

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----X	
HUDSON RIVERKEEPER FUND, INC.,	:
	:
Plaintiff, and	:
	:
VILLAGE OF HASTINGS-ON-HUDSON,	:
	:
Plaintiff-Intervenor,	:
	:
vs.	:
	:
ATLANTIC RICHFIELD COMPANY,	:
	:
Defendant.	:
-----X	

CIVIL ACTION NO.
94 Civ. 2741 (WCC)

CONSENT DECREE

TABLE OF CONTENTS

Section	Page
I. Stipulated Findings of Fact	3
II. Jurisdiction.....	5
III. Venue.....	5
IV. Definitions.....	5
V. Site Remedy	8
VI. Dismissal With Prejudice.....	15
VII. Additional Actions	15
VIII. Environmental Trust Fund	16
IX. Site Use and Maintenance.....	19
X. Dispute Resolution.....	21
XI. Force Majeure	22
XII. Further Assurances and Notices.....	23
XIII. Miscellaneous Provisions.....	25

Plaintiff Hudson Riverkeeper Fund, Inc. (“Riverkeeper”), Plaintiff-Intervenor the Village of Hastings-on-Hudson (“Village”) and Defendant Atlantic Richfield Company (“AR”) hereby agree as follows:

ARTICLE I: STIPULATED FINDINGS OF FACT

1.1. In 1994, the Hudson Riverkeeper Fund, Inc. (“Riverkeeper”) filed a suit styled *Hudson Riverkeeper Fund, Inc. v. Atlantic Richfield Company*, 94 Civ. No. 2741 (WCC) (“the Litigation”) in the United States District Court for the Southern District of New York. Also in 1994, the Village of Hastings-on-Hudson, New York (“the Village”) successfully moved to intervene in the Litigation. The Atlantic Richfield Company (“AR”) is the named defendant in the Litigation.

1.2. The Litigation concerns a property consisting of approximately 28 acres located at 1 River Road, on the bank of the Hudson River, in Hastings-on-Hudson, New York (the “Site”). The property is the former location of a wire and cable manufacturing plant operated by The Anaconda Wire & Cable Company. Both Riverkeeper and the Village allege that AR is liable under the Resource Conservation and Recovery Act (“RCRA”) Section 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), as a person who has contributed or is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

1.3. Specifically, Riverkeeper and the Village allege that the presence of polychlorinated biphenyls (“PCBs”) in soil, water, and sediment at or near the Site may present an imminent and substantial endangerment to health as well as to benthic organisms, striped bass, mink, heron and other flora and fauna that may inhabit the Hudson River or areas on or near the Site. In 2003, the Village filed, by Stipulation, an Amended Complaint that includes a claim for response actions and response costs under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. §§ 9601 et seq.).

1.4. AR has asserted affirmative defenses in the litigation, including defenses related to Riverkeeper’s and the Village’s allegations of risk to health and the environment and the absence of imminent and substantial endangerment to health or the environment from current Site conditions.

1.5. In 1995, AR’s affiliate, ARCO Environmental Remediation LLP (“AERL”), entered into a Consent Decree with the New York State Department of Environmental Conservation (“DEC”) requiring AERL to conduct a remedial investigation and feasibility study with respect to Site conditions. Between 1995 and 2003, AERL conducted a series of remedial investigations, obtaining extensive data related to the nature, extent, and scope of contamination in Site soils, Site fill water, and Site groundwater, and it also submitted a full feasibility study to DEC, evaluating numerous

remedial options. It is anticipated that DEC will ultimately select a remedy that will address Site conditions, including the presence of PCBs on the Site.

1.6. In 2000, in the Litigation, AR brought third party claims against the United States of America and various departments and agencies, alleging that the United States was liable for Site conditions under Section 7002 of the RCRA, as well as under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9607, 9613.

1.7. Between 1999 and 2002, AR, the Village, and numerous community groups engaged in an informal process designed to explore potential redevelopment options for the Site. That process, organized by the Regional Plan Association and funded by the Village (through a New York State Department of State grant), the County of Westchester and AR, has resulted in a preliminary conceptual plan for redevelopment of the Site. AR, Riverkeeper and the Village recognize that the preliminary redevelopment plan is conceptual in nature and may be changed significantly to accommodate Site remediation, development needs, or other future developments.

1.8. Riverkeeper and the Village recognize that each of them individually faces certain material risks in the continued pursuit of their claims in the Litigation, including, but not limited to, risks that (a) AR will prevail on one or more of its defenses; (b) even if Riverkeeper and the Village are successful, any judicially imposed remedy at the Site may be less environmentally rigorous than a remedy negotiated through settlement; (c) litigation may substantially delay the implementation of a Site remedy; and (d) continued litigation may delay, hinder, or defeat efforts to shape future redevelopment of the Site consistent with community needs and objectives.

1.9. AR also recognizes that it faces certain material risks in the continued defenses against Riverkeeper’s and the Village’s claims in the Litigation, including, but not limited to, risks that (a) Riverkeeper and the Village will prevail on their claims; (b) a judicially imposed remedy at the Site may require remedial actions inconsistent with, or redundant of, any remedy selected by DEC; (c) litigation may substantially delay the implementation of any remedy selected by DEC; and (d) continued litigation may delay, hinder, or defeat future efforts at Site redevelopment.

1.10. Therefore, in recognition of the material risks of continued litigation facing each of the Parties as set forth in Paragraphs 1.8 and 1.9 above, and without any admission of liability on the part of AR, Riverkeeper, the Village, and AR each has determined that it is in its respective interest to settle and resolve all claims between and among them in the Litigation upon the terms and conditions set forth in this Consent Decree.

NOW, THEREFORE, it is ORDERED, ADJUDGED AND DECREED:

ARTICLE II: JURISDICTION

2.1. This Court has personal jurisdiction over the subject matter and parties to this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 6972, 7002, and 9613(b). The parties to this Consent Decree agree to be bound by the terms of this Consent Decree and agree not to contest its validity in any subsequent proceeding to implement or enforce its terms.

ARTICLE III: VENUE

3.1. Venue is proper in this district under 42 U.S.C. § 6972, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1391 and 1395, as it is the judicial district in which the releases or threatened releases occurred.

ARTICLE IV: DEFINITIONS

4.1. For the purposes of this Consent Decree, the following terms shall have the following meanings:

(a) **“Approval Period”** shall have the meaning set forth in Section 8.5(b) of this Decree.

(b) **“AR”** shall mean The Atlantic Richfield Company and its parents, subsidiaries, successors, assigns, and affiliates, including, but not limited to, ARCO Environmental Remediation, LLP and BP America, Inc.

(c) **“AR’s Claims Against the United States”** shall mean those claims asserted by AR in the Litigation against the Third Party Defendants, the United States of America, the United States Department of Defense, the United States Department of Commerce, and the United States Navy, including claims asserted under RCRA, 42 U.S.C. § 6901 *et seq.*, and CERCLA, 42 U.S.C. § 9601 *et seq.*

(d) **“Clean Fill”** shall mean construction and demolition debris consisting of: recognizable uncontaminated concrete and concrete products (including steel or fiberglass reinforcing rods that are embedded in the concrete), asphalt pavement, brick, glass, soil, and/or rock. The term “uncontaminated,” as used in the definition of clean fill, shall mean construction and demolition debris that is not mixed or commingled with other solid waste at the point of generation, processing, or disposal, and that is not contaminated with spills of a petroleum product, hazardous waste or industrial waste. Contamination from spills of a petroleum product does not include asphalt or concrete pavement that has come into contact with petroleum products through normal vehicle use of the roadway. Such Clean Fill shall be sufficiently crushed, if necessary, to allow pilings or other foundational support to be driven through it, to inhibit subsidence that

would materially impair reasonable future use, and to support topsoil placed on top of it. The fill should be crushed such that all material is less than 3 inches in diameter. The crushed fill should then be placed on site in maximum 1-foot thick loose lifts and compacted with an appropriately sized roller so that the entire fill lift is compacted and substantially non-yielding. Fill shall be placed so as not to materially impair future use of the site for development.

(e) **“The Court”** shall mean the United States District Court for the Southern District of New York.

(f) **“DEC”** shall mean the New York State Department of Environmental Conservation.

(g) **“DEC Selected Remedy”** shall mean that remedy chosen by DEC in a Record of Decision for OU1 at the Site.

(h) **“Effective Date”** shall mean the date on which the Court enters this Order.

(i) **“EPA”** shall mean the United States Environmental Protection Agency.

(j) **“Final Decision”** shall mean a judgment entered by a state or federal court or a final decision issued by an administrative agency after all of AR’s rights of appeal have been exhausted or waived.

(k) **“Hastings/Hudson River Environmental Trust Fund”** shall have the meaning set forth in Section 8.1 of this Decree.

(l) **“Lead Areas”** shall mean (i) four square areas, each of which shall measure fifty feet on each side and each of which shall surround one of the following soil boring locations: SB-100, SB-128, SB-131, and SB-137, and (ii) two areas, each measuring twenty-five feet by fifty feet and each of which shall surround one of the following soil boring locations: HB-01 and HB-06. The Lead Areas shall be located in the Southern Portion of the Site and are depicted on Exhibit B.

