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MONROE COUNTY CLERK'S OFFICE
County Clerk's Recording Page

Return To:

BOX 36 JFB

Index DEEDS ✓

Book 08985 Page 0203

No. Pages 0028

Instrument DECL RESTR COVT

Date : 3/20/1998

Time : 2:58:00

Control # 199803200746

TT#

TT# TT 0000 013528

Employee ID NB

ROCHESTER CITY OF

ROCHESTER CITY OF

MORTGAGE TAX

FILE FEE-S	\$	4.75	AMOUNT	\$	.00
FILE FEE-C	\$	10.25			
REC FEE	\$	84.00	BASIC MTG TAX	\$	.00
	\$	.00			
	\$	.00	SPEC ADDIT MTG TAX	\$	.00
	\$	.00			
	\$	.00	ADDITIONAL MTG TAX	\$	.00
	\$	.00			
	\$	.00	Total	\$	.00
Total:	\$	99.00			

STATE OF NEW YORK
MONROE COUNTY CLERK'S OFFICE

TRANSFER TAX

WARNING - THIS SHEET CONSTITUTES THE CLERKS ENDORSEMENT, REQUIRED BY SECTION 316-a(5) & SECTION 319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH	AMOUNT	\$	.00
	Transfer Tax	\$	.00

Maggie Brooks, County Clerk



0089850203

DECLARATION OF COVENANTS AND RESTRICTIONS

D27882
27/88

THIS DECLARATION is made this 18th day of MARCH, 1998, by the **CITY OF ROCHESTER**, a New York municipal corporation having its principal place of business in the State of New York, County of Monroe, at 30 Church Street, Rochester, New York.

WHEREAS, the City of Rochester is the owner of the real property and premises located in the State of New York and County of Monroe at 1190 Scottsville Road, Rochester, New York, and bearing Section Block Lot No. 135-18.01.01 (described in Schedule A hereto attached); and

WHEREAS, the City of Rochester and the New York State Department of Environmental Conservation have entered into a Consent Order regarding the remediation of hazardous waste on the property; and

1190 Scottsville Road
NOW, THEREFORE, the City of Rochester hereby establishes the following restriction regarding the use of the property:

- Box 36 JF-8
1. The City of Rochester, its heirs and/or successors in title and/or assigns shall be responsible for remediating hazardous waste on the property, pursuant to the provisions of the Consent Order, a copy of which is attached hereto and made a part hereof.
 2. The above restriction shall run with the land, binding any subsequent successor in title to the property, or any person claiming thereunder, until such time as an instrument is recorded, releasing the successor in title from any further obligation under the Consent Order.
 3. Such release may occur upon the expiration of thirty (30) years from the certification by the New York State Department of Environmental Conservation, that construction to the elements of the remedial design have been completed, or upon expiration of the post-closure period referred to in the Consent Order, whichever is later.

RECORDED
1998 MAR 23
MONROE COUNTY

IN WITNESS WHEREOF, the City of Rochester has hereunto set its hand the day and year first written above.

CITY OF ROCHESTER

BY: Robert J. Meyer
for William A. Johnson, Jr., Mayor

Robert J. Meyer

STATE OF NEW YORK)
COUNTY OF MONROE) SS:

On this 18th day of March, 1998, before me the subscriber, personally came WILLIAM A. JOHNSON, JR., known, who being by me duly sworn, did depose and say that he resides in the City of Rochester; that he is the Mayor of the City of Rochester, the municipal corporation described in and which executed the above instrument; and that he signed his name to the foregoing instrument by virtue of the authority vested in him by the laws of the State of New York and the local laws and ordinances of the City of Rochester.

Angela Sorber
Notary Public

ANGELA SORBER

Notary Public in the State of New York
MONROE COUNTY
Commission Expires April 6, 19 99

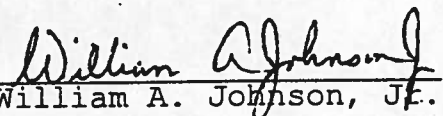
Property Address: 1190 Scottsville Road, Rochester, NY
Tax Account Number: 135.18.01-01



Inter-Departmental Correspondence

To: Robert J. Meyer, Assistant to the Mayor
From: William A. Johnson, Jr., Mayor
Date: March 4, 1998
Subject: Delegation of Authority

During my absence from March 5 to March 23, if the Deputy Mayor is simultaneously absent, you are hereby designated as Acting Mayor.


