

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program for an
Inactive Hazardous Waste Disposal
Site under Article 27, Title 13
of the Environmental Conservation Law
by

Cyprus Amax Minerals Company
Chemetall Foote Corp.
Niagara Mohawk Power Corporation d/b/a
National Grid
New York Power Authority

Respondent.

**ORDER ON CONSENT
and
ADMINISTRATIVE
SETTLEMENT**

Index #B9-0470-94-12
(OU-3)

Site #932001

WHEREAS,

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

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

C. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL 3-0301, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

2. A. The Vanadium Corporation of America Site (the "Vanadium Site") is located on Witmer Road in the Town of Niagara, Niagara County, New York and has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 932001 with a classification "2" pursuant to ECL 27-1305.

B. The Vanadium Site includes real property parcels owned by Aireo Properties, Inc., CC Metals and Alloys, LLC, and the New York Power Authority and Niagara Mohawk Power Corporation d/b/a National Grid.

C. The CC Metals and Alloys, LLC parcel has been designated by the Department as Operable Unit No. 1 ("OU-1"). The Airco Properties, Inc., parcel has been designated by the Department as Operable Unit No. 2 ("OU-2"). The New York Power Authority and National Grid parcel has been designated by the Department as Operable Unit No. 3 ("OU-3").

D. This Order addresses OU-3. For purposes of this Order "Site" shall mean OU-3. A map of OU-3 is attached to this Order as Exhibit "A".

3. A. Chemetall Foote Corp. ("Chemetall") is a corporation organized and existing under the laws of the State of Delaware with offices at 348 Holiday Inn Drive, Kings Mountain, North Carolina and is the corporate successor to Vanadium Corporation of America which operated at the Site.

B. Cyprus Amax Minerals Company ("Cyprus") is a corporation organized and existing under the laws of the State of Delaware with offices at 333 North Central Avenue, Phoenix, Arizona and has indemnified Chemetall for the claims that are the subject of this order.

C. Niagara Mohawk Power Corporation d/b/a National Grid ("National Grid") is a corporation organized and existing under the laws of the State of New York with offices at 300 Erie Boulevard West, Syracuse, New York.

D. New York Power Authority ("NYPA") is a corporate municipal instrumentality and political subdivision of the State of New York with offices at 123 Main Street, White Plains, New York.

4. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

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

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

I. Initial Submittal

Within thirty (30) Days after receiving a written request from the Department Respondent shall submit to the Department a Records Search Report prepared in accordance with Exhibit "B" attached hereto. The Records Search Report can be limited if the Department notifies Respondent that prior submissions satisfy specific items required for the Records Search Report. Notwithstanding, the parties acknowledge that the records in possession of the Department as of the effective date of this Order satisfy the Initial Submittal requirements

II. Development, Performance, and Reporting of Work Plans

A. Work Plans

All activities at the Site that comprise any element of an Inactive Hazardous Waste Disposal Site Remedial Program shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans") and this Order and all activities shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, as required under CERCLA, 42 U.S.C. § 9600 *et seq.* The Work Plan(s) under this Order shall address both on-Site and off-Site conditions and shall be developed and implemented in accordance with 6 NYCRR § 375-1.6(a). All Department-approved Work Plans shall be incorporated into and become enforceable parts of this Order. Upon approval of a Work Plan by the Department, Respondent shall implement such Work Plan in accordance with the schedule contained therein. Nothing in this Subparagraph shall mandate that any particular Work Plan be submitted.

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

1. Site Characterization ("SC") Work Plan: a Work Plan whose objective is to identify the presence of any hazardous waste disposal at the Site;
2. Remedial Investigation/Feasibility Study ("RI/FS") Work Plan: a Work Plan whose objective is to perform a Remedial Investigation and a Feasibility Study;
3. Interim Remedial Measure ("IRM") Work Plan: a Work Plan whose objective is to provide for an Interim Remedial Measure;
4. Remedial Design and or Remedial Action ("RD, RA") Work Plan: a Work Plan whose objective is to provide for the development and implementation of final plans and specifications for implementing the remedial alternative set forth in the ROD; or
5. Site Management Plan: a Work Plan whose objective is to identify and implement the institutional and engineering controls required for the Site, as well as any necessary monitoring and/or operation and maintenance of the remedy.

