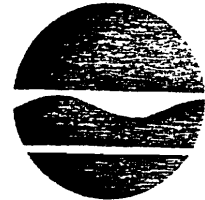


Sue's desk copy

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



Thomas C. Jorling
Commissioner

July 20, 1988

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Shiela McC. Harvey
Shaw, Pittman, Potts
& Trowbridge
2300 N Street, N.W.
Washington, DC 20037

bcc: w/attachment
D. Markell
J. Periconi
F. Bifera
D. Brickwedde
M. O'Toole
T. Suozzo
J. Swartwout ✓
R. Heerkens
R. Tramontano

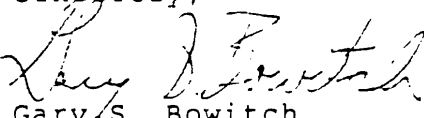
RE: Emerson Power Transmission Company - Order on Consent

Dear Ms. McC. Harvey:

Enclosed is a copy of the executed Order on Consent (Index #A7-0125-87-09) for the development and implementation of a Remedial Investigation/Feasibility Study and implementation of a Remedial Program for the Site. Also enclosed is a copy of the cover page of the Stage 1 Remedial Investigation Work Plan (Appendix B), as I believe you already have a copy of the whole document.

Accordingly, Emerson Power Transmission Company will now commence its obligations under the Order.

If you have any questions, please contact me.

Sincerely,

Gary S. Bowitch
Attorney
Division of Environmental
Enforcement
(518) 457-3296

GSB:ljd
Attachment

cc: R. Hubbert w/a
H. Hedges w/a
K. Makeig w/a

RECEIVED

JUL 22 1988

BUREAU OF EASTERN REMEDIAL ACTION
DIVISION OF HAZARDOUS
WASTE REMEDIATION

REVISED
WORK PLAN FOR STAGE 1
REMEDIAL INVESTIGATION PROGRAM
EMERSON POWER TRANSMISSION (EPT)
Ithaca, New York

Prepared for:

Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037

Prepared by:

Radian Corporation
13595 Dulles Technology Drive
Suite 200
Herndon, Virginia 22071

May 5, 1988

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X

In the Matter of the :
Development and Implementation :
of a Remedial Investigation, :
Feasibility Study and Implementation : ORDER
of a Remedial Program for an : ON
Inactive Hazardous Waste Disposal : CONSENT
Site, Under Article 27, Title 13, :
of the Environmental Conservation :
Law of the State of New York (the : INDEX #A7-0125-87-09
"ECL") by :
Emerson Power Transmission Company :
Respondent. :

-----X

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13, of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites".

2. Emerson Power Transmission Company, formerly Morse Industrial Corporation ("Respondent"), a corporation organized and existing under the laws of the State of Delaware, is doing business in the State of New York in that Respondent manufactures power transmission products in Ithaca, New York.

3. Respondent is the current owner of property located at Route 96B, Ithaca, New York (the "Site"). [A map of the Site is attached to this Order as Appendix "A".]

4. Plant records provided to the Department by Respondent indicate that hazardous wastes were disposed of in the fire reservoir located on the Site during the time when

the Site was owned and operated by Borg Warner Corporation.

5. The Site is an inactive hazardous waste disposal site, as that term is defined in ECL §27-1301(2), and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 755010.

6. The Department has identified and classified the site pursuant to ECL §27-1305, under classification 2, a "significant threat to the public health or environment - action required".

7. Pursuant to ECL §27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the Environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the Order."

8. The Department and Respondent acknowledge that the goals of this Order are that Respondent shall develop and implement a remedial investigation, feasibility study, and remedial program for the Site, each of which shall be subject to the approval of the Department.

9. The Department, pursuant to its authority under ECL §27-1313(3), and Respondent, having waived its right to a hearing as provided by ECL §27-1313(4) prior to the issuance

of this Order, have consented to the issuance and entry of this Order and agree to be bound by terms hereof.

Entry into this Order shall not constitute an admission of liability for any purpose or an adjudication or waiver of any right or defense by Respondent with respect to any present or future alleged liability for conditions at or near the Site, or evidence of any wrongdoing or misconduct or liability to any person on the part of Respondent. This Order shall not be admitted as evidence against any party to this Order in any judicial proceeding, order or attachment other than for the purpose of enforcing this Order. Respondent does not admit, concede, accept or acknowledge any allegations made herein and specifically reserves the right to contest any such allegations. Furthermore, Respondent specifically denies any fault or liability under any statutory or common law principles and any responsibility for response costs or damages thereunder, and does not, by signing this Order, waive any of its rights to assert claims against any other person.