William A. Johnson, Jr.
Mayor

All that tract or parcel of land situated partially in the Sixth Tract of the 3000 Acre Tract, in the Town of Chili, and situated partially in the City of Rochester, County of Monroe, and State of New York and more particularly described as follows: Commencing at a point in the centerline of Scottsville Road at the northwest corner of property conveyed by Willis Britton and wife to James O'Neil on July 7, 1925 by deed filed in Liber 1257 of deeds at page 112 and also being 266.46 feet distant southerly from the south property of lands owned formerly by the Pennsylvania Railroad; thence south 30-degrees 40 minutes 21 seconds east a distance of 574.97 feet to the Point of Beginning; thence south 30 degrees 40 minutes 21 seconds east a distance of 112.31 feet to a point of cusp; thence northerly, along a curve to the left having a radius of 935.37 feet, through a central angle of 30 degrees 20 minutes 23 seconds along an arc length of 495.30 feet to a point of tangency, the same having a chord bearing of north 2 degrees 2 minutes 56 seconds east, and a length of 489.54; thence north 13 degrees 7 minutes 15 seconds west a distance of 236.45 feet to a point in the southeasterly line of said Scottsville Road; thence north 59 degrees 19 minutes 39 seconds east along said southeasterly line a distance of 62.93 feet to a point;

thence south 13 degrees 7 minutes 15 seconds east a distance of 255.43 feet to a point of curvature; thence southerly along a curve to the right having a radius of 995.37 feet through a central angle of 23 degrees 22 minutes 1 second along an arc length of 405.94 feet to a point of cusp, the same having a chord bearing of south 1 degree 26 minutes 15 seconds east and a length of 403.13 feet; thence, northeasterly along a curve to the right having a radius of 562.50 feet through a central angle of 9 degrees 38 minutes 32 seconds along an arc length of 94.66 feet to a point of tangency, the same having a chord bearing of north 45 degrees 39 minutes 11 seconds east, a distance of 94.55 feet; thence north 50 degrees 28 minutes 27 seconds east a distance of 138.73 feet to a point; thence north 50 degrees 53 minutes 27 seconds east a distance of 571.24 feet to a point; thence south 39 degrees 49 minutes 55 seconds east a distance of 146.35 feet to a point, thence south 50 degrees 52 minutes 27 seconds west a distance of 326.00 feet to a point; thence south 49 degrees 42 minutes 37 seconds west a distance of 64.01 feet to a point; thence south 48 degrees 37 minutes 5 seconds west a distance of 66.05 feet to a point; thence south 53 degrees 12 minutes 2 seconds west a distance of 64.05 feet to a point; thence south 54 degrees 27 minutes 1 second west a distance of 64.12 feet to a point; thence south 51 degrees 55 minutes 52 seconds west a

distance of 63.78 feet to point; thence south 54 degrees 40 minutes 46 seconds west a distance of 34.74 feet to a point; thence south 46 degrees 41 minutes 32 seconds east a distance of 54.55 feet to a point; thence south 44 degrees 33 minutes 58 seconds west a distance of 225.67 feet to a point; thence south 48 degrees 31 minutes 57 seconds east a distance of 223.61 feet to a point; thence south 33 degrees 36 minutes 49 seconds west a distance of 358.41 feet to a point; thence south 39 degrees 14 minutes 26 seconds west a distance of 182.17 feet to a point; thence south 48 degrees 47 minutes 57 seconds west a distance of 237.55 feet to a point; thence north 38 degrees 23 minutes 49 seconds west a distance of 338.06 feet to a point; thence south 44 degrees 3 minutes 26 seconds west a distance of 14.09 feet to a point; thence south 42 degrees 34 minutes 56 seconds west a distance of 69.21 feet to a point; thence south 46 degrees 23 minutes 32 seconds west a distance of 67.42 feet to a point; thence south 64 degrees 33 minutes 16 seconds west a distance of 68.04 feet to a point; thence south 57 degrees 34 minutes 30 seconds west a distance of 62.64 feet to a point; thence south 59 degrees 58 minutes 24 seconds west a distance of 33.35 feet to a point; thence north 29 degrees 53 minutes 3 seconds west a distance of 82.48 feet to a point; thence north 49 degrees 23 minutes 58 seconds east 31.65 feet to a point; thence north 57

