

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CAEUSA Inc.

Plaintiff,

vs.

TRIPLE CITIES METAL FINISHING CORP.,
ZURENDA ENTERPRISES, INC., BINGHAMTON
REALTY, INC., GAGNE ASSOCIATES, INC.,
ANTOINE GAGNE, MICHAEL AND BARBARA
PANKO, PANKO ELECTRICAL & MAINTENANCE,
INC., NANCY S. CADY, Individually and as the Executrix
of the Estate of James W. Cady, JOHN DOE
CORPORATIONS and JOHN DOES,

Defendants.

COMPLAINT

Civil Action No.: 3 : 11 - CV - 0711
(LEK / DEP)

Plaintiff, by its attorneys, KNAUF SHAW LLP, and LAW OFFICE of ROBERT C.
MURPHY for its Complaint, allege as follows:

INTRODUCTION

1. In this action, plaintiff seeks, *inter alia*, compensation, reimbursement, and/or contribution for past and future environmental investigation and remedial costs, caused or made necessary by environmental contamination (the "Contamination") on, at, under or emanating from various properties owned and/or operated by the defendants in the Hamlet of Hillcrest, Town of Fenton, County of Broome and State of New York (the "Defendants' Properties"). A map of the properties at issue in this matter is annexed as Exhibit "A."

2. The Contamination was caused by discharges and releases (collectively the “Releases”) of contaminants (the “Contaminants”) at the Defendants’ Properties

3. The Contaminants include hazardous wastes and substances (the “Hazardous Substances”) and other solid wastes, including but not limited to 1,1,1-trichloroethane (“TCA”), trichloroethylene (“TCE”), other volatile organic compounds (“VOCs”), semi-volatile organic compounds (“SVOCs”) and metals.

4. Plaintiff brings this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §9601, *et seq.*, and various state law theories, including the New York Environmental Conservation Law (“ECL”), and common law and equitable theories, against defendants, who are responsible for the Contamination.

PLAINTIFF

5. Plaintiff CAEUSA Inc. (“plaintiff” or “CAE”) is a corporation organized and existing under the laws of the state of Delaware with its principal place of business in the United States at 4908 Tampa West Blvd. Tampa, Florida 33634. CAE is authorized to do business in the State of New York.

6. CAE purchased all of Link Aviation’s successor’s interest in the Town of Fenton including Link’s longtime manufacturing facility located at 11 Beckwith Avenue, Tax Parcels 129.05-4-4 and 129.05-4-3, in the Town of Fenton, County of Broome and State of New York (the Link/CAE/LINK Property”).

7. CAE later sold said Link/CAE/LINK Property but contractually retained the liability for Link Aviation’s contamination at 11 Beckwith.

8. The Link/CAE/LINK Property is currently owned by B.W. Elliott Manufacturing Co., Inc.

DEFENDANTS

9. Defendant Triple Cities Metal Finishing Corp. (“TCMF”) is a corporation organized under the laws of New York with offices at 349 Industrial Park Drive, Binghamton, New York 13904. TCMF formerly owned and operated at the properties located at 4 Nowlan Road and 7 Beckwith Avenue in the Hamlet of Hillcrest, Town of Fenton, County of Broome and State of New York. Further, TCMF formerly owned the property located at 1080 Chenango Street in the Hamlet of Hillcrest, Town of Fenton, County of Broome and State of New York.

10. Defendant Zurenda Enterprises, Inc. (“Zurenda”) is a corporation organized under the laws of New York with offices at 349 Industrial Park Drive, Binghamton, New York 13904. Zurenda formerly owned the properties located at 4 Nowlan Road and 7 Beckwith Avenue in the Hamlet of Hillcrest, Town of Fenton, County of Broome and State of New York. Further, Zurenda formerly owned the property located at 1080 Chenango Street in the Hamlet of Hillcrest, Town of Fenton, County of Broome and State of New York.

11. Defendant Binghamton Realty, Inc. (“Binghamton Realty”) is a corporation organized under the laws of New York with offices at 3 Beckwith Avenue, Binghamton, New York, 13901. Binghamton Realty currently owns the properties located at 4 Nowlan Road and 7 Beckwith Avenue in the Hamlet of Hillcrest, Town of Fenton, County of Broome and State of New York. Further, Binghamton Realty formerly owned the property located at 1080 Chenango Street in the Hamlet of Hillcrest, Town of Fenton, County of Broome and State of New York.

12. Defendant Gagne Associates, Inc. (“Gagne”) is a corporation organized under the laws of New York with offices at 41 Commercial Drive, Johnson City, New York 13790. Gagne formerly leased and operated at the property located at 1080 Chenango Street in the Hamlet of Hillcrest, Town of Fenton, County of Broome and State of New York.

13. Defendant Antoine Gagne (“A. Gagne”) is an individual, upon information and belief, residing in Fenton, New York 13901. A. Gagne formerly owned and operated the property located at 1080 Chenango Street in the Hamlet of Hillcrest, Town of Fenton, County of Broome and State of New York. Further, A. Gagne formerly owned, and upon information and belief, operated the properties located at 4 Nowlan Road and 7 Beckwith Avenue in the Hamlet of Hillcrest, Town of Fenton, County of Broome and State of New York.

14. Defendants Michael and Barbara Panko (the “Pankos”) are individuals, upon information and belief, residing in Binghamton, New York, 13901-6011. The Pankos currently own and operate the property located at 1080 Chenango Street in the Hamlet of Hillcrest, Town of Fenton, County of Broome and State of New York.

15. Defendant Panko Electrical & Maintenance, Inc. (“Panko”) is a corporation organized under the laws of New York with offices at 1080 Chenango Street, Suite B, Binghamton, New York 13901. Upon information and belief, Panko currently operates at the property located at 1080 Chenango Street in the Hamlet of Hillcrest, Town of Fenton, County of Broome and State of New York.