(m) **“The Litigation”** shall mean *Hudson Riverkeeper Fund, Inc. v. Atlantic Richfield Company*, 94 Civ. 2741 (WCC) filed in the United States District Court for the Southern District of New York.

(n) **“Maximum Depth of Dry Excavation”** shall mean the maximum depth of excavation reasonably achievable by means of a dry excavation without the necessity of flooding excavation cells to provide additional excavation stability. The Parties agree that the Maximum Depth of Dry Excavation shall be greater than 12 feet and shall be determined by AR in the engineering and design of the final remedy at the Site.

(o) **“Northwest Corner”** shall mean that area of the Site located in the extreme northwestern corner of the Site and having an area of approximately 31,250

square feet. The Northwest Corner encompasses all portions of the Site between those points marked with the numbers 10-18 on Exhibit A and delineated by the corresponding GPS coordinates.

(p) **“Northern Remainder”** shall mean that portion of the Site located north of a line bisecting the Site and beginning at the shoreline from a point 350 feet south of the Shoreline Area and running perpendicular to the shoreline until it intersects the eastern boundary of the Site, except that the Northern Remainder shall not include the Northwest Corner or Shoreline Area. The Northern Remainder is depicted on Exhibit A.

(q) **“OU1”** shall mean Operable Unit 1, i.e., the term used by DEC to describe the Site itself, and shall not include the Hudson River, the Hudson River bottom, or Hudson River sediments.

(r) **“Outlier Data Point Areas”** shall mean three areas in the Northern Remainder, each consisting of an area approximately 50 feet by 50 feet located around each of the following soil boring locations: SB-72, SB-84, and SB-85. At soil boring locations SB-72, SB-84, and SB-85, PCBs have been reported at concentrations greater than 10 ppm at depths greater than 12 feet but less than or equal to 22 feet. The Outlier Data Point Areas are depicted on Exhibit A.

(s) **“Parties”** shall mean, collectively, AR, Riverkeeper and the Village. AR, Riverkeeper and the Village each may individually be referred to sometimes herein as a Party.

(t) **“PCBs”** shall mean those chemicals known as polychlorinated biphenyls.

(u) **“Risk Contract”** shall have the meaning assigned in Section 7.4 of this Order.

(v) **“Riverkeeper”** shall mean Plaintiff Hudson Riverkeeper Fund, Inc.

(w) **“Shoreline Area”** shall mean that area of the Site circumscribed by a line that can be described as follows: (i) starting from the intersection of the shoreline and the southwestern-most point in Northwest Corner and running generally south parallel to the shoreline for 300 feet; (ii) then running perpendicular to the shoreline for 50 feet, (iii) then running 300 feet parallel to the shoreline in a generally northern direction but 50 feet inland from the shoreline, and (iv) finally running 50 feet perpendicular to the shoreline until it meets the southwestern most point in Northwest Corner. The Shoreline Area has an area of approximately 15,000 square feet and is depicted on Exhibit B.

(x) **“The Site”** shall mean that property above the low tide line currently owned by AERL, consisting of approximately 28 acres of land located on the banks of the Hudson River at 1 River Road in Hastings-on-Hudson, New York. For the

purposes of this Consent Decree, the Hudson River, the bottom of the Hudson River, and Hudson River sediments shall not be part of the Site.

(y) “**Southern Portion**” shall mean those portions of the Site excluding the Northwest Corner, the Shoreline Area, and the Northern Remainder. The Southern Portion is depicted on Exhibit A.

(z) “**The Village**” shall mean the Plaintiff-Intervenor the Village of Hastings-on-Hudson.

ARTICLE V: SITE REMEDY

5.1. **Site Remedy**. Subject to the terms and conditions set forth in this Consent Decree (including, but not limited to, Section 5.9), AR agrees to cause environmental remediation to be performed at the Site that meets the objectives set forth in Sections 5.2 to 5.10 below. The Parties agree that Sections 5.2 to 5.10 below set forth the agreed upon objectives of remedial action at the Site, but do not dictate the methods by which such objectives must be achieved. The manner and method of achieving the objectives and actions set forth in Sections 5.2 to 5.10, including, but not limited to, the engineering, design, and implementation of any excavations, bulkhead, water treatment systems, hydraulic controls, or support, restraining, cover, or control systems shall, unless otherwise provided herein, be left to AR’s discretion, provided that the results of AR’s actions meet the objectives and requirements of Sections 5.2 to 5.10. In exercising that discretion, AR shall design the remedy in accordance with sound engineering practices and the standards of care applicable to environmental remedial activities and, in so doing, may consider cost management factors, regulatory criteria that would be used by EPA or DEC in a feasibility study process to evaluate implementation of any remedy, and consistency of remedial design and approach with concurrent remedial obligations imposed on AR by DEC, EPA or other governmental or regulatory agencies (including the ability to obtain all necessary permits, variances, and other governmental authorizations).

5.2. **Consistency with Other Regulatory Obligations**. The Parties agree that any remedy performed pursuant to this Article shall be performed in accordance with all applicable laws, statutes, ordinances, regulations, and permitting obligations and that AR shall expeditiously seek to obtain all required governmental permits or authorizations to proceed with the activities described in this Article V. In the event that any governmental agency refuses to authorize such actions, the Parties agree to invoke the force majeure provisions of Article XI.

5.3. **Excavation of Contaminated Soils in Northern Remainder and the Southern Portion**. Before installation of the contact barrier and cover described in Section 5.8, AR agrees that it shall excavate soils and fill material in the Southern Portion and the Northern Remainder as set forth in this Section 5.3.

(a) **Northern Remainder Excavation.** AR shall excavate soils and fill materials in the Northern Remainder as follows:

(i) Except for those limited areas designated in Paragraphs 5.3(a)(ii) and 5.3(a)(iii), AR shall excavate soils and fill materials containing PCB concentrations greater than 10 ppm to the extent that such soils and materials are present at depths of up to 9 feet;

(ii) AR shall excavate soils and fill materials containing PCB concentrations greater than 10 ppm to the extent that such soils and materials are present at depths of up to 12 feet in a subportion of the Northern Remainder circumscribed by a line (a) starting at the southeastern corner of the Shoreline Area and running east for 50 feet; (b) then running north for 250 feet; (c) then running west for 50 feet until it intersects the eastern boundary of the Shoreline Area; and (d) then running south along the eastern boundary of the Shoreline Area for 250 feet until it intersects the starting point. This subportion shall have an area of approximately 12,500 square feet.

(iii) In the Outlier Data Point Areas, AR shall excavate soils and fill materials containing PCB concentrations greater than 10 ppm to the extent that such soils and materials are present at depths of up to 12 feet. Excavation in these areas shall be conducted through the use of steel sheet pile walls or other suitable structural barriers surrounding each of the Outlier Data Point Areas, which steel sheet pile walls or barriers shall remain in place following excavation as set forth in Section 5.7(b).

(b) **Southern Portion Excavation.** AR shall excavate soils and fill materials in the Southern Portion of the Site only to the extent that such soils or fill materials meet any one of the following criteria:

(i) The concentration of PCBs in the soil exceeds 10 ppm and such soil is present at depths of 12 feet or less below ground surface; or

(ii) Such soils are two feet or less below existing ground surface and are located within one of the four Lead Areas.

5.4. **Excavation of Contaminated Soils in the Northwest Corner and the Shoreline Area.** Before installation of the contact barrier and cover described in Section 5.8 and before installation of hydraulic controls described in Section 5.7, AR agrees that it shall excavate soils and fill material in the Northwest Corner and the Shoreline Area in accordance with one of the following alternatives:

(a) **Alternative 1:** If the DEC Selected Remedy requires excavation of soils to depths of less than or equal to 7 feet below the current ground surface (“bgs”) in both the Northwest Corner and the Shoreline Area, then AR shall excavate soils

containing PCB concentrations greater than 10 ppm to the extent that such soils are present at depths of up to 7 feet bgs in those areas, even if the DEC Selected Remedy requires excavation to lesser depths.

(b) **Alternative 2:** If the DEC Selected Remedy requires excavation of soils to depths of less than or equal to 7 feet bgs in the Northwest Corner and less than or equal to 9 feet bgs in the Shoreline Area, then AR shall excavate soils containing PCB concentrations greater than 10 ppm to the depths specified in the DEC Selected Remedy for those areas, provided that the depths specified in the DEC Selected Remedy exceed the excavation depths required in Alternative 1.

(c) **Alternative 3:** If the DEC Selected Remedy requires excavation of soils to depths of (i) nine feet bgs in the Northwest Corner and (ii) nine feet bgs in the Shoreline Area, then AR shall excavate soils containing PCB concentrations greater than 10 ppm to the depths specified in the DEC Selected Remedy for those areas.

(d) **Alternative 4:** If the DEC Selected Remedy requires excavation of soils to depths of (i) greater than 7 feet bgs but less than or equal to 9 feet bgs in the Northwest Corner, and (ii) greater than 9 feet bgs but less than or equal to 12 feet bgs in the Shoreline Area, then AR shall excavate soils containing PCB concentrations greater than 10 ppm to the depths specified in the DEC Selected Remedy.