degrees 29 minutes 48 seconds east a distance of 58.44 feet to a point; thence north 38 degrees 55 minutes 55 seconds east a distance of 64.13 feet to a point; thence north 44 degrees 41 minutes 5 seconds east a distance of 61.60 feet to a point; thence north 67 degrees 31 minutes 44 seconds east a distance of 66.99 feet to a point; thence north 46 degrees 16 minutes 13 seconds east a distance of 63.97 feet to a point; thence north 42 degrees 29 minutes 6 seconds east a distance of 189.35 feet to a point; thence north 42 degrees 10 minutes 27 seconds east a distance of 3.67 feet to a point; thence north 30 degrees 40 minutes 21 seconds west a distance of 211.38 feet to a point; thence north 59 degrees 19 minutes 39 seconds east a distance of 276.75 feet to a point; thence south 30 degrees 40 minutes 21 seconds east a distance of 63.35 feet to a point of cusp; thence northerly along a curve to the left having a radius of 855.37 feet, through a central angle of 13 degrees 15 minutes 00 seconds along an arc length of 197.81 feet to a point of cusp, the same having a chord bearing of north 18 degrees 47 minutes 37 seconds east and a length of 197.37 feet to the place of beginning; containing in all 591,848 square feet, or 13.587 acres approximately. The foregoing is described on a certain map prepared by Clough, Harbour & Associates, dated October 1, 1997.

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development and
Implementation of a Remedial Investigation,
Feasibility Study and a Remedial Program For
an Inactive Hazardous Waste Disposal Site
Under Article 27, Title 13, of the Environmental
Conservation Law of the State of New York
(the "ECL") by:

ORDER
ON
CONSENT

THE CITY OF ROCHESTER

Respondent

INDEX NO. B8-0205-87-09
SITE #828015

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York (the "ECL"), entitled "Inactive Hazardous Waste Disposal Sites".

2. The City of Rochester ("Respondent") is a municipality in the State of New York, located within Monroe County.

3. Respondent owns real property located at 1190 Scottsville Road, in the City of Rochester, Monroe County, and operates a facility known as the Rochester Fire Academy at that location (the "Site"). A map of the Site is attached hereto as Appendix "A".

4. The Department alleges that during the course of operations at the Rochester Fire Academy, certain hazardous wastes were disposed of at the Site, while Respondent was the owner and operator of the Site.

5. The Department has listed the Site in the Registry of Inactive Hazardous Waste Disposal Sites in the State of New York as Site Number 8-28-015, and has classified it pursuant to ECL §27-1305 under Classification 2, a "significant threat to the public health or environment - action required".

6. Initial investigations at the Site have identified areas at the Site which exhibit elevated levels of some metals, other inorganic constituents, and organic constituents.

7. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

8. The Department and Respondent acknowledge that the goals of this Order shall be that Respondent shall develop and implement a remedial investigation, feasibility study and remedial program for an inactive hazardous waste disposal site, subject to the approval of the Department, and shall implement such program within the time limits specified

hereinafter. The program shall be developed and implemented to abate and eliminate any significant threat to the public health or environment.

9. Respondent, having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order without any adjudication of fact or law and without admitting any liability except as may be incurred hereunder, agrees to be bound by the terms and conditions of this Order.

NOW, THEREFORE, having considered this matter and been duly advised, it is ORDERED THAT:

I. Respondent shall retain a third-party professional consultant, contractor and/or laboratory to perform the technical, engineering and analytical obligations required by this Order. The qualifications and professional expertise of any third party so employed shall be subject to the approval of the Department.

II. All submittals made by Respondent pursuant to this Order shall be subject to Departmental review and approval.

If the Department approves a submittal, Respondent shall perform the specified work or continue with Respondent's obligations under the Order in accordance with the terms of the approval and under the Department's supervision. The submittal once approved by the Department shall be appended to and made a part of this Order.

