

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Development and
Implementation of a Remedial Program
for a Resource Conservation and Recovery
Act ("RCRA") Facility, Under Article 27,
Title 9 and Article 71, Title 27 of the
Environmental Conservation Law of the
State of New York by:

ORDER ON
CONSENT

INDEX #R9-4407-96-09
FILE NO. 96-47

NIAGARA MOHAWK POWER CORPORATION

Site Registry # 9-15-144

Respondent

-----X
WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 9 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Industrial Hazardous Waste Management." This Order is entered into pursuant to the Department's authority under, inter alia, ECL Article 27, Title 9 and ECL § 71-2727(3).

2. Pursuant to ECL § 71-2727(3), the Commissioner of the Department may issue orders requiring corrective action, including corrective action beyond the facility boundary where necessary to protect human health and the environment, for all releases of hazardous waste or constituents from any solid waste management unit at any treatment, storage or disposal facility which is either permitted or seeking a permit under Title 7 or 9 of Article 27 of this chapter, or which has interim status according to regulations adopted thereunder, regardless of the time at which the waste was placed in such unit.

3. Niagara Mohawk Power Corporation ("NMPC") is a corporation organized and existing under the laws of the State of New York with principal offices at 300 Erie Boulevard West, Syracuse, New York.

4. NMPC owns, operates, and maintains a facility (the "Facility") located at 144 Dewey Avenue in the City of Buffalo, County of Erie, State of New York.

5. In May 1991, the Department issued a Hazardous Waste Storage Permit (EPA I.D. No. NY0000730390) pursuant to 6 NYCRR Part 373 to NMPC for the storage of hazardous waste consisting of PCB-laden oil at the Facility. NMPC ceased hazardous waste storage operations at the Facility in November 1992. Owing to PCB soil contamination found along the Facility property line, the Facility site was listed as a Class 5 inactive hazardous waste site under Site Registry number 9-15-144.

6. Ground water monitoring results obtained pursuant to the Post-Remedial Ground Water Monitoring Program which was required by the aforesaid Part 373 Hazardous Waste Storage Permit indicate that hazardous constituents in concentrations exceeding Resource Conservation and Recovery Act ("RCRA") Corrective Action Levels, Safe Drinking Water Act Maximum Contaminant Levels ("MCLS"), and New York State Groundwater Standards are present in the ground water at the Facility.

7. At the Department's request, NMPC submitted a Soil and Ground Water Investigation Report for Solid Waste Management Unit #7 (SWMU #7) to evaluate groundwater conditions at the site of an underground waste oil storage tank which was removed in 1992. The report was approved by the Department on February 13, 1995.

8. At the Department's further request, NMPC submitted the September 1995 Focused Risk Assessment (RA) and Corrective Measures Study Report (CMS) to evaluate potential risks and potential corrective measure alternatives associated with the contaminated soil and ground water conditions at the Facility.

9. The RA and CMS Report was approved by the Department on September 24, 1996.

10. In February 1997, the Department issued a Statement of Basis describing the corrective actions selected by the Department to remediate the soil and groundwater contamination at the Facility.

11. Based upon its review of the Corrective Measures Study (CMS), the Department required implementation of the following Corrective Measures:

A. A Groundwater Monitoring Program to monitor the migration of the impacted groundwater associated with contaminated groundwater in the vicinity of SWMU #7 and along the property boundary of the Facility;

B. Development of a Health and Safety Plan for any future excavation activities in the vicinity of SWMU #7; and

C. Filing of a deed restriction to notify potential purchasers, if NMPC sells a portion or all of the property at the Dewey Avenue site, of the on-site contamination.

12. The Department and NMPC agree that the goal of this Corrective Action Order is to establish the terms and conditions under which NMPC will:

A. implement a RCRA Corrective Action Program, which shall include:

- 1) Continuation of groundwater monitoring at the Facility;
- 2) Implementation, if required, of the Contingency Plan/Supplemental Investigation contained in the Department-approved CMS;
- 3) Development and implementation of a Remedial Plan if the Supplemental Investigation indicates one is necessary; and

B. provide financial assurance for implementation of the RCRA Corrective Action Program.

13. NMPC, without admitting or denying any violation of law or regulation, hereby waives its right to a hearing as provided by law on the matters recited herein and consents to the issuance and entry of this Order and agrees to be bound by its terms. NMPC 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. Groundwater Sampling and Analysis Plan

A. NMPC shall sample 4 wells (MW-1, MW-5, MW-7, MW-9) on a semiannual (every six months) basis and 3 additional wells (MW-6, MW-8, ESI-1) once a year as required by the Department-approved Sampling and Analysis Plan.