16. Defendant Nancy S. Cady (“N. Cady”) is an individual, upon information and belief, residing in Port Crane, New York. N. Cady is also the Executrix of the Estate of James W. Cady (J. Cady). N. Cady and J. Cady formerly owned and operated the property located at

1080 Chenango Street in the Hamlet of Hillcrest, Town of Fenton, County of Broome and State of New York.

17. Defendants John Doe Corporations are one or more corporations or other business entities whose identity and address is not known at this time, but who participated in the Releases of Contaminants which resulted in the Contamination.

18. Defendant John Does are one or more individuals whose identity and address is not known at this time, but who participated in the Releases of Contaminants which resulted in the Contamination.

19. Upon identification of such John Does and John Doe Corporations, plaintiff intends to seek to amend this Complaint accordingly.

THE CAE/LINK PROPERTY

20. CAE is the former owner of a 15-acre facility developed by Link Aviation, Inc. located in a commercial/residential area of the Hamlet of Hillcrest within the Town of Fenton approximately five miles northeast of the City of Binghamton (the "CAE/LINK Property").

21. The CAE/LINK Property is located at 11 Beckwith Avenue (Tax Parcel Numbers 129.05-4-3 and 129.05-4-4) in the Town of Fenton, Hamlet of Hillcrest, County of Broome and State of New York.

22. From approximately 1917 to the early 1990's, the CAE/LINK Property was involved in the manufacturing of products for the aerospace industry, including flight simulators and peripheral equipment.

23. There are currently, and historically, many commercial/industrial facilities located in close proximity to the CAE/LINK Property, including but not limited to auto body shops, industrial platers, gasoline stations, machine shops and former dry cleaners.

24. Prior to 1986, there was no sewer and/or other public water treatment and/or disposal facilities available to properties in this area of the Town of Fenton, and thus, waste water from the CAE/LINK Property was discharged on-site through several outfalls, pursuant to a State Pollution Discharge Elimination System (SPDES) permit.

25. The CAE/LINK Property has been the subject of extensive investigation and remediation since at least 1984 when violations of CAE's SPDES permit were allegedly reported.

26. Thereafter, CAE and its predecessors undertook soil, groundwater and soil vapor sampling on the CAE/LINK Property, and in some off-site wells surrounding the CAE/LINK Property.

27. In addition, CAE and its predecessors have entered into Consent Orders with the New York State Department of Environmental Conservation ("NYSDEC") for the investigation and remediation activities undertaken.

28. The investigation of the CAE/LINK Property and sampling performed for NYSDEC in and around the residences which exist in the vicinity of the CAE/LINK Property and Defendants' Properties (the "Adjacent Properties") revealed the existence of soil contamination on the CAE/LINK Property, as well as groundwater contamination in the area surrounding the Defendants' Properties and the Adjacent Properties.

29. After this discovery, CAE performed an extensive contaminated soil remediation project on the CAE/LINK Property in 1998 to eliminate their source of soil contamination contributing to the groundwater plume by excavation and off-site disposal.

30. During that remediation process, hundreds of truckloads of vadose zone (unsaturated) soil was excavated from the Link/CAE site, and disposed of off-site at a significant cost of approximately \$3.6 million. Only a small area of low-level contaminated soil located immediately adjacent to the building foundation, where it could not be removed, was remediated in place through chemical stabilization at the cost of approximately \$400,000.

31. Due to the fact that the level of contamination in the groundwater was low, it was determined by the NYSDEC that no remedial action was required to address the groundwater.

32. In 2003, however, NYSDEC began an extensive soil gas investigation in the area surrounding the CAE/LINK Property, including the Defendants' Properties, as well as the Adjacent Properties.

33. Based on the preliminary results of NYSDEC's soil gas investigation, further investigation was undertaken into the presence of Contaminants in the indoor and/or subslab air in the Defendants' Properties and the Adjacent Properties beginning in 2004.

34. The indoor and/or subslab investigation indicated that vapor intrusion, which is a phenomenon whereby Contaminants contained in the groundwater and soil vapor beneath and in the vicinity of structures can migrate into the structure's air, was potentially occurring in the Adjacent Properties and the Defendants' Properties.

35. The investigation indicated there were higher levels of contaminated soil vapor beneath the Defendants' Properties than the CAE/LINK Property.

36. As a result, beginning in 2004, NYSDEC installed more than 120 sub slab depressurization (SSDS) systems in the Adjacent Properties.

37. Even though the other industrial and commercial uses in the vicinity of the CAE/LINK Property, including Defendants' Properties, have been identified as additional potential sources for the groundwater and soil vapor contamination in the area in various environmental reports prepared by NYSDEC's consultants, NYSDEC has only sought response costs for their investigation, SSDS installation and remedial activities in evaluating and addressing the soil vapor and vapor intrusion problem from CAE.

38. To date, NYSDEC alleges it has spent at least 2.4 million dollars in its efforts to investigate and address the soil vapor contamination problem, and costs continue to be incurred since the SSDS systems must be maintained.

39. In addition to the approximately four million dollars in soil remediation, and \$100,000 paid pursuant to an earlier consent order, CAE has voluntarily reimbursed NYSDEC approximately \$300,000 for activities related to the characterization of soil vapor and vapor intrusion in the area, which it believes to be its appropriate allocation of responsibility, however, NYSDEC contends that CAE is responsible for all of the \$2.1 million dollars of costs it has incurred.

40. NYSDEC has asked CAE to conduct further investigation of remedial alternatives and future operation and maintenance work on the Adjacent Properties, and if necessary, further remedial work.

THE TCMF PROPERTY

41. The property located at 4 Nowlan Road (Tax Parcel 129.05-4-2) and 7 Beckwith Avenue (Tax Parcel 129.05-4-5) (together the “TCMF Property”) is immediately adjacent to the CAE/LINK Property to the west.

42. The TCMF Property, which is approximately 0.88 acres, is currently owned by Binghamton Realty, and upon information and belief, is either vacant and/or being used partially for warehousing purposes.