If the Department disapproves a submittal, the Department shall notify Respondent in writing of the reasons for such disapproval. Within 30 days of receipt of such notice, or such greater period as the Department may allow, the Respondent shall revise and resubmit the submittal, addressing each of the Department's objections. If the Department approves the revised submittal, Respondent shall perform the specified work or continue with Respondent's obligations under the Order in accordance with the terms of the approval and under the Department's supervision.

In the event that the approved Remedial Design requires modification during implementation, such modification must receive the prior written approval of the Department before incorporation of such modification into the approved Remedial Design.

If the Department disapproves any revised submittal, Respondent shall be in violation of this Order, not having submitted an approvable document in accordance with the terms of this Order.

III. Respondent shall undertake and complete the Remedial Investigation and Feasibility Study program for the Site in accordance with the plan which has been approved by the Department (the "Approved Proposal"). The Approved Proposal shall be attached hereto as Appendix "B" and shall be incorporated as a part of this Order. Respondent and any consultant, contractor or subcontractor shall conduct all activities in accordance with the procedures and protocols as

specified in the Approved Proposal.

IV. Within 90 days of the date specified for completion of the Remedial Investigation, Respondent shall submit to the Department a Remedial Investigation Report (the "Report"), founded upon its performance of the Remedial Investigation in accordance with the Approved Proposal. The Report shall include a certification by the project manager or supervisor that the work conducted was performed in accordance with the Approved Proposal, a copy of all data generated, and all other information obtained, during the Remedial Investigation and shall provide all assessments and evaluations as set forth in the most current United States Environmental Protection Agency ("EPA") guidance documents for projects pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq. ("CERCLA") and shall be consistent with the national contingency plan as developed pursuant to that statute.

V. The Department reserves the right to require a modification and/or amplification and expansion of the Remedial Investigation and Report by Respondent to address specific areas if the Department determines that further investigation is necessary, as a result of reviewing data generated by the Remedial Investigation or as a result of reviewing other data or facts, provided that such modification, amplification or expansion is consistent with

the requirements of the Report as specified in Paragraph IV above.

VI. Within the time provided therefor in the Approved Work Plan, but not more than six months after receipt of the Department's approval of the Report, Respondent shall submit to the Department a feasibility study (the "Feasibility Study") evaluating on-Site and off-Site remedial actions to eliminate or mitigate the health and environmental hazards and potential hazards attributable to the Site. The Feasibility Study shall be prepared and certified by a licensed professional engineer registered in the State of New York. The Feasibility Study shall be in accordance with the most current EPA guidance documents for projects pursuant to CERCLA and shall be consistent with the national contingency plan as developed pursuant to that statute.

VII. After submission of the proposed Feasibility Study, the Respondent shall publish a notice prepared by the Department, advising of the availability of this Order and its Appendices and all proposals and reports concerning the Site and shall announce a location where documents are provided for public review and comment. The Department and Respondent will accept written comments from the public for a period of 30 days following the notice. The Respondent shall provide for oral comments at a public hearing during the comment period and shall submit a transcript of these proceedings to the Department.

At the conclusion of the comment period, the Department

will review such documents and comments which it has received. The Department shall then determine whether or not Respondent's proposed Feasibility Study adequately addresses those comments and concerns raised during the comment period and shall provide a written record of such review to Respondent and the public.

If the Department determines that the proposed Feasibility Study adequately addresses remediation of the Site as consistent with CERCLA and in view of the public comments received, then Respondent shall develop and submit a proposal for the construction of the Remedial Design for approval by the Department.

If the Department determines that the Feasibility Study requires modification, expansion or adjustment, the Department shall identify the elements of adjustment determined to be necessary and shall so inform the public and Respondent.

Respondent shall modify the Feasibility Study in accordance with the comments received and shall submit the modified Feasibility Study to the Department for review and approval. The Department shall provide written notice to Respondent of its approval or disapproval of the modified Feasibility Study and its reasons for such determination.