(e) **Alternative 5:** If the DEC Selected Remedy requires excavation of soils to depths of (i) greater than 9 feet bgs in the Northwest Corner or (ii) greater than 12 feet bgs in the Shoreline Area, then AR reserves the right to challenge DEC's Selected Remedy in an appropriate judicial or administrative forum, and AR shall seek court and/or administrative approval for a remedy equivalent to Alternative 1, 2, 3, or 4. The remedy for which AR seeks court and/or administrative approval shall include the terms set forth in Sections 5.3, 5.5, 5.6, 5.7 and 5.8.

(f) If the DEC Selected Remedy requires excavation of soils in either the Northwest Corner or the Shoreline Area to a non-numerically specified depth (including but not limited to the Maximum Depth of Dry Excavation, or to a depth to be determined during remedial design), then excavation in Northwest Corner and Shoreline Area shall be governed by Alternative 5 set forth in Section 5.4(e).

(g) For illustrative purposes, a series of maps depicting pictorially the concepts set forth in this Section 5.4 are attached to this order as Exhibit C. In the event of any conflict in interpretation between Exhibit C and this Section 5.4 (or the definitions set forth in Section 4.1), the language of Sections 4.1 and 5.4 shall control.

5.5. **Disposal of Excavated Soil and Fill.** AR shall, as appropriate, treat and dispose of any soils, fill materials, water, wastewater, or other wastes generated pursuant to activities conducted under Sections 5.3 and 5.4. Any such treatment and disposal shall comply with all applicable laws and regulations, and any such disposal shall occur at an appropriate off-site disposal facility in accordance with applicable laws and regulation. AR shall use all reasonable efforts to maximize the use of barges and rail to transport material excavated from the Site and to bring equipment and material to the Site (e.g., for backfill) in effectuating the remediation.

5.6. **Installation of a Bulkhead.** Upon completion of an excavation remedy pursuant to Alternatives 1, 2, 3 or 4 of Section 5.4, AR shall install a new bulkhead along the northern shoreline of the Site. The new bulkhead shall connect to and extend from the northernmost portion of the existing 330-foot steel sheet pile bulkhead (installed in 2000 along the southern shoreline of the Site) and along the entire remaining shoreline of the Site to the northeastern most point at which the Site intersects the Hudson River. The bulkhead installed pursuant to this Section 5.6 shall consist of steel sheet pile (Waterloo Barrier or equivalent) and shall be designed and installed in a manner similar to the design and installation of the southern bulkhead, but, notwithstanding the foregoing, AR shall use components for the bulkhead that have the maximum practicable design life. AR shall, as required, provide Clean Fill behind the bulkhead to meet the grade of the Site after the addition of the contact barrier and cap required pursuant to Section 5.8.

5.7. **Construction of Hydraulic Control and Containment.** Upon completion of an excavation remedy pursuant to Alternatives 1, 2, 3, or 4 of Section 5.4:

(a) AR shall install a slurry wall or other hydraulic control device of comparable effectiveness and longevity on all upgradient sides of any remaining soils containing PCBs in concentrations greater than 10 ppm in the Northwest Corner and the Shoreline Area. The slurry wall shall connect hydraulically with the bulkhead described in Section 5.6 and, together, the slurry wall and bulkhead shall encircle any remaining soils containing PCBs in concentrations greater than 10 ppm in the Northwest Corner and the Shoreline Area. The slurry wall or other hydraulic control device shall be installed to a depth that is at least equal to the distance to the top of the relatively impervious clay layer, plus three additional feet to key into the clay layer, thus creating an impervious barrier around any remaining PCB contamination over 10 ppm in the Northwest Corner and Shoreline Area following excavation in those areas. A groundwater flow model or other methodology shall be developed and used to establish the effectiveness of the slurry wall as a barrier to water flowing through the contaminated soils remaining at the Site.

(b) In each of the Outlier Data Points Areas, AR shall leave in the place the steel sheeting or other structural wall or retaining barrier installed around each of the Outlier Data Points Areas. In addition, if required by DEC, AR shall install a slurry wall or other hydraulic control device of comparable effectiveness and

longevity on all sides of the remaining soils containing PCBs in concentrations greater than 10 ppm in the Outlier Data Points Areas.

5.8. **Contact Barrier and Cover.** AR shall place Clean Fill upon the Site as follows:

(a) Upon completion of the excavations conducted pursuant to Sections 5.3 and 5.4, AR shall place Clean Fill in excavated areas to return such excavated areas to their original grade.

(b) Upon completion of an excavation remedy consistent with Alternative 1, 2, 3, or 4 of Section 5.4 above, in addition to the placement of Clean Fill to return the Site to grade as set forth in Section 5.8(a) above, AR shall install a contact barrier and cover over the entire Site consisting of the following (in ascending order from the Site surface):

(i) a six (6) inch layer of low permeability asphalt, cement, or geosynthetics placed on top of an adequately prepared subgrade;

(ii) an inserted demarcation layer (e.g., snow fence or equivalent) to indicate “no excavation” areas;

(iii) a four-foot layer of Clean Fill; and

(iv) a six (6) inch layer of topsoil that will be seeded and fertilized.

The contact barrier shall be comprised of the layers set forth in Section 5.8(b)(i) and (ii). The design of the contact barrier/soil cover system will include measures to manage stormwater runoff, including grading, drainage swales, and or other surface controls. Further, AR shall provide appropriate shoreline protection to retain the contact barrier and cover and protect it from erosion by grading, a filtered rip-rap revetment, a bulkhead, or a combination of these or other suitable shoreline protection measures, provided such measure or combination of measures is permitted by DEC. AR agrees to coordinate the placement of topsoil with redevelopment plans for the Site, to the extent permitted by DEC. To the extent that AR desires to use demolished structures on the Site for Clean Fill, it shall first segregate all potentially hazardous materials contained in such structures (including, but not limited to, asbestos and lead-painted matter), conduct all appropriate characteristic testing of such materials, remove and dispose of any hazardous or otherwise unsuitable materials, and then crush any remaining suitable materials for reuse in accordance with Section 4.1(d).

5.9 **Remedial Monitoring:** AR shall pay the reasonable costs for the Village to retain independent consultants (which may include counsel) to conduct periodic inspections of the site, monitor the principal elements of remediation, have access to AR’s consultants’ data, conduct other important monitoring tasks during the course of the implementation of a remedy pursuant to this Decree and/or a ROD issued by DEC, and provide advice and guidance to the Village with regard to AR’s implementation of the

remedy (collectively, "Monitoring"). For the purposes of this Section 5.9, the reasonable costs incurred by the Village for such Monitoring shall not exceed the sum of one hundred seventy-five thousand dollars (\$175,000), in 2003 dollars without the written approval of AR. Within ninety days after the Effective Date of this Consent Decree, AR and the Village shall execute and deliver to each other a Monitoring Trust Agreement, establishing an interest bearing trust account for the funding of Monitoring as set forth in this Section. The trust account shall be referred to as the "Hastings Monitoring Trust Account" (the "Monitoring Trust Account"). At least thirty days prior to the commencement of physical remedial work on the Site, AR shall pay into the Hastings Monitoring Trust Account the sum of one hundred seventy-five thousand dollars (\$175,000.00). AR and the Village agree that a federally chartered bank in the United States shall serve as the Agent to administer the Hastings Monitoring Trust Fund Account pursuant to the Monitoring Trust Agreement. The Village may draw upon such account for Monitoring through and until the DEC has issued AR a written statement that the remedial activities on the Site required by the agency have been satisfactorily completed. If at the time of such written notification by DEC there are funds remaining in the Monitoring Trust that are in excess of the expenses incurred by the Village for Monitoring, any such excess funds shall be transferred to the Environmental Trust Fund established under Article VIII of this Consent Decree; AR and the Village shall cooperate in taking actions necessary to effectuate such transfer.

5.10 **Assessment of Potential of Preserving Certain Site Structures:** AR shall assess the feasibility of the following: (a) whether the water tower, located in the Shoreline Area, has sufficient structural integrity to allow it to be disassembled, stored, and reassembled on the site; (b) reusing the Administrative Building, Building No. 51 and/or Building No. 52; or (c) saving one or more facades from the Administrative Building, Building 51 and/or Building 52. In each instance, AR's assessment shall consider the overall condition and integrity of the structure in question, and/or the compatibility of preservation measures with the implementation of any remedial actions required by this Consent Decree or by DEC; if the assessment of these factors indicates that preservation may be feasible, AR shall then consider, at a minimum, the estimated costs of preservation measures and the potential effects of preservation measures on future redevelopment of the Site.