43. The TCMF Property has been used for industrial purposes since at least the 1930s.

44. The historical 1932 Sanborn map shows a “plating works business” located on the northern portion of the TCMF Property (Tax Parcel 129.05-4-2).

45. In 1953, TCMF purchased the northern portion of the TCMF Property (Tax Parcel 129.05-4-2) for its electroplating, surface finishing and anodizing applications.

46. After its purchase, TCMF made several additions and/or alterations to the facility in 1977, 1985 and 1986.

47. Similar to the CAE/LINK Property, prior to 1986 when sewers were installed in the area, TCMF disposed of the facilities’ waste water on-site pursuant to a SPDES permit.

48. Upon information and belief, TCMF received its first SPDES permit in approximately 1978.

49. Upon information and belief, three outfalls were utilized at the TCMF facility, one for septic waste (Outfall 003) and two for waste process water (Outfall 001 and 002).

50. Outfall 001 was formerly located on the east side of the TCMF facility, east of the wastewater treatment system/drum storage area.

51. Outfall 001 consisted of four structures: two 4-feet by 4-feet by 8-feet deep, 957-gallon structures, a 7-feet by 8-feet by 28-feet deep “dry well,” and a 10-foot diameter by 26-feet deep unidentified structure.

52. Outfall 002 was formerly located on the west side of the TCMF facility.

53. Outfall 002 consisted of two, 10-foot diameter unidentified structures that were reportedly 24-feet and 38-feet deep.

54. The SPDES permit for Outfall 001 and 002 required monitoring for the following contaminants: aluminum, cadmium, total chromium, hexavalent chromium, copper, cyanide, fluoride, iron, lead, nickel, tin, zinc, total nitrogen, and oil and grease.

55. In approximately 1979, Outfall 002 ceased being used and all process wastewater was redirected to Outfall 001.

56. When the SPDES permit was modified in 1980 to account for Outfall 002 no longer being used, TCA was an additional contaminant added to the parameter list for monitoring.

57. After discharging to the sewer began, TCMF was required to monitor for pH, total cyanide, volatile organic analysis by EPA Method 624, cadmium, chromium, copper, iron, lead, nickel, silver and zinc.

58. As such, the SPDES permit information indicates that solvents, including TCA, were utilized at the TCMF facility.

59. When the TCMF facility was expanded in approximately 1984, the dry wells related to Outfall 002 were allegedly filled with soils and the building additions were placed over these Outfall structures.

60. Further, TCMF was identified as a hazardous waste generator.

61. Upon information and belief, in 1980, TCMF completed a Form I Notification of Hazardous Waste Activity/Form II Hazardous Waste Permit Application pursuant to the Resource Conservation and Recover Act (“RCRA”) which reported the storage of 440,000 gallons of hazardous materials on-site.

62. Upon information and belief, the Form I Notification of Hazardous Waste Activity/Form II Hazardous Waste Permit Application further identified hazardous waste generated at the facility of comprising 50,000 pounds of F001 waste (mixed solvents) and 2,400,000 pounds of F006 waste (metal hydroxide sludge).

63. As such, additional information exists which indicates that solvents were utilized at the TCMF facility.

64. Upon information and belief, reports from residents in the area of the TCMF Property indicate that they witnessed greenish liquid running from the facility.

65. In approximately 1988, TCMF purchased the southern portion of the TCMF Property (Tax Parcel 129.05-4-5) from A. Gagne for use as auxiliary storage space.

66. On November 6, 1995, Spill Number 9509780 was reported to NYSDEC at the TCMF Property.

67. Upon information and belief, the Spill Report was made as the result of the discovery of a dry well during construction activities at the TCMF Property. Samples were to be taken, and the results reported to NYSDEC.

68. Upon information and belief, the dry well discovered during construction was related to Outfall 001, located on the east side of TCMF.

69. The Spill was closed April 2, 1996, but no further information is provided in NYSDEC's Spills Incidents Database fully documenting how the spill was closed and whether any confirmatory sampling of remaining contamination was performed.

70. In the winter of 1999-2000, TCMF terminated activities at the TCMF Property.

71. In 2004, Binghamton Realty submitted an application to participate in the New York State Brownfield Cleanup Program ("BCP") to investigate and remediate the TCMF Property.

72. In the BCP Application, Binghamton acknowledges that TCA was utilized in TCMF's processes, but denies the use of TCE.

73. The BCP Application, however, acknowledges this conclusion is only based on information beginning in the 1980s, even though TCMF had been operating at the TCMF Property since 1953.

74. Notwithstanding TCMF's denials in its BCP application, TCE has been found in multiple locations in the soil/soil sediment beneath TCMF.

75. Further, upon information and belief, the Broome County Brownfield data base includes a description of the TCMF Site, which indicates that "contaminated waste water was discharged to deep dry wells; chemical spills and leaks also seeped into the ground through cracks in the building foundation. . . .Disposed materials: heavy metals, VOCs."

76. Releases of Contaminants, including but not limited to TCA, at the TCMF Property during the use and/or operations of TCMF, Zurenda, Binghamton Realty, A. Gagne are contributing to the Contamination.

77. TCMF is in a voluntary remediation program in which it has agreed to perform remediation of the TCMF Property, but has failed to properly investigate the Site to locate the on-Site soil source areas and perform any remediation work since 2004.

THE GAGNE PROPERTY

78. The property located at 1080 Chenango St. (Tax Parcel 129.05-4-6) is immediately adjacent to the TCMF Property to the east (the “Gagne Property”).

79. The Gagne Property, which is approximately 0.89 acres, is currently owned by the Pankos, and upon information and belief, is being used for industrial purposes, including but not limited to the operations of Panko.

80. Upon information and belief, the Gagne Property has been being used for industrial purposes since at least 1950, as the historic Sanborn map from that year shows the building which still currently occupies the site.

