

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of Remedial Investigation/Feasibility
Studies for two Inactive Hazardous Waste
Disposal Sites under Article 27, Title 13,
and Article 71, Title 27 of the
Environmental Conservation Law
of the State of New York by

ORDER
ON
CONSENT
INDEX # D1-0002-98-11

KeySpan Gas East Corporation, d/b/a
Brooklyn Union of Long Island, Respondent

Site Nos. 1-52-159 and 2-41-029

DEFINITIONS

For purposes of this Order,

- A. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 USC 9601 *et seq.*], as amended.
- B. "Commissioner" means the Commissioner of Environmental Conservation of the State of New York.
- C. "Department" means the New York State Department of Environmental Conservation.
- D. "ECL" means the Environmental Conservation Law of the State of New York.
- E. "Hazardous materials" means hazardous wastes; hazardous substances as that term is defined in 42 U.S.C. 9601(14), that are in violation of law or that exceed State environmental quality standards (as, those set forth in 6 NYCRR Part 703); MGP Residuals; and petroleum-based substances.
- F. "Hazardous waste," "IRM," "Remedial Investigation" (or "RI"), "Feasibility Study" (or "FS") have the meanings as set forth in 6 NYCRR 375-1.3.
- G. "LILCO" means the Long Island Lighting Company.
- H. "MGP" means manufactured gas plant.
- I. "MGP Residuals" means coal/coke ash, coal tar, purifier waste, or petroleum-based residues and other substances associated with MGP operations, including hazardous wastes as ECL 27-1301 defines that term, that MGP facilities formerly operating on the Site generated.
- J. "NCP" means the National Contingency Plan, set forth in 40 CFR Part 300.

K. "Reports" means the following evaluation and assessment reports that LILCO submitted to the Department on the Sites:

Date of Report	Title
	<i>For Sag Harbor:</i>
April 1997	"Phase I Site Investigation Report," Sag Harbor Manufactured Gas Plant, Fluor Daniel GTI, Inc.
	<i>For Rockaway Park:</i>
January 1997	"Phase I Site Investigation Report for the Rockaway Park Former Manufactured Gas Plant Site", Atlantic Environmental Division, GEI Consultants, Inc.

L. "Respondent" means KeySpan Gas East Corporation, d/b/a Brooklyn Union of Long Island, a business corporation organized under the laws of the State of New York. Respondent is the business entity formed from the merger of LILCO and the Brooklyn Union Gas Company.

M. "Sites" means the properties located in Rockaway Park, at Beach Channel Drive, Rockaway Park, Queens, having as its tax map identifier Section 62, Block 16166, Lots 110 and 155; and located at Sag Harbor at the east side of Bridge Street, Sag Harbor, Town of Southampton, Suffolk County, having as its tax map identifier District 0903, Section 2, Block 2, Lot 10.

N. "USEPA" means the United States Environmental Protection Agency.

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL 3-0301.

2. A. 1. By operation of merger, Respondent has come to own each of the Sites.

2. Neither Site has active MGP facilities on them but some or all of those facilities generated, *inter alia*, MGP Residuals. Other hazardous materials may have been disposed at each of the Sites, resulting from each Site's use after MGP operations ceased.

B. The Department commented on the Reports by the following: for Rockaway Park, a letter dated August 14, 1997 from the Department to Steven Dalton, LILCO; and for Sag Harbor, a letter dated September 10, 1997 from the Department to Mr. Dalton.

3. A. The Department's general authority over abatement and remediation of, *inter alia*, hazardous materials is derived from statutory provisions, including, but not limited to, ECL 1-0101, 3-0301, 71-1929, 71-2703, and 71-2705 and Navigation Law, Article 12.

B. In addition, the Department has the power, *inter alia*, to provide for the prevention and abatement of water, land, and air pollution.

C. Furthermore, the Department has the authority to require abatement and remediation of significant threats to human health or the environment caused by threatened releases of hazardous wastes.

