

**NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION**

In the Matter of the
Development and Implementation
of Remedial Programs for
Former Manufactured Gas Plants and
Gas Holder Locations under
Article 27, Title 13 of the
Environmental Conservation Law
by

Brooklyn Union Gas Company d/b/a
KeySpan Energy Delivery New York &
KeySpan Gas East Corporation d/b/a
KeySpan Energy Delivery Long Island,

Respondents.

**ORDER ON CONSENT
and
ADMINISTRATIVE
SETTLEMENT**

Index # A2-0552-0606

Multiple
Sites

WHEREAS,

1. A. The New York State Department of Environmental Conservation (“Department”) is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law (“ECL”) and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 3, Title 1 of the ECL.

C. This Order on Consent and Administrative Settlement (“Order & Settlement Agreement”) is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13, ECL Article 71, Title 27, and ECL § 3-0301, and resolves Respondent's liability to the State under the “Comprehensive Environmental Response, Compensation, and Liability Act of 1980”, as amended (“CERCLA”), 42 U.S.C. § 9601 *et seq.*, to the extent set forth herein. It is the intent of the Department and KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island (together and individually “KeySpan” or the “Respondent”) that this Order & Settlement Agreement constitutes an administrative settlement within the meaning of CERCLA § 113(f)(2), § 113(f)(3)(B), 42 U.S.C. § 9613(f)(2), § 9613(f)(3)(B) and is a settlement under, *inter alia*, ECL Article 27, Title 13, ECL Article 71, Title 27, and ECL § 3-0301. Accordingly, pursuant to CERCLA § 113 (f)(3)(B), 42 U.S.C. § 9613(f)(3)(B), Respondent may seek

contribution from persons not parties to this Order & Settlement Agreement to the extent set forth in Subparagraph XIV.I. Such efforts by Respondent will be supported by the Department in such manner as the Department reasonably deems appropriate.

2. KeySpan is a New York corporation with offices at One MetroTech Center, Brooklyn, New York 11201.

3. Respondent is currently subject to the following Orders and/or Agreements with respect to the following sites which are more particularly described in Exhibit "A" Table 2:

A. Order on Consent D2-001-94-12 for Investigation and Interim Remedial Measures with respect to the Coney Island Manufactured Gas Plant ("MGP") Site (listed in the *Registry of Inactive Hazardous Waste Sites In New York State* ("*Registry*") as a Class 2 Site) in Brooklyn, NY;

B. Order on Consent Index # D2-0001-98-04 for Investigation and Remediation with respect to the Clifton MGP Site in Staten Island NY;

C. Order on Consent Index # D1-0001-98-11 for Investigation and Remedial Response Program with respect to the Bay Shore MGP Site in the Town of Islip, NY; Hempstead MGP Site in the Town of Hempstead, NY; and Glen Cove MGP Site in the City of Glen Cove, NY; and Halesite MGP Site in the Town of Huntington, NY;

D. Order on Consent Index # D1-0002-98-11 for Remedial Investigation/Feasibility Studies for Sag Harbor MGP Site (listed in the *Registry* as a Class 2 Site) in the Town of Southampton, NY; and Rockaway Park MGP Site (listed in the *Registry* as a Class 2 Site) in Queens, NY;

E. Order on Consent Index # D1-0001-99-05 for Preliminary Site Assessment of Patchogue MGP Site in the Town of Brookhaven, NY; Far Rockaway MGP Site in Queens, NY; Clinton (Hempstead) Road MGP Site in the Town of Hempstead, NY; Babylon MGP Site in the Town of Babylon, NY; and Garden City MGP Site in the Town of Hempstead, NY;

F. Agreement Index # D1-0002-99-05 for Investigation of Watchogue Creek MGP Site in the Town of Islip, NY;

G. Voluntary Cleanup Agreement Index # R1-0001-01-01 for a Remedial Response Program for Glenwood Landing Propane Plant and Compressor Station in the town of Oyster Bay, NY;

H. Voluntary Cleanup Agreement Index # A2-0460-0502 for Remedial Investigation/Feasibility Study with respect to the Citizens Gas Works MGP Site in Brooklyn, NY;

I. Voluntary Cleanup Agreement Index # W2-1062-05-03 for the remediation of four (4) non-contiguous parcels related to the Liquified Natural Gas Plant within the Greenpoint Energy Center in Brooklyn, NY;

J. Order on Consent and Administrative Settlement Index # A2-0523-0705 for a Remedial Investigation Program with respect to the Gowanus Canal in Brooklyn, NY;

K. Voluntary Cleanup Agreement Index # D2-0002-99-10 for Investigation and, if needed, Remediation of the Newtown Holder Station in Elmhurst, NY; and

L. Order on Consent Index # W2-1090-06-06, for Remediation of the Nassau Works MGP Site, Brooklyn, NY (part of Brooklyn Navy Yard OU-2; listed on the *Registry* as a Class 2 Site).

M. Voluntary Cleanup Agreement Index # R2-0330-98-01, for Implementation of a Response Program for LILCO - Edgemere Substation, in Rockaway, Queens, NY.

4. A. Respondent is the owner or formerly owned and/or operated MGP Sites (individually “Site”; collectively “Sites”) at the following locations at which, *inter alia*, coal tar and associated hazardous substances (“MGP Wastes”) were or may have been disposed at various times in the past and which are the subject of this Order & Settlement Agreement: (1) Brooklyn, NY: Peoples Works MGP Site; Dangman Park MGP Site; (2) Queens, NY: Far Rockaway MGP Site; Jamaica Gas Light Co. MGP Site; (3) Town of Brookhaven, NY: Patchogue MGP Site; (4) Babylon, NY: Babylon MGP Site. These MGP Sites, are more particularly described in Exhibit “A” - Table 1 attached hereto and are not currently listed in the *Registry*.

B. Respondent is the owner or formerly owned and/or operated gas holder (“Holder”) Stations (individually “Site”; collectively “Sites”) at the following locations at which, *inter alia*, MGP Wastes were or may have been disposed at various times in the past and which are the subject of this Order & Settlement Agreement: (1) Brooklyn, NY: Front Street Holder Station; Rutledge Street Holder Station; Skillman Street Holder Station; Keap Street Holder Station; Bay Ridge Holder Stations A & B; (2) Queens, NY: Jamaica Holder Station; (3) E. Garden City, NY: E. Garden City Holder Station; (4) Long Beach, NY: Long Beach Holder Station. These Holder Sites are more particularly described in Exhibit “A” - Table 1 attached hereto and are not currently listed in the *Registry*.

C. The Department and Respondent recognize that these MGP and Holder Sites have the potential to release MGP Wastes. The Department and KeySpan recognize that implementation of this Order & Settlement Agreement will expedite the cleanup of the Sites. The Department and Respondent further agree that the settlement set forth herein will avoid potentially prolonged and complicated litigation, and that this Order & Settlement Agreement is mutually acceptable, fair, reasonable, and in the public interest.

D. The Department and Respondent acknowledge that Respondent is regulated by the Public Service Commission (“PSC”) of the State of New York. Costs incurred for site

investigation and remediation activities must be reviewed and approved by the PSC in order to be recoverable through rates. The Department will support Respondent's position that any necessary and appropriate response actions by Respondent were required to address Respondent's liability for such activities.

5. In addition to the MGP and Holder sites listed in Paragraphs 3 and 4 above, Respondent is the owner or formerly owned and/or operated a number of other sites, including MGP and Holder Sites, not currently the subject of existing orders or agreements and not included in this Order & Settlement Agreement at this time, but which may be included in this Order & Settlement Agreement in the future. These other known sites are more particularly described in Exhibit "A" - Table 3.

6. A. The Department alleges that Respondent is a "covered person" as defined in CERCLA § 107(a), 42 U.S.C. § 9607(a), that each Site is a "facility" as defined in CERCLA § 101(9), 42 U.S.C. § 9601(9) and that Respondent is liable to the State of New York under CERCLA § 107(a) for the response actions related to investigation work activities required by this Order & Settlement Agreement.

B. Respondent consents to the Department's issuance of this Order & Settlement Agreement with respect to the MGP Sites listed in Paragraph 4.A above and Holder Sites listed in Paragraph 4.B above, and on Exhibit "A" - Table 1, without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from any of the Sites; or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from any of the Sites constitutes a significant threat to the public health or the environment.

7. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order & Settlement Agreement, and 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 & Settlement Agreement, and agrees not to contest the validity of this Order & Settlement Agreement or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order & Settlement Agreement.

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

I. Initial Submittal- Records Search Reports

Respondent shall submit to the Department a Records Search Report for each of the Sites, in accordance with the requirements of Exhibit "F" attached hereto, as follows:

1. Within thirty (30) Days after the effective date of this Order & Settlement Agreement, for Sites 1 through 7 listed on Exhibit "A" – Table 1.

2. Within sixty (60) Days after the effective date of this Order & Settlement Agreement, for Sites 8 through 14 listed on Exhibit “A” – Table 1.

The Records Search Report can be limited if the Department notifies Respondent that prior submissions satisfy specific items required for the Records Search Report. Such Records Search Report shall be submitted in a format acceptable to the Department.

II. Development, Performance, and Reporting of Work Plans

A. Work Plans

All activities at any Site that comprise any element of an Inactive Hazardous Waste Disposal Site Remedial Program shall be conducted pursuant to one or more Department-approved work plans (“Work Plan” or “Work Plans”) for each Site and this Order & Settlement Agreement, and all activities shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”), 40 C.F.R. Part 300, as required under CERCLA, 42 U.S.C. § 9600 *et seq.* The Work Plan(s) under this Order & Settlement Agreement shall address both on-Site and off-Site conditions and shall be developed and implemented in accordance with 6 NYCRR Part 375, “DER-10, Technical Guidance for Site Investigation and Remediation,” and/or Exhibits G, H, I, J, and K of this Order & Settlement Agreement. All Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order & Settlement Agreement and shall be attached as Exhibit “B.” Upon approval of a Work Plan by the Department, Respondent shall implement such Work Plan in accordance with the schedule contained in such Work Plan. Nothing in this Subparagraph shall mandate that any particular Work Plan be submitted.

Each Work Plan submitted for each Site shall use one of the following captions on the cover page:

1. “Site Characterization Work Plan” (“SC Work Plan”): a Work Plan whose objective is to identify the presence of any hazardous waste disposed of at the Site. Such Work Plan shall be developed in accordance with Exhibit “G”;
2. “Remedial Investigation/Feasibility Study Work Plan” (“RI/FS Work Plan”): a Work Plan whose objective is to perform a Remedial Investigation and a Feasibility Study. Such Work Plan shall be developed and implemented in accordance with Exhibit “H”;
3. “Interim Remedial Measure Work Plan” (“IRM Work Plan”): a Work Plan whose objective is to provide for an Interim Remedial Measure. Such Work Plan shall be developed in accordance with Exhibit “I”;
4. “Remedial Design/Remedial Action Work Plan” (“RD/RA Work Plan”): a Work Plan whose objective is to provide for the development and implementation of final plans and specifications for implementing the remedial alternative set forth in the ROD. Such Work Plan shall be developed in accordance with Exhibit “J”; or

5. “Site Management Work Plan” (“SM Work Plan”): a Work Plan whose objective is to provide for all activities required to maintain and monitor the effectiveness of the Remedial Action or an IRM. Such Work Plan shall be developed in accordance with Exhibit “K.”

B. Submission/Implementation of Work Plans

1. (a) The first Work Plan for each of the Sites referred to in Paragraphs 4.A and 4.B and listed on Exhibit “A” shall be submitted to the Department in accordance with the schedule on Exhibit “A” Table 1.

(b) The Department may request that Respondent submit additional or supplemental Work Plans for each of the Sites. Within thirty (30) Days after the Department’s written request, Respondent shall advise the Department in writing whether it will submit and implement the requested additional or supplemental Work Plan for the Site or whether it elects to terminate this Order & Settlement Agreement with respect to the Site pursuant to Paragraph XIII. If Respondent elects to submit and implement such Work Plan, Respondent shall submit the requested Work Plan within sixty (60) Days after such election. If Respondent elects to terminate this Order & Settlement Agreement with respect to the Site or fails to make a timely election, this Order & Settlement Agreement shall terminate with respect to the Site pursuant to Paragraph XIII.

(c) Respondent may, at Respondent’s option, propose one or more additional or supplemental Work Plans (including one or more IRM Work Plans) at any time, which the Department shall review for appropriateness and technical sufficiency.

(d) Any request made by the Department under Subparagraph II.B.1.(b) shall be subject to dispute resolution pursuant to Paragraph XII.

2. A Professional Engineer must stamp and sign all Work Plans other than a Work Plan for an RI/FS or an SC.

3. During all field activities, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken. Such representative may be an employee or a consultant retained by Respondent to perform such supervision.

C. Modifications to Work Plans

The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph II.A or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall, subject to Respondent’s right to invoke dispute resolution pursuant to Paragraph XII or to terminate with respect to the Site pursuant to Paragraph XIII,

submit a Work Plan for such requested work to the Department within sixty (60) Days after the date of the Department's written notice pursuant to this Subparagraph.

D. Submission of Final Reports and Annual Reports

1. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report that includes the caption of that Work Plan on the cover page and a certification that all requirements of the Work Plan have been complied with and all activities have been performed in full accordance with such Work Plan. Such certification shall be by the person with primary responsibility for the day to day performance of the activities under this Order & Settlement Agreement and, except for RI and SC final reports, shall be by a Professional Engineer.

2. Any final report that includes construction activities shall include "as built" drawings showing any changes made to the remedial design or the IRM.

3. In the event that any ROD or Work Plan for any of the Sites requires site management, including reliance upon institutional or engineering controls, Respondent shall submit an annual report by the 1st Day of the month following the anniversary of the start of the site management. Such annual report shall be signed by a Professional Engineer or by such other expert as the Department may find acceptable and shall contain a certification under penalty of perjury that any institutional and/or engineering controls required by this Order & Settlement Agreement are unchanged from the previous certification and that nothing has occurred that would impair the effectiveness of such control or constitute a violation of or failure to comply with the approved SM Work Plan. Respondent or owner of the Site may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

E. Review of Submittals other than Progress Reports and Health and Safety Plans

1. The Department shall make a good faith effort to review and respond in writing to each submittal Respondent makes pursuant to this Order & Settlement Agreement within sixty (60) Days. The Department's response shall include an approval, modification or disapproval of the submittal. For the purposes of this Order & Settlement Agreement, "approval" shall mean acceptance of the document by the Department without conditions. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order & Settlement Agreement.

2. If the Department requests modification or disapproves a submittal, it shall specify the reasons for its requested modification or disapproval. Within fifteen (15) Days after the date of the Department's written notice that Respondent's submittal has been disapproved or

a modification was requested, Respondent shall elect, in writing, to either (i) modify the submittal to address the Department's comments, (ii) invoke dispute resolution pursuant to Paragraph XII, or (iii) in the event the rejected submittal is a Work Plan submitted prior to the Department's approval of the RD/RA Work Plan, terminate this Order & Settlement Agreement with respect to the Site pursuant to Paragraph XIII. If Respondent elects to modify the submittal, Respondent shall, within thirty (30) Days after such election, make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal. In the event that Respondent's revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order & Settlement Agreement unless it invokes dispute resolution pursuant to Paragraph XII and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order & Settlement Agreement.

3. Within thirty (30) Days after the Department's approval of a final report, Respondent shall submit such final report, as well as all data gathered and drawings and submittals made pursuant to such Work Plan, in an electronic format acceptable to the Department. If any document cannot be converted into electronic format, Respondent shall submit such document in an alternative format acceptable to the Department.

F. Department's Issuance of a ROD

Respondent shall cooperate with the Department and provide reasonable assistance, consistent with the Citizen Participation Plan for each of the Sites, in soliciting public comment on the proposed remedial action plan ("PRAP"), if any, for each of the Sites. After the close of the public comment period, the Department shall select a final remedial alternative for each of the Sites in a ROD. Nothing in this Order & Settlement Agreement shall be construed to abridge the rights of Respondent, as provided by law, to judicially challenge the Department's ROD.