5.11. **Effect of DEC's Selection of a Remedy on AR's Obligations.** If the DEC Selected Remedy requires excavation in the Northwest Corner or the Shoreline Area to depths greater than those set forth in Alternative 4 of Section 5.4(d), AR's excavation obligations shall be governed by Alternative 5 set forth in Section 5.4(e), and AR reserves the right to challenge DEC's Selected Remedy. In any judicial or administrative challenge to the DEC Selected Remedy, AR shall advocate the excavation remedies set forth in Alternatives 1, 2, 3 or 4 of Section 5.4. Nonetheless, if a Final Decision requires excavation beyond the depths set forth in Alternative 4, the Company's remedial obligations will be governed by the Final Decision. In such event, with the exception of Section 5.4(e) (and, solely to the extent applicable as addressed in that Section, the sections referenced therein) and Section 5.8, the provisions of Sections 5.1 through 5.10 and Sections 9.1 through 9.3 shall be null and void. Except to the extent that the contact

barrier and/or cover set forth in Section 5.8 are/is inconsistent with or duplicative of remedial actions or protections provided for in the Final Decision, AR shall be required to install the contact barrier and cover set forth in Section 5.8 as part of any remedial work performed pursuant to the Final Decision.

5.12. **Timing of Implementation of the Remedy.** In addition to any Party's rights to initiate actions in the Court to resolve disputes, breaches, or interpretations of this Consent Decree as set forth in Article X below, the Village or Riverkeeper may seek to have the Court enforce the terms of this Consent Decree and direct remediation pursuant to this Article V upon the occurrence of any one of the following conditions related to the timing of the implementation of remedial actions at the Site:

(a) If DEC has not issued a Record of Decision setting forth the DEC Selected Remedy within one year of the Effective Date of the Consent Decree, the Village or Riverkeeper may seek to have the Court order performance of a remedial action consistent with either Alternative 1, Alternative 2, Alternative 3 or Alternative 4 in Section 5.4 and the remaining terms of Sections 5.1 to 5.10.

(b) If DEC timely selects a remedy, and excavation in the Northwest Corner and Shoreline Area pursuant to the DEC Selected Remedy is governed by Alternative 1, Alternative 2, Alternative 3 or Alternative 4 of Section 5.4, AR shall implement a Site remedy pursuant to a schedule agreed to between AR and DEC for AR to perform the DEC Selected Remedy. However, the Village or Riverkeeper may seek an order from the Court establishing a schedule for implementation of the remedy pursuant to this Consent Decree if a remedial design work plan or comparable document substantially consistent with the ROD has not been submitted to DEC within 5 months of the date that DEC's selection of a remedy has become final, if remedial design is not proceeding on a reasonably expeditious schedule thereafter, or if implementation of the remedy is not proceeding on a reasonably expeditious schedule after remedial design is complete.

(c) If DEC timely selects a remedy, and excavation in the Northwest Corner and Shoreline Area pursuant to the DEC Selected Remedy is governed by Alternative 5 of Section 5.4, AR shall initiate a remedy required by a Final Decision, according to a schedule required by DEC or by a court as part of the Final Decision. In the case of Alternative 5, the Village and/or Riverkeeper would retain the right to seek intervention of the Court to establish and enforce a schedule for the performance of Site remedial obligations consistent with those obligations of AR under Alternative 5 of this Consent Decree if AR fails to meet the work schedule required by DEC or by a court in its Final Decision.

5.13. **Performance of AR's Obligations Under Article V.** AR may hire, retain, or otherwise contract with contractors, subcontractors, remediation firms or companies, insurers, or other third party entities to perform its obligations under Article V of this Consent Decree. Any such third party shall be provided a copy of this Consent Decree

upon entering into such agreement with AR. Retention of any third party by AR shall not relieve AR of responsibility to perform its obligations hereunder.

ARTICLE VI: DISMISSAL WITH PREJUDICE

6.1. **Dismissal With Prejudice of Riverkeeper and Village Claims.** All counts, claims, and allegations that the Riverkeeper and Village asserted, or could have asserted, against AR in the Litigation are hereby dismissed with prejudice, subject only to the provisions of Section 6.2 of this Consent Decree.

6.2. **Limited Jurisdiction Retained By Court.** The Court shall retain jurisdiction to enforce this Consent Decree and to resolve any disputes arising out of this Consent Decree, including, but not limited to, disputes regarding its interpretation, implementation, or the performance or breach of the Parties of their obligations hereunder. The Court may issue all relief necessary, including injunctive relief or specific performance, to give effect to the terms and conditions of this Consent Decree.

6.3. **Payment of Attorneys' Fees and Costs.** Within 60 days of the Effective Date of this Consent Decree, AR shall pay the Village and Riverkeeper a collective total of seven hundred thousand dollars (\$700,000.00) as full settlement of and satisfaction for all the Village and Riverkeeper's claims of attorneys' fees, expenses, and costs related to the Litigation or to past investigation of conditions at the Site. No later than 14 days prior to the date on which AR's payment to the Village and Riverkeeper pursuant to this Section becomes due, the Village and Riverkeeper shall provide AR with a final allocation of total payment as between them, as well as instructions for method of payment.

6.4. **Preservation of Claims and Defenses Between AR and the United States.** Neither the dismissal of claims set forth in Section 6.1 nor any other terms or conditions of this Consent Decree shall dismiss, prejudice, or in any way impair AR's Claims Against the United States in the Litigation. Neither the dismissal of claims set forth in Section 6.1 nor any other terms or conditions of this Consent Decree shall dismiss, prejudice, or in any way impair the United States' defenses of claims brought against it by AR in this Litigation.

ARTICLE VII: ADDITIONAL ACTIONS

7.1. **Public Support for a Remedy.** After an independent scientific and technical review of remedial options concerning the Site, in which it was assisted by environmental engineers and consultants, Riverkeeper and the Village have each independently arrived at the conclusion that the Remedy described in Article V of this Consent Decree (including excavation pursuant to Alternative 1 of Section 5.4) protects human health and the environment and would allow for redevelopment of the Site. Riverkeeper and the Village support publicly the remedy described in Article V (including excavation pursuant to Alternative 1 of Section 5.4) as an appropriate remedy for the Site.

7.2. **DEC's Selection of an OUI Remedy.** The Village and Riverkeeper agree not to oppose DEC's Selected Remedy, or initiate or participate in any challenges to DEC's Selected Remedy for the Site, in any judicial, administrative, legislative, or other forum.

7.3. **Notice of Selection of Excavation Remedy.** Within 30 days after the issuance of a Record of Decision containing DEC's Selected Remedy,

(a) AR shall provide written notice to Riverkeeper, the Village, and the Court confirming the excavation alternative that applies under Section 5.4 of this Consent Decree. If Alternative 5 applies, AR shall indicate whether it intends to exercise its right to challenge DEC's Selected Remedy under Section 5.4(e).

(b) If AR challenges the DEC's Selected Remedy, then AR shall provide further written notice to the Village, Riverkeeper and the Court of any Final Decision entered in that challenge action within 30 days after any such decision becomes a Final Decision.

ARTICLE VIII: ENVIRONMENTAL TRUST FUND

8.1. **Establishment of the Hastings/Hudson River Environmental Trust Fund.** Within 30 days after the Effective Date of this Consent Decree, the Parties shall execute and deliver to each other a Trust Agreement, establishing an interest bearing trust account for the performance or funding of environmental projects as set forth in this Article VI. The trust account shall be referred to as the "Hastings/Hudson River Environmental Trust Fund" (the "Trust Fund"). Within 3 days after the execution of the Trust Agreement, AR shall pay into the Hastings/Hudson River Environmental Trust Fund the sum of one hundred thousand dollars (\$100,000.00). The Parties further agree that a federally chartered bank in the United States shall serve as the Agent to administer the Hastings/Hudson River Environmental Trust Fund pursuant to the Trust Agreement.

8.2. **Amount of Funds To Be Placed into the Hastings/Hudson River Environmental Trust Fund.** Depending upon the selection of an excavation alternative pursuant to Section 3.4 of this Consent Decree, AR shall pay the following additional amounts (over and above those amounts paid pursuant to Section 8.1) into the Hastings/Hudson River Environmental Trust Fund within 30 days of its written notice of selection of an excavation alternative pursuant to Section 8.3.

(a) If AR selects excavation Alternative 1 pursuant to Section 5.4(a), AR shall place the additional sum of four million four hundred thousand dollars (\$4,400,000.00) into the Trust Fund.

(b) If AR selects excavation Alternative 2 pursuant to Section 5.4(b), AR shall place the additional sum of two million nine hundred thousand dollars (\$2,900,000.00) into the Trust Fund.

(c) If AR selects excavation Alternative 3 pursuant to Section 5.4(c), AR shall place the sum of one million four hundred thousand dollars (\$1,400,000.00) into the Trust Fund.

(d) If AR selects excavation Alternative 4 pursuant to Section 5.4(d), AR shall place the sum of nine hundred thousand dollars (\$900,000) into the Trust Fund.

(e) If AR selects excavation Alternative 5 pursuant to Section 5.4(e), AR shall not be required to pay additional amounts into the Trust Fund beyond the amount paid pursuant to Section 8.1.

8.3. **Hastings/Hudson River Environmental Trust Fund Priorities.** Funds deposited in the Hastings/Hudson River Environmental Trust Fund shall be used for the following purposes in order of priority:

(a) To pay all administrative costs and fees incurred by the Trust Agent related to the Trust Agent's performance of its duties and obligations, or exercise of its rights, under the Trust Agreement.

(b). To fund environmental projects that meet the criteria set forth in Section 8.4 below.

Use of trust funds for actions taken pursuant to Sections 8.3(b) shall occur upon designation of such funds for release from the trust account pursuant to the procedures set forth in Section 8.5 of this Agreement.