81. In 1971, A. Gagne purchased the Gagne Property.

82. Further, in 1971, Town of Fenton records indicate that the building on the Gagne Property was expanded.

83. From 1971 until at least 1997, Gagne leased the Gagne Property and operated a machine shop.

84. During this time period, additional owners of the Gagne Property included N. Cady and J. Cady.

85. In 1993, government records indicate that Gagne transported at least 150 pounds of F005 waste from the Gagne Property for disposal.

86. F005 waste is identified by the United States Environmental Protection Agency (“EPA”) as:

toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above nonhalogenated solvents or those solvents listed in F001 [Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride and chlorinated fluorocarbons], F002 [Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,1,2, trichloroethane], or F004 [cresols, cresylic acid, and nitrobenzene]; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

87. In 1997, N. Cady transferred the Gagne Property to TCMF, who then transferred to Zurenda, and then onto Binghamton Realty.

88. In 1999, the Broome County Department of Health received an anonymous complaint regarding dumping of solvents and grease at the Gagne Property, as well as a potentially leaking tank and use of an on-site dry well for solvents and oils until the late 1980s.

89. According to the Broome County report of the complaint:

“The caller said that he was a former worker at a machine shop (Gagne Associates) which occupied the annex during the 1980s and early 1990s. He said that he was providing this information because he and his family lived in the Hillcrest community, and that some of his relatives had recently been afflicted with cancer.

The allegations are as follows:

1. A UST was present at Gagne during the complainant’s time of working there. Cutting oils and some solvents were disposed of in this tank, which may also have held heating fuel for the building. This tank was said to be very old, and it may be leaking if still present. The tank location was to

the north and east of the former Gagne building. Filling ports and/or vent pipes were still visible when the complainant left the company in the 1980s.

2. Less flammable solvents were dumped on the ground to the north and east of the former Gagne facility.
3. Other chemicals (solvents and oils) were disposed into shop sinks and floor drains that emptied to an on-site dry well.”

90. Releases of Contaminants, including but not limited to cutting oils and solvents, at the Gagne Property during the ownership and/or operations of TCMF, Zurenda, Binghamton Realty, Gagne, A Gagne, Pankos, Panko, N. Cady, J. Cady are contributing to the Contamination.

THE CAUSE OF THE CONTAMINATION

91. The extensive investigation undertaken in the vicinity of the CAE/LINK Property, Defendants’ Properties and the Adjacent Properties indicates that the CAE/LINK Property is not the sole source of the Contamination, but rather, Releases from the Defendants’ Properties have contributed to the Contamination.

92. Plotting of TCE soil vapor concentrations throughout the area shows three distinct plumes, one in the area of the Defendants’ Properties (the “West Plume”), and two smaller plumes in the vicinity of the CAE/LINK Property (the “East Plumes”). A copy of the TCE plume map is annexed as Exhibit “B.”

93. The West Plume is clearly the largest plume, and it is emanating from the area of the Defendants’ Properties. *See* Exhibit “B”.

94. The largest TCE soil vapor plume extends at least 3000 feet to the northeast, from an apparent source area at the TCMF and/or Gagne Properties. The highest soil vapor concentrations in this source area range up to 13,000 ug/m³ below the TCMF floor slab.

95. All three soil vapor samples collected from beneath the CAE/LINK floor slab did not detect any TCA. In addition, a TCA soil vapor plume map shows that there is no TCA in the vicinity of the CAE/LINK Property, and a significant TCA soil vapor plume in the vicinity of the TCMF and Gagne Properties. Indeed, some of the highest soil vapor levels of TCA were detected on the Gagne Property. A copy of the TCA soil vapor plume map is annexed as Exhibit "C."

96. The East Plumes emanating from the CAE/LINK Property are now detached from the original soil source areas, confirming that the soil sources of contamination in the vadose zone have been removed on the CAE/LINK Property. To the contrary, the West Plume emanating from the Defendants' Properties is not detached, which indicates there are ongoing sources of soil contamination contributing to soil vapor contamination.

97. The lack of daughter compounds (degradation compounds) from TCE, and especially TCA, near the Defendants' Properties establishes that the primary sources of the soil vapor contamination are in the vadose zone (unsaturated soils), not in the groundwater.

98. Certain degradation compounds would typically be expected if the source of the soil vapor contamination was in groundwater for an extended period of time, as would be the case if the CAE/LINK Property was the sole source of the Contamination.

99. The groundwater and soil vapor laboratory analytical results from near the Defendants' Properties have different chemical "signatures" from the results near the CAE/LINK

Property and/or the degree of magnitude of the sample results is so much higher, a soil source of contamination must still be present on the Defendants' Properties.

100. Indeed, some of the highest contaminated TCE soil vapor levels have been detected in soil gas on both the TCMF and Gagne Properties, establishing that there are TCE vadose zone soil sources of contamination on one or both of these Properties.

101. TCE has already been detected in the soil/sediments at the TCMF Property in the vicinity of Outfall 001, and from a core sample taken from directly beneath the building floor, indicating disposal of TCE at the TCMF Property. However, extensive investigation was not performed to further identify this source area.

102. TCA and R-113 are present in samples near, and beneath, the Defendants' Properties at significantly higher concentrations than any present near the CAE/LINK Property.

103. Some of the highest soil vapor results of TCA were detected on the Gagne Property. A copy of the TCA plume map is annexed as Exhibit "C."

104. Moreover, the direction of soil vapor migration is not following the direction of groundwater flow to the northwest, because soil vapor is migrating along preferential gravel and sand layer pathways in the unsaturated vadose zone.

105. The geologic logs from the area of Defendants' Properties, the CAE/LINK Property, and the Adjacent Properties, indicate that there is a thick, continuous gravel layer overlying the groundwater. The gravel layer is overlain by a layer of compacted fill and/or asphalt parking lots.

106. This gravel layer is significantly more transmissive than the underlying silt zone, and the overlying fill and/or the surface asphalt layer.

107. The unsaturated sand and gravel layer is providing a preferential pathway for the migration of soil vapor in a direction different than groundwater flow, further confirming that there is a source of soil contamination in the vadose zone layer contributing to West Plume in the vicinity of the Defendants' Properties.

