

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development
and Implementation of a Former
Manufactured Gas Plant (MGP) Sites
Investigation and Remediation Program
by Niagara Mohawk Power Corporation

ORDER ON
CONSENT

Index #D0-0001-9210

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law, which, inter alia, requires the Department to carry out the environmental policy of the State set forth of the ECL 1-0101. ECL 3-0301.1.

2. Niagara Mohawk Power Corporation ("Respondent") is a business corporation organized under the laws of the State of New York.

3. Respondent is the owner of the former manufactured gas plant ("MGP") sites at the following locations at which coal tar and associated hazardous substances ("MGP wastes") were, or which may have been, disposed at various times in the past: Gloversville, Rome (Kingsley), Schenectady (Broadway), Oneida, Glens Falls, Troy (Water Street), North Albany, Watertown, Troy (Smith Avenue), Syracuse (Hiawatha), Syracuse (Erie), Oswego, Albion, Fulton, Herkimer, Ilion, Canajoharie, Johnstown, Fort Plain, Schenectady (Seneca), and Rome (Jay and Madison Streets) (individually, "the Site;" collectively, "the Sites").

4. The Department's authority to require abatement and remediation of releases of, inter alia, hazardous substances as that term is defined in 42 U.S.C. 9601(14), including MGP wastes, that are in violation of law or that exceed State environmental quality standards (as those set forth in 6 NYCRR Part 703) ("hazardous substances"), is varied, including, but not limited to, ECL 1-0101, 3-0301, 71-1929, 71-2703, and 71-2705. In addition, the Department has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution caused by, inter alia, the release of hazardous substances into the environment. ECL 3-0301.1.i. Furthermore, the Department has authority to require abatement and remediation of significant threats to the public health or the environment caused by threatened releases of hazardous substances that are hazardous wastes as that term is defined in ECL 27-1301.

5. By letter dated August 30, 1991, Respondent submitted to the Department and to the U.S.E.P.A. a proposed Interim Remedial Measures ("IRM") Plan for the 21 former MGP sites identified in Paragraph 3 of this Order, the purpose of which was to control and/or remove residual MGP waste sources at those Sites. The key elements of the proposed IRM Plan as that set forth in that letter consists of:

- a. IRM-focused characterizations sufficient to allow preparation of work plans for MGP waste source control and/or removal;
- b. IRM work plans detailing the design of MGP waste source control and/or removal measures; and
- c. performance of IRMs (control and/or removal of MGP waste sources).

After evaluation of the proposal, the Department has concluded that the interim remedial objectives of the proposal must be attained within the context of a more comprehensive remedial program that addresses the significant adverse environmental impacts that may be associated with each of the Sites.

6. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement, for each Site, a Preliminary Site Assessment ("PSA") by Respondent which will gather data to enable the Department to characterize hazardous substances which are or may be present at the Site and to enable the Department to determine whether such hazardous substances constitute a significant threat to public health or the environment necessitating remediation as well as to enable Respondent to develop appropriate IRMs; (ii) develop and implement a Remedial Investigation ("RI") and prepare a Feasibility Study ("FS") for any Site the Department determines, based upon the results of the PSA, to require the more comprehensive evaluations and assessments that would be provided through the Remedial Investigation/Feasibility Study ("RI/FS") process; (iii) remediate each Site that the Department determines is in need of remediation to an extent acceptable to the Department, including authorizing Respondent to develop and implement Interim Remedial Measures ("IRMs") that the Department determines to be appropriate; and (iv) pay for the State's administrative and oversight costs associated with implementation of this Order.

7. Respondent, having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its

terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order; and agrees not to contest the validity of this Order or its terms.