G. Release and Covenant Not to Sue

Upon (i) the Department's approval of either the RD/RA Work Plan final report or an IRM Work Plan final report evidencing that no further remedial action (other than site management activities) is required to meet the goals of the Remedial Program for a Site, and (ii) the Department's acceptance of any environmental easement required pursuant to Paragraph X, then, except for the provisions of Paragraphs VI and VIII, and except for the future site management of the Site and any Natural Resource Damage claims, such acceptance shall constitute a release and covenant not to sue with respect to the Site for each and every claim, demand, remedy, or action whatsoever against Respondent, its directors, officers, employees, agents, servants, successors, and assigns (except successors and assigns who were responsible under law for the development and implementation of a Remedial Program at the Site prior to the effective date of this Order & Settlement Agreement), and their respective secured creditors, which the Department has or may have pursuant to Article 27, Title 13 of the ECL or pursuant to any other provision of State or Federal statutory or common law, including but not limited to §

107(a) of CERCLA, 42 U.S.C. § 9607(a), involving or relating to investigative or remedial activities relative to or arising from the disposal of hazardous wastes (or other contaminants remediated by Respondent to the Department's satisfaction pursuant to the ROD or Work Plans) at the Site; provided, however, that the Department specifically reserves all of its rights concerning, and any such release and covenant not to sue shall not extend to any further investigation or remediation the Department deems necessary due to newly discovered environmental conditions on-Site or off-Site which are related to the disposal of hazardous wastes at the Site and which indicate that the Remedial Program is not protective of public health and/or the environment. The Department shall notify Respondent in writing of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of public health and/or the environment.

This release and covenant not to sue shall be null and void, *ab initio*, in the event of fraud relating to the execution or implementation of this Order & Settlement Agreement or in the event of Respondent's failure to materially comply with any provision of this Order & Settlement Agreement subsequent to issuance of a release and covenant not to sue, in each case with respect to that particular Site. The Department's determination that Respondent has committed fraud or has materially failed to comply with this Order & Settlement Agreement shall be subject to dispute resolution pursuant to Paragraph XII.

Nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that (i) Respondent may have against anyone other than the Department, including but not limited to rights of contribution under § 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), and (ii) the Department may have against anyone other than Respondent, its directors, officers, employees, agents, and servants, and those successors and assigns of Respondent who were not responsible under law for the development and implementation of a Remedial Program at the Site prior to the effective date of this Order & Settlement Agreement, and their respective secured creditors.

III. Progress Reports

Respondent shall submit written progress reports for each Site to the parties identified in Subparagraph XI.A.1 by the 10th Day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions taken pursuant to this Order & Settlement Agreement during the reporting period and those anticipated for the upcoming reporting period; all approved modifications to work plans and/or schedules; all results of sampling and tests and all other data received or generated by or on behalf of Respondent in connection with the Site, during the reporting period, including quality assurance/quality control information; and information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, efforts made to mitigate such delays, information regarding activities undertaken in support of the Citizen

Participation Plan during the reporting period and those anticipated for the upcoming reporting period and the name of the Department Project Manager for the Site.

IV. Penalties

A. 1. Respondent's failure to comply with any term of this Order & Settlement Agreement constitutes a violation of this Order & Settlement Agreement, the ECL, and 6 NYCRR Part 375. Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order & Settlement Agreement.

2. Payment of any penalties shall not in any way alter Respondent's obligations under this Order & Settlement Agreement.

B. 1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order & Settlement Agreement as a result of any event arising from causes beyond the reasonable control of Respondent, of any entity controlled by Respondent, and of Respondent's contractors, that delays or prevents the performance of any obligation under this Order & Settlement Agreement despite Respondent's best efforts to fulfill the obligation ("Force Majeure Event"). The requirement that Respondent exercise best efforts to fulfill the obligation includes using best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order & Settlement Agreement.

2. Respondent shall notify the Department in writing within seven (7) Days after it obtains knowledge of any Force Majeure Event. Respondent shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Order & Settlement Agreement. Failure to give such notice within such seven (7) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

3. Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Subparagraph IV.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for such time as is reasonably necessary to complete those obligations.

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order & Settlement Agreement pursuant to Subparagraph IV.B, Respondent shall be in violation of this Order & Settlement Agreement unless it invokes dispute resolution pursuant to Paragraph XII and Respondent's position prevails.

V. Entry upon Site

A. Respondent hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site (or areas in the vicinity of the Site which may be under the control of Respondent) by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to this Order & Settlement Agreement, and by any agent, consultant, contractor, or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying records related to the contamination at the Site, testing, and any other activities necessary to ensure Respondent's compliance with this Order & Settlement Agreement. Upon request, Respondent shall (i) provide the Department with suitable office space at each of the Sites, including access to a telephone, to the extent available, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this Order & Settlement Agreement. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Respondent is unable to obtain any authorization from third-party property owners necessary to perform its obligations under this Order & Settlement Agreement, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

B. The Department shall have the right to take its own samples and scientific measurements and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled. The Department shall make the results of any such sampling and scientific measurements available to Respondent.

VI. Payment of State Costs

A. Within forty-five (45) Days after the effective date of this Order & Settlement Agreement, Respondent shall pay to the Department the sum of \$0.00, which shall represent reimbursement for State Costs as set forth on the cost summary attached as Exhibit "C." Respondent acknowledges that all past State Costs are not itemized on the cost summary and that additional charges may be billed at a later date for State Costs incurred prior to the effective date of this Order & Settlement Agreement.

B. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs, other than those identified in Subparagraph VI.A, for work performed at or in connection with each of the Sites through and including the Termination Date.

C. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary or billable hourly rate, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code for each of the Sites. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (*e.g.*, supplies, materials, travel, contractual) and shall be documented by expenditure reports. The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

D. Such invoice shall be sent to Respondent at the following address:

Lawrence Liebs
KeySpan Corporation
One MetroTech Center
Brooklyn, New York 11201

E. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7012.

F. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

G. Respondent may contest, in writing, invoiced costs under Subparagraph VI.B if it believes that (i) the cost documentation contains clerical, mathematical, or accounting errors; (ii) the costs are not related to the State's activities with respect to the Remedial Program for the Site; or (iii) the Department is not otherwise legally entitled to such costs. If Respondent objects to an invoiced cost, Respondent shall pay all costs not objected to within the time frame set forth in Subparagraph VI.B and shall, within thirty (30) Days after its receipt of an invoice, identify, in writing, all costs objected to and the basis of the objection. This objection shall be filed with the Bureau of Program Management ("BPM") Director. The BPM Director or the BPM Director's designee shall have the authority to relieve Respondent of the obligation to pay invalid costs. Within forty-five (45) Days after the date of the Department's determination of the objection,

Respondent shall either pay to the Department the amount which the BPM Director or the BPM Director's designee determines Respondent is obligated to pay or commence an action or proceeding seeking appropriate judicial relief.

H. If any negotiable instrument submitted to the Department pursuant to this Order & Settlement Agreement is not honored when presented for payment, Respondent shall be in violation of this Order & Settlement Agreement, provided that (i) the Department gives Respondent written notice of same, and (ii) the Department does not receive a certified check or bank check in the amount of the uncollected funds within fourteen (14) Days after the date of the Department's written notification.

VII. Reservation of Rights

A. Except as provided in Subparagraph II.G, nothing contained in this Order & Settlement Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this Order & Settlement Agreement, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order & Settlement Agreement, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order & Settlement Agreement or Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights of contribution under §113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

VIII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all third-party 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 & Settlement Agreement by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns except for liability arising from (i) vehicular accidents occurring during travel to or from the Site; or (ii) willful, wanton, or malicious acts or omissions, and acts or omissions constituting gross negligence or criminal behavior by the Department, the State of New York, and/or their representatives and employees

during the course of any activities conducted pursuant to this Order & Settlement Agreement. The Department shall provide Respondent with written notice no less than thirty (30) Days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Public Notice

A. Respondent shall cause to be filed a Department-approved Notice of Order & Settlement Agreement for each of the Sites, in accordance with the schedule below, which Notices shall be substantially similar to the Notice of Order & Settlement Agreement attached to this Order & Settlement Agreement as Exhibit “D,” with the recording officer of the county wherein the Site is to give all parties who may acquire any interest in the Site notice of this Order & Settlement Agreement. Within sixty (60) Days of each such filing, Respondent shall also provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

1. Within thirty (30) Days after the effective date of this Order & Settlement Agreement, for Sites 1 through 6, 11 and 13 listed on Exhibit “A” – Table 1.
2. Within sixty (60) Days after the effective date of this Order & Settlement Agreement, for Sites 7 through 10, 12 and 14 listed on Exhibit “A” – Table 1.

B. If Respondent proposes to convey, or becomes aware of a proposal to convey, the whole or any part of Respondent’s ownership interest in the Site, or becomes aware of such conveyance, Respondent shall, not fewer than forty-five (45) Days before the date of conveyance, or within forty-five (45) Days after becoming aware of such conveyance, whichever shall be applicable, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order & Settlement Agreement. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with Respondent to secure the repayment of money or the performance of a duty or obligation.

X. Environmental Easement

A. 1. If a Department-approved Work Plan or the ROD for the Site, if any, relies upon one or more institutional and/or engineering controls, Respondent (or the owner of the Site) shall execute an environmental easement pursuant to ECL Article 71, Title 13 which shall be substantially similar to Exhibit “E.” Respondent shall cause such instrument to be recorded with the recording officer of the county wherein the Site is located within thirty (30) Days of the Department’s approval of such instrument. Respondent shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within sixty (60) Days after such recording.

B. If the ROD provides for “no action” other than implementation of one or more institutional controls, Respondent shall cause an environmental easement to be recorded under the provisions of Subparagraph X.A.1. If Respondent does not cause such environmental easement to be recorded, Respondent cannot obtain a release and covenant not to sue pursuant to Subparagraph II.G.

XI. Communications

A. All written communications required by this Order & Settlement Agreement 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:

Robert Schick
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233
(2 bound copies, 1 unbound copy and 1 disk)

with copies to:

Gary Litwin
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216
(2 bound copies)

Regional Director
Region 2
NYS Dept of Environmental Conservation
One Hunter’s Point Plaza
47-40 21st Street
Long Island City, NY 11101-5407
(Correspondence only)

Larry S. Eckhaus, Senior Attorney
Division of Environmental Enforcement
Superfund & Brownfields Restoration Bureau
NYS Dept of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233-5500
(Correspondence only)

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

Lawrence Liebs
KeySpan Corporation
One MetroTech Center
Brooklyn, New York 11201

with copy to:

Donna Riccobono, Esq.
KeySpan Corporation
One MetroTech Center
Brooklyn, New York 11201

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

C. Each party shall notify the other within ninety (90) Days after any change in the addresses in this Paragraph XI or in Paragraph VI.

XII. Dispute Resolution

A. If Respondent disagrees with the Department's notice under (i) Subparagraph II.B requesting additional or supplemental Work Plans; (ii) Subparagraph II.C requesting modification of a Department-approved Work Plan; (iii) Subparagraph II.E disapproving a submittal, a proposed Work Plan, or a final report; (iv) Subparagraph II. G. finding that Respondent materially failed to comply with the Order & Settlement Agreement; (v) Subparagraph IV.B rejecting Respondent's assertion of a Force Majeure Event; or (vi) Subparagraph XIV.G.2.iii requesting modification of a time frame, Respondent may, within thirty (30) Days of its receipt of such notice, make a written request for informal negotiations with the Department in an effort to resolve the dispute. A copy of such request shall be sent by Respondent to the appropriate Remedial Bureau Chief in the Department's Central Office. The Department and Respondent shall consult together in good faith and exercise best efforts to resolve any differences or disputes without resort to the procedures described in Subparagraph XII.B. The period for informal negotiations shall not exceed thirty (30) Days from the date of the Department's initial response to the Respondent's request for informal negotiations. If the parties cannot resolve a dispute by informal negotiations during this period, the Department's position shall be considered binding unless Respondent notifies the Department in writing within thirty (30) Days after the conclusion of the thirty (30) Day period for informal negotiations that it invokes the dispute resolution provisions provided under Subparagraph XII.B.

B. 1. Respondent shall file with the Office of Hearings and Mediation Services ("OH&M") a request for formal dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, or opinion supporting its position, and all supporting documentation upon which Respondent relies (hereinafter called the "Statement of Position"). A copy of such request and written statement

shall be provided contemporaneously to the Director and to the parties listed under Subparagraph XI.A.1.

2. The Department shall serve its Statement of Position no later than twenty (20) Days after receipt of Respondent's Statement of Position.

3. Respondent shall have the burden of proving by substantial evidence that the Department's position does not have a rational basis and should not prevail. The OH&M can conduct meetings, in person or via telephone conferences, and request additional information from either party if such activities will facilitate a resolution of the issues.

4. The OH&M shall prepare and submit a report and recommendation to the Director. The Director shall issue a final decision in a timely manner. The final decision shall constitute a final agency action and Respondent shall have the right to seek judicial review of the decision pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") provided that Respondent notifies the Department within thirty (30) Days after receipt of a copy of the final decision of its intent to commence an Article 78 proceeding and commences such proceeding within sixty (60) Days after receipt of a copy of the Director's final decision. Respondent shall be in violation of this Order & Settlement Agreement if it fails to comply with the final decision resolving this dispute within forty-five (45) Days after the date of such final decision, or such other time period as may be provided in the final decision, unless it seeks judicial review of such decision within the sixty (60) Day period provided. In the event that Respondent seeks judicial review, Respondent shall be in violation of this Order & Settlement Agreement if it fails to comply with the final Court Order or any settlement within thirty (30) Days after the effective date of such Court Order or settlement, unless otherwise directed by the Court. For purposes of this Subparagraph, a Court Order or settlement shall not be final until the time to perfect an appeal of same has expired.

5. The invocation of dispute resolution shall not extend, postpone, or modify Respondent's obligations under this Order & Settlement Agreement with respect to any item not in dispute unless or until the Department agrees or a Court orders otherwise. Except as otherwise provided in this Order & Settlement Agreement, the invocation of the procedures set forth in this Paragraph XII shall constitute an election of remedies and such election shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Respondent regarding the issue in dispute.

6. The Department shall keep an administrative record of any proceedings under this Paragraph XII that shall be available consistent with Article 6 of the Public Officers Law.

7. Nothing in this Paragraph XII shall be construed as an agreement by the parties to resolve disputes through administrative proceedings pursuant to the State Administrative Procedure Act, the ECL, or 6 NYCRR Part 622 or 6 NYCRR Part 375.

8. Nothing contained in this Order & Settlement Agreement shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy

selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy with respect to each Site.

XIII. Termination of Order & Settlement Agreement

A. This Order & Settlement Agreement will terminate with respect to a Site upon the earlier of the following events:

1. Respondent's election to terminate with respect to a Site pursuant to Subparagraphs II.B.1.b, II.C or II.E.2 so long as such election is made prior to the Department's approval of the RD/RA Work Plan for that Site. In the event of termination in accordance with this Subparagraph XIII.A.1, this Order & Settlement Agreement with respect to such Site shall terminate effective the 5th Day after the Department's receipt of the written notification terminating this Order & Settlement Agreement with respect to such Site or the 5th Day after the time for Respondent to make its election has expired, whichever is earlier, provided, however, that if there are one or more Work Plan(s) with respect to such Site for which a final report has not been approved at the time of Respondent's notification of its election to terminate this Order & Settlement Agreement with respect to such Site pursuant to Subparagraphs II.B.1.b or II.E.32 or its failure to timely make such an election pursuant to Subparagraphs II.B.1.b or II.E.32, Respondent shall promptly complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein. Thereafter, this Order & Settlement Agreement shall terminate with respect to such Site effective the 5th Day after the Department's approval of the final report for all previously approved Work Plans with respect to such Site ; or

2. the Department's written determination that Respondent has completed all phases of the Remedial Program (including site management) for all the Sites, in which event the termination with respect to all Sites shall be effective on the 5th Day after the date of the Department's approval of the final report relating to the final phase of the Remedial Program for all the Sites.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VI and VIII shall survive the termination of this Order & Settlement Agreement and any violation of such surviving Paragraphs shall be a violation of this Order & Settlement Agreement, the ECL, and 6 NYCRR Part 375, subjecting Respondent to penalties as provided under Paragraph IV so long as such obligations accrued on or prior to the Termination Date.