B. All well samples will be analyzed for VOC's (including naphthalene) by Method 8260; PCB's by Method 8080; and Total lead by Method 7421.

C. All sampling and analysis will be in accordance with the Department-approved Sampling and Analysis Plan.

D. The Groundwater Monitoring Program will continue for a period of 30 years.

II. Modification of Groundwater Sampling and Analysis Plan

A. If the monitoring data suggest that modifications are necessary, the Department can request that NMPC modify the Sampling and Analysis Plan. Likewise, if NMPC believes modifications are necessary, NMPC can petition the Department to modify the Sampling and Analysis Plan. Cessation of the monitoring program prior to the 30 year period will be permitted only if NMPC can support its petition with analytical data demonstrating that continued monitoring is not required.

B. Any proposed modification of the Sampling and Analysis Plan shall be submitted to the Department for review and approval. All modifications must have the Department's written approval prior to implementation.

III. Implementation of Contingency Plan

A. To ensure that off-site migration of contaminated groundwater does not occur, NMPC is required to implement the Contingency Plan contained in the CMS if the analytical results from wells MW-7 and MW-9 (or any new property boundary wells) indicate exceedance of NYSDEC groundwater quality standards for two (2) consecutive sampling events.

B. If the results from two consecutive sampling events indicate exceedance of standards, an evaluation of additional remedial alternatives will be initiated. Within thirty (30) days of determining two consecutive rounds of exceedances at MW-7

and/or MW-9, NMPC shall submit an Evaluation Workplan for a Supplemental Investigation. Based upon the results of the Supplemental Investigation, a more aggressive corrective measure will be evaluated and implemented if necessary in addition to the groundwater monitoring program. A Remedial Plan shall be submitted within ninety (90) days if the Supplemental Investigation indicates that additional corrective measures are necessary.

IV. Implementation of Corrective Measures

Within thirty (30) days of the effective date of this Order NMPC shall commence implementation of the corrective measures required pursuant to this Order. All plans, reports, and schedules (collectively hereinafter referred to as "submittals" or "NMPC submittals") required pursuant to this Order are, upon NMPC's receipt of the Department's written approval, incorporated by reference into this Order. Upon incorporation, the provisions of each such document shall be binding upon NMPC and have the same legal force and effect as the requirements of this Order.

V. Health and Safety Plan

Any excavation in the area of SWMU #7 shall be in accordance with NMPC's May 1996 Health and Safety Plan.

VI. Public Notice

A. Within sixty (60) days after the effective date of this Order, NMPC shall file a Declaration of Covenants and Restrictions, which is acceptable to the Department, with the County Clerk of Erie County to give all parties who may acquire any interest in the Facility notice of this Order.

B. Within sixty (60) days after the effective date of this Order, NMPC shall incorporate a notice in the Facility's deed or in a similar instrument which would normally be examined in a title search for the Facility that will, in perpetuity, notify a potential purchaser of any portion of the Facility of the following: (1) the types, concentrations, and locations of hazardous wastes or hazardous constituents at the Facility and (2) that all future uses of the property must be industrial or commercial in nature and must be compatible with the presence of hazardous waste or hazardous constituents at the Facility. NMPC shall forward to the Department a copy of this notice within ten (10) working days of filing.

C. If NMPC proposes to convey the whole or any part of NMPC's ownership interest in the Facility, NMPC shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall provide the transferee, with a copy of this Order together with a copy of the aforesaid written notice to the Department.

VII. Financial Assurance

Within thirty (30) days following the Department's approval of the Corrective Action Program, NMPC shall provide to the Department a cost estimate and shall provide financial assurance for implementation of the Corrective Action Program pursuant to one of the methods set forth in 6 NYCRR § 373-2.8(f). While this order remains in effect, the cost estimate will be subject to adjustment for inflation as provided for in 6 NYCRR § 373-2.8(e).

VIII. Review of Submittals

A. 1. The Department shall review each of the submittals NMPC makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify NMPC in writing of its approval or disapproval of the submittal.

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

b. After receipt of the revised submittal, the Department shall notify NMPC in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, NMPC shall be in technical violation of this Order unless NMPC either incorporates the corrections required by the Department within ten (10) days of receipt of the Department's comments or, in the alternative, invokes the Dispute Resolution process recited in Paragraph IX to effect an agreement with the Department.