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

I. Initial Submittals

Within 45 days after the effective date of this Order, Respondent shall submit to the Department all data within Respondent's possession or control regarding environmental conditions on and near each of the first three Sites identified in Subparagraph II.A of this Order, and other information described in this Paragraph. The Department ~~will determine within a reasonable time~~ before the submittal date whether such data have been previously submitted to the Department and will inform Respondent accordingly. For all other Sites listed in Subparagraph II.A of this Order, Respondent shall provide the information described in this Paragraph in accordance with the schedule set forth in that Subparagraph. The data and other information shall include:

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sites

A. A brief history and description of the Site, including the types, quantities, physical state, location, and, if applicable, dates of disposal of MGP wastes, including methods of disposal and spillage of such wastes;

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

C. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of each Site and areas in the vicinity of each Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs; and

D. An 8.5 inch by 11 inch portion of a United States Geological Survey topographic map of the Site which contains the name of the quadrangle and an arrow indicating the orientation of a northern compass point.

II. PSA and IRM Study

A. With respect to each of the Sites identified, and (unless otherwise provided in the Department-approved PSA Work Plan, defined below) no later than the date specified, in Table "A," Respondent shall:

(1) submit to the Department the initial submittal identified in Paragraph I of this Order;

(2) submit to the Department, for its review and approval, a detailed work plan that describes the methods and procedures to be used in implementing (i) a PSA and (ii) a study of possible IRMs to be considered for implementation at the Site in question, such that the PSA and IRM Study will provide Respondent sufficient information to enable Respondent to evaluate the appropriateness of proposing any IRMs for Departmental consideration under Paragraph III of this Order ("PSA Work Plan"); and

(3) commence field work needed to undertake the PSA Work Plan at each Site.

TABLE "A"

<u>Site Name</u>	<u>Initial Submittal Date</u>	<u>PSA Work Plan Submittal Date</u>	<u>Field Work Start Date</u>
Gloversville	see Paragraph I ✓	March 1, 1992 ✓	July 1, 1992 ✓
Rome (Kingsley)	see Paragraph I ✓	March 1, 1992 ✓	July 1, 1992 ✓
Schenectady (Broadway)	see Paragraph I ✓	March 1, 1992 ✓	July 1, 1992 ✓
Oneida	January 15, 1993 ✓	March 1, 1993 ✓	July 1, 1993 ✓
Glens Falls	January 15, 1993 ✓	March 1, 1993 ✓	July 1, 1993 ✓
Troy (Water Street)	January 15, 1994 ✓	March 1, 1994 ✓	July 1, 1994 ✓
North Albany	January 15, 1994 ✓	March 1, 1994 ✓	July 1, 1994 ✓
Watertown	January 15, 1994 ✓	March 1, 1994 ✓	July 1, 1994 ✓
Troy (Smith Avenue)	January 15, 1995 ✓	March 1, 1995 ✓	July 1, 1995 ✓
Syracuse (Hiawatha)	January 15, 1995 ✓	March 1, 1995 ✓	July 1, 1995 ✓
Syracuse (Erie)	January 15, 1995 ✓	March 1, 1995 ✓	July 1, 1995 ✓
Oswego	January 15, 1996 ✓	March 1, 1996 ✓	July 1, 1996 ✓
Albion	January 15, 1996 ✓	March 1, 1996 ✓	July 1, 1996 ✓
Fulton	January 15, 1996 ✓	March 1, 1996 ✓	July 1, 1996 ✓
Herkimer	January 15, 1997 ✓	March 1, 1997 ✓	July 1, 1997 ✓
Ilion	January 15, 1997 ✓	March 1, 1997 ✓	July 1, 1997 ✓
Canajoharie	January 15, 1997 ✓	March 1, 1997 ✓	July 1, 1997 ✓
Johnstown	January 15, 1998 ✓	March 1, 1998 ✓	July 1, 1998 ✓
Fort Plain	January 15, 1998 ✓	March 1, 1998 ✓	July 1, 1998 ✓
Schenectady (Seneca)	January 15, 1999 ✓	March 1, 1999 ✓	July 1, 1999 ✓
Rome (Jay & Madison St.)	January 15, 1999 ✓	March 1, 1999 ✓	July 1, 1999 ✓

B. The Department may revise the initial submittal date, the PSA Work Plan submittal date, and the field work start date, or any of them, for any Site identified in Table "A" if information is developed, or otherwise becomes available, indicating the existence of a condition or circumstance justifying immediate or near-term evaluation or response at that Site which otherwise would not be addressed until a later time.