If the Department approves the modified Feasibility Study, Respondent shall submit the Remedial Design. If the Department disapproves the modified Feasibility Study, the Department shall take whatever action the Department deems

appropriate.

VIII. Within 180 days after receipt of the Department's approval of the Feasibility Study, Respondent shall submit to the Department an engineering report, plans and specifications for a remedial program (the "Remedial Design").

The Remedial Design shall include, but not be limited to, the following:

a. A description of the means of effectuating the combination of technologies which has been selected from the alternatives by the approved Feasibility Study, and which collectively constitutes the Remedial Program ("Remedial Program") to include but not be limited to, as necessary or appropriate as determined by the Department:

(1) the disposition of hazardous wastes, constituents and degradation products, and any soil or other materials contaminated thereby;

(2) the collection, treatment, and disposition of any contaminated groundwater, leachate and air;

(3) physical security and posting of the Site;

(4) health and safety of persons living and/or working at or in the vicinity of the areas being remediated;

(5) quality control and quality assurance procedures and protocols to be applied to Remedial Program construction operations;

(6) integrated air monitoring on and off-Site during implementation of the Remedial Program.

b. "Contract-ready" documents for the construction of the elements of the Remedial Program, including plans and specifications prepared and certified by a licensed professional engineer registered in the State of New York, which plans shall satisfy all applicable state and federal laws, rules and regulations;

c. A time schedule for construction of the elements of the Remedial Program and provisions for periodic work-in-progress reports during the implementation of the Remedial Program;

d. The parameters, conditions, procedures and protocols to determine the effectiveness of the Remedial Program, including a schedule for periodic sampling of existing and planned groundwater monitoring wells;

e. A description of the maintenance and monitoring activities, procedures and protocols to be undertaken during the period commencing upon completion of the construction of the elements of the Remedial Program, including a provision for submission to the Department of periodic monitoring reports ("post-closure monitoring");

f. A contingency plan to be implemented in the event that any element of the Remedial Program fails to operate in accordance with the Remedial Design prior to the date 30 years after satisfactory completion of construction pursuant thereto ("Supplemental Remedial Program"); and

g. An evaluation of the need to take measures to provide for the health and safety of human beings working or

residing at and in the vicinity of the Site during a 30-year period following completion of the implementation of the Remedial Program, and a plan for the implementation of such measures.

IX. Within such period as may be allowed by the approved Remedial Design and any modifications thereto which have been approved by the Department or any Supplemental Remedial Program which may be required, Respondent shall complete construction pursuant to the approved Remedial Design and any modifications to the Remedial Design which have been approved by the Department. Within 45 days of completion of construction, Respondent shall submit to the Department record drawings and a certification that construction was completed in accordance with the approved Remedial Design and any approved modifications. Such certification shall be by a licensed professional engineer registered in the State of New York.

X. Within 45 days after receipt of the record drawings and certification, the Department shall review the same and provide comments to Respondent. In the event that the Department is not satisfied with the quality and completeness of construction, the Department may take any action and pursue any remedy to which it may be entitled by law.

If the Department acknowledges that the implementation is complete and in accordance with the Approved Remedial Design, then unless a Supplemental Remedial Program is required hereof, and except for the requirements of

paragraphs XII, XIII and the conditions set forth in paragraph XIV hereof, such acknowledgement shall constitute a full and complete satisfaction and release of each and every claim, demand, remedy or action whatsoever against Respondent, its directors, officers, employees, agents, successors and assigns, which the Department has or may have pursuant to Article 27, Title 13, of the ECL relative to or arising from the disposal of hazardous waste at the Site which caused the Site to be listed in the Registry.

This release shall inure only to the benefit of Respondent, its directors, officers, employees, agents, successors and assigns, with respect to the aforesaid matter.

Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or claims, interests, defenses, actions, suits, causes of action or demands whatsoever that the Department or Respondent may have against anyone other than the parties to this Order.

XI. The right of the Department to enforce the terms of this Order shall not be affected by any release contained herein.