C. If the Order & Settlement Agreement is terminated with respect to a Site or all Sites pursuant to Subparagraph XIII.A.1, neither this Order & Settlement Agreement nor its termination shall affect any liability of Respondent may have for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA, nor shall it affect any defenses to such liability that may be asserted by Respondent. Respondent shall also ensure that it does not leave the Site in a condition, from the perspective of human

health and environmental protection, worse than that which existed before any activities under this Order & Settlement Agreement were commenced. Further, the Department's efforts in obtaining and overseeing compliance with this Order & Settlement Agreement shall constitute "reasonable efforts" under law to obtain a voluntary commitment from Respondent for any further activities to be undertaken as part of a Remedial Program for the Site.

XIV. Miscellaneous

A. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators ("Respondent's Contractors") acceptable to the Department to perform its obligations under this Order & Settlement Agreement. If the Department has not previously approved Respondent's Contractors for the work required by this Order & Settlement Agreement, Respondent shall submit the Contractors' qualifications to the Department a minimum of thirty (30) Days before the start of any activities for which each such Contractor will be responsible. The Department's approval of each such Contractor shall be obtained prior to the start of work by that Contractor. The responsibility for the performance of all Contractors retained by Respondent shall rest solely with Respondent. Subject to the requirements of this Subparagraph, Respondent retains the right to select or change firms or individuals in its sole discretion.

B. Respondent shall allow the Department to attend and shall notify the Department at least seven (7) Days in advance of any field activities as well as any pre-bid meetings, job progress meetings, the substantial completion meeting and inspection, and the final inspection and meeting; nothing in this Order & Settlement Agreement shall be construed to require Respondent to allow the Department to attend portions of meetings where privileged matters are discussed.

C. Respondent shall use "best efforts" to obtain all Site access, permits, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations necessary to perform Respondent's obligations under this Order & Settlement Agreement.

1. The Department may exempt Respondent from the requirement to obtain any state or local permit or other authorization for any activity on the Site needed to implement this Order & Settlement Agreement that the Department determines is conducted in a manner which satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

2. If, despite Respondent's best efforts, any necessary Site access, easements, rights-of-way, rights-of-entry, approvals, institutional controls, or authorizations required to perform this Order & Settlement Agreement are not obtained within forty-five (45) Days after the effective date of this Order & Settlement Agreement, or within forty-five (45) Days after the date the Department notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify the Department, and shall include in that notification a summary of the steps Respondent has

taken to obtain access. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining access. If any interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Work Plan pursuant to Subparagraph II.C of this Order & Settlement Agreement to reflect changes necessitated by the lack of access and/or approvals.

D. Respondent and Respondent's successors and assigns shall be bound by this Order & Settlement Agreement. Any change in ownership or corporate status of Respondent shall in no way alter Respondent's responsibilities under this Order & Settlement Agreement.

E. Respondent shall provide a copy of this Order & Settlement Agreement to each contractor hired to perform work required by this Order & Settlement Agreement and shall condition all contracts entered into pursuant to this Order & Settlement Agreement upon performance in conformity with the terms of this Order & Settlement Agreement. Respondent or its contractor(s) shall provide written notice of this Order & Settlement Agreement to all subcontractors hired to perform any portion of the work required by this Order & Settlement Agreement. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order & Settlement Agreement.

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

G. 1. The terms of this Order & Settlement Agreement constitute the entire agreement between the Department and Respondent concerning implementation of the activities required by this Order & Settlement Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order & Settlement Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order & Settlement Agreement. In the event of a conflict between the terms of this Order & Settlement Agreement and any Work Plan submitted pursuant to this Order & Settlement Agreement, the terms of this Order & Settlement Agreement shall control over the terms of the Work Plan(s) attached as Exhibit "B."

2. i. Except as set forth herein, if Respondent desires that any provision of this Order & Settlement Agreement be changed, other than a provision of a Work Plan or a time frame, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XI.A.1. The Commissioner or the Commissioner's designee shall timely respond.

ii. Changes to a Work Plan shall be accomplished as set forth in Subparagraph II.C of this Order & Settlement Agreement.

iii. Changes to a time frame set forth in this Order & Settlement Agreement shall be sought by a written request to the Department's project attorney and project manager, which request shall be timely responded to in writing. The Department's decision relative to the request for a time frame change shall be subject to dispute resolution pursuant to Paragraph XII.

H. 1. If multiple parties sign this Order & Settlement Agreement, the term "Respondent" shall be read in the plural where required to give meaning to this Order & Settlement Agreement. Further, the obligations of such Respondents under this Order & Settlement Agreement are joint and several and the insolvency of or failure by any Respondent to implement any obligations under this Order & Settlement Agreement shall not affect the obligations of the remaining Respondent(s).

2. If Respondent is a partnership, the obligations of all general partners, including limited partners who act as general partners, to finance and perform obligations under this Order & Settlement Agreement and to pay amounts owed to the Department under this Order & Settlement Agreement are joint and several. In the event of the insolvency of or the failure of any of the general partners to implement the requirements of this Order & Settlement Agreement, the remaining general partners shall implement all such requirements.

3. Notwithstanding the foregoing Subparagraphs XIV.H. 1 and 2, if multiple parties sign this Order & Settlement Agreement as Respondents but not all of the signing parties elect, pursuant to Subparagraph II.B, to implement a Work Plan, then all Respondents are jointly and severally liable for each and every obligation under this Order & Settlement Agreement through the completion of the activities in such Work Plan that all such parties consented to; thereafter, only those Respondents electing to perform additional work shall be jointly and severally liable under this Order & Settlement Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Order & Settlement Agreement relative to the activities set forth in such Work Plan(s). Only those Respondents electing to implement such additional Work Plan(s) shall be eligible to receive the release and covenant not to sue provided under Subparagraph II.G.

I. To the extent authorized under CERCLA § 113, 42 U.S.C. § 9613, New York General Obligations Law § 15-108, and any other applicable law, Respondent shall be deemed to have resolved its liability to the State for purposes of contribution protection provided by CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2) for "matters addressed" pursuant to and in accordance with this Order & Settlement Agreement. "Matters addressed" in this Order & Settlement Agreement shall mean all response actions taken by Respondent to implement this Order & Settlement Agreement for the Sites and all response costs incurred and to be incurred by any person or party in connection with the work performed under this Order & Settlement Agreement, which costs have been paid by Respondent, including reimbursement of State Costs pursuant to this Order & Settlement Agreement. Furthermore, to the extent authorized under CERCLA § 113(f)(3)(B), 42 U.S.C. Section 9613(f)(3)(B), by entering into this administrative settlement of liability, if any, for some or all of the response action and/or for

some or all of the costs of such action, Respondent is entitled to seek contribution under CERCLA from any person except those who are entitled to contribution protection under CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2).

J. Unless otherwise expressly provided herein, terms used in this Order & Settlement Agreement which are defined in ECL Article 27, Title 13, ECL Article 71, Title 36, or in regulations promulgated under such statute shall have the meaning assigned to them under said statute or regulations. Whenever terms listed in the Glossary attached hereto are used in this Order & Settlement Agreement or in the attached Exhibits, the definitions set forth in the Glossary shall apply. In the event of a conflict, the definition set forth in the Glossary shall control.

K. Respondent's obligations under this Order & Settlement Agreement represent payment for or reimbursement of response costs, and shall not be deemed to constitute any type of fine or penalty.

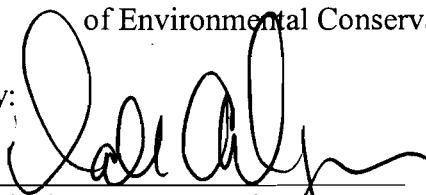
L. This Order & Settlement Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which for all purposes shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

M. The effective date of this Order & Settlement Agreement is the 10th Day after the date the Commissioner or the Commissioner's designee signs this Order & Settlement Agreement.

DATED: FEB 22 2007

CARL JOHNSON,
ACTING EXECUTIVE DEPUTY COMMISSIONER
New York State Department
of Environmental Conservation

By:



Dale A. Desnoyers, Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island hereby consents to the issuing and entering of this Order on Consent and Administrative Settlement, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order on Consent and Administrative Settlement.

By: William J. Akley
William J. Akley

Title: Vice President, Gas Operations, LI

Date: 2-2-07

STATE OF NEW YORK)
) s.s.:
COUNTY OF Nassau)


On the 2nd day of February, in the year 2007, before me, the undersigned, personally appeared William J. Akley, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Joan M. Jerz
Signature and Office of individual
taking acknowledgment

JOAN M. JERZ
Notary Public, State of New York
No. 01JE4737272
Qualified in Nassau County 2007
Commission Expires May 31, 2007

CONSENT BY RESPONDENT

Respondent The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York hereby consents to the issuing and entering of this Order on Consent and Administrative Settlement, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order on Consent and Administrative Settlement.

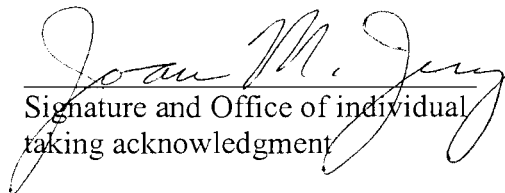
By: 
John J. Bishar Jr.

Title: Executive Vice President and Secretary

Date: 2/2/07

STATE OF NEW YORK)
) s.s.:
COUNTY OF Nassau)

On the 2nd day of February, in the year 2007, before me, the undersigned, personally appeared John J. Bishar, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Signature and Office of individual
taking acknowledgment

JOAN M. JERZ
Notary Public, State of New York
No. 01JE4737272
Qualified in Nassau County 2007
Commission Expires May 31, 2007

EXHIBIT "A"

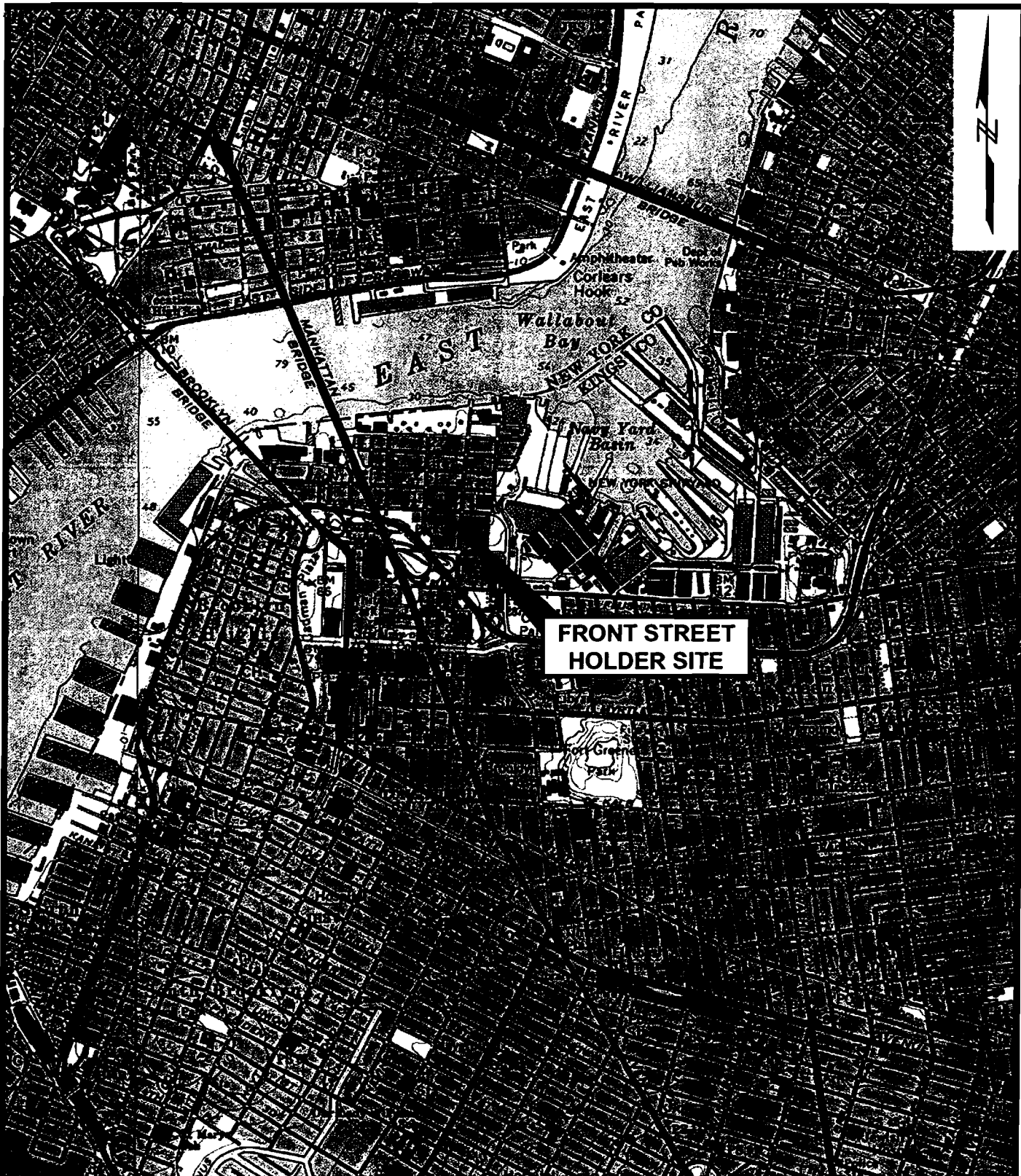
**Descriptions of KeySpan MGP & Holder Sites &
Maps of Sites included in Paragraphs 4.A and 4.B**

Exhibit "A" - Table 1
KeySpan
Former MGP Sites & Holder Stations

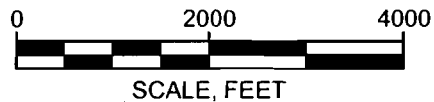
Note: Sites in **BOLD CAPS** are entirely owned by KeySpan.
 Sites in **Bold** are partially owned by KeySpan
 All other sites are not owned by KeySpan

#	KeySpan Sites	Work Plan Type	Proposed Start	Site #	Location	County
1	Front Street Holder Station	SC	3/2007	224063	206 & 218 Front Street B Brooklyn, NY 11202	Kings
2	Rutledge Street Holder Station	SC	3/2007	224066	18 to 36 Rutledge Street & Heyward Street Brooklyn, 11211	Kings
3	Skillman Street Holder Station	SC	3/2007	224068	7 & 39 Skillman Street Brooklyn, NY 11205	Kings
4	Keap Street Holder Station	SC	3/2007	224064	18 Hooper Street (or 46 Keap St.) Brooklyn, NY 11221	Kings
5	Far Rockaway MGP Site	RI	6/2007	241032	Brunswick Avenue Queens, NY 11691	Queens
6	Patchogue MGP Site & Hortonsphere	RI	9/2007	152182	Village of Patchogue Brookhaven, NY 11772	Suffolk
7	Babylon MGP Site	RI	12/2007	152180	29 Evergreen Street Babylon, NY 11704	Suffolk
8	Dangman Park MGP	SC	3/2008	224047	486 Neptune Avenue Brooklyn, NY 11224	Kings
9	Peoples Works MGP Site	SC	3/2008	224053	Kent Ave & William St. Brooklyn, NY 11211	Kings
10	Jamaica Gas Light Co. MGP	SC	6/2008	241063	58-18 Beaver Road Jamaica, NY 11433	Queens
11	Long Beach Holder Station	SC	6/2008	130122	Int. of: Riverside Blvd, Water St & Park Pl Long Beach, 11561	Nassau
12	Jamaica Holder Station	SC	9/2008	241062	Liberty Ave. Bet 158 & 159 St Queens, NY	Queens
13	Bay Ridge Holder Stations A & B	SC	9/2008	224058	A: 837 64th Street Brooklyn B:829-884 65th Street Brooklyn	Kings
14	East Garden City (Stewart Avenue) Former Holder Station	SC	12/2008	130120	600-620 Stewart Avenue E. Garden City, NY 11530	Nassau

Note: Proposed Start = submittal of work plan



SOURCE: Map created with TOPO!® ©2001 National Geographic
 (www.nationalgeographic.com/topo)