1. Pursuant to that authority, the Department has determined that each of the Sites is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, and that the hazardous waste disposed at each of the Sites presents a significant threat to the public health or environment. The Sites have been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Numbers 1-52-159 (for Sag Harbor) and 2-41-029 (for Rockaway Park). The Department has classified each of the Sites as a Classification "2" pursuant to ECL 27-1305.4.b.

2. Pursuant to ECL 27-1313.3.a, whenever the Commissioner "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

3. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

4. Respondent, consistent with its commitment to environmental protection as an integral part of its corporate philosophy, and the Department agree that the goals of this Order, with respect to each of the Sites, are for Respondent to (i) develop and implement an RI/FS for the Site; (ii) remediate the hazardous materials released at the Site and located there or migrated therefrom, if the Department determines that remediation is needed, on a schedule and to an extent acceptable to the Department, (iii) develop and implement IRMs that the Department determines to be appropriate; and (iv) pay for the State's administrative and oversight costs associated with implementation of this Order.

5. Respondent, having waived Respondent's right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department

to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms. However, should the Department request that this Order be revised, Respondent reserves all of its rights provided by law with respect to such revision. Respondent also reserves all of its rights to oppose any action any person, including the Department and/or State of New York, may undertake with regard to the Site or environmental conditions on or off such Site, except where the Department acts pursuant to this Order, and in that case Respondent's rights are those provided by this Order.

6. Notwithstanding Respondent's consent to the issuance of this Order and its commitment to its obligations under this Order, Respondent does not admit or acknowledge any liability, fault or wrongdoing or violation of law, regulation or permit of any kind or in any way related to the Site. Respondent's consent to the issuance of this Order should not be interpreted as agreeing to or admitting any of the factual matters or interpretation of law contained in this Order.

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

I. Initial Submittal

Within 30 days after the effective date of this Order, Respondent shall submit to the Department all data within Respondent's possession or control regarding MGP Residuals and other hazardous materials that may have been disposed of on-Site and off-Site at each of the Sites, and other information described below, unless Respondent informs the Department that such data have previously been provided to the Department and provides an adequate reference to, and in, the document that provided such information. The data and other information shall include:

A. A brief history and description of each of the Sites, including the types, quantities, physical state, location, and dates of disposal of hazardous materials, including methods of disposal and spillage of such hazardous materials;

B. A concise summary of factual and data information held by Respondent and Respondent's attorneys and consultants with respect to all persons responsible for such disposal of hazardous materials, including but not limited to names, addresses, dates of disposal and any proof linking each such person responsible with hazardous materials identified pursuant to this Paragraph I; and

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs to the extent LILCO or Respondent has not already done so.

II. RI/FS Work Plan Contents and Submittals

A. The Department reviewed the Reports and determined that additional data need to be obtained to complete an acceptable RI/FS for the Site. Accordingly, within 30 days after the effective date of this Order, Respondent shall submit to the Department an RI/FS Work Plan as described in Subparagraph II.B of this Order for each of the Sites ("RI/FS Work Plan" for each of the Sites).

B. 1. The RI/FS Work Plan for each of the Sites shall include, but not be limited to, the following:

a. A chronological description of the anticipated RI/FS activities together with a schedule for the performance of these activities.

b. A Sampling and Analysis Plan that shall include:

(i) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience.

(ii) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Field Methods Compendium," OSWER Directive 9285.2-11 (draft June 1993), as supplemented by the Department.

c. A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the RI/FS which shall be prepared in accordance with 29 CFR 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.

d. A citizen participation plan that is, at a minimum, consistent with the Department's publication, "Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook," dated June 1998, and any subsequent revisions thereto, and 6 NYCRR Part 375. Any document repositories that may be created as part of a required citizen participation plan pertaining to a Site will contain documents only for such Site.

2. The RI/FS Work Plan for each of the Sites shall incorporate all elements of a RI/FS as set forth in CERCLA, the NCP, the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.