C. Each Site's PSA Work Plan shall describe the methods and procedures to be implemented in undertaking a study at the Site to which it pertains that will cause the generation of information sufficient to enable the Department to characterize the nature and extent of distribution of any hazardous substances at the Site and to determine whether such substances constitute a significant threat to public health or the environment necessitating remediation; and that will enable Respondent to determine whether the nature and extent of distribution of any MGP wastes disposed at the Site are such that the implementation of one or more IRMs may be appropriate for consideration by the Department. Hence, each Site's PSA Work Plan shall include, but not be limited to, the following:

(1) A chronological description of the anticipated investigative activities together with a schedule for the performance of these activities. Such schedule shall take into account, at a minimum, the submission of draft documents, Department review of such documents, and submission of final approvable documents.

(2) A Sampling and Analysis Plan that shall include:

(a) 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.

(b) A field sampling plan that defines sampling and data gathering methods in a manner consistent with the "Compendium of Superfund Field Operations Method" (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as supplemented by the Department.

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

D. If after review of the data generated during and after implementation of the Department-approved PSA Work Plan for a particular Site the Department determines that the hazardous substances found at the Site constitute a

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III. IRMs

A. Respondent may propose one or more IRMs for any Site. In proposing each IRM, Respondent shall submit to the Department a work plan that includes a chronological description of the anticipated IRM activities together with a schedule for performance of those activities (an "IRM Work Plan" for that Site). Upon the Department's determination that the proposal is an appropriate IRM and upon the Department's approval of such work plan, the IRM Work Plan shall be incorporated into and become an enforceable part of this Order; and Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved IRM Work Plan, detailed documents and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, contingency plan, and (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto. Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this Order. Within the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit to the Department a report or reports documenting the performance of the IRM. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-

approved work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department. Within the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by that individual that all activities that comprised the IRM were performed in full accordance with the Department-approved IRM Work Plan, detailed documents and specifications, and this Order.

B. (1) In implementing any IRM approved by the Department under this Order, Respondent shall be exempt from the requirement to obtain any permit issuable by the Department for an activity satisfying the criteria set out in Subparagraph III.B(2) of this Order.

(2) The following criteria must be met:

(i) The activity is conducted on the Site. For purposes of this Order, an activity is on the Site:

(a) if it is conducted on the same premises as the Site, or

(b) if it is conducted on different premises that are under common control or are contiguous to or physically connected with the Site and the activity manages exclusively hazardous substances for which Respondent is liable (except in situations where the PSA discloses the existence of off-Site hazardous substance deposits derived from, or otherwise related to materials deposited on-Site, in which case such deposits shall be deemed subject to this Order to the extent Respondent is able to obtain access for purposes of investigation and/or removal); and

(c) the activity is conducted in a manner which satisfies all substantive technical requirements applicable if the activity were conducted pursuant to a permit issued by the Department.

IV. Performance and Reporting of PSA and IRM Study and of Remedial Investigation

A. (1) In accordance with the schedule contained in a Site's Department-approved PSA Work Plan, Respondent shall commence that Site's PSA and IRM study.

(2) Respondent shall perform the PSA and IRM study in accordance with that Site's Department-approved PSA

Work Plan.

(3) During the performance of that Site's Department-approved PSA and IRM study, Respondent shall have at such Site a full-time representative who is qualified to supervise the work done. Respondent's designated representative may be a qualified employee of a consultant or contractor.

(4) In accordance with the schedule contained in a particular Site's Department-approved PSA Work Plan, Respondent shall prepare a PSA and IRM Study Report pertaining to that Site that shall:

(i) include all data generated and all other information obtained during the investigation of that Site;

(ii) provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph II.D of this Order; and

(iii) include a certification by the individual or firm with primary responsibility for the day to day performance of the PSA and IRM study for that Site that all activities that comprised the Investigation were performed in full accordance with the Department-approved PSA Work Plan for that Site.