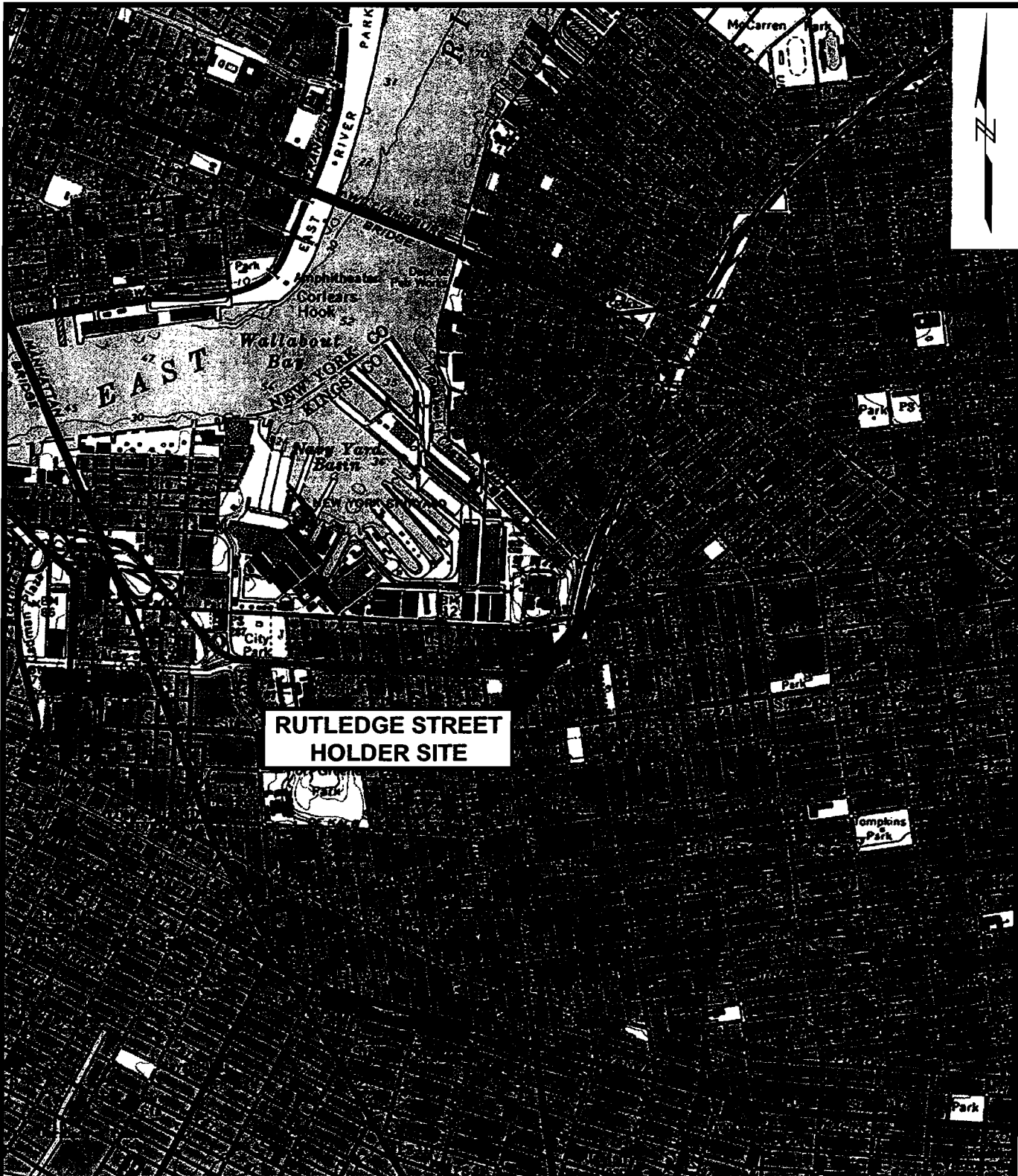


NYSDEC BCP APPLICATION
 FRONT STREET HOLDER
 BROOKLYN, NEW YORK

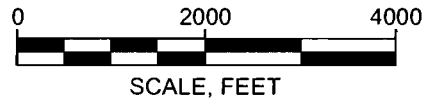
KEYSPAN CORPORATION
 BROOKLYN, NEW YORK

GEI Consultants
 PROJECT 982482

SITE LOCATION MAP
 AUGUST 2004
 FIGURE 1



SOURCE: Map created with TOPO!® ©2001 National Geographic
 (www.nationalgeographic.com/topo)



NYSDEC BCP APPLICATION
 RUTLEDGE STREET HOLDER STATION
 BROOKLYN, NEW YORK

KEYSPAN CORPORATION
 BROOKLYN, NEW YORK

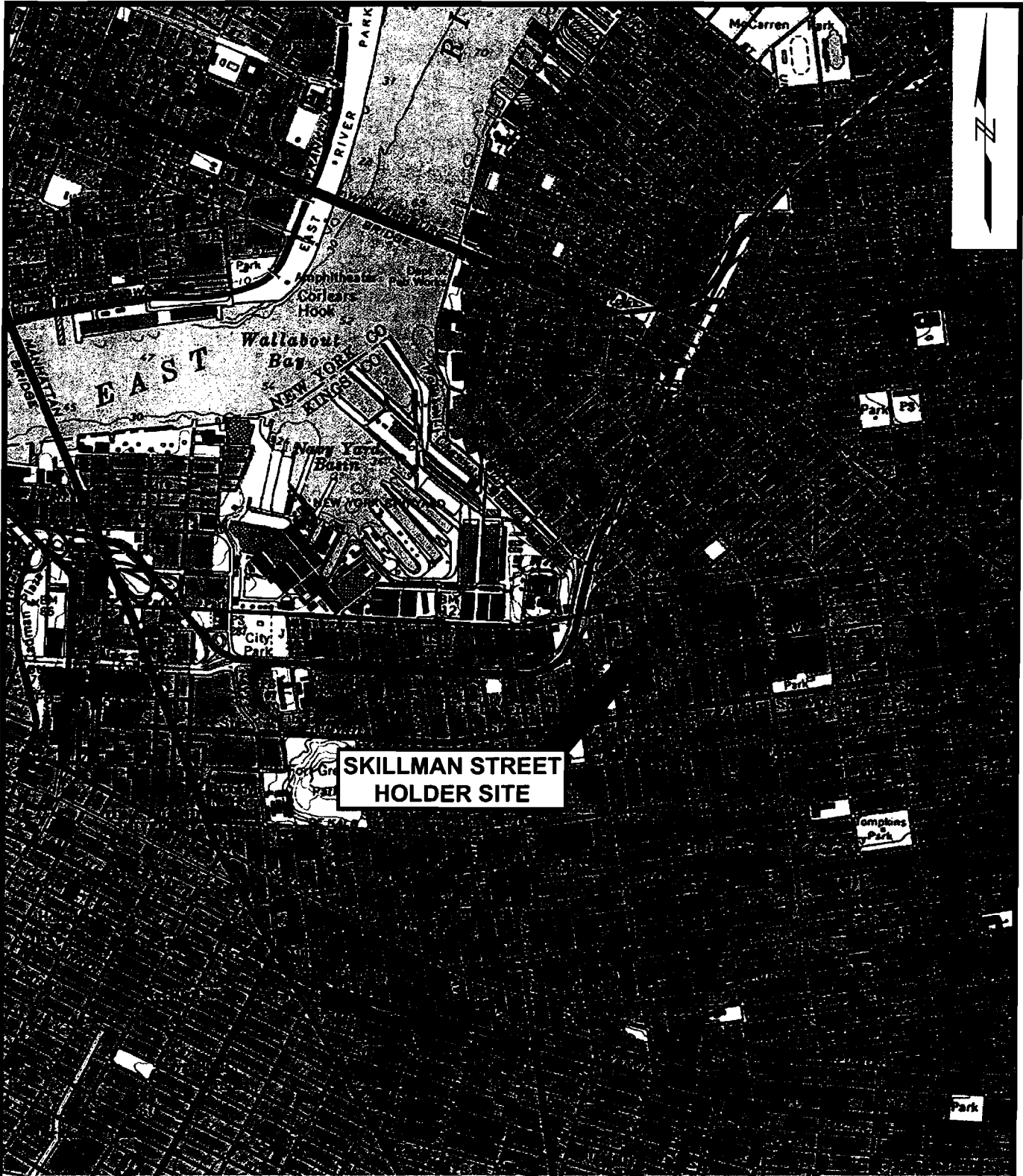


PROJECT 982482

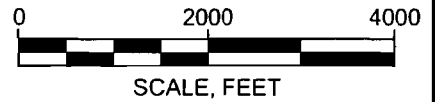
SITE LOCATION MAP

AUGUST 2004

FIGURE 1



SOURCE: Map created with TOPO!® ©2001 National Geographic
 (www.nationalgeographic.com/topo)



NYSDEC BCP APPLICATION
 SKILLMAN STREET HOLDER STATION
 BROOKLYN, NEW YORK

KEYSPAN CORPORATION
 BROOKLYN, NEW YORK

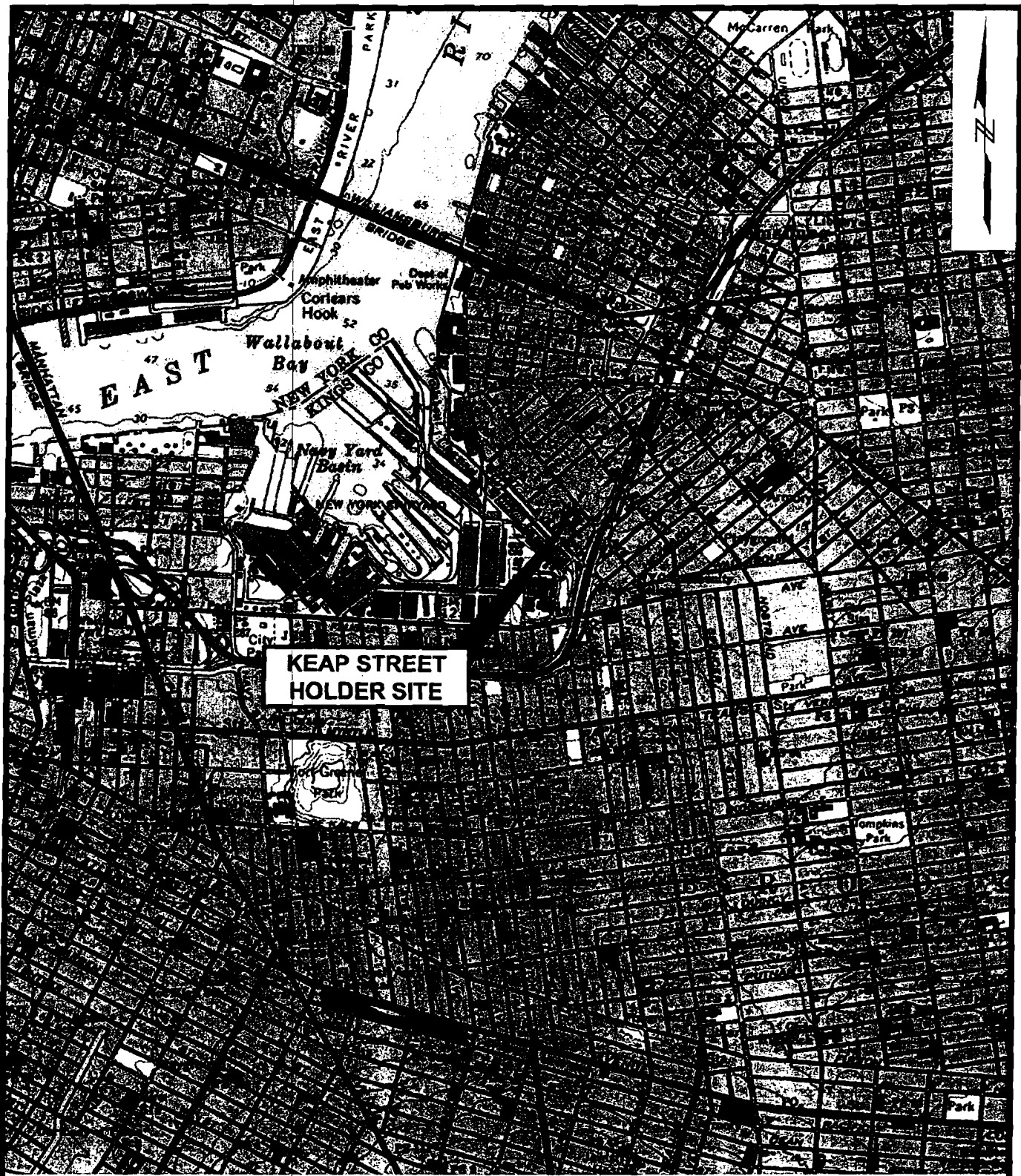


SITE LOCATION MAP

PROJECT 982482

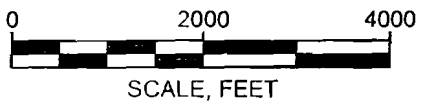
AUGUST 2004

FIGURE 1



**KEAP STREET
HOLDER SITE**

SOURCE: Map created with TOPO!® ©2001 National Geographic
(www.nationalgeographic.com/topo)



**NYSDEC BCP APPLICATION
KEAP STREET HOLDER STATION
BROOKLYN, NEW YORK**

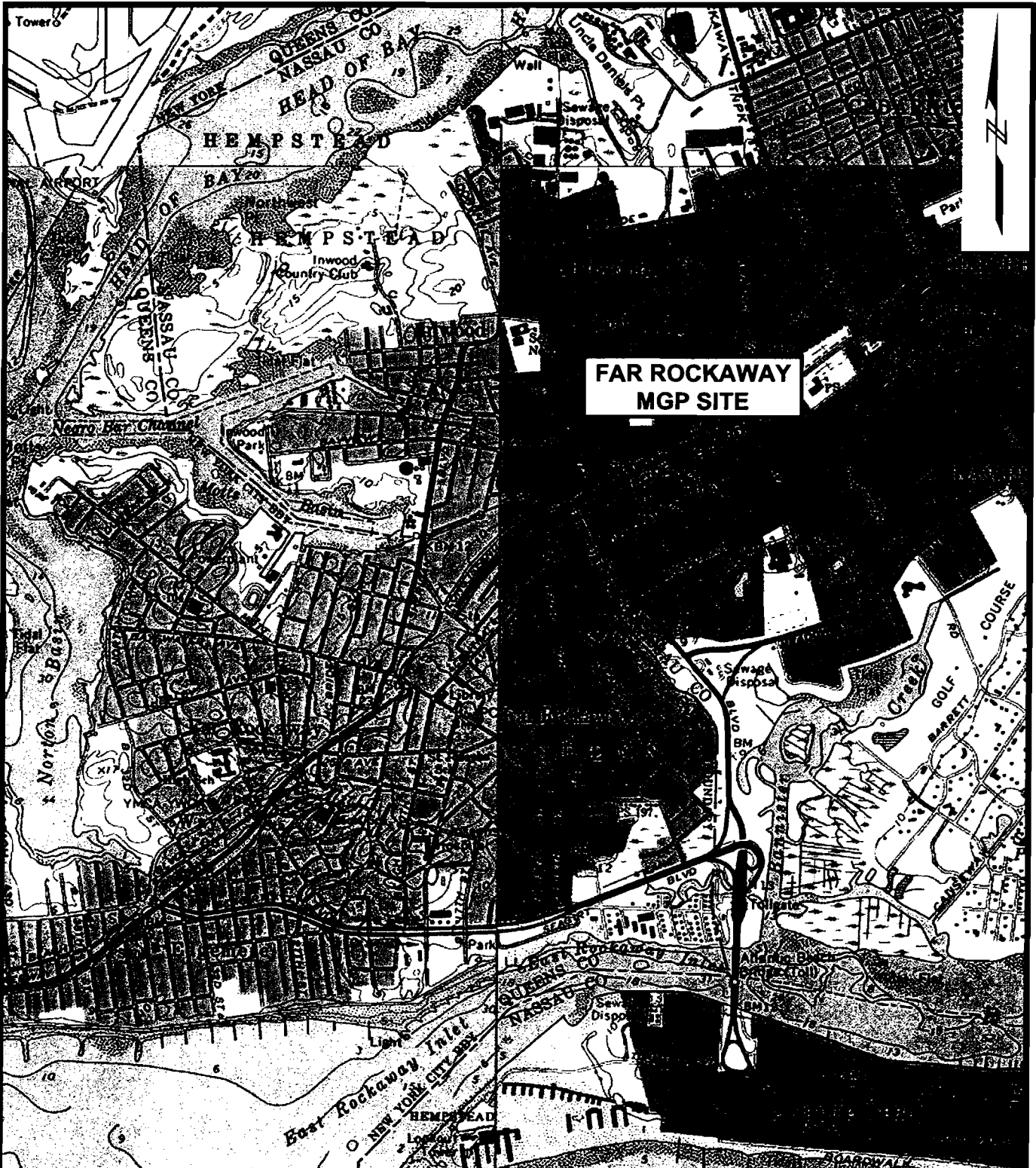


SITE LOCATION MAP

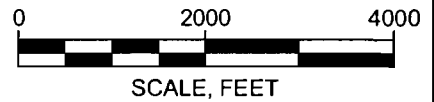
**KEYSPAN CORPORATION
BROOKLYN, NEW YORK**

PROJECT 982482

AUGUST 2004 **FIGURE 1**



SOURCE: Map created with TOPO!® ©2001 National Geographic
 (www.nationalgeographic.com/topo)



