under this provision, it will not be liable to the Department under this Agreement for further investigation, remediation or other costs or activities at the site.

L. This Agreement constitutes an exercise of the Department's enforcement discretion and, accordingly, the remedial activities required herein shall be exempt from the provisions of the State Environmental Quality Review Act.

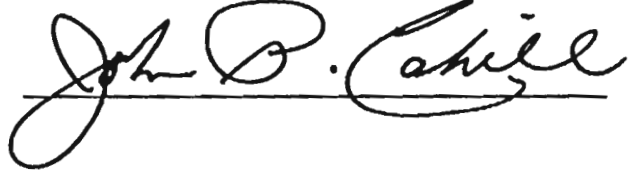
M. The provisions of this Agreement do not constitute and shall not be deemed a waiver of any right Volunteer otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteer's insurers, for payments made previously or in the future for response costs.

N. Volunteer and Volunteer's employees, servants, agents, lessees, successors, and assigns hereby affirmatively waive any right they had, have, or may have to make a claim against the State pursuant to Article 12 of the Navigation Law with respect to the Site, and further release and hold harmless the New York State Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever that any of same has or may have as a result of Volunteer's entering into or fulfilling the terms of this Agreement with respect to the Site.

O. The effective date of this Agreement shall be the date it is signed by the Commissioner or his designee.

DATED: 4/17, 1998


JOHN P. CAHILL
COMMISSIONER
NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION



CONSENT BY CORPORATION

Volunteer hereby consents to the issuing and entering of this Agreement, waives its rights to a hearing herein as provided by law, and agrees to be bound by this Agreement.

NORTHWAY PLAZA ASSOCIATES

BY 

TITLE Partner

DATE 4/2/98

STATE OF New York
COUNTY OF Onondaga SS.:

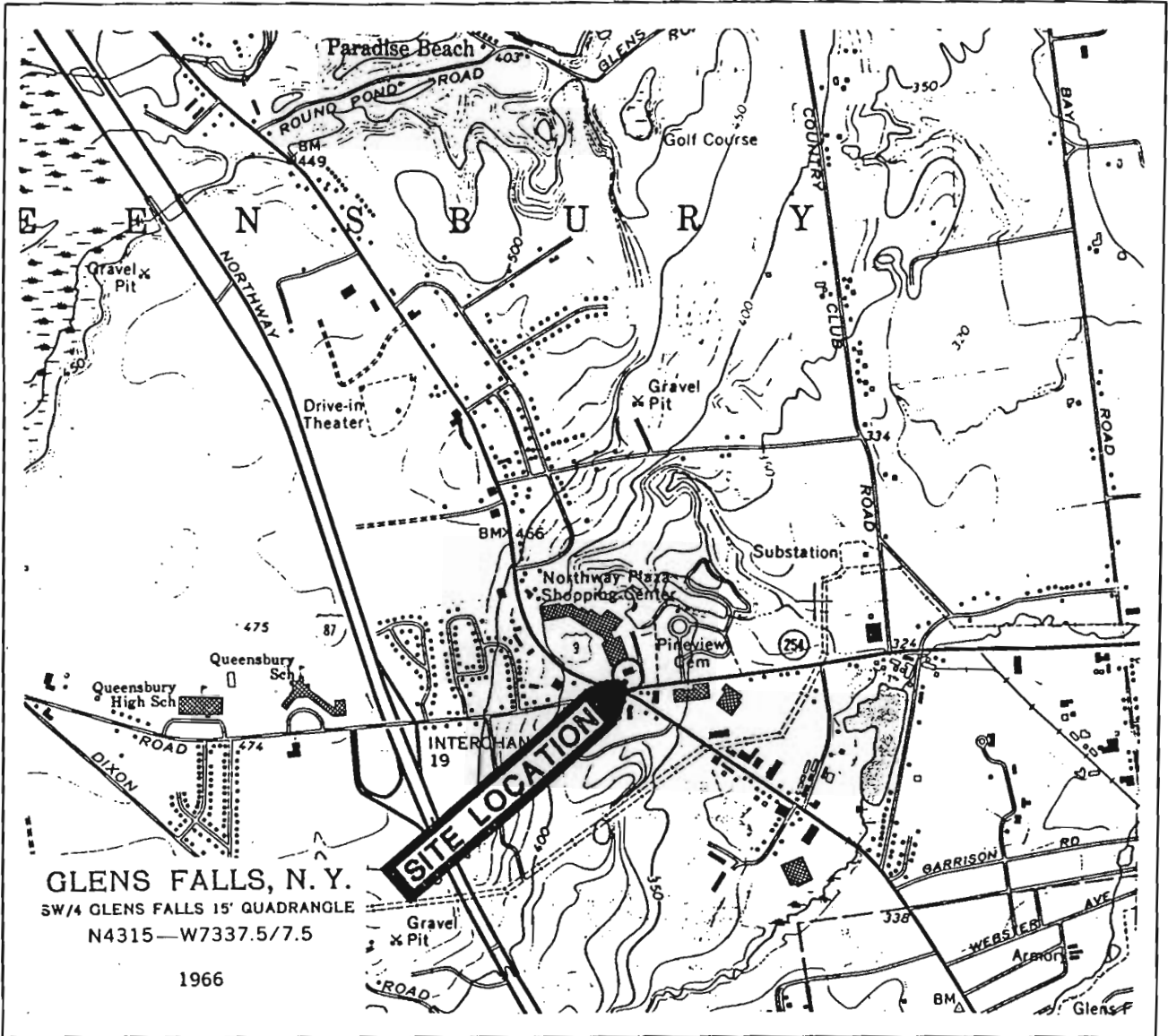
On this 2nd day of APRIL, 1998 before me personally came William M. Dutch,
to me known, who being by me duly sworn, did depose and say that he resides in
Syracuse, that he is the Partner of the ~~corporation~~ described in, and who
executed the foregoing instrument, and acknowledged that he signed his name thereto by order of
the board of directors of said corporation. Partnership