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

I. Requisite Technology. All investigations, proposals, reports, plans, remedial programs, and supplements and revisions thereto required by this Order shall address both the on-Site contamination and the off-site impacts caused by the disposal and/or release of hazardous wastes at the Site and shall be prepared, designed and executed in accordance

with Requisite Technology. As used in this Order, Requisite Technology means engineering, scientific and construction principles and practices subject to the Department's approval, which (a) are technologically feasible, (b) will most cost-effectively abate and eliminate any significant threat to the environment posed by the disposal and/or release of hazardous wastes at the Site, and (c) are consistent with the requirements of the most current National Contingency Plan at the time of submittal ("NCP"), the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA") and as appropriate, the USEPA Guidance Documents entitled "Guidance on Remedial Investigations Under CERCLA," dated June 1985 and "Guidance on Feasibility Studies Under CERCLA," dated June 1985 (or any revisions thereto).

The failure of Respondent, without cause as set forth in Paragraph XXIII, to submit or undertake a required Proposal, Report, Field Investigation, Construction Program Plan or any supplement or revision thereof which is in accordance with Requisite Technology shall constitute a violation of this Order as provided in Paragraph XXV.

II. Hazardous Wastes. As used herein, "hazardous wastes" shall mean hazardous wastes, as defined at 6 NYCRR 371 and hazardous substances as defined in CERCLA, and any constituents or degradation products of such wastes and substances.

III. Submission by Respondent. All submittals made by Respondent pursuant to this Order shall be subject to Departmental review within the time limits set forth by Table No. 1 herein. The Department shall approve or disapprove each submittal in writing.

Table No. 1
Submittals

| Submittal | Consent Order Paragraph | Days after Receipt for Department Review | Days after Receipt of Dept. Comments to Prepare and Submit Revision |
|---|-------------------------|--|---|
| Stage I Report | VI | 60 Days | 30 Days |
| RI Report | VII | 60 Days | 30 Days |
| Feasibility Study | VIII | 60 Days | 30 Days |
| Feasibility Study After Public Comment (if necessary) | IX | 60 Days | 30 Days |
| Remedial Design | X | 60 Days | 30 Days |
| Supplementary Remedial Program | XIII | 60 Days | 30 Days |
| Financial Assurance | XXIV | 30 Days | 30 Days |

STATUS of Submittals

a. If the Department approves a submittal, Respondent shall perform the specified work or continue with Respondent's obligations under the Order in accordance with the terms of the approval and under the Department's supervision. The submittal once approved by the Department shall be appended to and made a part of this Order.

b. If the Department disapproves a submittal, the Department shall notify Respondent in writing of the reasons why the Department believes the submittal does not conform to the terms of the Order or is in contravention of applicable laws or regulations and shall provide Respondent with a statement in sufficient detail to enable the Respondent to address its objections.

The Respondent shall revise and resubmit the submittal, addressing each of the Department's objections within the time limits set forth by Table No. 1 herein unless Respondent can demonstrate to the Department such response cannot reasonably be accomplished within such time limits. Within 30 days of receipt of the revised submittal, the Department shall approve or disapprove the revised submittal in writing. If the Department approves the revised submittal, Respondent shall perform the specified work or continue with Respondent's obligations under the Order in accordance with the terms of the approval and under the Department's supervision.

c. If the Department disapproves the revised submittal, and if the Department's objections cannot be resolved by negotiation between the Department and Respondent within 30 days of receipt of the Department's disapproval of the revised submission, Respondent shall be in violation of this Order, and may be subject to a penalty in an amount not to exceed \$500 and an additional \$500 each day the violation continues to exist, unless it has invoked, within 30 days of receipt of

the disapproval, the dispute mechanism set forth in Paragraph IV to resolve any issue on which the parties are in disagreement.

d. In the event that Respondent determines that a modification of the approved Remedial Design is necessary during implementation, such modification must receive the prior written approval of the Department before incorporation of such modification into the approved Remedial Design. To the extent modifications are made or additional work is undertaken under any provision of this Order, appropriate schedule modifications shall be agreed upon. In the event of failure to agree on any scheduling issue, conflicts shall be resolved in accordance with the dispute resolution procedure set forth in Paragraph IV.