8.4. **Hastings/Hudson River Environmental Trust Fund Project Criteria.** The use of Hastings/Hudson River Environmental Trust funds for environmental projects pursuant to Section 8.3(b) above shall be limited to projects that meet the following criteria:

(a) Any such project must improve public access, use, or enjoyment of the Hudson River or improve the ecology of the Hudson River. Such projects might include, but are not limited to, acquisition and/or improvement of open space, creation of walking or hiking trails along the Hudson, construction of boat launches or ramps, creation of habitat for Hudson River Valley wildlife, the improvement or creation of wetlands, and/or the restoration of indigenous fauna along the Hudson River.

(b) In the use of escrow funds for environmental projects pursuant to Section 8.3(b), priority shall be given to projects meeting the criteria of Section 8.4(a):

(i) First to projects on the Site itself;

(ii) Second to projects within the Village of Hastings-on-Hudson.

(iii) If no such projects described in the preceding subsections are approved within the first two calendar years after the effective date of this Consent Decree, then third, projects located outside the Village of Hastings-on-Hudson but along the Hudson River between Yonkers and the Tappan Zee Bridge may be considered; and

(iv) If no such projects described in the preceding subsections are approved within the first three calendar years after the effective date of this Consent Decree, then finally, projects located along the Hudson River between the Tappan Zee Bridge and the Bear Mountain Bridge may be considered.

8.5. **Designation of Projects for Funding.** Either the Riverkeeper or the Village may propose a project for funding from the Hastings/Hudson River Environmental Trust Fund pursuant to this Article VIII.

(a) To propose a project, the proposing Party shall send written notice of the project to all other Parties and to the Trust Agent. The notice shall outline the nature of the project, describe how the project meets the criteria of this Article VIII, establish a request for the total amount of costs to be funded for the project, provide a schedule relating the amount of funds requested to the project's goals, activities, or results, identify those persons or entities who shall perform the project, and contain a timetable for project implementation.

(b) Proposals for funding of projects shall be submitted to all Parties no later than January 1 of each calendar year to be considered for funding in that calendar year. Beginning on January 1 of each calendar year, each Party shall have 60 days to review all proposed projects and to approve or object to each proposed project by sending written notice to the other Parties and the Trust Agent (the "Approval Period"). Any Party that does not respond to a proposal for funding within 60 days shall be deemed to have approved such proposal. Any proposal for funding submitted to all Parties after January 1 of a given calendar year shall be considered for funding beginning January 1 of the following calendar year.

(c) Any such proposed project shall be approved, and the Trust Agent shall be instructed to release funds in accordance with the specifications and needs of the project, upon approval in writing from all Parties.

(d) Any project that has secured the approval of only one Party to this Agreement shall be deemed to have been rejected and shall not be eligible for funding.

(e) If any project secures the approval of two Parties to this Agreement, but not the approval of a third, the Objecting Party shall submit a written statement specifying the reasons for the objections to the Approving Parties within 30 days after the expiration of the Approval Period, to which the Approving Parties may

choose to respond in writing, and the Parties shall have 90 days after the submission by the Objecting Party to negotiate, during which they may modify, revise, or change the project in order to reach agreement. If no agreement can be reached, the Parties agree that the project, together with any statements of support or objection shall be deemed approved but that the Objecting Party may appeal its approval to the Court within four months of the submission by the Objecting Party. To appeal successfully, the Objecting Party must prove to the Court that the project (or the elements of the project to which the Objecting Party objects) contravenes the Trust Fund project criteria or priorities established in Sections 8.3 and 8.4 above. Any decision by Court shall be final and may not be appealed by the Parties.

ARTICLE IX: SITE USE AND MAINTENANCE

9.1. **Deed Restrictions.** If excavation Alternative 1, 2, 3, or 4 applies pursuant to Section 5.4, AR shall place restrictions on the deed to the Site that restrict the future use of the Site as set forth in Sections 9.1(a) through 9.1(f). If excavation Alternative 5 applies pursuant to Section 5.4(e), AR shall not be required to place the restrictions set forth in Sections 9.1(a) through 9.1(f) below on the deed to the Site.

(a) The height of any buildings remaining on the Site or to be constructed on the Site in the future shall not exceed 65 feet above elevation 10 established in National Geodetic Vertical Datum (1929), and all new buildings shall be constructed with a minimum of a 100 foot setback from the River (60 feet at coves), unless a variance or other local land use approval from this setback has been obtained from the Village.

(b) New pilings, pillars, or other subterranean support structures shall not be installed (i) through the contact barrier or cover in the Northwest Corner or Shoreline Area, and this area shall be designated as open space pursuant to Section 9.1(f) below, or (ii) within the Outlier Data Points Areas.

(c) Utilities (except for sewer lines and the existing underground stream on Site) shall be placed above the low permeability layer of the contact barrier set forth in Section 5.8(b)(i) above.

(d) Wells shall not be installed to make use of groundwater at the Site for drinking, irrigation, or domestic purposes. Wells may be installed for the purposes of monitoring or managing groundwater or other environmental conditions.

(e) Detached single family residential homes shall not be constructed on the Site.

(f) The Company shall designate as open space not to be developed (“Open Space”), and allow public access to the following:

- (i) the Northwest Corner (constituting approximately 1.25 acres);
- (ii) approximately 2.5 acres consisting of a strip of land 30 feet in width on average paralleling and abutting the Hudson River for the length of the Site (which includes, but is not limited to, the Shoreline Area); and
- (iii) an additional 2.5 acres consistent with the location of Open Space on a development proposal for the Site formally submitted to the Village for its approval prior to completion of the remediation at the Site or, if no such proposal is submitted, the conceptual development plan contained in “A Redevelopment Plan for the Hastings-on-Hudson Waterfront” issued by the Regional Plan Association in Fall 2001.

(g) The Company may designate as Open Space, and, once designated, allow public access to, up to an additional 8 acres, at such time as, and conditioned upon, the agreement of AR and the Village on a development plan for the Site. Any such Open Space that may be designated pursuant to this Section 9.1(g), may be donated to a qualified land trust or other tax qualified recipient or to the Village. Such Open Space shall be identified and designated in accordance with future development and shall be subject to any further agreements reached between the Village and AR pursuant to Section 9.4.

9.2. **Village Responsibility for Open Space Maintenance.** The Village shall assume responsibility for the following matters with respect to the Open Space designated pursuant to Section 9.1(f) above: (i) planting vegetation (with the exception of any vegetation required to be planted by AR as part of the DEC Selected Remedy or a remedy required in a Final Decision); (ii) mowing, pruning, trimming and similar upkeep activities associated with all vegetation planted on any Open Space; and (iii) enforcement of the institutional controls (*i.e.*, the deed restrictions) set forth in the Sections 9.1(b) through 9.1(d) above. Nothing herein shall be construed as imposing on the Village any responsibility for maintenance of the bulkhead or cap required to be installed by the Company in accordance with Sections 5.6, 5.8 and 9.3

9.3. **Bulkhead and Cap Maintenance.** If AR implements excavation Alternative 1, 2, 3, or 4 pursuant to Section 5.4, AR shall maintain the entire bulkhead at the Site (including those portions constructed pursuant to Section 5.6) as well as the contact barrier and hydraulic controls/containment described in Sections 5.7 and 5.8 above in good and effective condition for a period of one hundred (100) years from the completion of the remedy described in Article V above and shall provide adequate financial assurance for such obligation. Such maintenance shall include, but not be limited to, testing directly or otherwise measuring the effectiveness of the components of the bulkhead to determine whether any such components require replacement.

- (a) AR may elect, at any time after the Effective Date, to fulfill its obligations under this Section 9.3 by establishing a trust, insurance policy, or other financial assurance mechanism to provide for adequate funding for the maintenance of the

bulkhead, contact barrier, and hydraulic control, the choice of which shall be at the Company's sole discretion but consistent with sound and accepted fiscal practices. The existence of any such financial assurance mechanism shall not relieve the Company of its independent obligations under this Section to maintain the bulkhead and cap.

(b) Upon election of a financial assurance mechanism under Section 9.3(a) above, AR shall send prompt written notice to the Village and Riverkeeper of the type, nature, scope, terms and parties to the financial assurance mechanism selected.

9.4. **Continued Negotiation of Future Site Development.** For a period of one year after the Effective Date of the Consent Decree, AR and the Village shall meet on a periodic basis and engage in good faith negotiations to explore possible mechanisms for redevelopment of the Site for non-industrial purposes. Specifically, the parties shall explore eligibility of the Site or remediation and redevelopment work or costs at the Site for New York State's Brownfields Redevelopment Program or tax credits thereunder. Other redevelopment mechanisms to be discussed include, but are not limited to, a possible transfer of certain assets and responsibilities to either the Village or a designee approved by the Village and AR, such as:

- (a) Title to the property;
- (b) A trust fund, insurance policy, or other financial assurance mechanism established under Section 9.3 for maintenance of the bulkhead and Site cover, along with primary responsibility for maintaining the bulkhead and Site cover;
- (c) Primary responsibility for enforcing the deed restrictions set forth in Section 9.1, and any other use or institutional restrictions that DEC may require as part of the DEC Selected Remedy; and
- (d) Such other responsibilities as the parties may agree to transfer.