TERRIE L. COLLINS
Notary Public in the State of New York
Qualified in Onondaga County
No. 01CO5023945
My Commission Expires February 22, 2000


NOTARY PUBLIC

EXHIBIT "A"

Map of Site



GAI		
Environmental Services, Inc.		
SITE LOCATION PLAN MONRO MUFFLER BRAKE/NORTHWAY PLAZA ROUTES 9 AND 254 (QUAKER ROAD) QUEENSBURY, NEW YORK		
DR BY: SEM	SCALE: 1" = 2,000'	PROJ. NO: 95090
REV'D. BY: MRL	DATE: JULY 1997	DRWG. NO. 1

EXHIBIT "B"

Department-Approved Remedial Work Plan

GeoLogic

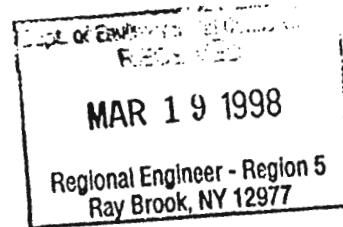
GeoLogic NY, Inc.

formerly GAI Environmental Services, Inc.

P.O. Box 5080 • Cortland, NY 13045 • 607.836.4400 • Fax: 607.836.44

March 13, 1998

Mr. Frank Peduto, P.E.
Section Chief
Technology Assistance Section
NYSDEC
50 Wolf Road, Room 360
Albany, NY 12233-3750



and

Mr. Richard Wagner, P.E.
Regional Spill Engineer
NYSDEC
Route 86/PO Box 296
Ray Brook, NY 12977

Reference: Corrective Action Plan
Northway Plaza Shopping Center
Queensbury, NY

Dear Messrs. Peduto and Wagner:

I have enclosed the Correction Action Plan (CAP) for the above referenced site. Written and verbal comments provided by the Department have been incorporated into this CAP.

Also enclosed are tables summarizing the free product bailing activities completed at the site between February 18 and March 12, 1998. I am pleased to report that no free product was observed at the site on March 12, 1998.

If you have any questions, please call me.

Sincerely,

GeoLogic NY, Inc.


Sarah E. McCulloch
Senior Hydrogeologist

Encs. CAP
Free Product Bailing Table

cc: William Dutch
Barry Schreibman, Esq.
Steve Brewer, Esq.

F:\95090\cor\3-13ltr

EXHIBIT "B"



GeoLogic NY, Inc.

formerly GAI Environmental Services, Inc.

P.O. Box 5080 • Cortland, NY 13045 • 607.836.4400 • Fax: 607.836.4404

CORRECTIVE ACTION PLAN
March 13, 1998
Voluntary Cleanup Agreement
Northway Plaza Shopping Center
Queensbury, New York

This Corrective Action Plan (CAP) was prepared to address free phase petroleum product at the water table at a very limited area of the site and to detail the type of exposure assessment to be completed.