B. This Subparagraph applies only to those Sites concerning which the Department determines that an RI/FS must be prepared.

(1) In accordance with the schedule contained in a particular Site's Department-approved RI/FS Work Plan, Respondent shall commence that Site's Remedial Investigation.

(2) Respondent shall perform the Remedial Investigation in accordance with that Site's Department-approved RI/FS Work Plan.

(3) During the performance of that Site's Remedial Investigation, Respondent shall have at such Site a full-time representative who is qualified to supervise the work done. Respondent's designated representative may be a qualified employee of a consultant or contractor.

(4) In accordance with the schedule contained in a particular Site's Department-approved RI/FS Work Plan, Respondent shall prepare a Remedial Investigation Report pertaining to that Site that shall:

(i) include all data generated and all other information obtained during the remedial investigation of that Site;

(ii) identify any additional data that must be collected; and

(iii) provide all of the assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph II.D of this Order; and

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

V. Feasibility Study

This Paragraph applies only to those Sites concerning which the Department determines that an RI/FS must be prepared.

A. Within 120 days after receipt of the Department's approval of the Remedial Investigation Report pertaining to a particular Site, Respondent shall submit a Feasibility Study evaluating on-Site and off-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous substance disposal at that Site. Such evaluation shall take into account any and all Department-approved IRMs that were implemented at the Site. The Feasibility Study shall be prepared by and have the signature and seal of an individual licensed and registered to practice professional engineering in the State of New York who shall certify that the Feasibility Study was prepared in accordance with this Order.

B. Unless the Department otherwise specifies for a particular Site, Respondent shall perform and prepare the Feasibility Study in accordance with the Department-approved RI/FS Work Plan in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph II.D of this Order. If the Department specifies otherwise for a particular Site, Respondent shall perform and prepare the Feasibility Study in accordance with the Department's specifications.

C. Within 30 days after the Department's approval of the Feasibility Study, Respondent shall cooperate and

assist the Department in soliciting public comment on the RI/FS and the proposed remedial action plan identified therein, in accordance with CERCLA, the NCP, the guidance documents identified in Subparagraph II.D of this Order, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the Site in a Record of Decision ("ROD"). The ROD shall be incorporated into and become an enforceable part of this Order.

VI. Remedial Design

This Paragraph applies only to those Sites concerning which the Department determines that an RI/FS must be prepared.

A. Unless the ROD selects the "no action" alternative, within 180 days after the ROD is signed, or as otherwise specified in the ROD, Respondent shall submit to the Department a remedial design to implement the remedial alternative for the Site selected by the Department in the ROD (the "Remedial Design"). The Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design was prepared in accordance with this Order.

B. The Remedial Design shall include the following:

(1) A detailed description of the remedial objectives and the means by which each essential 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 substances 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) health and safety of persons living and/or working at or in the vicinity of the Site;

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

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

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

(3) A time schedule to implement the Remedial Design;

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

(5) A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design, including the number of years during which such activities will be performed;

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

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

(8) A citizen participation plan which incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto.

VII. Remedial Construction

This Paragraph applies only to those Sites concerning which the Department determines that an RI/FS must be prepared.

A. Within 60 days of the Department's approval of the Remedial Design, Respondent shall commence construction of the Remedial Design. The Department will extend this period if reasonably necessary to accommodate weather-related limitations or other restrictions upon the construction season.

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

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

D. Within 90 days after completion of the construction activities identified in the Remedial Design, Respondent shall submit to the Department a detailed post-remedial operation and maintenance plan ("O & M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification by a professional engineer that the Remedial Design was implemented and all construction activities were completed in accordance with the Department-approved Remedial Design. The O & M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

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

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

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

VIII. Progress Reports and Meetings

A. Respondent shall submit to each of the parties set forth in Paragraph XVI of this Order two copies of

written monthly progress reports that:

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

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

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

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

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

6. include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved. Respondent shall submit these progress reports to the Department with respect to each Site by the 10th day after the end of the month to which the report pertains.