B. The Department may determine, 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 additional work is necessary. The Department may also determine, 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 the need for continuing the work required by this Order should be reviewed and, if necessary, reduced or terminated in whole or in part. If the Department determines that either additional work is necessary or that the work required by the Order should be reduced or terminated, it shall do so in writing setting forth the reasons for its decision. A reasonable period of time within which to implement the Department's determination shall be specified by the Department in its notice. NMPC shall either undertake to implement the Department's determination or shall respond to the Department's determination through the Dispute Resolution procedure in Paragraph IX of this Order.

IX. Dispute Resolution

Any dispute that arises between the Department and NMPC regarding Department approval of any NMPC submittal or any determination by the Department pursuant to Paragraph VIII.B. requiring additional work shall, in the first instance, be the subject of informal negotiations between the parties.

In the event that these informal negotiations reach an impasse, either party may make a written request (with a copy to the other party) to meet with the Director of the Division of Solid and Hazardous Materials ("Division Director") in an effort to resolve the dispute. NMPC, the Department Staff, and the Division Director shall be available to meet within a reasonable time of the request.

At the meeting with the Division Director, each party shall have an opportunity to present its position on the disputed issue(s). The party requesting the meeting shall present its position first. The Division Director shall consider the matter(s) in dispute *de novo* and shall notify the parties in writing of his/her determination as soon as is reasonably practicable after the meeting.

Within thirty (30) days of receipt of written notice of the Director's determinations, NMPC shall either: (a) notify the Department that it intends to comply with the Division Director's decision and shall, if required, submit a revised draft submittal within the timeframe provided by the Division Director, or, in the alternative, (b) invoke the Alternative Dispute Resolution process provided for in Paragraph X.

Upon review, the Department shall either approve the revised draft submittal or provide NMPC with written comments. NMPC shall have a reasonable time in which to amend the revised draft to respond to the Department's comments.

If the amended revised draft submittal fails to adequately address the Department's comments, the dispute remains unresolved and subject to Alternate Dispute Resolution as set forth in Paragraph X.

NMPC's obligations under this Order which are disputed or are dependent upon disputed items shall be stayed pending the Division Director's decision.

X. Alternative Dispute Resolution

In the event that any dispute regarding Department approval of any NMPC submittal or any Department determination requiring additional work arising under this Order cannot be resolved by the Division Director or through informal discussion between the parties, either party shall be entitled to invoke the Alternative Dispute Resolution ("ADR") process by making a written request to the Department's Office of Hearings and Mediation Services ("OHMS") for arbitration by an Administrative Law Judge ("ALJ") from OHMS.

Any request for assignment of an ALJ shall include a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting the requester's position, and all supporting documentation on which the requester relies (hereinafter, "Statement of Position"). The requester's Statement of Position shall be served concurrently on the other party.

The other party shall serve its Statement of Position upon the requester and the OHMS, including supporting documentation, no later than fifteen (15) business days after receipt of the requester's Statement of Position.

The ALJ may request additional information from either side and may conduct a pre-hearing conference (either in person or telephonically) before proceeding with dispute resolution. The requester shall have the burden of going forward.

NMPC's obligations under this Order which are disputed or are dependent upon disputed items shall be stayed pending the ALJ's decision.

XI. Penalties

A. NMPC's failure to comply with any term of this Order will constitute a violation of this Order and the ECL and may subject NMPC to an enforcement action by the Department and the imposition of a payable penalty. Such penalties will begin to accrue on the first day NMPC is in violation of the terms of this Order and will continue to accrue through the final day of correction of any violation. Payment of the penalties shall not in any way alter NMPC's obligation to complete performance under the terms of this Order. The Department, in its discretion, may elect not to impose any penalties upon NMPC.

B. NMPC shall not suffer any penalty under this Order or be subject to any proceeding or action if it can not comply with any requirement hereunder because of war, riot, or an unforeseeable disaster arising from natural causes which the exercise of ordinary human prudence could not have prevented. NMPC shall, within ten (10) working days of receiving knowledge of any such condition, notify the Department in writing. NMPC shall include in such notice the measures taken and to be taken by NMPC to prevent or minimize any delays and may request an extension or modification of this Order, as appropriate. NMPC shall have the burden of proving that an event is a defense to compliance with this Order.