108. As the direct and proximate result of the Releases of Contaminants at Defendants' Properties, and the lack of proper investigation and remediation of the remaining soil sources of Contamination, the off-site migration of contaminated groundwater and soil vapor has occurred onto the Adjacent Properties.

109. In the vicinity of the West Plume, the Adjacent Properties have become contaminated with a variety of Contaminants from the Defendants' Properties, including TCE, TCA and other VOCs and metals, whereas in the vicinity of the East Plumes near the CAE/LINK Property, there are fewer Contaminants on and under the Adjacent Properties and are present in significantly lower concentrations.

110. As a direct and natural consequence of the Releases, Contaminants flowed, drained, leached, or otherwise migrated into the ground, causing the Contamination, including Contamination of the soil, soil vapor and the ground water on the Defendants' Properties and the Adjacent Properties and creating the West Plume of soil vapor contamination.

111. Upon information and belief, some or all of the Releases occurred in a sudden and accidental manner.

112. Defendants (including their predecessors, officer, employees, agents and servants) knew or should have known that surface, subterranean and other conditions were such that it was

inevitable and foreseeable that the Contamination would be caused by the Releases, and persist into the present time.

113. As a direct, proximate, and natural consequence of the Releases and the Contamination, plaintiff has undertaken environmental investigation and response actions, and it will be necessary for plaintiff to incur additional costs to investigate, remove, remediate, clean up and respond to the Contamination.

THE CLAIMS

114. NYSDEC has made claims against plaintiff (the “Claims”), repeatedly demanding that plaintiff pay for all the work it has done to date.

115. While plaintiff has reimbursed NYSDEC in the amount of approximately \$4300,000, it has declined to further reimburse NYSDEC for past investigation and remediation costs because it is not legally responsible to do so as not all of the Contamination has emanated from the operations at the CAE/LINK Property.

PROCEDURAL ISSUES

116. Upon information and belief, plaintiff has no adequate remedy at law, and no previous application has been made for the relief sought in this action.

117. This Court has personal jurisdiction over all defendants with respect to all Causes of Action of this Complaint, pursuant to CPLR §§301 and 302, because defendants either directly, or through their employees or agents, were or are doing business in New York, committed tortious acts in New York, or transacted business in New York with respect to the subject matter of this action.

118. This Court has subject matter jurisdiction over this First and the Second Causes of Action of this Complaint, pursuant to CERCLA §113(b), 42 U.S.C. §9613(b) and 28 U.S.C. §1331.

119. This Court has supplemental jurisdiction over the state law claims in the other Causes of Action of this Complaint pursuant to 28 U.S.C. §1367, since they arise out of a common nucleus of facts.

120. Venue is appropriate for this First and the Second Causes of Action of this Complaint in the Northern District of New York, pursuant to CERCLA §113(b), 42 U.S.C. §9613(b), because the Releases occurred and the Contamination is located within the Northern District of New York, and over all Causes of Action of this Complaint, pursuant to 28 U.S.C. §1391, because the Defendants' Properties, the CAE/LINK Property and the Adjacent Properties are located, and the events related to the claims occurred, within the Binghamton area of the Northern District of New York.

121. In addition, the Declaratory Judgments Act, 28 U.S.C. §2201, authorizes this Court to grant declaratory relief in this matter.

**AS AND FOR A FIRST CAUSE
OF ACTION FOR STRICT LIABILITY
UNDER CERCLA §107,
PLAINTIFF ALLEGES AS FOLLOWS:**

122. Plaintiff repeats and realleges the allegations of paragraphs "1" through "123" of this Complaint, as if set forth in this paragraph at length.

123. The Defendants' Properties are each a "facility," as defined in CERCLA §101(9), 42 U.S.C. §9601(9).

124. Defendants have been “operators” and/or “owners,” as defined by CERCLA §101(20), 42 U.S.C. §9601(20), of the Defendants’ Properties at the time of the Release of the Hazardous Substances.

125. The Hazardous Substances are “hazardous substances” as defined by CERCLA §101(14), 42 U.S.C. §9601(14).

126. All response costs incurred by plaintiff in connection with the Contamination have been consistent with the National Contingency Plan, and are recoverable pursuant to CERCLA §107(a), 42 U.S.C. §9607(a).

127. Pursuant to CERCLA §107(a), 42 U.S.C. §9607(a), defendants are strictly liable and responsible for investigation, cleanup, remediation and removal of the Contamination, and all of plaintiff’s associated past and future response costs, and this Court should direct defendants to pay all response costs incurred by plaintiff, direct them to conduct any remedial activities that may be necessary as a result of the Contamination, and declare that they are responsible for future response costs.

**AS AND FOR A SECOND AND ALTERNATIVE
CAUSE OF ACTION UNDER CERCLA §113(f)(1),
PLAINTIFF ALLEGES AS FOLLOWS:**

128. Plaintiff repeats and realleges the allegations of paragraphs “1” through “127” of this Complaint, as if set forth in this paragraph at length.

129. Pursuant to CERCLA §113(f)(1), 42 U.S.C. §9613(f)(1), defendants should contribute their equitable share of the response costs incurred by plaintiff in response to the Releases and the Contamination, and all of plaintiff’s future response costs, and this Court should declare that defendants are responsible for their equitable share of future response costs.

**AS AND FOR A THIRD CAUSE OF ACTION
UNDER ECL ARTICLE 37,
PLAINTIFF ALLEGES AS FOLLOWS:**

130. Plaintiff repeats and realleges the allegations of paragraphs “1” through “129” of this Complaint, as if set forth in this paragraph at length.

131. Some or all of the Contaminants are classified as hazardous wastes, pursuant to ECL Article 27, and hazardous substances, pursuant to ECL Article 37.

132. Defendants released the Contaminants at or from the Defendants’ Properties in contravention of rules and regulations promulgated pursuant to the ECL, including ECL Articles 17 and 27.