In connection with any transfer of some or all of the assets and responsibilities set forth above, the Company and the Village shall evaluate reaching an agreement with a mutually acceptable remedial management contractor and an insurance company providing for the performance of a remedy within the scope of Alternatives 1, 2, 3, 4, or 5 and insurance coverage for the associated risks of that remedy (the "Risk Contract"). Failure to reach agreement on the terms of the Risk Contract or on the transfer of responsibilities under this paragraph shall not constitute a breach of this Consent Decree nor shall it affect the other terms of Order.

ARTICLE X: DISPUTE RESOLUTION

10.1. **Notice of Breach.** If any Party believes that any other Party is in breach of this Consent Decree, it shall send prompt written notice to the Party believed to be in breach. Such notice shall state with particularity the nature, manner, and substance of the breach.

The alleged breaching Party shall thereafter be afforded an opportunity to respond within 20 days of receipt of the notice of breach. Any such response shall be in writing, shall be sent to all Parties, and shall state, with particularity, any objections to or defenses to the notice of breach and/or any plans and timetables for implementation of a cure of the breach. If the allegedly breaching Party does not respond as set forth in this Section 10.1, the Party giving notice may take action pursuant to Section 10.3 below. If the allegedly breaching Party does respond pursuant to this Section 10.1, the Parties agree to follow the procedures set forth in Section 10.2 below before any Party initiates action under Section 10.3 below.

10.2. **Negotiation of the Alleged Breach**. Upon receipt of the written response from the allegedly breaching Party, all Parties shall agree to attempt to resolve the alleged breach by means of informal negotiations between the Parties for a period of up to 30 days. The Parties may extend the negotiating period in writing and by mutual consent if the Parties believe that an extension to negotiations may allow for resolution of the alleged breach. The Parties shall forebear from seeking judicial resolution pursuant to Section 10.3 below during any negotiating period pursuant to this Section 10.2. Such informal negotiations, and any documents exchanged pursuant thereto, shall be subject to Federal Rule of Evidence 408. Further, any documents exchanged pursuant to negotiations under this Section 10.2 shall be treated and held as confidential by the Parties and shall not be subject to discovery or disclosure to third parties. If the Parties resolve the alleged breach through negotiation, any such resolution shall be memorialized in writing and shall be signed by the Parties and submitted to the Court as a modification to this Consent Decree.

10.3. **Judicial Resolution**. If the allegedly breaching Party does not respond pursuant to Section 10.1 or the Parties are unable to resolve the alleged breach pursuant to Section 10.2, any Party may petition the Court or file any appropriate legal action with the Court to seek to enforce or to seek relief from the Consent Decree. The prevailing Party in any such action shall be entitled to recover its legal fees and costs, as well as consulting fees and costs, incurred in (a) the prosecution or defense of any action filed pursuant to this Section 10.3, and (b) the engagement of good faith negotiations pursuant to Section 10.2 above.

ARTICLE XI: FORCE MAJEURE

11.1. **Force Majeure**. Force Majeure, for the purposes of this Agreement, is defined as an event arising from causes entirely beyond the control of any Party or Parties (or their agents, contractors, subcontractors, representatives, or assigns) which could not have been overcome by reasonable due diligence and which delays or prevents the performance of any obligation under this Agreement, including, but not limited to, the obligations to perform remedial activities under Article V. Examples of events which may constitute force majeure include the refusal of any federal, state, or local governmental authority to grant a permit or license necessary for the completion of actions required under this Consent Decree, floods, hurricanes, tornadoes and other extraordinary weather events, earthquakes and other natural disasters, terrorist attacks,

war and other national emergencies. Examples of events that are not force majeure events include, but are not limited to, normal inclement weather, increased costs or expenses, or financial difficulty of any Party.

11.2. **Obligations As a Result of a Force Majeure Event.** If any Party believes a force majeure event has occurred that will delay or prevent the performance of any obligation of that Party under this Agreement, the Party invoking the force majeure event shall (a) take reasonable measures to mitigate the impact of the force majeure event, and (b) send written notice within 15 days after the occurrence of the event to all other Parties. Such written notice shall describe the nature of the force majeure event, the obligations affected by the event, the degree to which such obligations are affected, and the steps taken, if any, to mitigate the impact of the force majeure event on the invoking Party's obligations under this Agreement. Upon receipt of such notice, the Parties shall engage in the dispute resolution procedures outlined in Section 10.2 above and, only after exhausting such procedures, may any Party invoke the dispute resolution procedures described in Section 10.3 above.

ARTICLE XII: FURTHER ASSURANCES AND NOTICE

12.1. **Further Assurances.** The Parties further agree to perform such acts and to prepare, execute, and file all documents or stipulations reasonably required to perform the covenants set forth in this Consent Decree, to satisfy the conditions contained herein, or to give full force and effect to this Consent Decree.

12.2. **Notice.** Any notices or other documents required or permitted to be given under the terms of this Consent Decree shall be deemed delivered (i) when received, if personally delivered, (ii) upon receipt of a telecopy, or (iii) one (1) business day after delivery thereof to a nationally recognized overnight delivery service which provides receipt of service (other than an overnight delivery service offered by the United States Postal Service), addressed to the Parties as follows:

If to Riverkeeper:

Mr. Karl Coplan
Hudson Riverkeeper Fund, Inc.
Pace Environmental Litigation Clinic
78 North Broadway
White Plains, NY 10603
FAX: (914) 422-4437

If to the Village:

Mayor
7 Maple Avenue
Hastings-on-Hudson, NY 10706

Village Manager
7 Maple Avenue
Hastings-on-Hudson, NY 10706

- and -

Mr. Mark A. Chertok
Ms. Kate Sinding
Sive, Paget & Riesel, P.C.
460 Park Avenue, 10th Fl.
New York, NY 10022
FAX: 212-421-2150

If to AR:

Atlantic Richfield Company
Global Environmental Management Business Unit
4850 E. 49th Street
Cuyahoga Heights, OH 44125
FAX: 216-271-8937
Attn: Mr. Werner Sievol or successor

BP America Inc. and its subsidiaries
Legal Department
6 Centerpointe Drive, 5th Floor
La Palma, CA 90623
FAX: 714-228-6570
Attn: Jean Martin or successor

- and -

Mr. Thomas Milch
Mr. Michael Daneker
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004
FAX: 202-942-5999

Notwithstanding the limitations on modification to this Agreement set forth in Section 13.1, any Party may change the person who is to receive notice on its behalf by sending written notice of such change to all other Parties.

ARTICLE XIII: MISCELLANEOUS PROVISIONS

13.1. **Modification of the Consent Decree.** This Consent order may be modified only in writing and only by mutual consent of all the Parties and approval of the Court. Any modification of this Agreement shall be filed with the Court.

13.2. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors, assigns, parents, subsidiaries and affiliates of each Party. No assignment or delegation of the obligations hereunder will release the assigning Party from its obligations under this Agreement. Without prior consent of the Village or Riverkeeper, and without prior approval of the Court, AR may hire, retain, or contract with contractors, subcontractors, insurers, environmental remediation firms, or other entities or third parties to perform its obligations under this Consent Decree.

13.3. **Third Party Beneficiaries.** Other than those successors, assigns, parents, subsidiaries, and affiliates of the Parties hereto (and as set forth in Section 13.2), this Consent Decree is not intended for the benefit of any third party and shall not be enforceable by any third party.

13.4. **Governing Law.** This Consent Decree shall be interpreted and enforced under the laws of New York by a federal court for the Southern District of New York (“this Court”). Any action pertaining to this Consent Decree shall be commenced and prosecuted in this Court.

13.5. **Construction.** This Consent Decree shall not be construed or resolved against any Party by reason of any conclusion that this Consent Decree has been drafted by that Party. The Consent Decree is the result of review, negotiation, and compromise by each Party.

13.6. **Authority to Enter Into Agreement.** Each person signing this Consent Decree represents and warrants that he or she is duly authorized to execute this Consent Decree by the Party on whose behalf it is indicated that the person is signing.

For The Atlantic Richfield Company

BY: _____
Title: _____
Date: _____

For The Hudson Riverkeeper Fund, Inc.