NYSDEC BCP APPLICATION
 FAR ROCKAWAY MGP
 QUEENS, NEW YORK

KEYSPAN CORPORATION
 BROOKLYN, NEW YORK

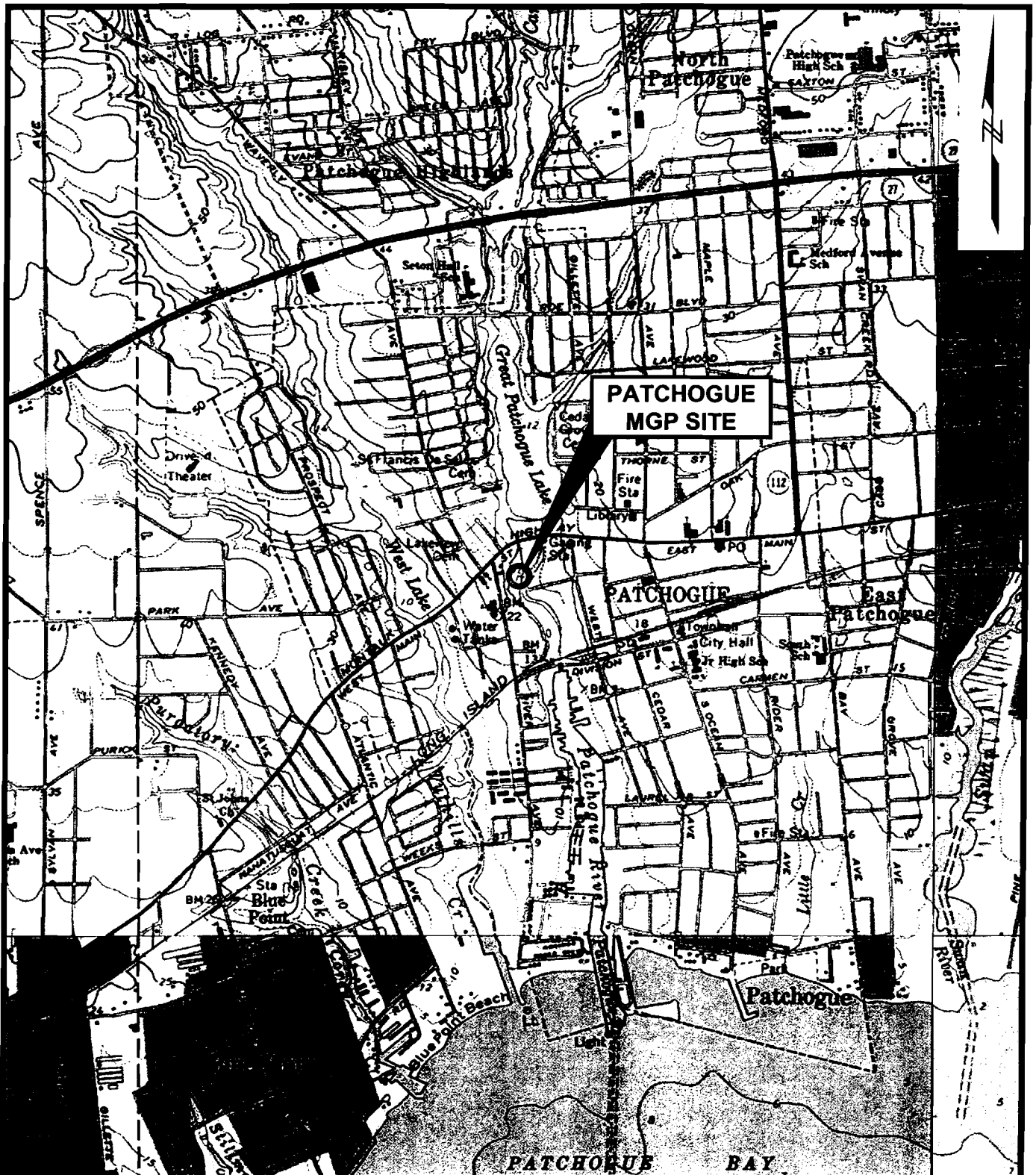


PROJECT 982482

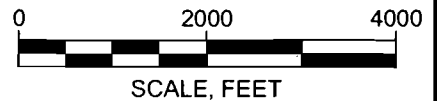
SITE LOCATION MAP

AUGUST 2004

FIGURE 1



SOURCE: Map created with TOPO!® ©2001 National Geographic
 (www.nationalgeographic.com/topo)



NYSDEC BCP APPLICATION
 PATCHOGUE MGP
 PATCHOGUE, NEW YORK

KEYSPAN CORPORATION
 BROOKLYN, NEW YORK



PROJECT 982482

SITE LOCATION MAP

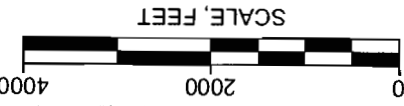
AUGUST 2004

FIGURE 1

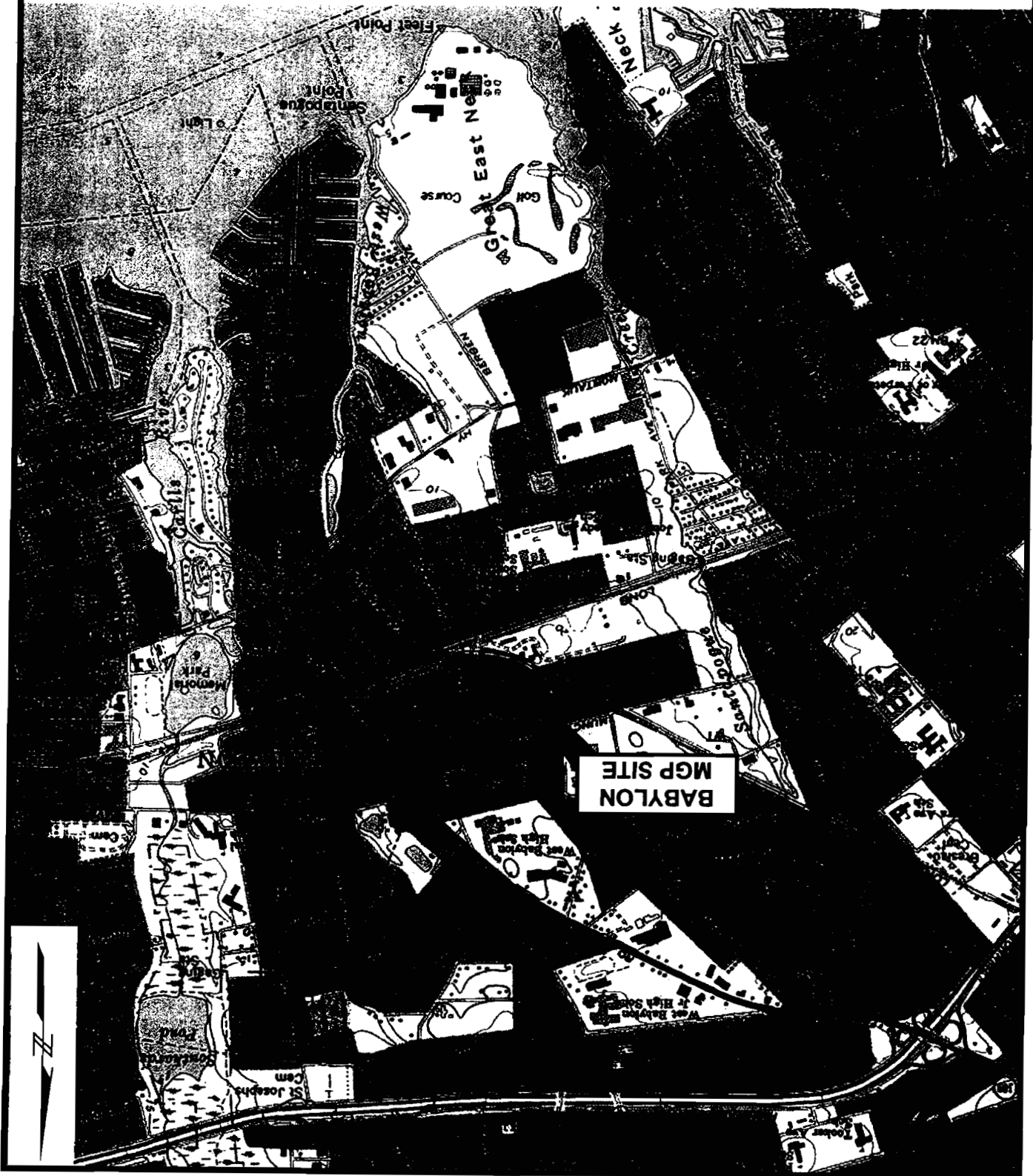
KEYSPAN CORPORATION
BROOKLYN, NEW YORK
BABYLON, NEW YORK
BABYLON MGP
NYSDEC BCP APPLICATION

PROJECT 982482
GEI Consultants

SITE LOCATION MAP



SOURCE: Map created with TOPoI © 2001 National Geographic
(www.nationalgeographic.com/topo)

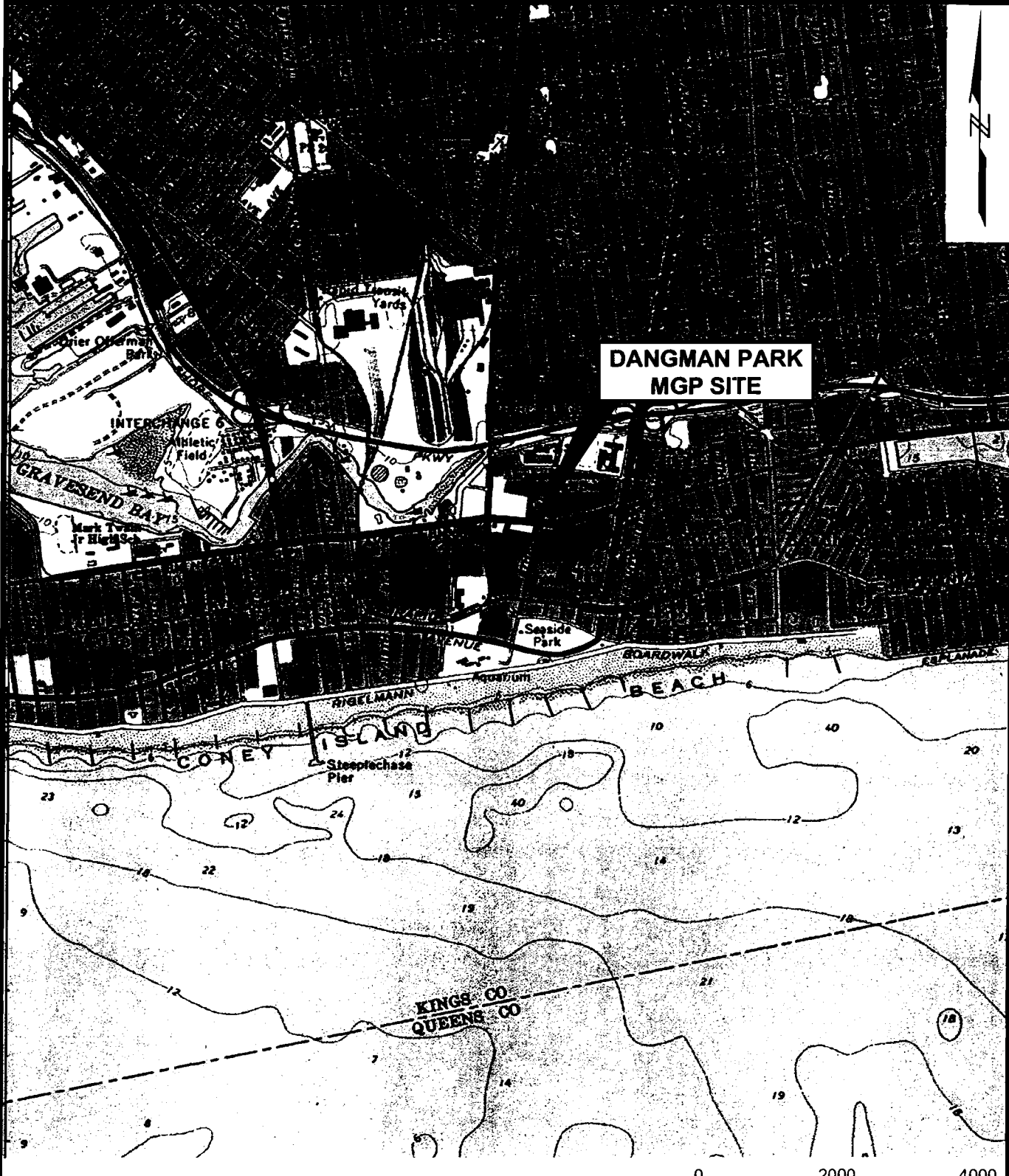


BABYLON
MGP SITE

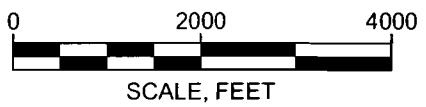




**DANGMAN PARK
MGP SITE**



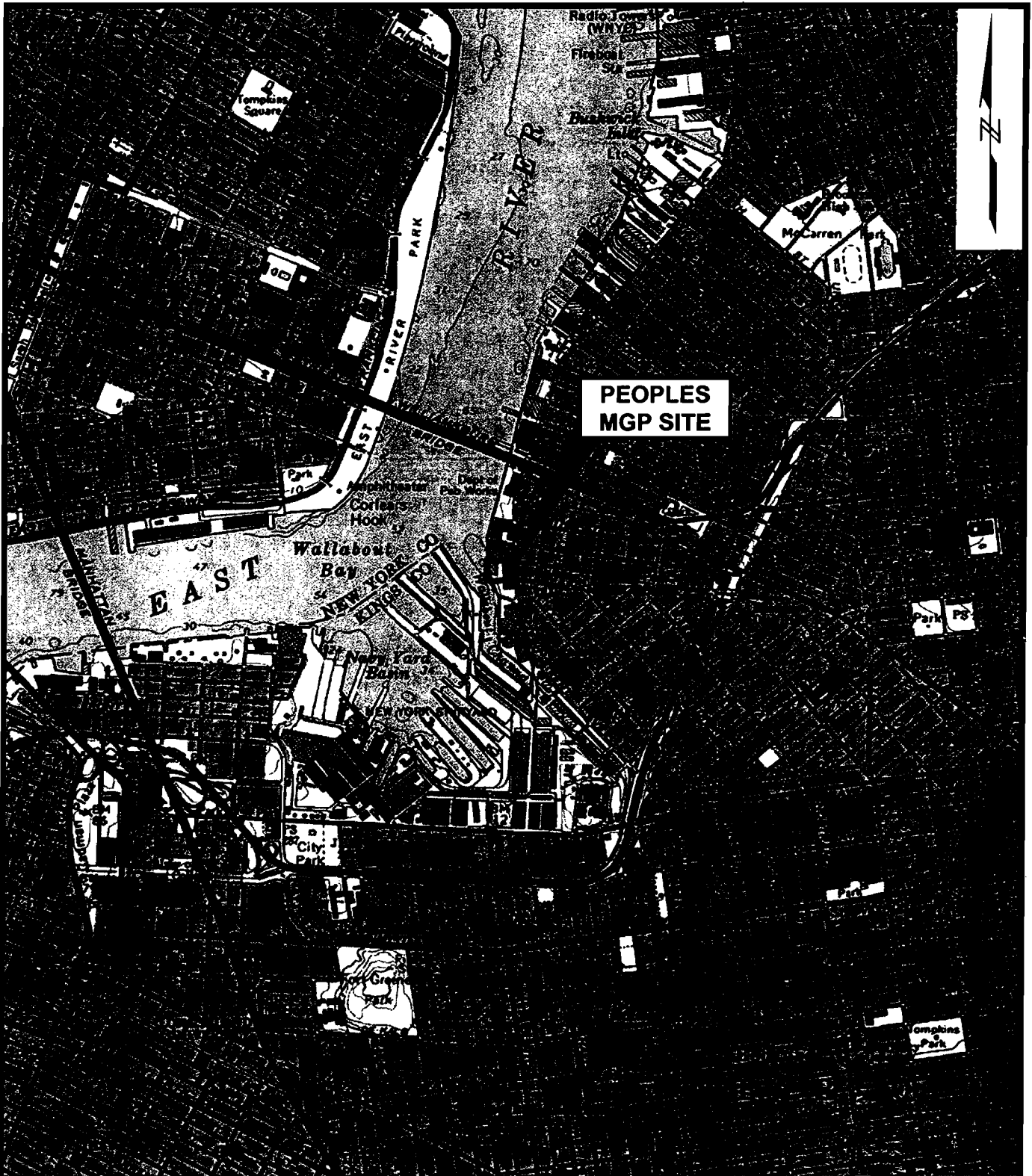
SOURCE: Map created with TOPO!® ©2001 National Geographic
(www.nationalgeographic.com/topo)