BACKGROUND

The area to be addressed by this CAP is associated with a former Montgomery Wards automobile service and gasoline dispensing building currently occupied by Monro Muffler and Convenient Care medical offices (See Attached Drawing No. 1). Numerous reports discussing the history of the site and previous remediation activities have been prepared as detailed in the September 1997 "Voluntary Cleanup Site Assessment Report" prepared by GeoLogic NY, Inc. (formerly GAI Environmental Services, Inc.).

The direction of groundwater flow is east, northeast towards the Pineview Cemetery (See Attached Drawing No. A). The average depth to groundwater in the immediate vicinity of the Monro Muffler building is 25.8 feet below the ground surface. The site geology consists of approximately 20 feet of fine to medium sand overlying approximately 10 feet of silt with little clay over a fine to coarse sand with some silt unit. The water table is within the silt with little clay unit. Pump test data at well RW-4 collected by others indicates a hydraulic conductivity of 1×10^{-4} cm/sec.

Site work completed in November and December 1997 indicates that there is a limited amount of free phase petroleum product (free product) in the vicinity of monitoring well GEC-8 (0.05 feet) and recovery well RW-4 (1.44 feet). No free product has been detected in monitoring well GEC-12, located hydraulically downgradient of wells GEC-8 and RW-4. Total reported BTEX concentrations in groundwater samples from well GEC-12 have decreased from 158 ug/L in August 1995 to 2 ug/L in November 1997. The reported screened intervals for these three wells are as follows: GEC-8 is 20 to 30 feet below ground surface (bgs), GEC-12 is 15 to 35 feet bgs and RW-4 is 20 to 45 feet bgs. Historic depth to water measurements for these three wells have ranged from 25.1 to 27.3 feet bgs. These water level measurements are within the screened intervals of these three wells.

Literature searches indicate that the accumulation of free product in a well does not directly correspond to the thickness of free product in the surrounding formation. In addition, seasonal elevation fluctuations of the water table can contribute to the accumulation of free product in a well. Given that well RW-4 had not been activated in the 40 months prior to the November 1997 measurement, and given that a free product

absorbent sock was installed in well GEC-8 in August 1995 and has been periodically checked and replaced by Northway Plaza personnel, it is our opinion that the free product measurement of 0.05 feet in well GEC-8 is more reflective of the site conditions than the measurement of 1.4 feet in well RW-4.

TASK 1

In order to better estimate the thickness of free product at wells GEC-8 and RW-4, the following tasks will be completed:

The free product absorbent sock will be removed from well GEC-8 and the groundwater and free product recovery pumps will be removed from well RW-4.

On a weekly basis, depth to free product measurements will be made in wells GEC-8, GEC-12 and RW-4. If encountered, the free phase product will be removed by bailing and stored in the on-site product storage tank. The estimated volume of product bailed will be recorded. Post bailing free product and depth to water measurements will also be recorded. The free product bailing logs will be provided to the Department.

If it appears that the free product thickness measurements are stabilizing with time, the time interval between bailing events will be increased to two or three weeks.

If the bailing and associated free product thickness measurement data indicate that the free product thickness is on the order of 0.05 feet, then no additional remedial activities will be implemented. If the data from Task 1 indicates that the free product thickness is greater than 0.05 feet, then Task 2 activities will be initiated.

TASK 2

Free Product Remediation Options

The NYSDEC Spill Response Guidance Manual (January 1990) and the USEPA publication titled "How to Effectively Recover Free Product at Leaking Underground Storage Tank Sites, a Guide for State Regulators" (September 1996) were reviewed to evaluate potentially feasible recovery methodologies. The NYSDEC Manual lists three basic options for free product recovery: pumping wells, trenches or drains, and barriers (with the stipulation that barriers are only to be used in conjunction with one of the other free product recovery options). The options presented in the USEPA document include skimming systems deployed in open trenches or excavations, free product recovery with water table depression wells, vapor extraction/groundwater extraction wells and dual-phase recovery from the same well (also known as total fluids extraction).

Groundwater recovery well RW-4, along with the three other recovery wells at the site, were in operation from September 1993 to July 1994. The recovery system was operated by Environmental Products and Services (EPS). EPS reported in August 1994 that no free product had been recovered by the system. As demonstrated by the EPS activities, the low permeability soils at the site are not conducive to groundwater depression/pump and treat technologies. These low permeability soils would also inhibit the effectiveness of conventional vapor extraction. Therefore, recovery of the free product by conventional vapor extraction or groundwater depression is not considered a feasible option.

