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ERIE COUNTY CLERKS OFFICE  
County Clerk's Recording Page

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BOX 21

NIAGARA MOHAWK POWER  
CORPORATION

Index DEED LIBER

Book 10946 Page 0735

No. Pages 0075

Instrument RESTRICTIONS

Date : 1/27/1999

Time : 11:26:05

Control # 199901270449

Employee ID FG

COUNTY	\$	230.50
	\$	.00
COE	\$	5.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
	\$	.00
Total:	\$	235.50

STATE OF NEW YORK  
ERIE COUNTY CLERKS OFFICE

WARNING - THIS SHEET CONSTITUTES THE CLERK'S  
ENDORSEMENT, REQUIRED BY SECTION 316-a(5) &  
SECTION 319 OF THE REAL PROPERTY LAW OF THE  
STATE OF NEW YORK. DO NOT DETACH

DAVID J SWARTS  
COUNTY CLERK



D109460735

## DECLARATION OF COVENANTS AND RESTRICTIONS

WHEREAS, Niagara Mohawk Power Corporation is a corporation organized under the laws of the State of New York having its principal place of business at 300 Erie Boulevard West, Syracuse, New York 13202; and

WHEREAS, Niagara Mohawk Power Corporation is the owner of a certain inactive hazardous waste disposal site, namely NIAGARA MOHAWK CHERRY FARM SITE (Site #9-15-063), located on River Road in the Town of Tonawanda, Erie County, State of New York; and

WHEREAS, the said inactive hazardous waste disposal site is the subject of a certain Order on Consent (Index Nos. B9-0046-84-10 and B9-0047-91-02) issued by the Commissioner of the New York State Department of Environmental Conservation, according to law effective on September 27, 1994, a copy of which is attached to and made a part hereof as Exhibit "A", which directs the owner and other responsible parties to develop, implement, monitor and maintain a remedial program for the property, and is further subject to an Amendment to said Order on Consent, effective November 2, 1998, attached hereto as Exhibit "B"; and

WHEREAS, the requirements of the remedial program selected by the New York State Department of Environmental Conservation in accordance with the New York State Environmental Conservation Law, and consistent with the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (as amended by the Superfund Amendments and Reauthorization Act of 1986) were published in an Amended Record of Decision issued by the Department of Environmental Conservation on October 7, 1993, attached hereto as Exhibit "C".

NOW, THEREFORE, Notice is hereby given:

First, that the property affected by this Declaration of Covenants and Restrictions is part of a parcel conveyed by a deed dated July 20, 1970, a copy of which is attached hereto as Exhibit "D", between party of the first part CF&I Steel Corporation and party of the second part Niagara Mohawk Power Corporation, recorded in the Erie County Clerk's Office in Liber 7711 at page 302. The property affected hereby is described in Schedule A attached to the aforementioned deed (Liber 7711 at pages 305 and 306), but is specifically limited to that portion of the property conveyed thereby to Niagara Mohawk Power Corporation which is located to the WEST of River Road and, as described in Schedule A attached to the July 20, 1970 deed, specifically excludes from the property affected by this Declaration of Covenants and Restrictions "all that land formerly owned by the State of New York and used for Canal purposes, and now owned by the County of Erie". The location of the affected property is indicated on the survey document dated 7/10/70, attached hereto as Exhibit "E";

Second, that the aforesaid Order on Consent (Exhibit "A" and Exhibit "B" attached hereto) is binding upon Niagara Mohawk Power Corporation and its successors in interest;

Third, that this Declaration of Covenants and Restrictions shall run with the land and to the benefit of the New York State Department of Environmental Conservation, and shall be binding upon all future owners of the property affected by this Declaration, and upon each and every tenant, subtenant, invitee and licensee of the property, and cannot be modified without the consent of the Department of Environmental Conservation or any New York State Department, Bureau or other entity replacing the Department;

Fourth, that the affected property, having been listed by the Department of Environmental Conservation as a Classification "2" Site in the Registry of Inactive Hazardous Waste Disposal Sites in New York State, is subject to applicable restrictions on the use of such property including those specified by §375-1.2(e) of the Environmental Conservation regulations embodied in Title 6 of the New York Code of Rules and Regulations. Use of the affected property is thereby limited such that no person may engage in any activity:

- a) that will, or that reasonably is anticipated to, prevent or interfere significantly with any proposed, ongoing or completed remedial program affecting the property, including any activity that will intrude into waste materials or will otherwise diminish the effectiveness of the remedy.

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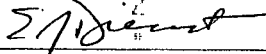
b) that will, or is reasonably likely to, expose the public health or the environment to a significantly increased threat of harm or damage to such property;

Fifth, that the use of the property may be further restricted by law and/or by other orders issued or to be issued according to law;

Sixth, that any deed of conveyance is subject to and encumbered by this Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 22<sup>nd</sup> day of January, 1999.

NIAGARA MOHAWK POWER CORPORATION



Edward J. Dienst  
Senior Vice President  
Customer Delivery and Asset Management

STATE OF NEW YORK ) SS.:  
COUNTY OF ONONDAGA )

On the 22<sup>nd</sup> day of January, 1999, before me personally came Edward J. Dienst, to me known, who, being by me duly sworn, did depose and say that he resides in Skaneateles, New York; that he is the Senior Vice President-Customer Delivery and Asset Management of Niagara Mohawk Power Corporation, the corporation described in and which executed the above instrument; and that he signed his name thereto by authority of the board of directors of said corporation.



WILLIAM C. WEISS  
Notary Public, State of New York  
No. 4719826  
Qualified in Onondaga County  
My Commission Expires October 31, 2002