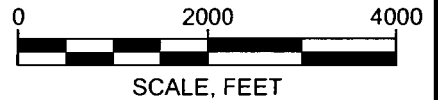
NYSDEC BCP APPLICATION DANGMAN PARK MGP BROOKLYN, NEW YORK
KEYSPAN CORPORATION BROOKLYN, NEW YORK

GEI Consultants
PROJECT 982482

SITE LOCATION MAP
AUGUST 2004
FIGURE 1



SOURCE: Map created with TOPO!® ©2001 National Geographic
 (www.nationalgeographic.com/topo)



NYSDEC BCP APPLICATION
 PEOPLES WORKS MGP
 BROOKLYN, NEW YORK

KEYSPAN CORPORATION
 BROOKLYN, NEW YORK

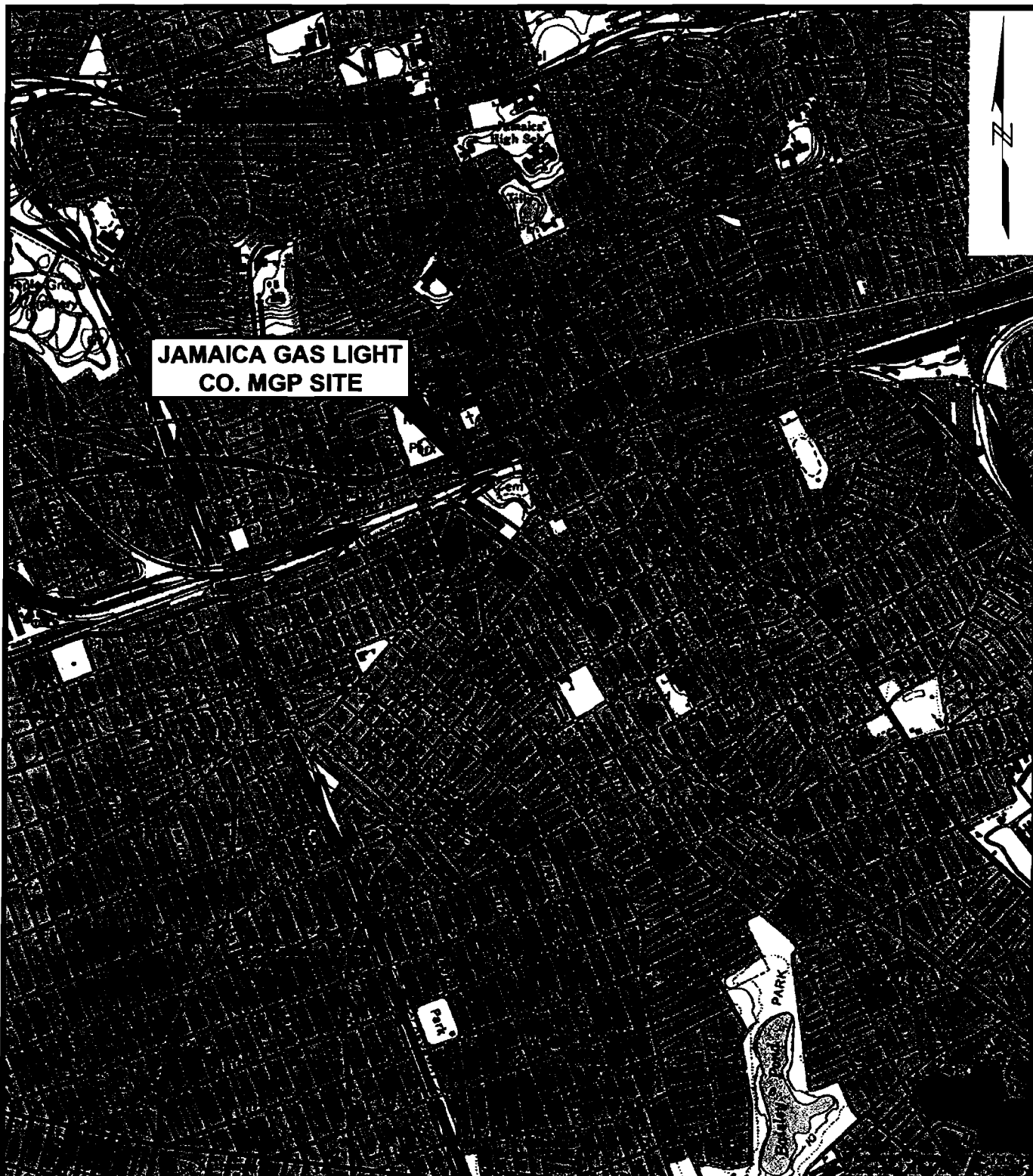


SITE LOCATION MAP

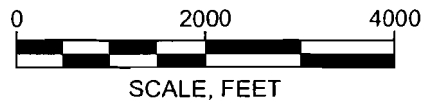
PROJECT 982482

AUGUST 2004

FIGURE 1



SOURCE: Map created with TOPO!® ©2001 National Geographic
 (www.nationalgeographic.com/topo)



NYSDEC BCP APPLICATION
 JAMAICA GAS LIGHT COMPANY MGP
 JAMAICA, NEW YORK

KEYSPAN CORPORATION
 BROOKLYN, NEW YORK

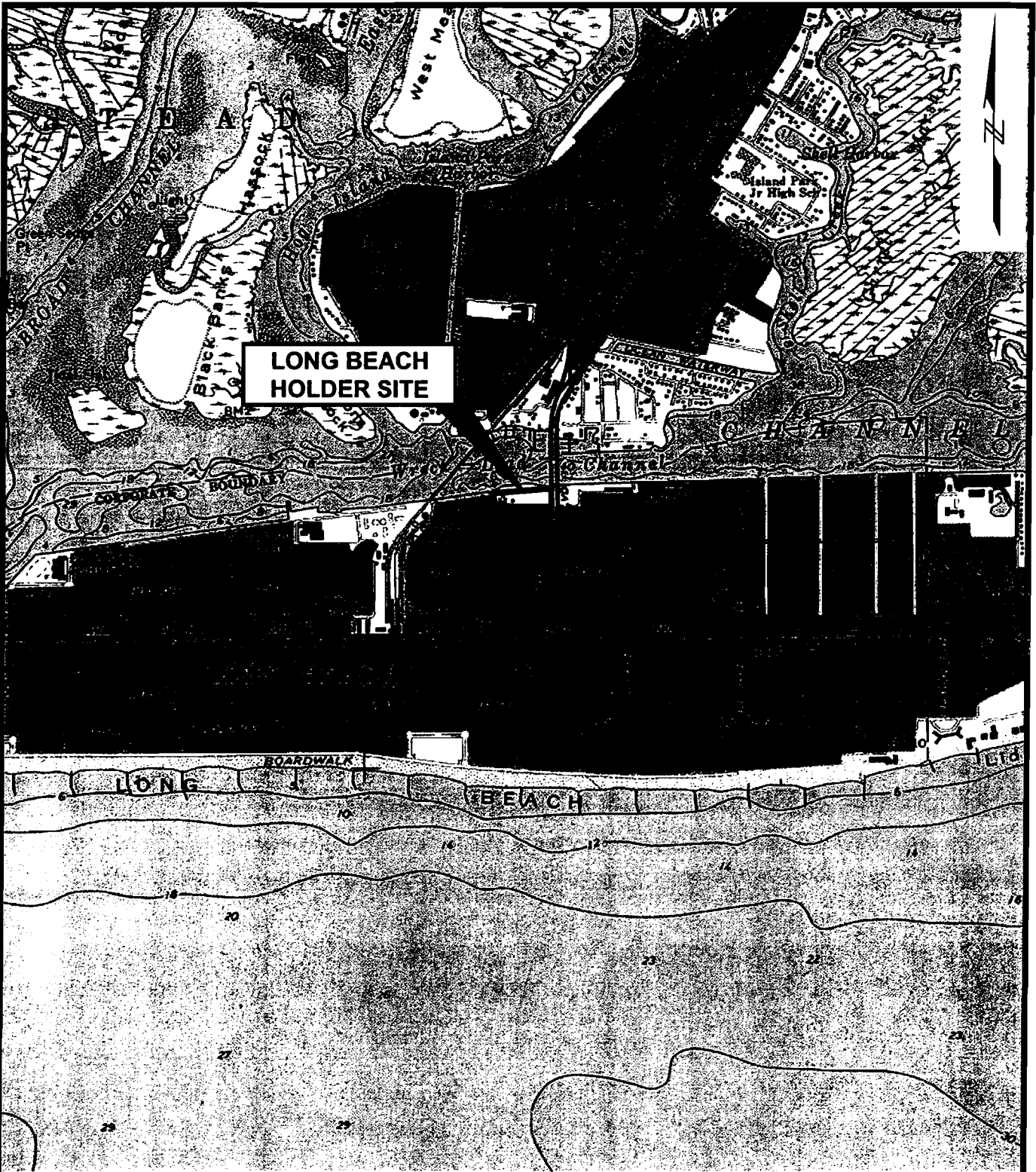


PROJECT 982482

SITE LOCATION MAP

AUGUST 2004

FIGURE 1



SOURCE: Map created with TOPO!® ©2001 National Geographic
 (www.nationalgeographic.com/topo)




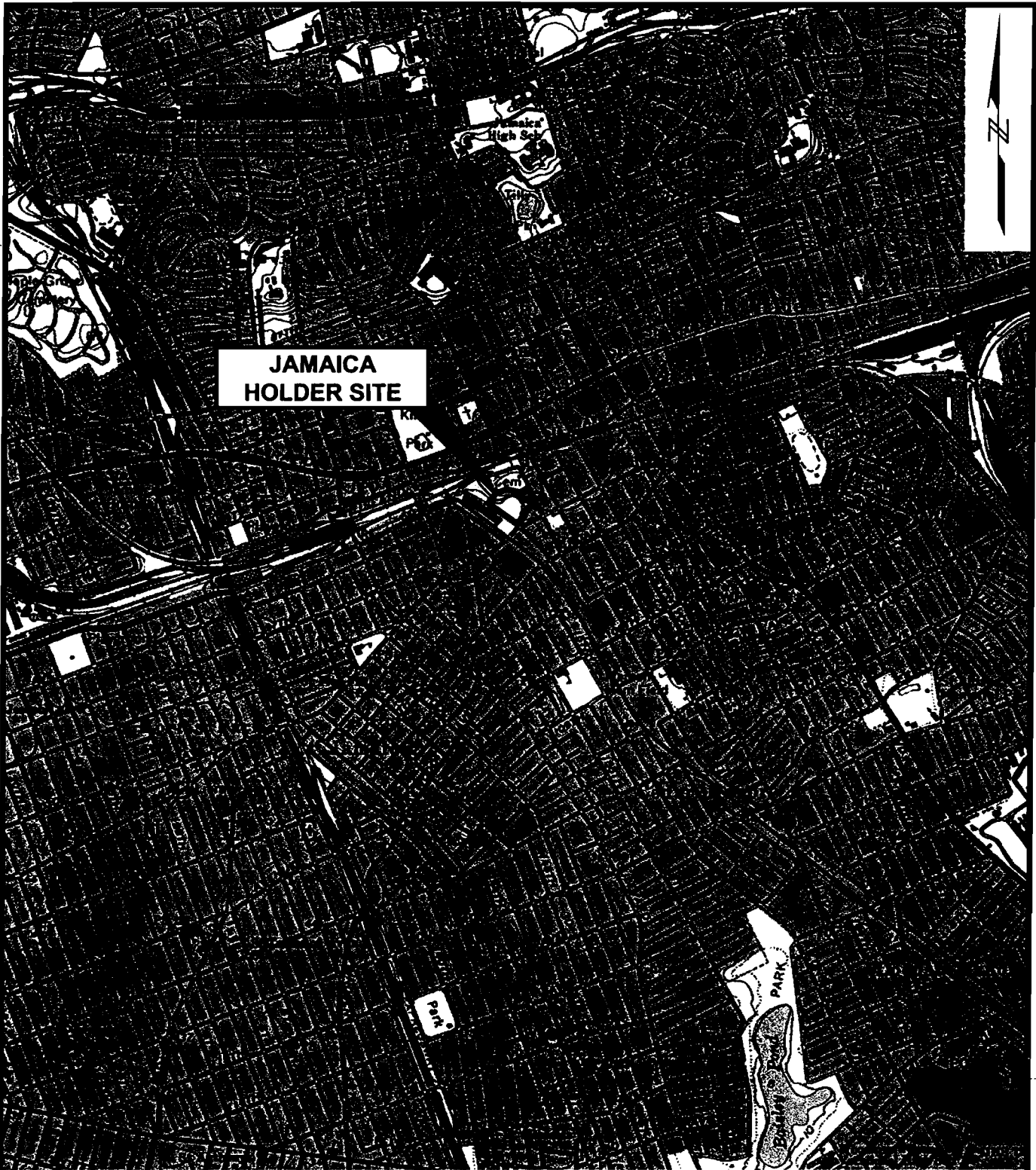
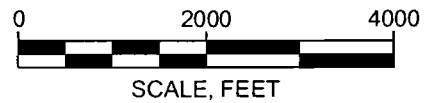
<p>NYSDEC BCP APPLICATION LONG BEACH HOLDER LONG BEACH, NEW YORK</p>	 <p>GEI Consultants</p>	<p>SITE LOCATION MAP</p>
<p>KEYSPAN CORPORATION BROOKLYN, NEW YORK</p>		

FIGURE 1



SOURCE: Map created with TOPO!® ©2001 National Geographic
 (www.nationalgeographic.com/topo)