The depth to groundwater at the site is on the order of at least 25 feet below the ground surface. The free product is located only about 20 feet north of the building's foundation. An excavation could not be placed deep enough to intercept the free product/water table zone without undermining the foundation of the building. Therefore, any free product remedial option involving the use of trenches or drains is not considered feasible.

The remaining feasible free product remedial option, as presented in the NYSDEC and EPA documents, is total fluids extraction (TFE). TFE, also known as dual-phase recovery, involves applying a high vacuum to a well to remove both liquids (water and free product) and vapors. TFE technology is applicable to low permeability soils such as those encountered at the site.

The following will be completed as Task 2:

A TFE pilot test will be undertaken at well RW-4 to evaluate whether the site and well are conducive to an application of TFE technology. The results of the pilot test will be used to determine whether RW-4 can be retrofitted to accommodate TFE equipment and whether additional recovery well(s) would be needed to recover the free product present. If the pilot test indicates that well RW-4 is unacceptable for retrofitting, then a new recovery well would be installed to evaluate TFE technology and, if needed, used as a recovery point.

If a TFE system is put into operation, the system will operate until it no longer recovers significant amounts of free product or high concentrations of dissolved phase contamination. Criteria to terminate TFE recovery will be based on the effectiveness of this system to recover free product and high concentrations of dissolved phase contamination. Plots showing the amount of free product recovered and dissolved phase concentrations over time will be prepared. If the slope of the curves for these plots is equal to or approaching zero (i.e. becomes asymptotic), then the system will be shut down.

Water level measurements will be obtained from wells: GEC-4, GEC-8, GEC-11, GEC-12, MW-A, MW-B, MW-C, MW-E, MW-G, MW-H, RW-1, RW-2, RW-3, and RW-4.


VCA CAP
Northway Plaza
Page 4

Monthly water samples will be obtained from wells: RW-1, RW-2, RW-4, GEC-8, GEC-12, MW-A, MW-C, MW-E and MW-G and submitted for laboratory analysis of STARS parameters by EPA Method 8020. The monitoring frequency may be adjusted based on data obtained and subsequent approval by the NYSDEC.

Results of each monthly monitoring will be presented to the Department.

Termination of the groundwater monitoring activities will occur in consultation with the NYSDEC.

Task 3

 An exposure assessment will be completed using supplemental default data provided by the NYSDEC. Documentation on the applicability of the default data with regards to actual site conditions will be provided.

SCHEDULE

The work proposed under Task 1 has already been initiated.

The work proposed under Task 3 will be completed within two months of receiving approval of this CAP by the Department.

Respectfully Submitted By,

GeoLogic NY, Inc.

Sarah E. McCulloch
Senior Hydrogeologist

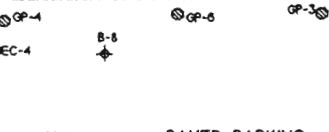
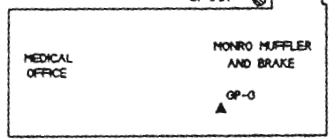
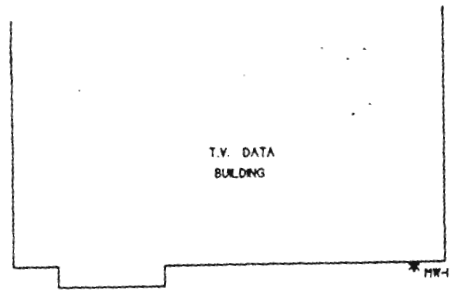
/s/

Forrest C. Earl
Vice President

/s/

Attachments: Drawing Nos. I and A

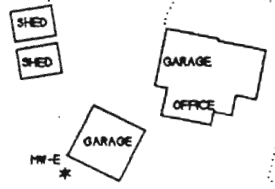
EXHIBIT "B"



WAREHOUSE ROAD

CEMETERY

CEMETERY



GRASS AREA NOT PLANNED TO BE USED FOR GRAVES

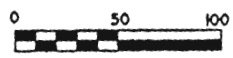
LEGEND

- * MINI-WELL LOCATION
- ◆ MONITORING WELL LOCATION
- ◆ RECOVERY WELL LOCATION
- ▲ DIRECT PUSH WATER AND/OR SOIL SAMPLE LOCATION
- CATCH BASIN
- MANHOLE
- ◆ HYDRAULIC PROBE WELL INSTALLED BY LANDTECH, APRIL, 1995
- HYDRAULIC PROBE HOLE INSTALLED BY GAI AUGUST, 1995

ROUTE 9

QUAKER ROAD

SCALE:



G A I

SITE PLAN
 VOLUNTARY CLEANUP AGREEMENT
 NORTHWAY PLAZA
 QUEENSBURY, NEW YORK

DR BY: CSM	SCALE: AS SHOWN	PROJ. NO. 95090
REV. BY: SEM	DATE: FEB. 1998	DRAW. NO. 1

EXHIBIT "B"

TV DATA BUILDING

N

ROUTE #9

FORMER UST AREA

77

CONCRETE

MEDICAL OFFICE

CONCRETE

MONRO MUFFLER AND BRAKE

CONCRETE

FORMER UST AREA

GP-2

ASPHALT PAVED

FORMER UST AREA

73

GEC-12

C.B.

MW-C

729

MW-B

731

OFFICE

BM

GP-C

GP-B

725
RW-2
SHED

WAREHOUSE ROAD

RW-1

726

GP-B

GP-A

RW-3

716

GEC-9

708

708
GEC-10

MW-A

707

← DIRECTION OF GROUNDWATER FLOW

73 GROUNDWATER CONTOUR

707 GROUNDWATER ELEVATION

⊕ HYDRAULIC PROBE HOLE INSTALLED BY GAI AUGUST, 1995

◆ EXISTING RECOVERY WELL

◇ EXISTING MONITORING WELL

▲ DIRECT PUSH SAMPLING POINT BY GAI NOVEMBER, 1997

★ MINI-WELL INSTALLED BY GAI NOVEMBER, 1997

⊕ HYDRAULIC PROBE HOLE INSTALLED BY LANDTECH, APRIL, 1995

■ BENCHMARK USED BY GAI SE CORNER OF BUILDING. ELEVATION 100.00 ASSUMED.

DRAWING BASED ON PLAN BY LAND TECH REMEDIAL, INC. DATED 4/26/95.

GAI

SITE PLAN
NORTHWAY PLAZA
QUEENSBURY, NEW YORK

DR BY:	CSM	SCALE:	1" = 40' +/-	PROJ NO:	95098
REV'D BY:		DATE:	NOVEMBER, 1997	DRAW NO:	A

EXHIBIT "B"

WTI-97

**FREE PRODUCT OBSERVATION LOG
NORTHWAY PLAZA SHOPPING CENTER
QUEENSBURY, NEW YORK**

RW-4

DATE	PRE-BAILING		APPROXIMATE VOLUME BAILED	POST-BAILING	
	DEPTH TO WATER	FREE PRODUCT THICKNESS		DEPTH TO WATER	FREE PRODUCT THICKNESS
2/18/98 7:00 p.m.	26.48'	0.84'	2.5 gal FP 5 gal FP&H2O	27.49'	0.77'
2/19/98 2:30 p.m.	25.84'	0.39'	2 gal FP 5 gal FP&H2O	NM*	NM*
2/26/98	26.91'	0.58'	5.5 gal FP&H2O	27.31'	0.27'
3/5/98	26.14'	0.23'	10 gal FP&H2O	29.01'	0.08'
3/12/98	25.68'	NONE**	25 gal H2O	28.67'	NONE

Depths to free product and groundwater were obtained with a free product interface probe.
Measurement point of reference for well RW-4 is the manhole rim.

*NM – not measured, probe stuck in pump assembly. Pump assembly from well RW-4 was removed on February 26, 1998 prior to obtaining measurements.
**NONE – no free product measured with interface probe or visible in purged water.

**FREE PRODUCT OBSERVATION LOG
NORTHWAY PLAZA SHOPPING CENTER
QUEENSBURY, NEW YORK**

GEC-8

DATE	PRE-BAILING		APPROXIMATE VOLUME BAILED	POST-BAILING	
	DEPTH TO WATER	FREE PRODUCT THICKNESS		DEPTH TO WATER	FREE PRODUCT THICKNESS
2/18/98 7:00 p.m.	NM*	NM*	NONE	NA	NA
2/19/98 2:30 p.m.	NM*	NM*	NONE	NA	NA
2/26/98	25.16'	0.02'	None- No FP in disposable bailer	NA	NA
3/5/98	25.05'	NONE	None- No FP in disposable bailer	NA	NA
3/12/98	24.81'	NONE	None – No FP in disposable bailer	NA	NA

Depths to free product (FP) and groundwater were obtained with a free product interface probe.