XII. Notwithstanding any provision contained in this Order to the contrary, for a period of 30 years from the date of the Department's written acknowledgement that Respondent has completed the implementation of the construction and other elements in accordance with the approved Remedial Design, or for such other period of time as may be designated

commensurate with Respondent's obligations pursuant to this Order, Respondent shall maintain and monitor the areas at which the elements of the Remedial Program were implemented in accordance with the approved Remedial Design ("Post-Closure Period"). During such Post-Closure Period, respondent shall provide the Department with the periodic monitoring reports, as set forth in the approved Remedial Design and shall provide immediate notice to the Department of any failure of the Remedial Program. In the event of any failure of the Remedial Program or any element thereof during the implementation of the Remedial Program or during the Post Closure Period, Respondent shall develop and submit a Supplemental Remedial Program.

XIII. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

a. any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns;

b. the Department's right to enforce at law or in equity the terms and conditions of this Order against Respondent, its directors, officers, employees, servants, agents, successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof;

c. the Department's right to bring any action at law or

in equity against Respondent, its directors, officers, employees, servants, agents, successors and assigns with respect to areas or resources that may have been affected or contaminated as a result of the disposal of hazardous wastes, including, but not limited to, the release or migration of hazardous or industrial wastes from the Site or from activities related to the Site.

XIV. Notwithstanding any other provision in this Order, the Department reserves the right to institute proceedings in this matter or in any other matter which are (1) seeking to compel the Respondent and/or third parties to perform additional response work at the Site or (2) seeking reimbursement of the Department's response costs if:

a. for proceedings initiated prior to the acknowledgement by the Department that the implementation is complete and in accordance with the Approved Remedial Design, such proceedings shall be founded upon (i) conditions at the Site which were previously unknown to the Department or (ii) information received by the Department after the execution of this Order, and such conditions or information indicates that the Remedial Design will not be sufficiently protective of human health or the environment; or

b. for proceedings initiated subsequent to the acknowledgement by the Department that the implementation is complete and in accordance with the Approved Remedial Design, such proceedings shall be founded upon (i) conditions at the Site which were previously unknown to the Department or, (ii)

information which is received, in whole or in part after such acknowledgement by the Department, and such conditions or information indicates that the Remedial Design is not protective of human health or the environment.

XV. Respondent shall provide notice to the Department of any field work (including, but not limited to, any excavating, drilling or sampling) to be conducted pursuant to the terms of this Order at least five (5) working days in advance of such activities.

XVI. Respondent shall permit any duly designated officer, employee, consultant, contractor or agent of the Department to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent, and any areas necessary to gain access thereto, for inspection purposes and for the purpose of making or causing to be made such sampling and tests as the Department deems necessary, and for ascertaining Respondent's compliance with the provisions of this Order.

XVII. The Department shall have the right to obtain "split samples" or "duplicate samples" or both, at the Department's option, of all substances and materials sampled by Respondent pursuant to this Order.

XVIII. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations which are necessary in order to perform Respondent's other obligations pursuant to this Order. However, for any permit administered and issued by the

Department, the Department's approval of plans and specifications as a part of the remedial programs encompassed by this Order shall constitute authorization in lieu of a permit, provided that the affected program, regulations or specific applicable permit are identified and that such plans and specifications are included in the appendices to this Order and incorporated as a part of this Order.

XIX. Within 30 days after the effective date of this Order, Respondent shall have filed a Declaration of Covenants and Restrictions with the Monroe County Clerk's Office for the purpose of providing notice of this Order to all potential future purchasers of any portion or all of the Site. This Declaration must indicate that any successor in title to any portion or all of the Site shall be responsible for implementing the provisions of this Order. A certified copy of this filing shall be provided to the Department.

XX. As used in this Order, "hazardous waste" shall mean a waste which appears on the list, or satisfies the characteristics promulgated by the Commissioner pursuant to Section 27-0903 of the ECL and found at 6 NYCRR Part 371, and any hazardous constituents or hazardous degradation products of a waste or combination of wastes which, because of its quantity, concentration, or physical, chemical or infectious characteristics may pose a substantial present or potential hazard to human health or the environment.

XXI. Respondent shall not suffer any penalty under any of the terms hereof, or be subject to any proceedings or

actions for any remedy or relief, if it cannot comply with any requirements of the terms hereof because of an act of God, war, riot or other condition as to which negligence or willful misconduct on the part of Respondent was not the proximate cause, provided, however, that Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of the terms of this Order.