BY: _____
Title: _____
Date: _____

For the Village of Hastings-on-Hudson

BY: _____
Title: _____
Date: _____

So Ordered on this ____ day of _____, 2003

The Honorable William Connor
United States District Court
for the Southern District of New York

DRAWING NUMBER 806938B103

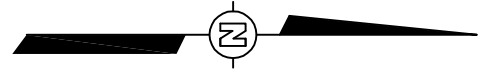
APPROVED BY

CHECKED BY

DRAWN BY MW/SSH 10-21-03

OFFICE Pittsburgh/Albany

L:\project\ARCO\HASTINGS\REDE\806938B103.dwg
Plot Date/Time: Oct 22, 2003 - 9:58am
Format Revised: 7/18/00
Image: L:\project\ARCO\HASTINGS\REDE\TOPO-1.dwg
Xref:



SHORELINE AREA

NORTHWEST CORNER

NORTHERN REMAINDER

NORTHERN REMAINDER

OUTLIER DATA POINT AREAS

SB-85		
DEPTH	CONCENTRATION	
	1254	1260
10-14	ND	180
18-22	ND	58

SB-84		
DEPTH	CONCENTRATION	
	1254	1260
10-14	ND	180

SB-72		
DEPTH	CONCENTRATION	
	1254	1260
12-14	ND	17
16-20	ND	15

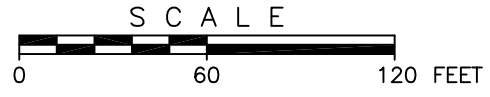
SB-79		
DEPTH	CONCENTRATION	
	1254	1260
2-6	ND	160

SB-80		
DEPTH	CONCENTRATION	
	1254	1260
10-14	ND	10

SB-154		
DEPTH	CONCENTRATION	
	1254	1260
2-6	ND	12

LEGEND:

- 15 BUILDING DESIGNATION
- DELINEATION OF NORTHERN AREA
- - - - DELINEATION OF SUB AREAS



E 661,500

E 661,800

N 788,400

N 787,800

N 788,100

N 788,400

REFERENCES:

- TOPOGRAPHY AND PLANIMETRICS PROVIDED BY GEOD PHOTOGRAMMETRIC SCIENCES SURVEY TECHNOLOGIES. MAPPED BY PHOTOGRAMMETRIC METHODS FROM AERIAL PHOTOGRAPHS TAKEN 12-08-1995. GRIDS BASED ON NEW YORK 1988 STATE PLANE COORDINATE SYSTEM. VERTICAL DATUM IS BASED ON NAD 1983. RI SAMPLE LOCATIONS SURVEYED BY GEOD.
- EXISTING BUILDING DESIGNATIONS ARE BASED ON DOLPH ROTFELD ASSOCIATES FIGURE 4, DATED NOVEMBER 1996. BUILDING INTERIOR DIVISION LOCATIONS ARE APPROXIMATE ONLY.



ATLANTIC RICHFIELD COMPANY

EXHIBIT A

DELINEATION OF NORTHERN AND SUB AREAS
HARBOR AT HASTINGS
HASTINGS-ON-HUDSON, NEW YORK

L:\project\ARCO\HASTINGS\REDEV\806938B101.dwg
 Plot Date/Time: Oct 22, 2003 - 9:32am
 Format Revised: 7/18/00
 Xref: L:\project\ARCO\HASTINGS\REDEV\X-CONT.DWG
 L:\project\ARCO\HASTINGS\REDEV\topo-2.dwg

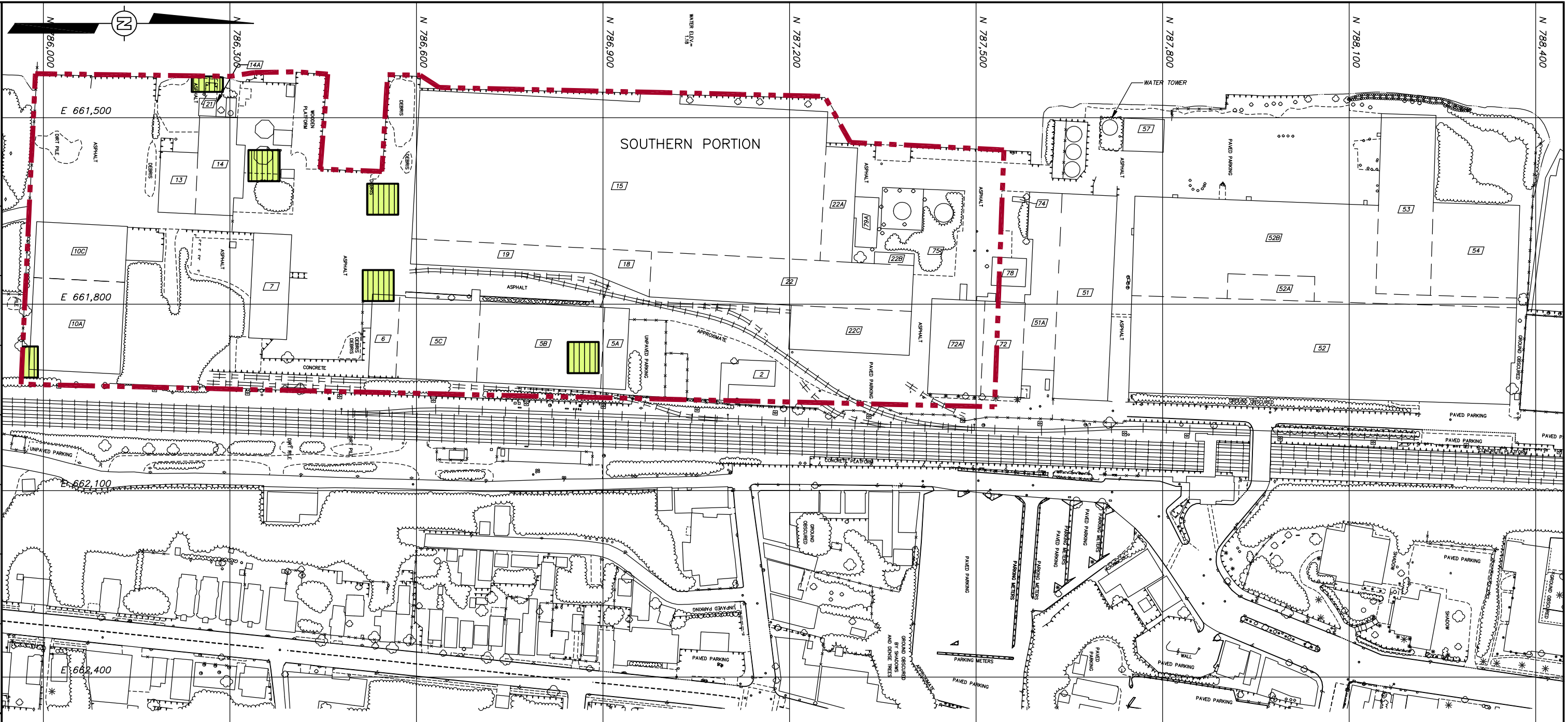
DRAWING NUMBER
806938B101

APPROVED BY

CHECKED BY

DRAWN BY
 MW/SSH 10-21-03




OFFICE
 Pittsburgh/Albany




REFERENCES:

1. TOPOGRAPHY AND PLANIMETRICS PROVIDED BY GEOD PHOTOGRAMMETRIC SCIENCES SURVEY TECHNOLOGIES. MAPPED BY PHOTOGRAMMETRIC METHODS FROM AERIAL PHOTOGRAPHS TAKEN 12-08-1995. GRIDS BASED ON NEW YORK 1988 STATE PLANE COORDINATE SYSTEM. VERTICAL DATUM IS BASED ON NAD 1983. RI SAMPLE LOCATIONS SURVEYED BY GEOD.
2. EXISTING BUILDING DESIGNATIONS ARE BASED ON DOLPH ROTFELD ASSOCIATES FIGURE 4, DATED NOVEMBER 1996. BUILDING INTERIOR DIVISION LOCATIONS ARE APPROXIMATE ONLY.

LEGEND:

-  BUILDING DESIGNATION
-  DELINEATION OF SOUTHERN PORTION
-  DELINEATION OF LEAD AREAS



 <p>Shaw Environmental, Inc.</p>	<p>ATLANTIC RICHFIELD COMPANY</p>
<p>EXHIBIT B</p> <p>DELINEATION OF SOUTHERN PORTION AND LEAD AREAS HARBOR AT HASTINGS HASTINGS-ON-HUDSON, NEW YORK</p>	

DRAWING NUMBER 806938B102

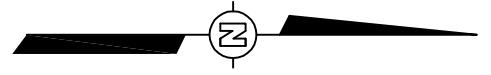
APPROVED BY

CHECKED BY

DRAWN BY MW/SSH 10-21-03

OFFICE Pittsburgh/Albany

L:\project\ARCO\HASTINGS\REDEV\806938B102.dwg
Plot Date/Time: Oct 22, 2003 - 9:54am
Format Revised: 7/18/00
Image: L:\project\ARCO\HASTINGS\REDEV\TOPO-1.dwg



SHORELINE AREA

NORTHWEST CORNER

NORTHERN REMAINDER

NORTHERN REMAINDER

OUTLIER DATA POINT AREAS

E 661,500

E 661,800

N 788,400

N 788,400

N 787,800

N 788,100

SB-85		
DEPTH	CONCENTRATION	
	1254	1260
10-14	ND	180
18-22	ND	58

SB-84		
DEPTH	CONCENTRATION	
	1254	1260
10-14	ND	180



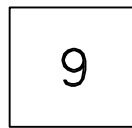

SB-72		
DEPTH	CONCENTRATION	
	1254	1260
12-14	ND	17
18-20	ND	15

SB-79		
DEPTH	CONCENTRATION	
	1254	1260
2-6	ND	160

SB-80		
DEPTH	CONCENTRATION	
	1254	1260
10-14	ND	10

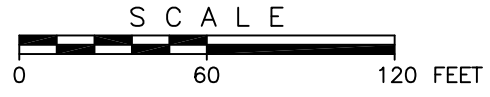
SB-154		
DEPTH	CONCENTRATION	
	1254	1260
2-6	ND	12

LEGEND:

-  BUILDING DESIGNATION
-  APPROXIMATE SITE BOUNDARY
-  PROPOSED EXCAVATION DEPTH
-  DELINEATION OF SUB AREAS

REFERENCES:

- TOPOGRAPHY AND PLANIMETRICS PROVIDED BY GEOD PHOTOGRAMMETRIC SCIENCES SURVEY TECHNOLOGIES. MAPPED BY PHOTOGRAMMETRIC METHODS FROM AERIAL PHOTOGRAPHS TAKEN 12-08-1995. GRIDS BASED ON NEW YORK 1988 STATE PLANE COORDINATE SYSTEM. VERTICAL DATUM IS BASED ON NAD 1983. RI SAMPLE LOCATIONS SURVEYED BY GEOD.
- EXISTING BUILDING DESIGNATIONS ARE BASED ON DOLPH ROTFELD ASSOCIATES FIGURE 4, DATED NOVEMBER 1996. BUILDING INTERIOR DIVISION LOCATIONS ARE APPROXIMATE ONLY.