IV. Dispute Resolution Procedures. If there is a dispute between Respondent and Department concerning the terms of any submittals set forth in Table No. 1 or any other matter under this Order which specifically provides for use of this dispute resolution procedure, the matter shall be settled in accordance with the following procedures:

1. Except where negotiations have already failed, Respondent and the Department shall engage in informal negotiations in an attempt to resolve the dispute.

2. If after 30 days from the start of negotiations no resolution of the dispute is reached, either party, upon written notice to the other, may request the Commissioner of Environmental Conservation to appoint an Administrative Law

Judge ("ALJ"), to settle the dispute.

In all proceedings hereunder:

- a. The parties shall be Respondent and the Department.
- b. The burden of going forward shall be on the Respondent.
- c. The ALJ shall have all powers conferred by 6 NYCRR §622.12.
- d. All proceedings conducted pursuant to this Paragraph shall be stenographically recorded. The ALJ shall arrange for a stenographic transcript to be made as soon as possible after conclusion of the proceeding, and for the original and two copies of the transcript to be delivered to the ALJ for distribution to the parties at the expense of the Respondent, unless Respondent is ultimately successful in its challenge, in which case the Department shall bear its own expenses.
- e. The ALJ shall prepare, no later than 30 working days after receipt of the transcript of the proceeding, a written summary of the documentation and testimony received during the proceeding and a recommended decision. The ALJ's recommended decision shall include findings of fact and conclusions of law, shall be based solely on the record before the ALJ, and all findings of fact shall be supported by substantial evidence. The summary and recommendation shall be hand-delivered to the Department's representative and sent by express mail to Respondent.

f. The ALJ's recommended decision shall become the final determination of the Commissioner unless, within 7 working days from receipt of the recommended decision, either Respondent or the Department objects in writing. Any objection shall be submitted in writing to the ALJ with a copy to the other party, which shall serve and file its response, if any, within 7 working days of receipt of the objection. Upon receipt of the objections and any response, the ALJ shall refer the matter to the Commissioner for final determination.

g. The final determination of the Commissioner shall be made within 30 days of receipt of the referral by the ALJ. The Commissioner's final determination shall include findings of fact and conclusions of law, shall be based solely on the record before the Commissioner, and all findings of fact shall be supported by substantial evidence.

h. The procedure outlined herein shall be Respondent's sole legal remedy in the event of a dispute concerning the terms of any submittals set forth in Table No. 1 under this Order or any other matter under this Order which specifically provides for use of this dispute resolution procedure, except that Respondent specifically reserves the right to bring an action pursuant to Article 78 of the Civil Practice Law and Rules (CPLR) to challenge any final determination made by the Commissioner pursuant to this dispute resolution procedure which involves the selection of the Remedial Design, including, but not limited to, the

identification of all its components (Paragraph X), the need for and implementation of a Supplementary Remedial Program (Paragraph XIII), the Feasibility Study (Paragraphs VIII and IX), or Force Majeure (Paragraph XXIII).

i. If the dispute resolution procedure set forth in this paragraph is invoked, Respondent shall continue to perform all obligations pursuant to this Order except for those specific obligations which are at issue in the dispute resolution procedure or which are in any way related to or could be affected by the resolution of the dispute.

V. Commencement of Work. Within 45 days of the effective date of this Order or at such other time as is agreed to in writing by the Department, Respondent shall commence the implementation of Stage I of the Remedial Investigation as described in the Work Plan (the "Work Plan") which has been attached hereto and been incorporated into this Order as Appendix "B". Work shall proceed in accordance with the schedule set forth in the Work Plan.

VI. Stage I Investigation Report. In accordance with the schedule adopted as part of the Work Plan, Respondent shall submit to the Department a Stage I Investigation Report (the "Stage I Report"), founded upon its performance of the Stage I Remedial Investigation as set forth in the Work Plan. The Report shall be prepared in accordance with the requirements of the Work Plan.