133. Pursuant to ECL Article 37, defendants are strictly liable for all of the damages to plaintiff proximately caused by the Contamination, and investigation, remediation, cleanup, and removal of, and response, to the Contamination.

**AS AND FOR A FOURTH CAUSE OF ACTION
FOR INDEMNIFICATION AND CONTRIBUTION OF COSTS
INCURRED PURSUANT TO THE STATE SUPERFUND LAW,
PLAINTIFF ALLEGES AS FOLLOWS:**

134. Plaintiff repeats and realleges the allegations of paragraphs “1” through “133” of this Complaint, as if set forth in this paragraph at length.

135. There was no permit or authorization from the United States or the State of New York to dispose of the Contaminants on the Defendants’ Properties.

136. Pursuant to the State Superfund Law (Environmental Conservation Law Article 27, Title 13), and to the extent not covered by CERCLA, defendants are strictly liable and responsible for investigation, cleanup, remediation and removal of the Contamination to the

extent such actions are, or have been, directed or requested by NYSDEC, and defendants should indemnify plaintiff for, or contribute to plaintiff, their equitable share of, the past and future costs of investigation, cleanup, remediation and removal of the Contamination.

**AS AND FOR A FIFTH CAUSE
OF ACTION FOR NEGLIGENCE,
PLAINTIFF ALLEGES AS FOLLOWS:**

137. Plaintiff repeats and realleges the allegations of paragraphs “1” through “136” of this Complaint, as if set forth in this paragraph at length.

138. Defendants, including their officers, agents, servants, employees, and/or predecessors, owed a duty of care to plaintiff with regard to their use or operation of the Defendants’ Properties.

139. Defendants, including their officers, agents, servants, employees, and/or predecessors, acted unreasonably and negligently in causing the Releases and the Contamination, or failing to take reasonable precautions necessary to avoid the Releases and the Contamination, and those acts and omissions were the direct and proximate cause of the damages to plaintiff.

140. Defendants, by reason of this negligence, are liable for all of the damages to plaintiff, including the cost to install remedial systems on the Adjacent Properties, proximately caused by the Contamination, and investigation, remediation, cleanup, and removal of, and response to the Contamination.

**AS AND FOR AN SIXTH CAUSE OF
ACTION AGAINST DEFENDANTS
FOR STRICT LIABILITY,
PLAINTIFF ALLEGES AS FOLLOWS:**

141. Plaintiff repeats and realleges the allegations of paragraphs “1” through “140” of this Complaint, as if set forth in this paragraph at length.

142. The generation, disposal, and management of Hazardous Substances is an abnormally hazardous activity.

143. Defendants have engaged in generation, disposal, and management of Hazardous Substances at the Defendants’ Properties.

144. Defendants, by engaging in abnormally hazardous activities, are strictly liable without regard to fault for all of the damages to plaintiff, including the cost to install remedial systems on the Adjacent Properties, proximately caused by the Contamination, and investigation, remediation, cleanup, and removal of, and response to the Contamination.

**AS AND FOR A SEVENTH CAUSE
OF ACTION FOR PUBLIC NUISANCE,
PLAINTIFF ALLEGES AS FOLLOWS:**

145. Plaintiff repeats and realleges the allegations of paragraphs “1” through “144” of this Complaint, as if set forth in this paragraph at length.

146. Defendants, including their officers, agents, servants, employees, and/or predecessors, by causing the Contamination, have interfered with the rights common to all, including groundwater.

147. Plaintiff has sustained special damages from this public nuisance.

148. Defendants, by reason of this public nuisance, are liable for all of the damages to plaintiff, including the cost to investigate a soil vapor problem in the Hillcrest area and install more than 150 SSDS systems on the Adjacent Properties, proximately caused by the Contamination, and investigation, remediation, cleanup, and removal of, and response to the Contamination.

**AS AND FOR AN EIGHT CAUSE OF ACTION
FOR EQUITABLE OR IMPLIED INDEMNIFICATION,
PLAINTIFF ALLEGES AS FOLLOWS:**

149. Plaintiff repeats and realleges the allegations of paragraphs “1” through “148” of this Complaint, as if set forth in this paragraph at length.

150. Defendants, including their officers, agents, servants, employees, and/or predecessors, had a non-delegable duty to plaintiff and their predecessors to prevent, clean up or ensure against the Contamination of the Adjacent Properties.

151. As a result of the breach of this duty by defendants, including their officers, agents, servants, employees, and/or predecessors, defendants are responsible for plaintiff’s past and future expenses and damages in investigation, remediation, cleanup, and removal of, and response to, the Contamination, and as a result, defendants should, in equity, indemnify plaintiff for some or all of its expenses, costs, and damages, to the extent not recoverable under CERCLA.

**AS AND FOR A NINTH CAUSE OF
ACTION FOR RESTITUTION,
PLAINTIFF ALLEGES AS FOLLOWS:**

152. Plaintiff repeats and realleges the allegations of paragraphs “1” through “151” of this Complaint, as if set forth in this paragraph at length.

153. It would be against equity and good conscience to permit defendants to pass the entire burden of cleaning up the Contamination to plaintiff, and to have had the benefit of enjoyment of the use of, or work on, the Adjacent Properties, free of any responsibility for investigation, remediation, cleanup, and removal of, and response to, the Contamination.

154. Therefore, defendants should make restitution to plaintiff for some or all of their expenses, costs, and damages, to the extent not recoverable under CERCLA.

WHEREFORE, plaintiff demands judgment against defendants as follows:

A. Awarding plaintiff approximately \$400,000 in past damages and response costs, with interest and future damages totaling the balance of the \$2.1 million sought by the NYSDEC.

B. Granting a permanent injunction ordering defendants to investigate the Contamination, and remove, remediate, clean up and respond to all of the Contamination from the Defendants' Properties and the Adjacent Properties.

C. Declaring that defendants are responsible for investigation, remediation, cleanup, and removal of, and response to the Contamination, and future response costs.