NYSDEC BCP APPLICATION
 JAMAICA HOLDER STATION
 JAMAICA, NEW YORK

KEYSPAN CORPORATION
 BROOKLYN, NEW YORK

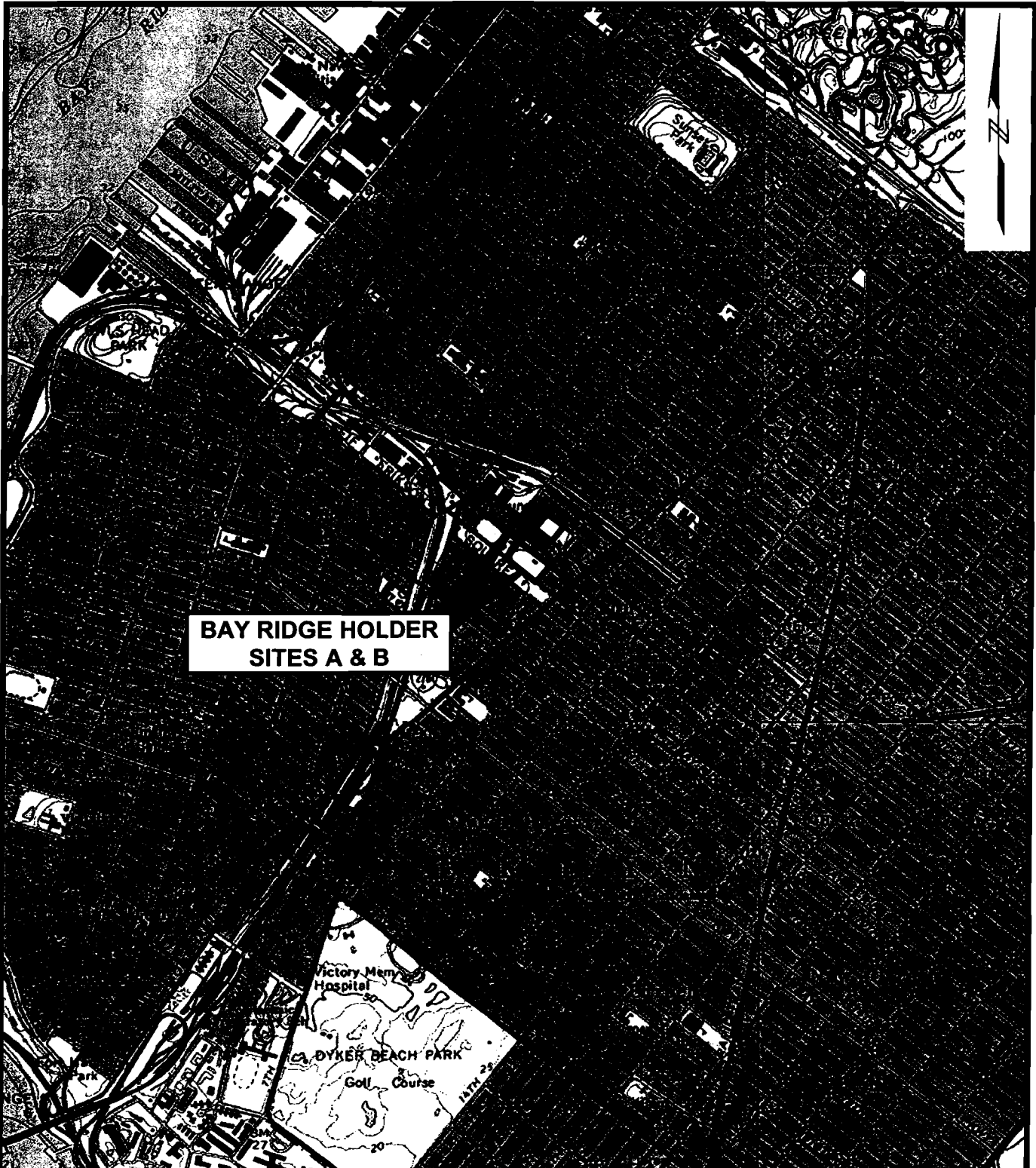


SITE LOCATION MAP

PROJECT 982482

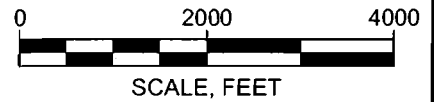
AUGUST 2004

FIGURE 1



**BAY RIDGE HOLDER
SITES A & B**

SOURCE: Map created with TOPO!® ©2001 National Geographic
(www.nationalgeographic.com/topo)



NYSDEC BCP APPLICATION
BAY RIDGE HOLDER STATIONS A & B
BROOKLYN, NEW YORK

KEYSPAN CORPORATION
BROOKLYN, NEW YORK

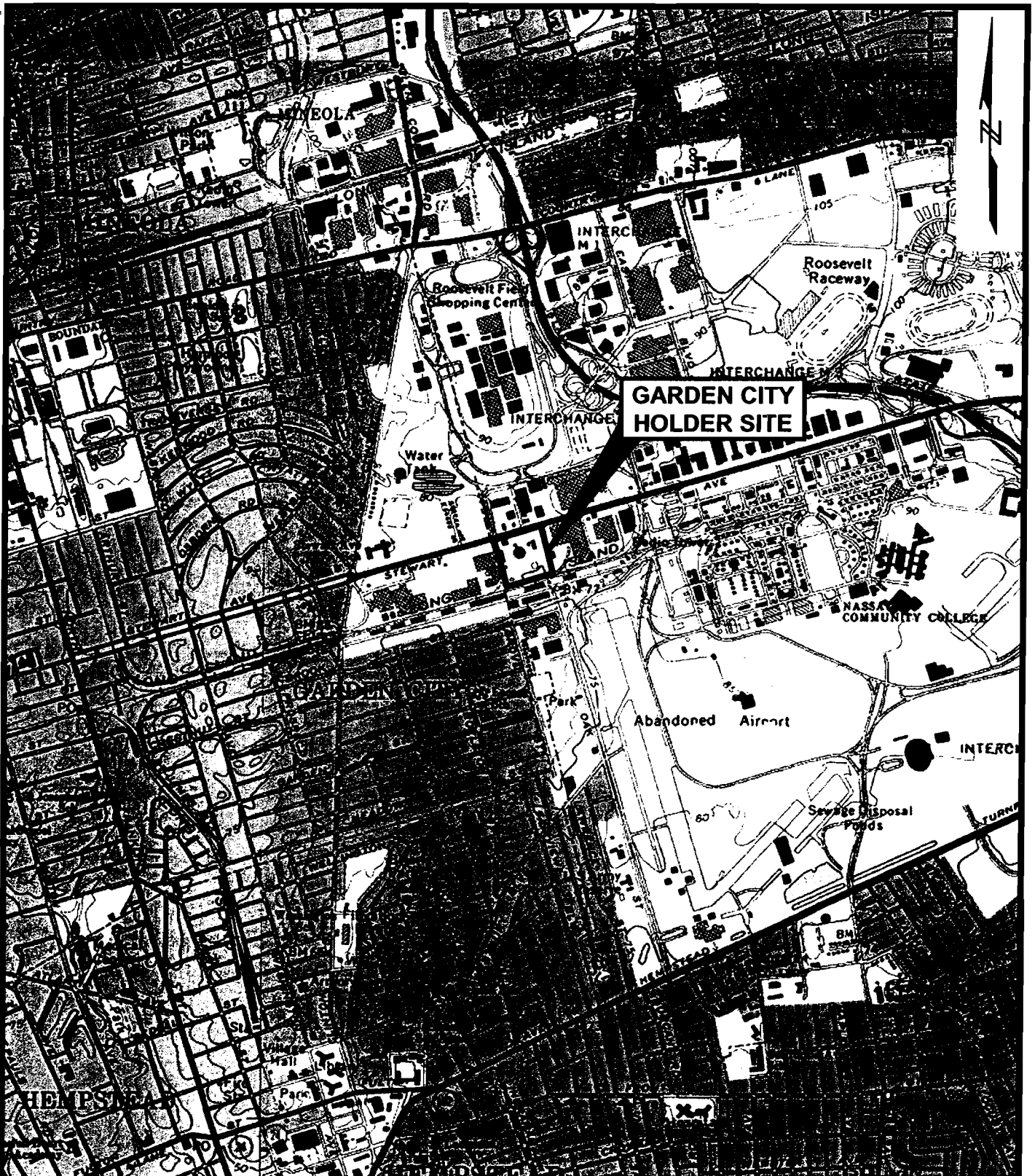


PROJECT 982482

SITE LOCATION MAP

AUGUST 2004

FIGURE 1



SOURCE: Map created with TOPO!® ©2001 National Geographic
 (www.nationalgeographic.com/topo)



NYSDEC BCP APPLICATION
 GARDEN CITY (STEWART AVENUE) HOLDER
 HEMPSTEAD, NEW YORK

KEYSPAN CORPORATION
 BROOKLYN, NEW YORK



PROJECT 982482

SITE LOCATION MAP

AUGUST 2004

FIGURE 1

**Exhibit "A" - Table 2
KeySpan MGP Related Sites
Subject to
Existing Orders and/or Agreements**

A. Order on Consent # D2-001-94-12: Investigation and Interim Remedial Measures

Coney Island MGP Site

Site # 224026 (Class 2)

Neptune Avenue

Brooklyn, NY 11224

County: Kings

Status: ROD for OU-1 signed in March 2001. ROD for Coney Island Creek, OU-2, signed in March 2002. Phase I of OU-1 completed in 2004. Phase II of OU-1 and OU-2 expected to begin in 2006.

B. Order on Consent Index # D2-0001-98-04: Investigation and Remediation

Clifton MGP Site

Site # 243023

25 & 40 Willow Avenue

Staten Island, NY 10305

County: Richmond

Status: RI for 40 Willow parcel is complete - ROD issued in 2004. RI for 25 Willow Ave. parcel approved, PRAP issued 2006.

C. Order on Consent Index # D1-0001-98-11: Investigation and Remedial Response Program

Bay Shore MGP Site

Site # 152172

Clinton Avenue

Town of Islip, NY 11706

County: Suffolk

Status: Several rounds of investigation were completed and RI and Final RI Reports issued in 2002 and 2003. Site was subsequently segregated into four operable units. IRMs were completed or are in progress in OU-2, 3 and 4. (See Watchogue Creek below.) Regarding OU-1, a RAP was issued in 2004 and RAWP in 2005. Pre-design construction studies were conducted and the remedial design is in progress.

Hempstead MGP Site

Site # 130086

Intersection Street

Town of Hempstead NY 11530

County: Nassau

Status: Final RI was completed in 2005. The report is being finalized based on NYSDEC/NYSDOH comments.

Glen Cove MGP Site Site # 130089
Stanco Street
City of Glen Cove, NY 11542 County: Nassau
Status: Initial phase of RI field work was completed in the summer of 2004. A supplemental investigation to further define the extent of site contamination was conducted in 2005/2006 and RI to be issued in 2006.

Halesite MGP Site Site # 152173
40 New York Avenue
Town of Huntington, NY 11743 County: Suffolk
Status: Remedial Investigation was completed in 2004. Feasibility study to develop remedial alternatives was completed and RAP issued in 2006.

D. **Order on Consent Index # D1-0002-98-11: Remedial Investigation/Feasibility Studies**

Sag Harbor MGP Site Site # 152159 (Class 2)
Bridge Street
Town of Southampton, NY 11963 County: Suffolk
Status: The site was recently decommissioned as a natural gas distribution station. Completed investigations include a PSA (1995) and two phases RI (2002 and 2003). Supplemental data was collected and a report was generated in 2005. A PRAP and ROD were issued in 2006.

Rockaway Park MGP Site Site # 241029 (Class 2)
Beach Channel Drive & Beach 108th Street
Queens, NY 11694 County: Queens
Status: Completed investigations include a PSA (1997) and two RIs (2002 and 2004). A ROD was issued for the site in October, 2004 and a design to implement that decision is currently being developed.

E. **Order on Consent Index # D1-0001-99-05: Preliminary Site Assessment**

Patchogue MGP Site Site # 152182
River Ave & West Main Street
Town of Brookhaven, NY 11772 County: Suffolk
Status: Field work for the investigation has been completed. MGP waste was observed in test pits. To be included in this Order & Settlement Agreement (see Table 1)

Far Rockaway MGP Site Site # 241032
Beach 12th Street & Brunswick Avenue
Queens, NY 11691 County: Queens
Status: Originally started as a State Superfund Project, the site has been continued under a Consent Order signed by Keyspan in September of 1999. PSA Report, which indicated that further investigative work is necessary, has been reviewed by DEC and accepted. To be included in this Order & Settlement Agreement (see Table 1)

Clinton Road (Hempstead) MGP Site Site # 130106
Clinton Road
Town of Hempstead, NY County: Nassau
Status: No Further Action; PSA completed in 2003

Babylon MGP Site Site # 152181
Evergreen Street
Town of Babylon, NY County: Suffolk
Status: Originally started as a State Superfund Project, the site has been continued under a Consent Order signed by Keyspan Corp in September of 1999. PSA completed. To be included in this Order & Settlement Agreement (see Table 1)

Garden City MGP Site Site #: 130105
Hilton Avenue & 11th Street
Town of Hempstead, NY County: Nassau
Status: No Further Action; PSA completed in 2002.

- F. **Agreement Index # D1-0002-99-05:** Investigation Program for MGP & Petroleum Derived Waste

Watchogue Creek
Near Smith Avenue & Mechanicsville Road
Bay Shore, NY County: Suffolk
Status: Investigation conducted in 2000. Creek sediment removal/channel realignment completed as IRM under Bay Shore OU-4.

- G. **Voluntary Cleanup Agreement Index # R1-0001-01-01:** Remedial Response Program

Glenwood Landing Propane Plant and Compressor Station Site # V00351
Shore Road
Glenwood Landing, NY 11547 County: Nassau
Status: A VCA agreement was signed in March 2001. As part of the agreement, data from several previous investigations was accepted and a further RI commenced in March 2001. The investigations indicated that groundwater VOCs and soil hot spots for PCBs, SVOCs, and metals. RI completed in September 2001 - additional sampling and bench scale studies have continued. An RA of hot spot removal for Areas 1A, 2, and 3, cover of area 1B, and in-situ chemical oxidation for groundwater in Area 1 were proposed and accepted. Excavation work and capping were completed in January 2003 with approval pending additional information and the groundwater treatment. A bench scale treatability study for the ISCO is complete and final design of the injection is on-going.

H. **Voluntary Cleanup Agreement Index # A2-0460-0502: RI/FS**

Citizens Gas Works MGP Site Site # 224012 & V00360

(Includes Hoyt Street Holder Station)

Corner of 5th Street & Smith Street

Brooklyn, NY 11218

County: Kings

Status: First phase of the RI was completed in spring 2003; second phase of the RI, initiated in December 2004, has been approved. Supplementary RI including off-site soil borings is currently underway.

I. **Voluntary Cleanup Agreement Index # W2-1062-05-03**

Greenpoint Energy Center Site #: V00631

287 Maspeth Avenue

Brooklyn, NY 11211

County: Kings

Status: In August 2005, an IRM Completion Report was submitted for four non-contiguous parcels located within the larger Greenpoint Energy Center.

J. **Order on Consent and Administrative Settlement Index # A2-0523-0705: RI Program**

Gowanus Canal

Brooklyn, NY

County: Kings

Status: Related to Citizens Gas, Fulton Works and Metropolitan Works former MGP Sites.

Off-site Remedial Investigation of Gowanus Canal underway.

K. **Voluntary Cleanup Agreement Index # D2-0002-99-10: Investigation and, if needed, Remediation**

Newtown Holder Station

Site #: V00406

78-01 57th Avenue

Elmhurst, NY 11373

County: Queens

Status: Remediated. Property donated to New York City to develop as a park and community center. KeySpan is negotiating with an adjacent property owner for easements/deed restrictions.

L. **Order on Consent Index # W2-1090-06-06**

Brooklyn Navy Yard

Site #: 2-24-019A, OU-2

(Includes Nassau Works MGP Site as OU-2)

540 Kent Avenue

Brooklyn, NY 11205

County: Kings

Status: Several preliminary characterization studies have been performed, and some interim remedial actions have been undertaken. Currently, the NYC Department of Sanitation is preparing a work plan to address the majority of the site (OU-1), while Keyspan is investigating the Coal Gasification portion of the site (OU-2).

M. **Voluntary Cleanup Agreement Index # R2-0330-98-01: In the Matter of the Implementation of a Response Program**

LILCO - Edgemere Substation

Site #: V00147

s/s Rockaway Beach Boulevard

w/o 52nd Street, Edgemere

Rockaway, NY

County: Queens

Status: The site is a retired LILCO electrical substation with various types of fill material including fill from former gas manufacturing facilities. Remediation completed. Awaiting comments from DEC on the soil vapor monitoring plan NYSDOH required be performed on an adjacent property.