3. If the Department disapproves the RI/FS Work Plan, Respondent may dispute such disapproval under the provisions of Paragraph XVII of this Order if Respondent files a Statement of Position within 45 days of the Department's disapproval.

III. Performance and Reporting of Remedial Investigation

A. Respondent shall commence the Remedial Investigation for each of the Sites in accordance with the schedule contained in the Department-approved RI/FS Work Plan for that Site.

B. Respondent shall perform the Remedial Investigation for each of the Sites in accordance with the Department-approved RI/FS Work Plan for that Site.

C. During the performance of the Remedial Investigation, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within the time frame set forth in the Department-approved RI/FS Work Plan for each of the Sites, Respondent shall prepare a Remedial Investigation Report that shall:

1. include all data generated and all other information obtained during the Remedial Investigation for that Site:

2. provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph II.B.2;

3. identify any additional data that must be collected; and

4. include a certification by the individual or firm with primary responsibility for the day to day performance of the Remedial Investigation that all activities that comprised the Remedial Investigation were performed in full accordance with the Department-approved RI/FS Work Plan for that Site.

IV. Feasibility Study

A. In accordance with the schedule contained in the Department-approved RI/FS Work Plan for each of the Sites, Respondent shall submit a complete Feasibility Study evaluating on-Site and off-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards associated with disposal of hazardous materials at the Site. The Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order.

B. Respondent shall perform and prepare the Feasibility Study for each of the Sites

in accordance with the Department-approved RI/FS Work Plan and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph II.B.2.

C. After the Department's approval of the Feasibility Study for a Site, Respondent shall cooperate and assist the Department in soliciting public comment on the RI/FS for that Site and on the proposed remedial action plan, in accordance with CERCLA, the NCP, the guidance documents identified in Subparagraph II.B.2, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. If the Department disapproves Respondent's Feasibility Study, Respondent may dispute such disapproval under the provisions of Paragraph XVII if Respondent files a Statement of Position within 45 days of the Department's disapproval.

After the close of the public comment period, the Department shall select a final remedial alternative for the site in a Record of Decision ("ROD"). The ROD shall be incorporated into and become an enforceable part of this Order.

V. Remedial Design Contents

A. Unless the ROD selects the "no action" alternative, within such period of time after the ROD is signed that the Department shall prescribe in writing, Respondent shall submit to the Department a remedial design to implement the remedial alternative for the Site selected by the Department in the ROD (the "Remedial Design"). The Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design was prepared in accordance with this Order.

B. The Remedial Design shall include the following:

1. A detailed description of the remedial objectives and the means by which each element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:

- a. the construction and operation of any structures;
- b. the collection, destruction, treatment, and/or disposal of hazardous materials and their constituents and degradation products, and of any soil or other materials contaminated thereby;
- c. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;
- d. physical security and posting of the Site;
- e. quality control and quality assurance procedures and protocols to

be applied during implementation of the Remedial Construction; and

f. monitoring which integrates needs which are present on-Site and off-Site during implementation of the Department-selected remedial alternative.

2. "Biddable Quality" documents for the Remedial Design including, but not limited to, documents and specifications prepared, signed, and sealed by a professional engineer. These plans shall satisfy all applicable local, state and federal laws, rules and regulations;

3. A time schedule to implement the Remedial Design;

4. The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design, including a schedule for periodic sampling of groundwater monitoring wells on-Site and off-Site;

5. A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design, including the number of years during which such activities will be performed (where appropriate) a specific description of the criteria to be used to decide when an operation of the remedy may be discontinued.

6. A contingency plan to be implemented if any element of the Remedial Design fails to achieve any of its objectives or otherwise fails to protect human health or the environment;

7. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction. This plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional; and

8. A citizen participation plan which incorporates appropriate activities outlined in the Department's publication, "Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook," dated June 1998, and any subsequent revisions thereto, and 6 NYCRR Part 375.