VII. Stage II Investigation. Within 45 days of the Department's approval of the Stage I Report, or at such other

time as is agreed to in writing by the Department, Respondent shall commence implementation of the Stage II Investigation as set forth in the Stage I Report, if such has been determined to be necessary, and shall submit to the Department a Final Report (the "Remedial Investigation Report" or "RI Report") founded upon its performance of the Stage I and Stage II Investigations.

VIII. Feasibility Study. Within 120 days after receipt of the Department's approval of the RI Report, Respondent shall submit to the Department a study evaluating the feasibility of remedial options to abate the on-Site contamination and associated off-Site impacts (the "Feasibility Study").

IX. Public Comment. Within 30 days of its approval of the Approved Feasibility Study, pursuant to the procedures set forth in Paragraph III of this Order, the Department shall publish the necessary information and solicit comments in accordance with the requirements of 6 NYCRR §375.7. Within 30 days of the close of the comment period, the Department will review any comments and determine whether the Approved Feasibility Study needs to be modified and will either:

(1) notify Respondent in writing that the Approved Feasibility Study is a final document; or

(2) notify Respondent in writing that modification of the Approved Feasibility Study is necessary in light of public comment in which case Respondent shall be informed as to the nature of the public comments and be

required to modify the Approved Feasibility Study in accordance with the Department's recommendations. Respondent shall be provided a reasonable amount of time within which to address these matters.

X. Remedial Design. Within 120 days after receipt of the Department's approval after public comment as required by 6 NYCRR §375.7 of the Feasibility Study, Respondent shall submit to the Department an engineering report, plans and specifications for a remedial program (the "Remedial Design").

The Remedial Design shall include, but not be limited to, the following:

a. A description of the means of effectuating the combination of technologies which has been selected from the alternatives by the approved Feasibility Study, and which therefore collectively constitutes the Remedial Program ("Remedial Program") to include but not be limited to:

1. the disposition or on-Site treatment of hazardous wastes, constituents and degradation products, and any soil or other materials contaminated thereby, if such has been determined to be necessary;
2. the collection, treatment, and disposition of contaminated groundwater, leachate and air, if such has been determined to be necessary;
3. physical security and posting of the Site, if such has been determined to be necessary;
4. health and safety of persons living and/or

working at or in the vicinity of the areas being remediated, if such has been determined to be necessary;

5. quality control and quality assurance procedures and protocols to be applied to Remedial Program construction operations, if such has been determined to be necessary;

6. integrated air monitoring on and off-Site during implementation of the Remedial Program, if such has been determined to be necessary.

b. Documents required for the construction of the elements of the Remedial Program, including plans and specifications, prepared and certified by a licensed professional engineer registered in the State of New York or otherwise approved by the Department to perform the tasks required by this Order, which plans shall satisfy all applicable state and federal laws, rules and regulations;

c. A preliminary time schedule for construction of the elements of the Remedial Program and provisions for periodic work-in-progress reports during the implementation of the Remedial Program;

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

e. A description of the maintenance and monitoring activities, procedures and protocols to be undertaken during

the period commencing upon completion of the construction of the elements of the Remedial Program, including a provision for submission to the Department of periodic monitoring reports (post-closure monitoring), if such has been determined to be necessary.

XI. Construction. Upon receipt of the Department's approval of the Remedial Design, Respondent shall commence construction pursuant to the approved Remedial Design. Within such period as may be allowed by the approved Remedial Design and any modifications thereto which have been approved by the Department, Respondent shall complete construction pursuant to the approved Remedial Design and any modifications to the Remedial Design which have been approved by the Department.

Within 90 days of completion of construction, Respondent shall submit to the Department as-built drawings and a certification that construction was completed in accordance with the approved Remedial Design and any approved modifications. Such certification shall be by a licensed professional engineer registered in the State of New York or otherwise approved by the Department to perform work pursuant to this Order.

XII. Construction Certification. Within 45 days after receipt of the as-built drawings and certification, the Department shall review the same and provide comments to Respondent. In the event that the Department believes the quality and completeness of construction do not conform with the terms of this Order, the Department will so notify the

Respondent in writing, providing sufficient description of the Department's concerns to enable Respondent to address those concerns. Respondent shall be provided a reasonable amount of time within which to address those concerns. Any disputes concerning these issues shall be subject to the dispute resolution procedure specified at Section IV.