Exhibit "A" - Table 3
Additional KeySpan
MGP Sites, Holder Stations & Hortonsphere Sites

#	KeySpan Sites	Site #	Location	County
	MGP or Holder Sites			
1	Flatbush Holder Stations A & B	224061	Winthrop St., & Clarkson Ave. Brooklyn, NY 11226	Kings
2	Fulton Municipal Works MGP & 3 rd Ave Holder Station	224051	Brooklyn, NY 11217 (near Gowanus Canal)	Kings
3	Metropolitan Works MGP Site	224046	124-136 Second Avenue Brooklyn, NY 11215 (near Gowanus Canal)	Kings
4	Williamsburg Works MGP	224055	Kent Avenue Bet. N.11 & N.12 Street Brooklyn, NY 11211	Kings
5	Inwood Holder Site & LP Cracking/Reformation	130121	Inwood, NY 11096	Nassau
6	Wythe Ave (Berry Street) Holder Site	224069	No. 12 & 13 Berry St. Brooklyn, NY 11211	Kings
7	Equity Works MGP Site	224050	Maspeth Avenue Brooklyn, NY 11211	Kings
8	Greenpoint Mgp Site	224052	287 Maspeth Avenue Brooklyn, NY 11211	Kings
9	Kings County MGP Site	224056	5400-5600 1st Avenue Brooklyn, NY 11220	Kings
10	Belmont Holder Station	224060	290 Belmont Avenue Brooklyn, NY 11207	Kings
11	Brooklyn Gas Light Works MGP Site	224048	1 Hudson Avenue Brooklyn, NY 11201	Kings
12	Plymouth Street Holder Station	224065	49 Gold Street Brooklyn, NY 11211	Kings
13	Union Station (Citizens Branch) Holder Station	224054	2940 Atlantic Avenue Brooklyn, NY 11207	Kings

**Exhibit "A" - Table 3
Additional KeySpan
MGP Sites, Holder Stations & Hortonsphere Sites**

#	KeySpan Sites	Site #	Location	County
	MGP or Holder Sites (cont'd)			
14	Scholes Street Holder Station	224067	338 & 350 Scholes St. & 154 Bogart Street Brooklyn, NY 11206	Kings
15	Brooklyn MGP Site		61 st Street & New Utrecht Ave Brooklyn, NY	Kings
16	Saltaire, acetylene gas production		Believed W/S Beacon Walk S/O Lighthouse Promenade Saltaire 11706	Suffolk
17	Southold, acetylene gas production		Believed W/S Hobart St & N/O Korn Rd	Suffolk
18	East Hampton, gasoline cracking		Buells Lane East Hampton, NY	Suffolk
	Former & Existing Hortonsphere Sites			
19	Bellmore		Newbridge Rd/Grand Ave N/O LIRR, S of Substation	Nassau
20	East Hampton (active)		S/S Railroad Ave btwn Race Lane & Fresno Pl East Hampton, NY 11937	Suffolk
21	Lynbrook		Ocean Ave & Merrick Rd	Nassau
22	Manhasset		High Street	Nassau
23	Oyster Bay		End of Willow Street	Nassau
24	Pinelawn/Farmingdale		E/S Broadhollow Rd, N/O Conklin St & S/O LIRR ROW East Farmingdale, NY 11735	Suffolk

EXHIBIT "B"

Department-Approved Work Plan(s)

EXHIBIT "C"

Cost Summary

INTENTIONALLY LEFT BLANK

EXHIBIT "D"

NOTICE OF ORDER & SETTLEMENT AGREEMENT

_____ ("Respondent") is subject to an Order On Consent and Administrative Settlement (Index # _____) (the "Order & Settlement Agreement") issued by the Commissioner of the New York State Department of Environmental Conservation (the "Department" under Article 27, Title 13, and Article 71, Title 27 of the Environmental Conservation Law of the State of New York ("ECL") for a site located at _____, New York (the "Site").

[The Site has been designated by the Department as an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301.2, and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site # _____. The Department has classified the Site as a Class "____" site pursuant to ECL Section 27-1305.4.b. This classification means that the Department has determined that the Site _____. The Site is more particularly described in the legal description that is attached hereto as Schedule "A."] **[Note: This paragraph can be changed, modified or deleted to set forth the status of the particular site.]**

The purpose of the Order & Settlement Agreement is to provide for the development and implementation of an inactive hazardous waste disposal site remedial program for the Site. The effective date of the Order & Settlement Agreement was _____. A copy of the Order & Settlement Agreement, as well as any and all Department-approved Work Plans under this Order & Settlement Agreement can be reviewed at the Department's _____ offices located at _____ by contacting _____.

This Notice of Order & Settlement Agreement is being filed with the _____ recording officer in accordance with Paragraph IX of the Order & Settlement Agreement to give all parties who may acquire any interest in the Site notice of this Order & Settlement Agreement.

-or-

At the request of Respondent, and in accordance with Respondent's responsibilities pursuant to Paragraph IX of the Order & Settlement Agreement, to give all parties who may acquire any interest in the Site notice of this Order & Settlement Agreement, this Notice of Order and Settlement Agreement is being filed with the _____ recording officer by _____, the fee Owner of the Site,

WHEREFORE, the undersigned has signed this Notice of Order & Settlement Agreement in compliance with the terms of the Order & Settlement Agreement.

Respondent (or Owner)

By: _____

Title: _____

Date: _____

STATE OF NEW YORK

) ss.:

COUNTY OF _____

On the _____ day of _____ in the year _____ before me, the undersigned, a notary public in and for said State, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed this instrument.

Notary Public

Draft

Appendix "A"
(to Exhibit "D")
Map of the Property

EXHIBIT "E"

DRAFT

DRAFT

ENVIRONMENTAL EASEMENT

THIS INDENTURE made this ____ day of _____, 200 __, between Owner(s) _____ residing at (or having an office at) _____ (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("brownfield sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of environmental easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and of ensuring the potential restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that environmental easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a brownfield site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and;

WHEREAS, Grantor, is the owner of real property located in the City/Town/Village of _____, _____ County, New York known and designated on the tax map of the _____ of _____ as tax map parcel number _____, section ___ block ___ lot___, being the same as that property conveyed to Grantor by deed on _____, and recorded in the Land Records of the _____ County Clerk at page ____, liber ____ of Deeds, comprised of approximately ___ acres, and hereinafter more fully described in Schedule A attached hereto and made a part hereof (the " Controlled Property"); and;

Attach an adequate legal description of the property subject to the easement, or reference a recorded map. If the easement is on only a part of a parcel of land which is not subdivided into encumbered and unencumbered portions, a legal description needs to be

created by a survey bearing the seal and signature of a licensed land surveyor with reference to a metes and bounds description.

WHEREAS, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein and the terms and conditions of **Brownfield Cleanup Agreement Number** _____ /**State Assistance Contract Number** _____ /**Order on Consent Number** _____, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The following controls apply to the use of the Controlled Property, run with the land are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees, and any person using the Controlled Property:

A. The Controlled Property may be used for

residential
commercial
industrial

use as long as the following long-term engineering controls are employed:

B. The Controlled Property may not be used for a higher level of use such as unrestricted/ residential / commercial use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

This property is subject to an environmental easement held by the New York State Department of Environmental Conservation pursuant of Title 36 to Article 71 of the Environmental Conservation Law.

C. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

D. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Controlled Property, including:

1. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

2. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This environmental easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this environmental easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person intentionally violates this environmental easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 27, Title 14, or the Satisfactory

Completion of Project provided under ECL Article 56, Title 5 with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing its County tax map number or the Liber and Page or computerized system tracking/ identification number and address correspondence to:

Division of Environmental Enforcement
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway
Albany New York 12233-5500

Such correspondence shall be delivered by hand, or by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. This environmental easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This environmental easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation and filed

On the _____ day of _____, in the year 200_, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public - State of New York

Draft

EXHIBIT "F"

RECORDS SEARCH REPORT

1. Detail all environmental data and information within Respondent's or Respondent's agents' or consultants' possession or control regarding environmental conditions at or emanating from the Site.

2. A comprehensive list 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 of areas immediately surrounding the Site which are or might be affected by contamination at the Site, including all available topographic and property surveys, engineering studies, and aerial photographs.

3. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to:

(i) a history and description of the Site, including the nature of operations;

(ii) the types, quantities, physical state, locations, methods, and dates of disposal or release of hazardous waste at or emanating from the Site;

(iii) a description of current Site security (i.e. fencing, posting, etc.); and

(iv) the names and addresses of all persons responsible for disposal of hazardous waste, including the dates of such disposal and any proof linking each such person responsible with the hazardous wastes identified.

EXHIBIT "G"

SC WORK PLAN REQUIREMENTS

The SC Work Plan shall include but not be limited to:

1. A chronological description of the anticipated SC activities together with a schedule for the performance of these activities.
2. 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 9285.2-111 (draft June 1993), as supplemented by the Department; and
 - (iii) A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the SC 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 & Settlement Agreement.
3. The Work Plan shall incorporate all elements of an SC as set forth in Department technical and administrative guidance documents including, but not limited to, investigations of surface and subsurface soils, surface waters, ground water, and air.
4. The SC must be sufficiently comprehensive to allow the Department to determine whether a consequential amount of hazardous waste has been disposed at the Site and, if so, whether the contamination presents a significant threat to public health and/or the environment.

EXHIBIT "H"

RI/FS WORK PLAN REQUIREMENTS

The Investigation Work Plan shall include but not be limited to:

1. A chronological description of the anticipated RI/FS activities together with a schedule for the performance of these activities.
2. 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;
 - (iii) 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 & Settlement Agreement; and
 - (iv) 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, any subsequent revisions thereto, and 6 NYCRR Part 375.
3. The Work Plan shall incorporate all elements of an RI/FS as set forth in CERCLA, as amended, the NCP, the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions thereto in effect at the time the RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents.
4. The Work Plan shall provide for an FS evaluating on-Site and off-Site remedial actions to restore the Site to pre-disposal conditions, to the extent feasible and authorized by law. At a minimum, alternatives shall evaluate the elimination or mitigation of all significant threats to the public health and to the environment presented by hazardous waste disposed at the Site through the proper application of scientific and engineering principals.

EXHIBIT "I"

IRM WORK PLAN REQUIREMENTS

The IRM Work Plan shall include, at a minimum, the following:

1. a summary of the data supporting the extent of the proposed IRM;
2. a chronological description of the anticipated IRM activities;
3. a schedule for performance of the IRM activities;
4. detailed documents and/or specifications prepared, signed, and sealed by a Professional Engineer providing sufficient detail to implement the Department-approved IRM, including, as appropriate, a description of soil and sediment erosion control, storm water management and monitoring, and dust, odor, and organic vapor control and monitoring procedures to be implemented during remedial activities, and a detailed description of confirmation sampling and site restoration plans;
5. a health and safety plan, including a community air monitoring plan;
6. a contingency plan, including a description of procedures for dismantling and removing remedial structures and equipment from the Site, if applicable;
7. a citizen participation plan, if required, 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, any subsequent revisions thereto, and 6 NYCRR Part 375;
8. an OM&M Plan, if the performance of the Department-approved IRM results in a treatment system which is expected to operate for greater than 18 months. If the system will not operate for greater than 18 months, or if only monitoring is required, only a monitoring plan will be needed; and
9. a description of institutional controls to be implemented as well as written approval from the owner of the affected property if the remedy selected requires implementation of an institutional control at an off-Site location or if the person responsible for the remedy is not the Site owner.

EXHIBIT "J"

REMEDATION WORK PLAN REQUIREMENTS

The Remediation ("RD/RA") Work Plan 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:

(i) the construction and operation of any structures;

(ii) the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;

(iii) the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;

(iv) physical security and posting of the Site;

(v) quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Construction; and

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

2. A schedule for submission of "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 all media of concern, including 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) and a specific description of the criteria to be used to decide when operation of such activities 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 and after 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, any subsequent revisions thereto, and 6 NYCRR Part 375.

EXHIBIT "K"

SM WORK PLAN REQUIREMENTS

The SM Work Plan shall provide for:

1. Operation and maintenance of engineering controls and/or treatment systems;
2. Maintenance of institutional controls, where applicable;
3. Yearly certification by a Professional Engineer of the continued effectiveness of any institutional and/or engineering controls, where applicable. The certification must identify the required controls and evaluate whether the controls should remain in place and effective for the protection of public health and/or the environment;
4. A monitoring plan which describes the measures for monitoring the performance and effectiveness of the remedy at the Site;
5. A contingency plan which describes procedures which may be required to protect and/or maintain the operation of the remedy in the event of an emergency, such as a fire, spill, tank or drum overflow or rupture, severe weather, or vandalism;
6. A health and safety plan and a list of records and references;
7. Monitoring and reporting of the performance and effectiveness of the remedy, both short and long-term, by:
 - (i) Assessing compliance with actual or equivalent discharge permit limits;
 - (ii) Assessing achievement of the remedial performance criteria; and,
 - (iii) Sampling and analysis of appropriate media.
8. A determination that the remedy is complete by demonstrating that the remedial action objectives have been achieved.

EXHIBIT "L"

RECORD OF DECISION

Glossary of Terms

The following terms shall have the following meanings:

“BPM Director”: the Director of the Bureau of Program Management within the Division of Environmental Remediation.

“CERCLA”: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.

“Day”: a calendar day. In computing any period of time under this Order & Settlement Agreement, where the last day would fall on a Saturday, Sunday or State holiday, the period shall run until the close of business of the next working day.

“Department”: the New York State Department of Environmental Conservation.

“Director”: the Division Director, Division of Environmental Remediation.

“ECL”: the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended.

“Feasibility Study” or “FS”: a study undertaken to develop and evaluate options for remedial action. The feasibility study emphasizes data analysis and is generally performed concurrently and in an interactive fashion with the remedial investigation, using data gathered during the remedial investigation. The term also refers to a report that describes the results of the study. (See 6 NYCRR Part 375)

“Force Majeure Event”: an event which is brought on as a result of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Respondent’s reasonable control.

“Inactive Hazardous Waste Disposal Site Remedial Program” or “Remedial Program”: activities undertaken to eliminate, remove, abate, control, or monitor existing health hazards, existing environmental hazards, potential health hazards, and/or potential environmental hazards in connection with the Site and all activities to manage wastes and contaminated materials at or removed from the Site. (See ECL 27-1301(3) and 6 NYCRR Part 375)

“Interim Remedial Measure” or “IRM”: a discrete set of activities, including removal activities, to address both emergency and non-emergency Site conditions, which can be undertaken without extensive investigation or evaluation, to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to the Site. (See 6 NYCRR Part 375)

“National Contingency Plan” or “NCP”: the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. 9605, and codified at 40 C.F.R. Part 300, and any amendments thereto.

“NL”: the Navigation Law, Chapter 37 of the Consolidated Laws of New York, as amended.

“OH&M”: the Office of Hearings and Mediation Services.

“Order & Settlement Agreement”: this Order on Consent and Administrative Settlement and all exhibits attached hereto.

“Professional Engineer”: 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.

“Record of Decision” or “ROD”: the document reflecting the Department’s selection of a remedy relative to the Site or any Operable Unit thereof. The ROD shall be attached to and made enforceable under this Order & Settlement Agreement as Exhibit “L.”

“Remedial Action” or “RA”: those activities, except for OM&M, to be undertaken under this Order & Settlement Agreement to implement the ROD.

“Remedial Investigation” or “RI”: a process undertaken to determine the nature and extent of contamination. The remedial investigation emphasizes data collection and site characterization and generally is performed concurrently with the feasibility study. It includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for and the proposed extent of the program and to support the evaluation of proposed alternatives. (See 6 NYCRR Part 375)

“Site Characterization” or “SC”: a process undertaken to allow the Department to determine whether a consequential amount of hazardous waste has been disposed at a Site and, if so, whether the contamination presents a significant threat to public health and/or the environment.

“Site Management” or “SM”: the activities undertaken as the last phase of the remedial program at a site which continues until the remedial action objectives for the Site are met. Site management is conducted in accordance with a site management plan, which identifies and implements the institutional and engineering controls required for a site, as well as any necessary monitoring and/or operation and maintenance of the remedy.

“Spill Fund”: the New York State Environmental Protection and Spill Compensation Fund as established by Article 12, Part Three of the NL.

“State Costs”: all the State’s response expenses related to this Site, including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating, implementing, overseeing, administering, or enforcing this Order & Settlement Agreement, and any other response costs as defined under CERCLA. Approved agency fringe benefit and indirect cost rates will be applied.

“Termination Date”: the date that this Order & Settlement Agreement is terminated pursuant to Paragraph XIII.

“USEPA”: the United States Environmental Protection Agency.