VI. Remedial Construction

A. Within such period of time after the Department's approval of the Remedial Design for a Site as the Department shall prescribe, Respondent shall commence construction of the Department-approved Remedial Design for that Site.

B. Respondent shall implement the Remedial Design in accordance with the Department-approved Remedial Design.

C. During implementation of all construction activities identified in the Remedial Design, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. 1. Respondent shall submit to the Department a detailed post-remedial operations and maintenance plan ("O&M Plan"), to the extent necessary, by the completion of the construction activities identified in the Remedial Design.

2. Within 90 days after completion of the construction activities identified in the Department-approved Remedial Design for a Site, Respondent shall submit to the Department a final engineering report. The final engineering report shall include "as built" drawings showing all changes made to the Remedial Design during construction, to the extent necessary; and a certification by a professional engineer that the Remedial Design for the Site was implemented and all construction activities were completed in accordance with the Department-approved Remedial Design for that Site and were personally witnessed by him or her or by a person under his or her direct supervision. The O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

E. Upon the Department's approval of the O&M Plan, Respondent shall implement the O&M Plan in accordance with the requirements of the Department-approved O&M Plan.

F. After receipt of the "as-built" drawings, final engineering report, and certification, the Department shall notify Respondent in writing whether the Department is satisfied that all construction activities have been completed in compliance with the Department-approved Remedial Design.

G. If the Department concludes that any element of the Department-approved Remedial Program fails to achieve its objectives or otherwise fails to protect human health or the environment, Respondent shall take whatever action the Department determines necessary to achieve those objectives or to ensure that the Remedial Program otherwise protects human health and the environment.

VII. Interim Remedial Measures

A. Respondent may propose one or more IRMs for either of the Sites.

B. In proposing each IRM, Respondent shall submit to the Department a work plan that includes a chronological description of the anticipated IRM activities together with a schedule for performance of those activities (an "IRM Work Plan" for that Site).

C. Upon the Department's determination that the proposal is an appropriate IRM and upon the Department's approval of such work plan, the IRM Work Plan shall be incorporated

into and become an enforceable part of this Order; and Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved IRM Work Plan, detailed documents and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan prepared by a certified health and safety professional in accordance with 29 CFR 1910, contingency plan, and (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication, "Citizen Participation in New York's Hazardous Waste Site Remediation Program: A Guidebook," dated June 1998, and any subsequent revisions thereto, and 6 NYCRR Part 375. Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this Order. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department.

D. During implementation of all construction activities identified in the Department-approved IRM Work Plan, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

E. 1. If the performance of the Department-approved IRM encompassed construction activities, Respondent shall submit to the Department a detailed post-construction operations and maintenance plan ("IRM O&M Plan") to the extent necessary, by the completion of the construction activities identified in the Department-approved IRM Work Plan.

2. Within the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by that individual that all activities that comprised the Department-approved IRM were completed in accordance with the Department-approved IRM Work Plan and this Order.

3. If the performance of the Department-approved IRM encompassed construction activities, the final engineering report also shall include "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification by a professional engineer that the IRM was implemented and all construction activities were completed in accordance with the Department-approved detailed documents and specifications for the IRM and all such activities were personally witnessed by him or her or by a person under his or her direct supervision. The IRM O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

4. Upon the Department's approval of the IRM O&M Plan, Respondent shall implement the IRM O&M Plan in accordance with the requirements of the Department-approved IRM O&M Plan.

F. After receipt of the final engineering report and certification, the Department shall notify Respondent in writing whether the Department is satisfied that the IRM was completed in compliance with the Department-approved IRM Work Plan and design.