XIII. Supplementary Remedial Program. In the event that either the Department or Respondent finds at any time prior to or during the post-closure period that any element of the Remedial Program has failed to meet the provisions of the Final Remedial Design, one shall immediately notify the other by telephone and in writing of such failure. Immediately upon such discovery or immediately upon its receipt of written notification from the Department of such failure, Respondent shall investigate to determine its causes, develop a Supplementary Remedial Program (the "SRP") to correct the failure, and submit the SRP to the Department within 60 days of discovery, or within such other time as is agreed to in writing by the Department, and shall implement the SRP as approved by the Department. The SRP shall include a written scope of work and time schedule for implementation.

XIV. Action by Department. So long as Respondent complies with the terms of this Order and any agreed upon amendments or modifications thereto, the Department shall not assert its authority to perform the tasks described in this Order.

XV. Release. If the Department acknowledges that the

implementation of the Remedial Program is complete and in accordance with the approved Remedial Design, then, unless a Supplementary Remedial Program is required pursuant to Paragraph XIII, and except for the requirements of Paragraph XVII hereof, such acknowledgment shall constitute a full and complete satisfaction and release of each and every claim, demand, remedy or action whatsoever against Respondent, its parent and affiliated companies, and their directors, officers, employees, agents, successors and assigns, which the Department has or may have pursuant to Article 27, Title 13, of the ECL relative to or arising from the release of hazardous wastes at the Site.

This release shall inure only to the benefit of Respondent, its parent and affiliated companies, and their directors, officers, employees, agents, successors and assigns, with respect to the aforesaid matter.

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 the Department may have against anyone other than Respondent, its parent and affiliated companies, and their directors, officers, employees, agents, successors and assigns.

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 the Respondent may have against any

third parties with regard to this Site.

XVI. Enforcement of Order. The right of the Department to enforce the terms of this Order shall not be affected by any release contained herein.

XVII. Maintenance and Monitoring of Site.

Notwithstanding any provision contained in this Order to the contrary, for a period of 30 years from the date of the Department's written acknowledgment that Respondent has completed the implementation of the construction and other elements in accordance with the approved Remedial Design or less than 30 years from the date of the Department's written acknowledgment, if the Commissioner finds that a reduced period is sufficient to protect human health and the environment, Respondent shall maintain and monitor the areas at which the elements of the Remedial Program were implemented in accordance with the approved Remedial Design ("Post-Closure Period"). During such Post-Closure Period, Respondent shall provide the Department with the periodic monitoring reports, as set forth in the Approved Remedial Design and as may be required by the NCP and CERCLA and shall provide immediate notice to the Department of any failure of the Remedial Program.

XVIII. Right to Samples. The Department shall have the right to obtain, at its expense, "split samples" for the purpose of comparative analysis of all substances and materials sampled by Respondent pursuant to this Order. Respondent shall have the right to obtain, at its expense,

"split samples" for the purpose of comparative analysis of all substances and materials sampled by the Department pursuant to this Order. The party performing the sampling shall notify the other party at least 5 working days in advance of any sample collection activity. In the event that the collection of samples must be taken on an emergency basis and five days notice cannot be given, the party performing the sampling activity shall notify the other party as soon as possible.

XIX. Notice of Work Schedules. Respondent shall provide notice to the Department of any excavating, drilling or sampling to be conducted pursuant to the terms of this Order at least 5 working days in advance of such activities. In the event that any of the above activities must be undertaken on an emergency basis and five days notice cannot be given, Respondent shall notify the Department as soon as possible.

XX. Permits and Approvals. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary in order to perform the Remedial Investigation and all of Respondent's other obligations pursuant to this Order, except that, pursuant to 6 NYCRR §375.8(a), a permit shall not be required for any on-site activity conducted pursuant to this Order that would otherwise be embodied in a permit issued by the State, provided the activities have been approved by the Department and are in compliance with all substantive technical requirements established by state or federal law.

In the event Respondent shall, using reasonable

efforts, be unable to obtain any necessary easements, rights-of-way, rights-of-entry, or other access, Respondent shall promptly notify the Department, in writing, regarding the lack of such access and of all efforts to obtain such. The Department then shall utilize its authority to obtain the necessary easement, right-of-way or right-of-entry or other access for Respondent. If the Department cannot provide such access, the terms of the Order shall be modified by mutual agreement of Respondent and the Department, to take account of the lack of such access.