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

IX. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent is required to make pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the submittal discussed in Subparagraph II.B(3) of this Order.

All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (i) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(ii) Within a reasonable time after receipt of the revised submittal so as to not cause Respondent to be unable to comply with subsequent obligations and schedule deadlines as presented in Department-approved work plans, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

X. Penalties

A. (1) Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

(2) Respondent shall be liable for payment to the Department of the sums set forth below as stipulated penalties for each day or part thereof that Respondent is in violation of any term of this Order. Stipulated penalties shall be due and payable pursuant to the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty Per Day</u>
First through 15th day	\$ 1,000
16th through 30th day	\$ 2,000
31st day and thereafter	\$ 4,000

All penalties begin to accrue on the first day Respondent is in violation of the terms of this Order and continue to accrue through the final day of correction of any violation.

Such sums shall be due and payable within 15 days after receipt of notification from the Department assessing the penalties. If such payment is not received within 15 days after Respondent receives such notification from the Department, interest shall be payable at the annual rate of nine per centum on the overdue amount from the day on which it was due through, and including, date of payment. Penalties shall be paid by certified check or money order, made payable to "New York State Department of Environmental Conservation" and shall be delivered personally or by certified mail, return receipt requested, to the Director, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-5500. Payment of the penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action for enforcement of this Order if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order.

XI. Entry upon Site

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



XII. Payment of State Costs

The Department shall establish an interest-bearing account into which the Department shall place all monies received from Respondent under the provisions of this paragraph in order to pay for the State's expenses (including, but not limited to, direct labor and fringe benefits, overhead, travel, analytical costs, and contractor

costs) incurred by the State of New York to fund environmental monitors for work associated with each Site and with the site (and its environs) subject to a Departmental Order issued September 28, 1989 pertaining to Respondent (Index No. A6-0201-89-05) and to Department Order issued the effective date of this Order pertaining to Respondent (Index No. D6-0001-9210) to date, reviewing and revising submittals made pursuant to this Order and those Orders, overseeing activities conducted pursuant to this Order and those Orders, collecting and analyzing samples, and administrative costs associated with administering the requirements of this Order and those Orders. Respondent shall make payments to the Department as follows:

A. Within 30 days after the effective date of this Order, Respondent shall submit to the Department the sum of \$356,424, which shall represent the State's estimate of the first year expenses (including, but not limited to, direct labor and fringe benefits, overhead, travel, analytical costs, and contractor costs) incurred by the State of New York to fund environmental monitors for work associated with reviewing and revising submittals made pursuant to this Order and Department Orders Index No. A6-0201-89-05 and Index No. D6-0001-9210 to date, overseeing activities conducted pursuant to this Order and those Orders, collecting and analyzing samples, and administrative costs associated with administering the requirements of this Order and those Orders. Respondent shall make subsequent quarterly payments to the Department for the greater duration of this Order or either of those Orders in order to maintain an account balance sufficient to meet the next nine months' anticipated above-described State costs. Each quarterly billing will be based on expenditures incurred to date. The quarterly billing will take into account matters such as inflation, salary increases, accrued interest to be applied to the balance, changes in operating hours and procedures and the need for additional personnel and supervision of such personnel by full-time supervisors. Costs and expenses to be covered by this account include:

(1) Direct personal service costs and fringe benefits of the State's staff assigned to work associated with each Site and the site covered by Departmental Orders Index No. A6-0201-89-05 and Index No. D6-0001-9210 to date, reviewing and revising submittals made pursuant to this Order and those Orders, overseeing activities conducted pursuant to this Order and those Orders, collecting and analyzing samples, and administrative costs associated with administering the requirements of this Order and those Orders, including their supervisors and including the costs of replacement personnel for the persons regularly assigned to these duties;

(2) Direct non-personal service costs, including but not limited to purchase of a vehicle if necessary and its full operating costs, any appropriate chemical sampling and analysis, travel, supplies, and contractual costs;

(3) Indirect support or overhead costs at the annually approved indirect support cost rate; and

(4) Consultant services.