VIII. Progress Reports and Job Meetings

Respondent shall submit to the parties identified in Subparagraph XVI.A.1 and XVI.B in the numbers specified therein copies of written monthly progress reports that:

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

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

C. identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;

D. describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Sites;

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

F. include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and

G. describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

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

IX. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for health and safety plans. If the Department disapproves the revised submittal, Respondent shall have the right to exercise the dispute resolution procedure described in Paragraph XVII of this Order. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 15 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

X. Penalties

A. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL. Nothing in this Order precludes Respondent from contesting in a Department hearing any possible future Department allegations that Respondent failed to comply with this Order or from contesting any penalty for an alleged failure to comply.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable event which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate

extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this Subparagraph X.B.

XI. Entry upon Site

Subject to conditions which may be prescribed in a Site's health and safety plan, Respondent hereby consents to the entry upon the Sites or areas in the vicinity of each of the Sites which may be under the control of Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order.

XII. Payment of State Costs

Respondent shall make payments for the State's expenses (including, but not limited to, direct labor and fringe benefits, overhead, travel, analytical costs, and contractor costs) incurred by the State of New York, to fund work associated with the Site to the effective date of this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with administering the requirements of this Order in accordance with the provisions of Paragraph VI of Department Order Index No. D1-0001-98-11.

XIII. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's civil, criminal, or administrative rights (including, but not limited to, nor exemplified by, the right to recover natural resource damages) or authorities.

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

XIV. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns; provided, however, that Respondent shall not indemnify the Department, the State of New York, and their representatives and employees in the event that such claim, suit, action, damages, or cost relate to or arise from any unlawful, willful, grossly negligent, or malicious acts or omissions on the part of the Department, the State of New York,

or their representatives and employees.

XV. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Clerk of the County wherein each Site is located to give all parties who may acquire any interest in each of the Sites notice of this Order.

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

XVI. Communications

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

1. Communication from Respondent shall be sent to:

James Van Hoesen, P.E.
Chief, Central Field Services Section
Bureau of Construction Services
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

with copies to:

Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

and to:

Mr. Raymond Cowen (for the Sag Harbor site)
Regional Director (Region 1)
New York State Department of Environmental Conservation
SUNY, Building 40
Stony Brook, NY 11790-2356

and

Ms. Mary Ellen Kris (for the Rockaway Park Site)
Regional Director (Region 2)
New York State Department of Environmental Conservation
1 Hunters Point Plaza
Long Island City, New York 11101-5407

and

Charles E. Sullivan, Jr., Esq.
Director
Division of Environmental Enforcement
New York State Department of Environmental Conservation
50 Wolf Road, Room 627
Albany, New York 12233-5500

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

Mr. Lawrence H. Liebs
Managing Director
KeySpan Gas East Corporation
One Metro Tech Center
Brooklyn, New York 11201

with copies to:

Steven Zelkowitz, Esq.
Deputy General Counsel
KeySpan Gas East Corporation
One Metro Tech Center
Brooklyn, New York 11201

and to

Dennis P. Harkawik, Esq.
Jaecle Fleischmann & Mugal, LLP
700 Fleet Bank Building
Twelve Fountain Plaza
Buffalo, New York 14202

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

Four copies (one unbound) to Mr. Van Hoesen

Two copies to the Director, Bureau of Environmental Exposure Investigation

One copy each to Mr. Cowen and to Ms. Kris.

C. 1. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to Director, Division of Environmental Remediation, a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

2. Within 30 days after the Department's approval of the drawings and submittals described in Subparagraph VI.D of this Order, Respondent shall submit one microfilm copy (16 millimeter roll film M type cartridge) of such Department-approved drawings and submittals, as well as all other Department-approved submittals (including the RI/FS, to the Director, Division of Environmental Remediation.

D. The Department and Respondent reserve the right to designate additional or different addressees for communication or written notice to the other.