XXI. Access to Site. Respondent shall permit any duly designated officer, employee, consultant, contractor or agent of the Department to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent, and any areas necessary to gain access thereto, during reasonable hours, for purposes of inspection and of making or causing to be made such sampling and tests as the Department deems necessary, and for assurance of Respondent's compliance with the terms of this Order. Nothing contained in this Paragraph shall be construed to limit any rights of access that the Department has pursuant to the Environmental Conservation Law.

XXII. Consultants. Respondent shall retain a third-party professional consultant, contractor and/or technically acceptable laboratory to perform the technical, engineering and analytical obligations required by this Order.

The certification for the Feasibility Study must be by a

New York State licensed professional engineer in accordance with applicable New York State Law.

XXIII. Force Majeure. Respondent shall not suffer any penalty under any of the terms of this Order, be subject to any proceeding or actions for any remedy or relief, or be held in violation of this Order if it cannot comply with any requirements because of any event or condition arising from causes beyond the control of Respondent (for example, but not limited to, an act of God, war, riot, fire, natural disaster, unavoidable and unforeseeable labor strikes, adverse weather conditions, contractor failures, and the unforeseeable inability to obtain necessary permits, licenses, certifications). The terms of this paragraph may delay, but not excuse, the performance of obligations under this Order, unless the event or condition has rendered such performance physically or practically impossible. Respondent shall notify the Department in writing within seven days after obtaining knowledge of any such condition and request an extension or modification of the terms of this Order. To the extent a delay is caused by such circumstances, the schedule affected by the delay shall be extended for a period equal to the delay resulting from such circumstances.

Any disputes concerning the terms of this paragraph shall be subject to the dispute resolution mechanism specified in Paragraph IV.

XXIV. Financial Assurance. No later than 60 days after the issuance of this Order, Respondent shall provide the

Department with financial assurance in a manner consistent with the requirements of 6 NYCRR 373.2.8 for an amount equal to the projected remedial program costs.

XXV. Violation of the Order. The failure of Respondent to comply with any term of this Order or to comply with a final determination of the Commissioner issued pursuant to Paragraph IV, without cause as provided in Paragraph XXIII, shall constitute a violation of this Order. In addition to being required to perform the tasks required by this Order, Respondent may be subject to a penalty in an amount up to \$500 for a violation of this Order and \$500 for each day the violation continues to exist until Respondent has undertaken some responsive action which has been approved in writing by the Department, invoked the dispute mechanism or initiated some other form of legal challenge.

XXVI. Reservation of Rights. Nothing contained in this Order shall be construed as enlarging any current applicable limitations period or barring, diminishing, adjudicating or in any way affecting:

a. any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its parent or affiliated companies, and their directors, officers, employees, servants, agents, successors and assigns;

b. the Department's right to enforce at law or in equity the terms and conditions of this Order against Respondent, its directors, officers, employees, servants,

agents, successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof, unless Respondent's failure is due to a condition as set forth in Paragraph XXIII;

c. any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that Respondent may have against any person other than the Department;

d. Respondent's right to challenge or bring any action or proceeding to which it may be entitled, including, without limitation, any right under Article 78 of the CPLR, in connection with, arising out of or relating to actions taken by the Department to enforce, interpret or otherwise implement the terms of this Order, except as described in Paragraph IV above;

e. the Department's right to bring an action or proceeding to which it may be entitled in connection with, relating to, or arising out of any release of hazardous wastes at the Site or other violation of the Environmental Conservation Law or any other State or Federal Law which is not addressed under the terms of this Order; or

f. the Department's right to bring an action or proceeding to which it may be entitled in connection with, relating to, or arising out of natural resource damage claims pursuant to CERCLA §107.

XXVII. 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 to the extent that they arise out of or result from negligent, reckless or willful actions taken in the fulfillment or attempted fulfillment of the terms of this Order by Respondent, its directors, officers, employees, servants, agents, successors or assigns. This indemnity shall, in no case, extend to any claim, suit, action, damage and cost of any name or description which arises out of or results from the negligent, reckless or willful actions of the Department's employees, contractors, subcontractors, consultants, or other agents.