XII. Entry upon Facility

NMPC hereby consents to the entry upon the Facility by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for the purposes of inspection, sampling, and testing and to assure NMPC's compliance with this Order. To the extent possible, the Department shall conduct such

visits during normal business hours and shall coordinate these visits with NMPC in advance of any such visit. All consultants, contractors, agents of the Department or any State Agency shall provide at the time of entry or in advance of the time of entry to the Facility, a letter from the Department or State Agency specifying that he/she is a consultant, contractor, or agent of the Department or a State Agency assigned to this matter. All persons entering the Facility for purposes of observing field activities and/or obtaining samples will follow the Health & Safety Plan and NMPC's appropriate safety rules. During implementation of the field work required under this Order, NMPC shall provide the Department with suitable work space at the Facility, including access to a telephone, and shall permit the Department full access to all non-privileged records pertaining to matters addressed by this Order.

XIII. Reimbursement of State Oversight Costs

A. While this Order is in effect, NMPC shall make an annual payment of Three-thousand Dollars (\$3,000) to reimburse the State of New York for the Department's oversight costs. Oversight costs shall include, but are not limited to: direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work related to the RCRA corrective action at the Facility commencing with the effective date of this Order, as well as for reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, and for collecting and analyzing samples.

B. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment

shall be sent to the Bureau of Program Management, Division of Solid and Hazardous Materials, NYSDEC, 50 Wolf Road, Albany, NY 12233-7010. Payment for the first year shall be made within thirty days (30) of NMPC's receipt of a copy of a fully executed Order. Payments for subsequent years shall be made on or before the anniversary date of the first payment.

C. During the sixth and subsequent years that this Order is in effect, Respondent may petition the Department for a reduction or elimination of the payment required under this paragraph. The Department will make its determination to reduce or eliminate payment for the sixth and subsequent years based upon the amount of oversight costs incurred by the Department in the previous year.

D. In the event that State oversight costs significantly exceed the annual payment of Three-thousand Dollars (\$3,000), the Department reserves the right to increase the reimbursement rate subject to providing NMPC with an itemization of the Department's costs and NMPC's right to invoke the Dispute Resolution process to effect agreement.

XIV. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's civil, criminal, or administrative rights or authorities. Except for those matters subject to Dispute Resolution or Alternate Dispute Resolution ("DR/ADR") as provided for in Paragraphs IX and X, respectively, the Department reserves its right to commence an enforcement action to compel NMPC's performance of any obligation NMPC has under this Order. Any

submittal already approved by the Department shall not be subject to DR/ADR and may be subject to enforcement by the Department as an obligation of NMPC.

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

XV. Compliance Schedule for Assessment of Newly Identified Solid Waste Management Units ("SWMUs")

A. Notification of Assessment

NMPC shall notify the Department, in writing, of any additional Solid Waste Management Units ("SWMUs") not listed in the former Part 373 Permit, which are identified during the course of groundwater monitoring, field investigations, environmental audits, or other means within thirty (30) calendar days after discovery.

B. SWMU Assessment Report

If, after reviewing the aforesaid notice from NMPC, the Department notifies NMPC that a SWMU Assessment Report is required, NMPC shall, within thirty (30) calendar days after receiving notice from the Department, submit either a SWMU Assessment Report or a letter to the Department indicating why such a report is not necessary.

C. Corrective Action Measures

If, after reviewing the SWMU Assessment Report, the Department determines that corrective action measures are required, NMPC shall implement those measures in accordance with the regulations presently promulgated at 6 NYCRR § 373-2.6 or the regulations in effect at the time of the Department's determination.

XVII. Communications

All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, hand delivered, or by telecopier (followed by hard copy), as follows:

A. Communications from NMPC shall be sent to:

Mr. Roger Murphy
Division of Solid and Hazardous Materials
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233-7251
Telecopier: 518-457-9240

Mr. Frank Shattuck, P.E.
New York State Department of
Environmental Conservation
Region 9 Headquarters
270 Michigan Avenue
Buffalo, New York 14203-2999
Telecopier: 716-851-7226

Mr. James Reidy, P.E.
U. S. Environmental Protection Agency
Region II Office
290 Broadway
New York, New York 10007-1866
Telecopier: 212-637-4437

B. Communications to NMPC shall be sent to:

William J. Holzhauer, Esq.
Chief Counsel-Environmental Affairs
Niagara Mohawk Power Corporation
300 Erie Boulevard West
Syracuse, NY 13202

Mr. James Morgan
Environmental Analyst IV
Niagara Mohawk Power Corporation
300 Erie Boulevard West
Syracuse, NY 13202

XVIII. Miscellaneous

A. All activities and submittals required by this Order shall address the impact of Facility releases both at the Facility

and beyond the Facility boundary, where necessary.