B. The Department shall notify Respondent in writing when a quarterly payment is due by submitting a quarterly billing. Respondent shall make such payment in the form of a certified check payable to the order of the New York State Department of Environmental Conservation and shall submit such payment to the Department at the following address no later than 30 days from receipt of such billing:

New York State Department of Environmental Conservation
50 Wolf Road, Room 608
Albany, NY 12233-1510
ATTENTION: Director of Environmental Monitors

Payments are to be in advance of the period in which they will be expended.

C. Upon the later termination of this Order, Departmental Order Index No. A6-0201-89-05, or Department Order Index No. D6-0001-9210 and upon payment of any outstanding costs and expenses, the Department shall return the unexpended balance, including interest, to Respondent.

D. Actual personal service costs will be based on Site-specific time and activity ("T&A") costs. Non-personal service costs will be prorated based on the type of cost incurred: general costs (such as, supplies and equipment) will be prorated evenly among the Sites subject to this Order; while other project-related costs will be prorated based on the percentage of T&A incurred for each Site subject to this Order and Departmental Orders Index No. A6-0201-89-05 and Index No. D6-0001-9210 during that time period.

E. Actual costs incurred will be documented by quarterly T&A reports for personal service costs. Copies of actual invoices will not be provided but shall be made available for auditing purposes.

XIII. Department Reservation of Rights

A. Nothing contained in this Order shall be

construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights.

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

XIV. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, and/or Respondent's directors, officers, employees, servants, agents, successors, and assigns.

XV. Public Notice

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

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

XVI. Communications

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

Communication from Respondent shall be sent to:

- (1) Charles N. Goddard, P.E.
Assistant Director
Division of Hazardous Waste Remediation
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

- (2) Director, Bureau of Environmental
Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
- (3) Department Regional Director in whose
Region the Site in question is located
- (4) Charles E. Sullivan, Jr.
Division of Environmental Enforcement
New York State Department of
Environmental Conservation
50 Wolf Road, Rm. 609
Albany, New York 12238-5500

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

- (1) Six copies (one unbound) to Mr. Goddard
- (2) Two copies to the Director, Bureau of
Environmental Exposure Investigation
- (3) One copy to Mr. Sullivan

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

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

Michael W. Sherman
Supervisor of Environmental Programs
Environmental Affairs Department, C-1
Niagara Mohawk Power Corporation
300 Erie Boulevard West
Syracuse, New York 13202

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

XVII. Miscellaneous

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

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. Within 30 days after completion of Respondent's retainer process resulting in the selection of a particular firm or individual to perform any of such obligations, Respondent shall submit to the Department a summary of the experience, capabilities, and qualifications of the firm or individual retained. Respondent must obtain the Department's approval of these firms or individuals before the initiation of any activities for which the Respondent and such firms or individuals will be responsible.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order, shall include a tabular summary of any such results in the progress reports required by this Order, and, upon Department request, shall submit such results in the progress reports required by this Order.

D. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall use reasonable efforts to obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Respondent's obligations under this Order. If Respondent is unable, after exhaustion of such reasonable efforts, to obtain any such permissions, the Department will exercise whatever authority is available to it, in its discretion, to obtain same. In no event will Respondent be determined to be in violation of this Order if it fails to obtain any such permissions after exhausting reasonable efforts to obtain same. This is in recognition of the fact that, with respect to certain Sites, Niagara Mohawk is the current owner of only part of the potential area of disposal of MGP wastes, and may in fact, as to certain Sites, be the owner of only a small portion of the original disposal area. Significant impediments may, therefore, be encountered as to Respondent's ability to obtain access for purposes of carrying out the requirements of this Order.