XVII. Dispute Resolution

A. If after conferring in good faith for a period not to exceed 30 days, there remains a dispute between Respondent and the Department concerning a provision of this Order identified as subject to this Paragraph XVII's procedures, Respondent shall be in violation of that provision unless within the time period provided in that provision Respondent shall serve on the Department a request for an appointment of an Administrative Law Judge ("ALJ"), and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis, or opinion supporting its position, and all supporting documentation on which Respondent relies (hereinafter called the "Statement of Position"). The Department shall serve upon Respondent its Statement of Position, including supporting documentation no later than ten (10) business days after receipt of Respondent's Statement of Position. Respondent shall have five (5) business days after receipt of the Department's Statement of Position within which to serve upon the Department a reply to the Department's Statement of Position, and in the event Respondent serves such a reply, the Department shall have five (5) business days after receipt of Respondent's reply to the Department's Statement of Position within which to serve upon Respondent the Department's reply to Respondent's reply to the Department's Statement of Position. In the event that the periods for exchange of Statements of Position and replies may cause a delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice by the Department as agreed to by Respondent.

B. The Department shall maintain an administrative record of any dispute being addressed under this Paragraph XVII. The record shall include the Statement of Position of each

party served pursuant to Subparagraph XVII.A and any relevant information. The record shall be available for review of all parties and the public.

C. Upon review of the administrative record as developed pursuant to this Paragraph XVII, the ALJ shall issue a final decision and order resolving the dispute. If the matter in dispute concerns a submittal,

1. Respondent shall revise the submittal in accordance with the Department's specific comments, as may be modified by the ALJ and except for those which have been withdrawn by the ALJ, and shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless the ALJ revises the time frame in the ALJ's final decision and order resolving the dispute.

2. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval of the revised submittal.

3. If the revised submittal fails to address the Department's specific comments, as may be modified by the ALJ, and the Department disapproves the revised submittal for this reason, Respondent shall be in violation of this Order and the ECL.

D. In review by the ALJ of any dispute pursued under this Paragraph XVII, Respondent shall have the burden of proving by a preponderance of the evidence that the Department's position should not prevail.

E. A deadline involving any matter that is the subject of the dispute resolution process described in this Paragraph XVII shall be held in abeyance while it is the subject of the dispute resolution process unless the Department and Respondent otherwise agree in writing. The invocation of the procedures stated in this Subparagraph shall constitute an election of administrative remedies by Respondent, and such election of this remedy shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Respondent regarding the issue in dispute.

XVIII. Management of Respondent's Investigation and Remediation Responsibilities Under This and Other Orders

A. Respondent has agreed to accept a significant share of liability for investigating and remediating former MGP sites in this State under this Order and other Orders that have been issued, including sites within the service area of the former Long Island Lighting Company. Respondent believes that the implementation of investigation and remediation responsibilities under these Orders will result in significant changes in fiscal and staff resource commitments from year to year.

B. In order to

1. Enhance Respondent's ability to efficiently manage investigation and remediation programs at multiple MGP sites, and

2. Provide and manage annual fiscal and staff resource commitments to implement its responsibilities under various Orders,

Respondent has the option to propose a plan to levelize future annual costs or project milestones at some or all of its sites under Department Orders.

C. Respondent agrees to provide the Department with the following information should it request from the Department a levelization of future annual costs or project milestones:

1. A discussion of the allocation of resources for all MGP site investigations and remediations to be affected under a cost or project milestone levelization proposal, to avoid impacts to human health and the environment;

2. A schedule for all MGP site project milestones to be affected under a cost or project milestone cost levelization proposal so as to avoid unnecessary delay;

3. An explanation of the financial and resource management reasons for the cost or project milestone levelization proposal;

4. A discussion of Respondent's interactions with the New York State Public Service Commission regarding the cost or project milestone levelization proposal; and

5. Any other ^{reasonable} information the Department may specify.

D. The Department shall not unreasonably deny such plan proposed by Respondent, so long as Respondent provides the information described in Subparagraph XVIII.C of this Order to the Department to justify its proposal and assures the Department that work,

1. At any site classified as a Class 1 or 2 on the Registry of Inactive Hazardous Waste Disposal Sites; or

2. Needed to address circumstances the Department considers to be imminent and substantial endangerments to the public health or to the environment,

is not delayed or hindered by Respondent's proposal.