ATLANTIC RICHFIELD COMPANY

EXHIBIT C - FIGURE 1

TERM SHEET ALTERNATIVE 1
HARBOR AT HASTINGS
HASTINGS-ON-HUDSON, NEW YORK

DRAWING NUMBER 806938B104

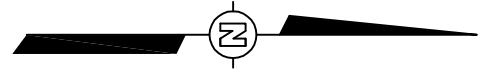
APPROVED BY

CHECKED BY

DRAWN BY MW/SSH 10-21-03

OFFICE Pittsburgh/Albany

L:\project\ARCO\HASTINGS\REDE\806938B104.dwg
Plot Date/Time: Oct 22, 2003 - 10:01am
Format Revised: 7/18/00
Image: L:\project\ARCO\HASTINGS\REDE\TOPO-1.dwg



SHORELINE AREA

NORTHWEST CORNER

NORTHERN REMAINDER

NORTHERN REMAINDER

OUTLIER DATA POINT AREAS

SB-85		
DEPTH	CONCENTRATION	
	1254	1260
10-14	ND	180
18-22	ND	58

SB-84		
DEPTH	CONCENTRATION	
	1254	1260
10-14	ND	180

SB-72		
DEPTH	CONCENTRATION	
	1254	1260
12-14	ND	17
18-20	ND	15

SB-79		
DEPTH	CONCENTRATION	
	1254	1260
2-6	ND	160

SB-80		
DEPTH	CONCENTRATION	
	1254	1260
10-14	ND	10

SB-154		
DEPTH	CONCENTRATION	
	1254	1260
2-6	ND	12

LEGEND:

- 15 BUILDING DESIGNATION
- APROXIMATE SITE BOUNDARY
- PROPOSED EXCAVATION DEPTH
- DELINEATION OF SUB AREAS



E 661,500

E 661,800

N 787,800

N 788,100

N 788,400

N 788,400

78

51

72

51A

57

54

SB-154

GROUND



ATLANTIC RICHFIELD COMPANY

EXHIBIT C - FIGURE 2

TERM SHEET ALTERNATIVE 2
HARBOR AT HASTINGS
HASTINGS-ON-HUDSON, NEW YORK

DRAWING NUMBER
806938B105

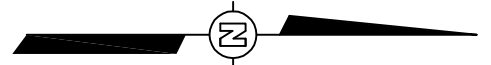
APPROVED BY

CHECKED BY

DRAWN BY
MW/SSH

OFFICE
Pittsburgh/Albany

DATE
10-21-03



SHORELINE AREA

NORTHWEST CORNER

NORTHERN REMAINDER

NORTHERN REMAINDER

OUTLIER DATA POINT AREAS

SB-85		
DEPTH	CONCENTRATION	
	1254	1260
10-14	ND	180
18-22	ND	58

SB-84		
DEPTH	CONCENTRATION	
	1254	1260
10-14	ND	180

SB-72		
DEPTH	CONCENTRATION	
	1254	1260
12-14	ND	17
18-20	ND	15

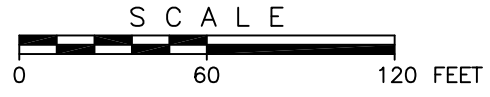
SB-79		
DEPTH	CONCENTRATION	
	1254	1260
2-6	ND	160

SB-80		
DEPTH	CONCENTRATION	
	1254	1260
10-14	ND	10

SB-154		
DEPTH	CONCENTRATION	
	1254	1260
2-6	ND	12

LEGEND:

- 15 BUILDING DESIGNATION
- APROXIMATE SITE BOUNDARY
- PROPOSED EXCAVATION DEPTH
- DELINEATION OF SUB AREAS



E 661,500

E 661,800

N 788,400

N 787,800

N 788,100

N 788,400

REFERENCES:

- TOPOGRAPHY AND PLANIMETRICS PROVIDED BY GEOD PHOTOGRAMMETRIC SCIENCES SURVEY TECHNOLOGIES. MAPPED BY PHOTOGRAMMETRIC METHODS FROM AERIAL PHOTOGRAPHS TAKEN 12-08-1995. GRIDS BASED ON NEW YORK 1988 STATE PLANE COORDINATE SYSTEM. VERTICAL DATUM IS BASED ON NAD 1983. RI SAMPLE LOCATIONS SURVEYED BY GEOD.
- EXISTING BUILDING DESIGNATIONS ARE BASED ON DOLPH ROTFELD ASSOCIATES FIGURE 4, DATED NOVEMBER 1996. BUILDING INTERIOR DIVISION LOCATIONS ARE APPROXIMATE ONLY.



ATLANTIC RICHFIELD COMPANY

EXHIBIT C - FIGURE 3

TERM SHEET ALTERNATIVE 3
HARBOR AT HASTINGS
HASTINGS-ON-HUDSON, NEW YORK

L:\project\ARCO\HASTINGS\REDE\806938B105.dwg
Plot Date/Time: Nov 04, 2003 - 12:02pm
Format Revised: 7/18/00
Image: L:\project\ARCO\HASTINGS\REDE\TOPO-1.dwg

DRAWING NUMBER 806938B106

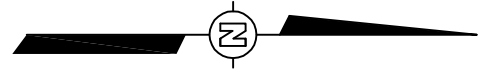
APPROVED BY

CHECKED BY

DRAWN BY MW/SSH 11-04-03

OFFICE Pittsburgh/Albany

L:\project\ARCO\HASTINGS\REDEV\806938B106.dwg
Plot Date/Time: Nov 04, 2003 - 12:01pm
Format Revised: 7/18/00
Image: L:\project\ARCO\HASTINGS\REDEV\TOPO-1.dwg



SHORELINE AREA

NORTHWEST CORNER

NORTHERN REMAINDER

NORTHERN REMAINDER

OUTLIER DATA POINT AREAS

E 661,500

E 661,800

N 788,400

N 787,800

N 788,100

N 788,400

SB-85		
DEPTH	CONCENTRATION	
10-14	1254	1260
18-22	ND	180
	ND	58

SB-84		
DEPTH	CONCENTRATION	
10-14	1254	1260
	ND	180

SB-72		
DEPTH	CONCENTRATION	
12-14	1254	1260
18-20	ND	17
	ND	15

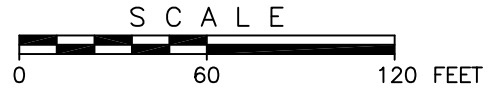
SB-79		
DEPTH	CONCENTRATION	
2-6	1254	1260
	ND	160

SB-80		
DEPTH	CONCENTRATION	
10-14	1254	1260
	ND	10

SB-154		
DEPTH	CONCENTRATION	
2-6	1254	1260
	ND	12

LEGEND:

- 15 BUILDING DESIGNATION
- APROXIMATE SITE BOUNDARY
- PROPOSED EXCAVATION DEPTH
- DELINEATION OF SUB AREAS



REFERENCES:

- TOPOGRAPHY AND PLANIMETRICS PROVIDED BY GEOD PHOTOGRAMMETRIC SCIENCES SURVEY TECHNOLOGIES. MAPPED BY PHOTOGRAMMETRIC METHODS FROM AERIAL PHOTOGRAPHS TAKEN 12-08-1995. GRIDS BASED ON NEW YORK 1988 STATE PLANE COORDINATE SYSTEM. VERTICAL DATUM IS BASED ON NAD 1983. RI SAMPLE LOCATIONS SURVEYED BY GEOD.
- EXISTING BUILDING DESIGNATIONS ARE BASED ON DOLPH ROTFELD ASSOCIATES FIGURE 4, DATED NOVEMBER 1996. BUILDING INTERIOR DIVISION LOCATIONS ARE APPROXIMATE ONLY.

Shaw Environmental, Inc.

ATLANTIC RICHFIELD COMPANY

EXHIBIT C - FIGURE 4

TERM SHEET ALTERNATIVE 4
HARBOR AT HASTINGS
HASTINGS-ON-HUDSON, NEW YORK