D. Awarding plaintiff its litigation costs, including its attorneys' fees and expert witness fees.

E. Awarding such other damages and further relief as this Court deems just and proper.

Dated: Binghamton, New York
June 24, 2011

s/Robert C. Murphy, Esq.

THE LAW OFFICE OF ROBERT MURPHY

Attorneys for Plaintiff
Robert C. Murphy, Esq., of Counsel
97 Riverside Drive
Binghamton, New York 13905
Tel: (607) 722-2122

KNAUF SHAW LLP

Attorneys for Plaintiff
Linda R. Shaw, Esq.,
Amy L. Reichhart, Esq., of Counsel
1125 Crossroads Building, 2 State Street
Rochester, New York 14614
Tel: (585) 546-8430

JURY DEMAND

Plaintiff demands trial by jury, pursuant to F.R.C.P. Rule 38(b).

Dated: June 24, 2011

s/Robert C. Murphy, Esq.

THE LAW OFFICE OF ROBERT MURPHY

Attorneys for Plaintiff

Robert C. Murphy, Esq., of Counsel

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Binghamton, New York 13905

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CAEUSA Inc.

(b) County of Residence of First Listed Plaintiff State of Florida (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Robert C. Murphy, Esq., of Counsel
97 Riverside Drive

DEFENDANTS

TRIPLE CITIES METAL FINISHING CORP.,
ZURENDA ENTERPRISES, INC., BINGHAMTON

County of Residence of First Listed Defendant Broome (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Another State, Foreign Nation, etc.).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. §9601, et seq.

Brief description of cause: Plaintiff seeks environmental response costs under federal and state statutes, as well as common law

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

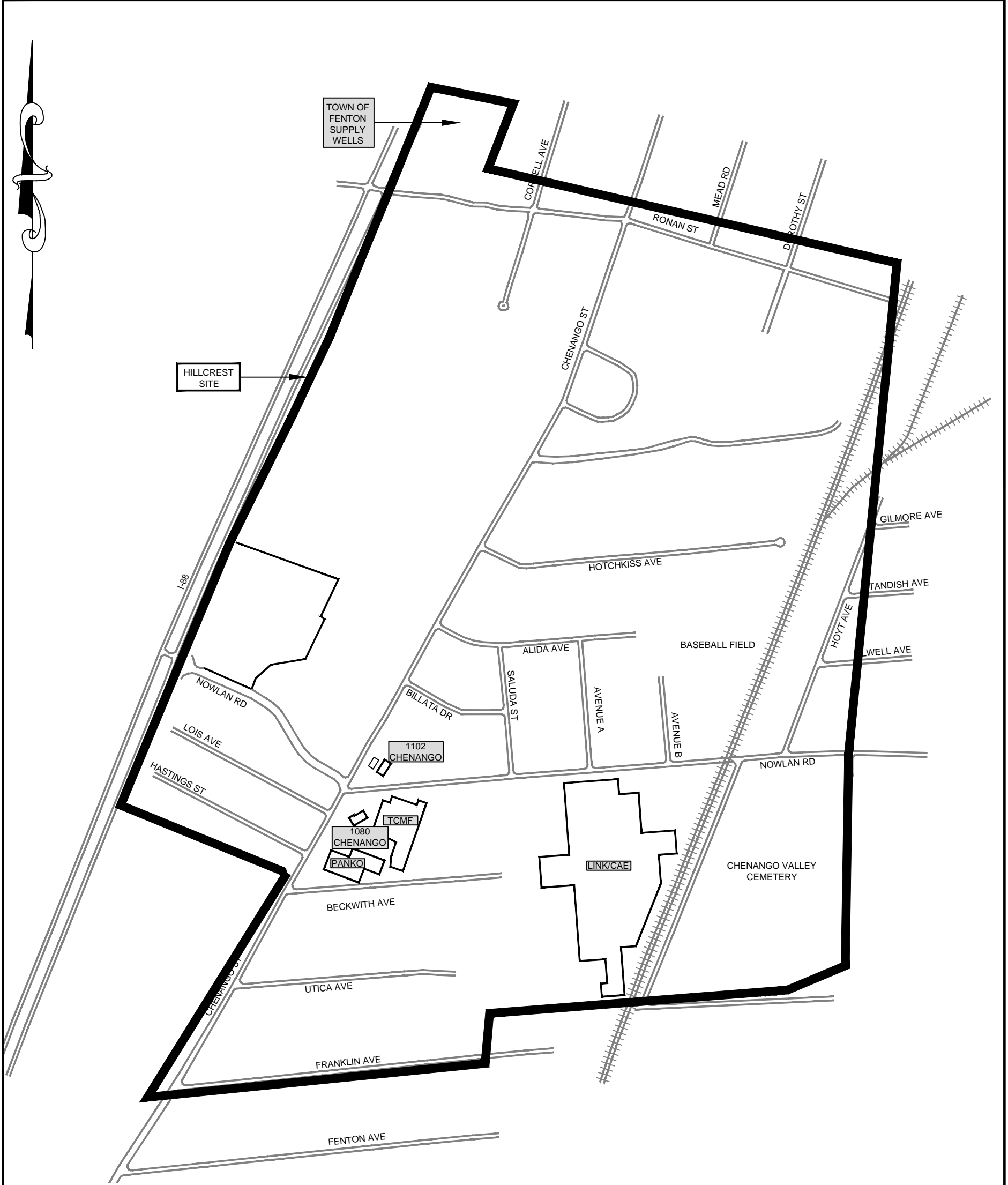
DATE SIGNATURE OF ATTORNEY OF RECORD

06/24/2011 s/Robert Murphy, Esq.