E. Respondent may make a proposal to levelize costs at any time before termination of this Order or any other Department Order involving investigation and remediation of a former MGP site.

XIX. Miscellaneous

A. 1. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous materials at each of the Sites.

2. All activities Respondent is required to undertake under this Order are ordinary and necessary expenses for the continued operation of Respondent.

3. All activities and payments required by this Order are necessary to protect the public health or welfare or the environment, are in the public interest, and are consistent with CERCLA.

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. Respondent shall submit to the Department a summary of the experience, capabilities, and qualifications of the firms or individuals. Respondent must obtain the Department's approval of these firms or individuals before the initiation of any activities for which Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent. The Department understands and agrees that any professional consultants, contractors, laboratories, and quality assurance/quality control personnel not employees of Respondent ("outside consultants") may not alter Respondent's obligations under this Order nor modify this Order.

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

D. If feasible, Respondent shall notify the Department at least ten business days in advance of any field activities to be conducted pursuant to this Order. If ten business days' advance notice is not feasible, Respondent shall provide as much advance notice to the Department as is practical under the circumstances. The Department's project manager is hereby authorized to approve any modification to an activity to be conducted under a Department-approved work plan in order to adapt the activities to be undertaken under such work plan to the conditions actually encountered in the field provided that such modification does not impair the effectiveness of the investigation or potential remediation of either Site or other area covered by

the RI for that Site.

E. Respondent shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order. If Respondent is unable, after exhaustion of such reasonable efforts, to obtain any such permissions, the Department will exercise whatever authority is available to it, in its discretion, to obtain same. In no event will Respondent be determined to be in violation of this Order if it fails to obtain any such permissions after exhausting reasonable efforts to obtain same.

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

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

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

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

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

K. 1. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as

may be required by this Order.

2. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Mr. VanHoesen and to Mr. Sullivan.

L. The effective date of this Order is the date the Commissioner or his designee signs it.

M. Nothing in this Order prevents or hinders Respondent from seeking cost recovery from parties responsible for contamination migrating onto either Site from an off-Site source. If the party responsible for such contamination is under an Order of the Department to remediate the contamination at either Site, the Department agrees to require the party responsible to take all necessary remedial efforts, consistent with the Department's remedial program for that other site, to prevent further migration of contamination onto either Site, if Respondent demonstrates to the Department's satisfaction that said party is responsible for the contamination.

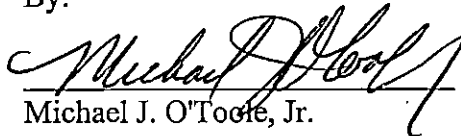
DATED:

March 31, 1999

JOHN P. CAHILL, COMMISSIONER

New York State Department of Environmental Conservation

By:


Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

Respondent hereby waives its right to a hearing herein as provided by law; consents to the issuance and entry of this Order; and agrees to be bound by its terms, not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and not to contest the validity of this Order or its terms.

KeySpan Gas East Corporation \

By:

Anthony J. DiBrito
Anthony J. DiBrito
Senior Vice President

Date signed:

3/30/99

STATE OF NEW YORK)

)

ss.

COUNTY OF KINGS)

On this 30th day of March, 1999, before me personally appeared Anthony J. Di Brito, to me known, who, being duly sworn, did depose and say that he resides in Nassau County; that he is Senior Vice President of KeySpan Gas East Corporation; that he executed the foregoing instrument on behalf of KeySpan Gas East Corporation; and that he signed his name thereto by like order.

Gina M. Becker

Notary Public State of New York

Registration Number: 01BE5031734

My Commission Expires: 8/8/00

GINA M. BECKER
Notary Public, State of New York
No. 01BE5031734
Qualified in Kings County
Commission Expires Aug. 8, 20 00