F. If Respondent determines, in connection with any given Site, that a valid claim exists in favor of

Respondent as against any other potentially responsible party, for contribution toward response costs deemed necessary by the Department in connection with such Site (or for recovery of an appropriate portion of such costs previously incurred by Respondent), the Department shall provide, in a timely manner, information responsive to any reasonable request (otherwise in conformity with Freedom of Information Law requirements) by such party related to conditions at the Site and any other relevant information that may be helpful in substantiating Respondent's claim. Similarly, if Respondent requests access to non-privileged and otherwise disclosable information in the Department's possession and relevant to the potential liability of any person or entity who may be subject to such claim by Respondent for contribution or cost recovery, the Department will take reasonable steps to expedite Respondent's access to such information.

G. Respondent and Respondent's officers, directors, agents, servants, employees, successors, and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

H. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work to be done under this Order in accordance with this Order.

I. All references to "professional engineer" in this Order are to an individual licensed and registered to practice professional engineering in accordance with Article 145 of the New York State Education Law.

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

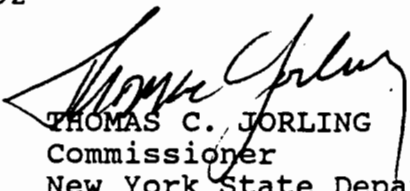
K. The section headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

L. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

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

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

DATED: *albany* , New York
Dec 7 , 1992


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

New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233

JUL 31 1996

Mr. Michael W. Sherman
Niagara Mohawk Power Corporation
Supervisor of Environmental Programs
Environmental Affairs Department, C-1
300 Erie Boulevard West
Syracuse, NY 13202

JS/mj

bcc: D. Sweredoski - NYSDEC Region 6
C. Branagh - NYSDEC Region 7
M. J. Peachey - NYSDEC Region 8
E. Hamilton - NYSDEC Region 4
D. Steenberge - NYSDEC Region 5
R. Koelling
J. Van Hoesen
J. Spellman
G. Cross
Dayfile

Dear Mr. Sherman:

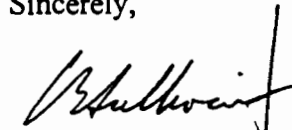
Re: Former MGP Site Investigation/Remediation Program
Order on Consent Index Nos. D6-0001-9210 and D0-0001-9210

Please be advised that Charles N. Goddard is no longer with this Department. Therefore, as per paragraph XVI.A, B and C of the Multi-MGP Site Order on Consent and paragraph III.L.1, 2 and 3 of the Harbor Point Site Order on Consent, communication to the Department regarding these orders shall now be directed to:

James Van Hoesen, P.E.
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233-7010

Please make your staff aware of these changes. Mr. Van Hoesen can be reached at (518) 457-9285 if you have any questions.

Sincerely,



Charles E. Sullivan, Jr.
Chief, State Superfund and
Voluntary Cleanup Practice Group

cc: G.A. Carlson - NYSDOH
T. Quinn - NYSDEC
T. Adamczyk - NYSDEC, Region 4
S. Buchanan - NYSDEC, Region 5
T. Brown - NYSDEC, Region 6
D. Palm - NYSDEC, Region 7
R. Davison - NYSDEC, Region 8

CONSENT BY RESPONDENT

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

NIAGARA MOHAWK POWER CORPORATION

by:

THair

hCW

Typed name of signer: Thomas R. Fair

(Seal of
Niagara Mohawk
Power Corp.)

Title of signer: Vice President-Environmental Affairs

Date signed: 11/16/92

STATE OF NEW YORK)
) ss:
COUNTY OF Onondaga)

On this 16th day of November, 1992, before me personally appeared Thomas R. Fair, to me known, who, being duly sworn, did depose and say that he resides in Pompey, New York; that he is Vice President-Environmental Affairs of Niagara Mohawk Power Corporation; that he executed the foregoing instrument on behalf of the Niagara Mohawk Power Corporation; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

William C. Weiss
Notary Public State of New York
Registration number: _____
My commission expires: _____

WILLIAM C. WEISS
Notary Public, State of New York
No. 4719925
Qualified in Onondaga County
My Commission Expires October 31, 1994