Measurement point of reference for well GEC-8 is the top of the PVC well casing

*NM – Not measured, ice formed at upper portion of monitoring well, therefore no measurements obtained on February 18-19, 1998. Ice block was removed on February 26, 1998. The free product absorbent sock was removed on February 26, 1998 prior to obtaining measurements. A translucent bailer was used to check/bail well.

NA – Not Applicable.

FREE PRODUCT OBSERVATION LOG
 NORTHWAY PLAZA SHOPPING CENTER
 QUEENSBURY, NEW YORK

GEC-12

DATE	PRE-BAILING		APPROXIMATE VOLUME BAILED	POST-BAILING	
	DEPTH TO WATER	FREE PRODUCT THICKNESS		DEPTH TO WATER	FREE PRODUCT THICKNESS
2/18/98	26.82'	NONE	NONE	NA	NA
7:00 p.m.	26.92'	NONE	NONE	NA	NA
2/26/98	26.50'	NONE	NONE	NA	NA
3/5/98	26.20'	NONE	NONE	NA	NA
3/12/98		NONE	NONE		

Depths to free product and groundwater were obtained with a free product interface probe.
 Measurement point of reference for well GEC-12 is the top of the PVC well.

NA - Not Applicable.

EXHIBIT C

No Further Action Letter and Assignable Release and Covenant Not to Sue

To whom it may concern:

Unless otherwise specified in this letter, all terms used herein shall have the meaning assigned to them under the terms of the Voluntary Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and Northway Plaza Associates ("Volunteer"), on

The Department is pleased to report that the Department is satisfied that the Department-approved Work Plan to implement a response program at the parcel of land located at (describe location in the --- of ---, Tax Map Parcel No./Tax Section, block, and lot no.) a map of which is attached hereto as Appendix "A" (the "Site"), has been successfully implemented. So long as no information has been withheld from the Department or mistake made as to the hazard posed by any Site-related compound or analyte of concern, the Department believes that no further investigation or response will be required at the Site respecting the Existing Contamination to render the Site safe to be used for the Contemplated Use.

Assignable Release and Covenant Not To Sue:

The Department therefore, hereby releases, covenants not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer and Volunteer's lessees and sublessees and Volunteer's successors and assigns and their respective secured creditors, for the further investigation and remediation of the Site, based upon the release or threatened release of Existing Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of the Agreement continue to be or have been made to the Department, (b) appropriate notices and deed restrictions have been recorded in accordance with the Agreement, and Volunteer and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Department-approved O&M Plan, if any. Nonetheless, the Department hereby reserves all of its rights concerning, and such release, covenant not to sue, and forbearance shall not extend to natural resource damages nor to any further investigation or remedial action the Department deems necessary:

- due to off-Site migration of contaminants other than petroleum resulting in impacts to environmental resources, to human health, or to other biota that are not inconsequential and to off-Site migration of petroleum, irrespective of whether the information available to Volunteer and the Department at the time of the development of the Work Plan disclosed the existence or potential existence of such off-Site migration;
- due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan which indicate that Site conditions are not sufficiently protective of human health and the environment for the Contemplated Use;
- due to information received, in whole or in part, after the Department's approval of the final summary or engineering report and certification, which indicates that the activities carried out

in accordance with the Work Plan are not sufficiently protective of human health and the environment for the Contemplated Use;

- due to Volunteer's failure to implement the Agreement to the Department's satisfaction; or
- due to fraud committed, or mistake made, by Volunteer in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the Work Plan were reached.

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

- Volunteer if it causes a, or suffers the, release or threat of release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Existing Contamination; or if it causes a, or suffers the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to
- any of Volunteer's lessees, sublessees, successors, or assigns who causes a, or suffers the, release or threat of release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Existing Contamination, after the effective date of the Agreement; who causes a, or suffers the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same established resulting solely from the Agreement's execution.

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

Notwithstanding any other provision in this release, covenant not to sue, and forbearance,

- if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this release shall be construed, or deemed, to preclude the State of New York from recovering such claim.
- except as provided in Subparagraph I.F of the Agreement and in this letter, nothing contained in the Agreement or in this letter shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, nor exemplified by, the right to recover natural resources damages) with respect to any party, including Volunteer.
- nothing contained in this letter shall prejudice any rights of the Department to take any investigatory or remedial action it may deem necessary if Volunteer fails to comply with the Agreement or if contamination other than Existing Contamination is encountered at the Site.

• nothing contained in this letter shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

• nothing contained in this letter shall be construed to affect the Department's right to terminate the Agreement at any time during its implementation if Volunteer fails to comply substantially with the Agreement's terms and conditions.

In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

By: _____

Title: _____