XXVIII. Assignment. In the event that Borg-Warner Corporation, or any other third party or prior owner is adjudged by a court with competent jurisdiction to be partially or wholly liable for any damages resulting from the disposal and/or release of hazardous wastes at the site, or upon the agreement by a third party to assume such liability, the rights and obligations of Respondent under this Order may, subject to the Department's approval, which approval shall not be unreasonably withheld, be assigned and delegated and this Order then shall be modified appropriately. Any such assignment shall reserve for Respondent the benefits conferred by this Order, including but not limited to those conferred by Paragraphs XIV and XV. The assignment and delegation of the rights and obligations under this Order pursuant to this paragraph shall include the assignment of Respondent's

obligation to provide the Department with financial assurances as required at Paragraph XXIV proportionate to the share of rights and obligations otherwise delegated and assigned.

Any dispute concerning the terms of this paragraph, including, but not limited to, whether the Department's approval has been unreasonably withheld, shall be subject to the dispute resolution procedure specified in Paragraph IV.

XXIX. Effective Date. The effective date of this Order shall be the date it is signed by the Commissioner.

XXX. Modification to the Order. If Respondent or the Department desires that any substantive terms of this Order be changed, one shall make timely written application to the other, setting forth reasonable grounds for the relief sought. Approval of such modifications shall not be unreasonably withheld. Changes relating to administrative or ministerial matters, such as the revision of the notification list provided at Paragraph XXXII or the staffing of the project management described in Section 2.1 of the Work Plan, are not subject to the terms of this Paragraph and may be changed by one party upon notice to the other.

XXXI. Real Estate Conveyances. In the event that Respondent proposes to convey the whole or any part of its ownership interest in the Site, Respondent shall, not fewer than 30 days prior to the consummation of such proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance,

Respondent shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XXXII. Communications.

A. All communication required by this Order to be made between the Department and Respondent shall be made in writing and transmitted by United States Postal Service Return Receipt Requested, hand delivered or send via Federal Express or any other overnight service to the addresses listed below.

B. Communication to be made from Respondent to the Department shall be made as follows:

1. two copies to the Division of Hazardous Waste Remediation, Room 212, 50 Wolf Road, Albany, New York 12233. Attn: Michael J. O'Toole, P.E., Acting Director;

2. two copies to the Division of Environmental Enforcement, Room 415, 50 Wolf Road, Albany, New York 12233. ATTN: Gary Bowitch;

3. one copy to the NYS Department of Environmental Conservation, Region 7, 7481 Henry Clay Boulevard, Liverpool, New York 13088. ATTN: William Krichbaum, Regional Director; and

4. two copies to the NYS Department of Health, Bureau of Environmental Exposure Investigation, 2 University Place, Albany, NY 12237. ATTN: Ronald Tramontano;

C. Communication to be made from the Department to Respondent shall be made as follows:

1. one copy to Robert Hubbert, Emerson Power Transmission Company, Route 96B, Ithaca, New York 14850;

2. one copy to H. L. Hedges, III, Corporate Safety Manager, Emerson Electric Co., 8000 W. Florissant, P.O. Box 4100, St. Louis, Missouri 63136;

3. one copy to Sheila McC. Harvey, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W. Washington, D.C. 20037; and

4. one copy to Kathryn S. Makeig, Radian Corporation, 13595 Dulles Technology Drive, Suite 200, Herndon, Virginia 22071.

D. The Department and Respondent respectively reserve the right to designate other or different addresses on notice to the other.

XXXIII. The terms of this Order shall be deemed to bind Respondent, its directors, agents, servants, employees, successors and assigns.

XXXIV. Nothing herein shall be construed to bind any entity not specifically bound by the terms of this Order.

XXXV. The terms hereof shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other writing submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals

as may be required by this Order.

DATED: July 13, 1988, New York

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

By Raymond H. Hirsch

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its right to a hearing prior to issuance of this Order provided by ECL §27-1313(4), and agrees to be bound by the provisions, terms and conditions contained in this Order.

By: Philip W. King
Emerson Power Transmission Company

Title: Division President

Date: June 20th, 1988

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

On this 20th day of June, 1988, before me personally came _____, to me known, who being duly sworn, did depose and say that he resides in Ithaca, New York; that he is the Division President of the Emerson Power Transmission corporation described in and which executed the foregoing instrument; 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 the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Carol R. Dik
Notary Public

CAROL R. DIK
Notary Public, State of New York
No. 4760025
Qualified in Tompkins County
Commission Expires OCT 31, 1988

APPENDIX A