B. NMPC shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within thirty (30) days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which NMPC and such firms or individuals will be responsible. The Department shall notify NMPC of such approval in writing within thirty (30) days of receipt of NMPC's submission. The Department's approval will not be unreasonably withheld, however, in the event that the Department does not approve of selected firms or individuals, the Department will so notify NMPC in writing within thirty (30) days of receipt of NMPC's submission and will provide NMPC with a reasonable time to select alternative firms or individuals. The responsibility for the performance of the professionals retained by NMPC shall rest solely with NMPC. All schedules will be stayed until such time as NMPC receives written confirmation of the Department's approval.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by NMPC, and the Department shall also have the right to take its own samples. NMPC shall make available to the Department the results of all sampling and/or tests or other data generated by NMPC with respect to implementation of this Order and

shall submit these results in the progress reports required by this Order.

D. NMPC shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the Department, and NMPC shall also have the right to take its own samples. NMPC shall also have the right to obtain analysis of all samples and/or tests or other data generated by the Department or State of New York, their agents and employees with respect to implementation of this Order.

E. NMPC shall notify the Department at least ten (10) working days in advance of the initiation of any field activities to be conducted pursuant to this Order.

F. NMPC shall use reasonable efforts obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform NMPC's obligations under this Order. In the event that NMPC's good-faith efforts to obtain necessary authorizations are unsuccessful, NMPC may request that NMPC's obligations under this order be modified in accordance with the procedure set forth in Paragraph XVIII.L.2. All schedules affected by lack of access will be stayed and penalties will not be assessed pending the Department's decision to modify NMPC's obligations under this order owing to NMPC's lack of access.

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

and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of NMPC.

H. NMPC shall be responsible for ensuring that NMPC's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

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

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 and attachments thereto shall constitute the complete and entire Order between NMPC and the Department concerning the Facility. 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 NMPC of NMPC's obligation to obtain such formal approvals as may be required by this Order.

2. If NMPC desires that any provision of this Order or the Remedial Plan be changed, NMPC shall make timely written application, signed by NMPC, to Mr. Frank Shattuck at the


address indicated in Paragraph XVII above, setting forth reasonable grounds for the relief sought. Any modification of this Order or approved work plans shall require the written approval of the Department. Once approved by the Department, any modification of this Order or of approved work plans shall become a part of this Order and shall be enforceable under this Order.

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

Buffalo, New York
Dated:

November 12, 1997

JOHN P. CAHILL
Commissioner
New York State Department
of Environmental Conservation


by: Gerald F. Mikol
Regional Director

Consent by Respondent

Respondent hereby consents to the issuing and entering of the foregoing Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained therein.

Respondent Niagara Mohawk Power Corporation

By William J. Holzhauser

Title Chief Counsel-Environmental Affairs

Date 10/24/97

(Seal)

Corporate

State of New York)
County of Onondaga)

On this 24th day of October, 19 97, before me personally came William J. Holzhauser to me known, who being by me duly sworn did depose and say that he resides at Camillus, New York; that he is the Chief Counsel-Env Affairs of NIAGARA MOHAWK POWER CORP. the corporation described in and which executed the foregoing instrument; and that he signed his name as authorized by said corporation.

Vicki L. Williams
NOTARY PUBLIC

Individual

State of)
County of)

VICKI L. WILLIAMS
Notary Public in the State of New York
Qualified in Onondaga County No. 4848074
My Commission Expires March 30, 1999

On this _____ day of _____, 19 _____, before me came _____, to me known and known to me to be the individual described in and who executed the foregoing consent and he duly acknowledged to me that he executed the same.

NOTARY PUBLIC



John P. Cahill
Commissioner

MEMORANDUM

TO:

Frank Shattuck

FROM:

Abby Snyder

SUBJECT:

Consent Order and/or Stipulation 96-47

DATE:

11-19-97

New York State Department of Environmental Conservation
270 Michigan Avenue, Buffalo, New York 14203-2999
(716) 851-7191; Fax (716) 851-7008



John P. Cahill
Commissioner

November 19, 1997

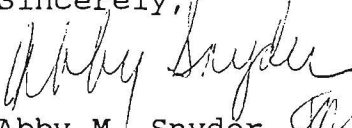
William J. Holzhauer, Esq.
Chief Counsel-Environmental Affairs
Niagara Mohawk Power Corporation
300 Erie Boulevard West
Syracuse, New York 13202

Dear Mr. Holzhauer:

Order on Consent

Enclosed please find a fully executed Order on Consent.
Please keep this for your files

Sincerely,


Abby M. Snyder
Regional Attorney

AMS:jps
Enc.