FOR OFFICE USE ONLY

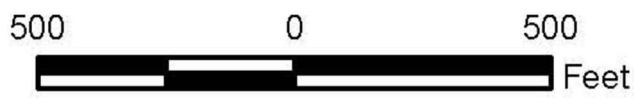
RECEIPT #1893510 AMOUNT \$350.00 APPLYING IFP JUDGE Kahn MAG. JUDGE Peebles

3:11-CV-0711 COMPLEX



HILLCREST SITE

TOWN OF FENTON SUPPLY WELLS




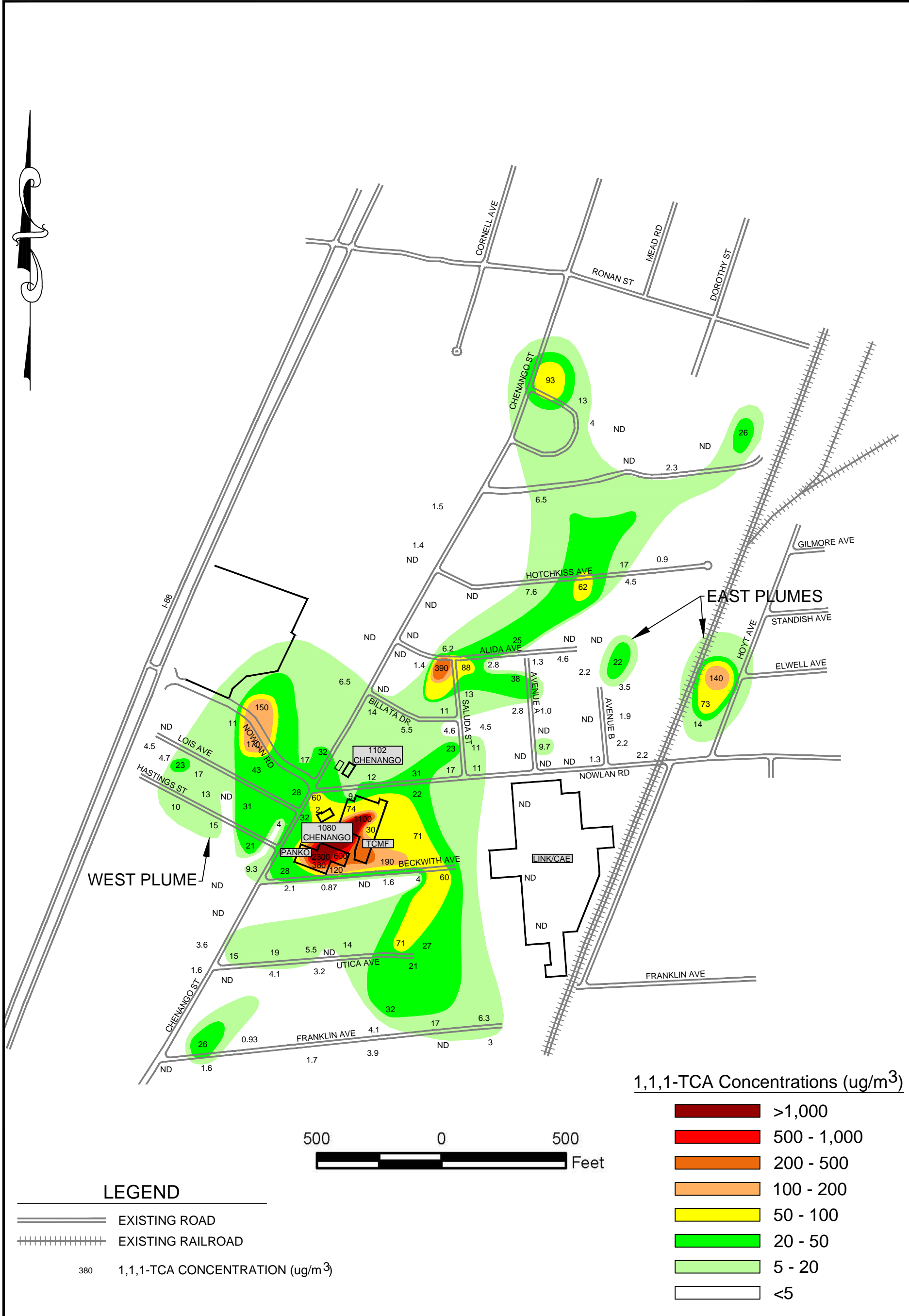
LEGEND

- EXISTING ROAD
- +++++ EXISTING RAILROAD
- █ HILLCREST SITE

SOURCE:
 BASE MAP FEATURES AND SOIL BORING LOCATIONS TAKEN FROM
 "HILLCREST & MONITORING WELL & SOIL BORING LOCATIONS"
 PREPARED BY URS AUGUST 7, 2008.

AREA SITE MAP

A	 <p>BRICKHOUSE ENVIRONMENTAL PROFESSIONAL GEOLOGISTS, SCIENTISTS AND ENGINEERS 515 S. FRANKLIN STREET; WEST CHESTER, PA 19382 PHONE: 610.692.5770 FAX: 610.692.8650 WWW.BRICKHOUSE-ENVIRONMENTAL.COM</p>	<p>HILLCREST, NEW YORK</p>	<p>PROJECT: 04-1110.3 FILE NO.: 041110.3SS-A DATE: 03/24/2011 SCALE: AS NOTED</p>
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LEGEND

- EXISTING ROAD
- +++++ EXISTING RAILROAD
- 380 1,1,1-TCA CONCENTRATION (ug/m^3)

1,1,1-TCA Concentrations (ug/m^3)

- >1,000
- 500 - 1,000
- 200 - 500
- 100 - 200
- 50 - 100
- 20 - 50
- 5 - 20
- <5

1,1,1-TRICHLOROETHANE (1,1,1-TCA) SOIL VAPOR CONTAMINANT PLUME (2003-2005)

BRICKHOUSE ENVIRONMENTAL
 PROFESSIONAL GEOLOGISTS, SCIENTISTS AND ENGINEERS
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 WWW.BRICKHOUSE-ENVIRONMENTAL.COM

HILLCREST, NEW YORK

PROJECT: 04-1110.3
 FILE NO.: 041110.3SVTC-C
 DATE: 03/24/2011
 SCALE: AS NOTED