XXII. The failure of Respondent to comply with any terms of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL. In the event of default by the Respondent, the Department may initiate any action and pursue any remedy which may be available to it.

XXIII. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

XXIV. Respondent 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 the terms of this Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

XXV. Respondent, having conducted a record search to

identify sources of materials utilized at the Site and to identify other parties who have used the Site and having reported thereon to the Department, shall have a continuing obligation to submit to the Department any data or information of which Respondent becomes aware and which may be applicable to identifying other parties who may be held liable for costs of the remedial program.

Respondent shall notify each other party so identified by Respondent or the Department of that party's potential liability and shall provide the Department with a copy of such notification, and copies of any other correspondence related thereto or resulting therefrom.

Respondent shall provide the Department with any information concerning, and provide an accounting of, any contributions, liability, reimbursements or indemnifications by or from any other parties related to expenditures undertaken by Respondent pursuant to this Order. The Department shall not be bound by any cost allocation or contribution agreements among any parties unless the Department has approved such allocations in writing.

XXVI. The effective date of this Order shall be the date this Order is signed by the Commissioner or his designee.

XXVII. If, for any reason, Respondent desires that any terms of this Order be changed, Respondent shall make timely written application therefor to the Commissioner setting forth reasonable grounds for the relief sought.

XXVIII. A. All communication required hereby to be made between the Department and Respondent shall be made in writing and transmitted by United States Postal Service return receipt requested, or hand delivered or delivered via a similar carrier service which records delivery, to each of the addresses listed below.

B. Submissions to be made by Respondent to the Department shall be submitted in two copies to each of the following addresses:

1. New York State Department of
Environmental Conservation
Division of Hazardous Waste Remediation
Region 8
6274 E. Avon-Lima Road
Avon, New York 14414
2. New York State Department of
Environmental Conservation
Division of Environmental Enforcement
600 Delaware Avenue
Buffalo, New York 14202-1073
3. New York State Department of
Environmental Conservation
Division of Hazardous Waste Remediation
Bureau of Eastern Remediation
50 Wolf Road
Albany, New York 12233
4. New York State Department of Health
Bureau of Environmental Exposure
Investigation
2nd Floor
2 University Place
Albany, New York 12237

C. Communication to be made from the Department to Respondent shall be made in duplicate as follows:

Edward J. Doherty
Commissioner of Environmental Services
Room 300 B
City Hall
30 Church Street
Rochester, New York 14614

Johanna F. Brennan, Esq.
4th Floor - Law Department
City Hall
30 Church Street
Rochester, New York 14614

D. The Department and Respondent respectively reserve the right to designate other or different addresses on notice to the other.

XXIX. The terms of this Order shall be deemed to bind Respondent, its officers, directors, agents, servants, employees, successors and assigns.

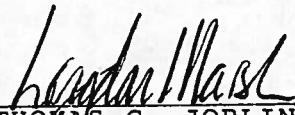
XXX. Nothing herein shall be construed to bind any entity not specifically bound by the terms of this Order.

XXXI. The terms hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing

submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

DATED: *June 21, 1989*

Albany, New York



THOMAS C. JORLING
Commissioner
New York State Department of
Environmental Conservation

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

THE CITY OF ROCHESTER

BY: *Louis Kash*TITLE: *Corporation Counsel*DATE: *5/5/89*

State of New York)
County of)

s.s.:

On this *5th* day of *May*, 1989,
before me personally came *Louis Kash*
to me known, who, being by me duly sworn, did depose
and say that he resides in *Rochester*; that he
is the *Corp Counsel* of the *City of Rochester*, the
municipality described in and which executed the foregoing
instrument; that he knew the seal of said municipality; that
the seal affixed to said instrument was such seal; that it
was so affixed by the appropriate order in accordance with
the Charter of the municipality, and that he signed his name
thereto by like order.

Brenda A. Teachout (Patrzalek)
NOTARY PUBLIC

BRENDA A. TEACHOUT (*Patrzalek*)
Notary Public in the State of New York
MONROE COUNTY
Commission Expires July 31, *1989*