B. Submission/Implementation of Work Plans

1. (a) Within 60 days after the effective date of this Order Respondent shall commence to implement the Department approved Remedial Design Report dated October 2010 (and subsequent Department approved revisions) ("RD Report"), which was developed in accordance with the Department approved Remedial Design Work Plan dated May 2007. The RD Report is attached to this order as Exhibit "D".

(b) The Department may request that Respondent submit additional or supplemental Work Plans for the Site. Within thirty (30) Days after the Department's written request, Respondent shall advise the Department in writing whether it will submit and implement the requested additional or supplemental Work Plan. If Respondent elects to submit and implement such Work Plan, Respondent shall submit the requested Work Plan within sixty (60) Days after such election.

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

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

2. A Professional Engineer must stamp and sign all Work Plans other than SC or RI/FS Work Plans. The RD Report was stamped and signed by a Professional Engineer on November 13, 2008.

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

C. Modifications to Work Plans

The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph II.A or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall provide written notification as provided at 6 NYCRR 375-1.6(d)(3) as to whether it will modify the Work Plan, or invoke dispute resolution.

D. Submission of Final Reports and Annual Reports

1. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report as provided at 6 NYCRR 375-1.6(b) and a final engineering report as provided at 6 NYCRR 375-1.6(c).

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

3. In the event that the final engineering report for the Site requires Site management, Respondent shall submit an annual report by the 1st Day of the month following the anniversary of the start of the Site management. Such annual report shall be signed by a Professional Engineer or by such other qualified environmental professional as the Department may find acceptable and shall contain a certification as provided at 6 NYCRR 375-1.8(h)(3). Respondent may petition the Department for a determination that the institutional and/or engineering controls may be terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

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

1. The Department shall make a good faith effort to review and respond in writing to each submittal Respondent makes pursuant to this Order within sixty (60) Days. The Department’s response shall include an approval or disapproval of the submittal, in whole or in part. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. If the Department disapproves a submittal, it shall specify the reasons for its disapproval. Within fifteen (15) Days after the date of the Department’s written notice that Respondent’s submittal has been disapproved, Respondent shall elect as provided at 6 NYCRR 375-1.6(d)(4). If Respondent elects to modify the submittal, Respondent shall, within thirty (30) Days after such election, make a revised submittal that addresses all of the Department’s stated reasons for disapproving the first submittal. In the event that Respondent’s revised submittal is disapproved, the Department shall set forth its reasons for such disapproval in writing and Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XII and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

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

F. Department’s Issuance of a Record of Decision (“ROD”)

The Department issued a ROD for the Vanadium Site in March 2006. The ROD selected the remedy for each operable unit of the Vanadium Site including OU-3 (the Site). Respondent shall comply with the requirements of the approved RD Report consistent with the ROD for OU-3.

G. Release and Covenant Not to Sue

Upon the Department's issuance of a Certificate of Completion as provided at 6 NYCRR 375-1.9 and 375-2.9, Respondent shall obtain the benefits conferred by such provisions, subject to the terms and conditions described therein.

III. Progress Reports

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

IV. Penalties

A. 1. Except as otherwise set forth herein, Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4). Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order.

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

B. 1. Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Respondent must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Respondent shall notify the Department in writing within five (5) Days of the onset of any Force Majeure Event. Failure to give such notice within such five (5) Day period constitutes a waiver of any claim that a delay is not subject to penalties.

Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

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

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force Majeure event, in accordance with 6 NYCRR 375-1.5(4).

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

V. Entry upon Site

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

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

VI. Payment of State Costs

A. 1. Within forty-five (45) Days after the effective date of this Order Respondent shall pay to the Department the amount of \$203,065.00 which shall represent reimbursement for State Costs (including Department of Environmental Conservation and Department of Health) incurred in connection with the Vanadium Site and which shall resolve Respondent's liability to the State for those State costs incurred in connection with the Vanadium Site prior to March 31, 2006 and related contract costs.

2. Within forty-five (45) Days after the effective date of this Order Respondent shall pay to the Department the amount of \$65,792.21 which represents reimbursement for State costs incurred in connection with the Site through June 24, 2009 as set forth in the September 15, 2009 Cost Summary attached hereto as Exhibit "C".

B. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs, other than those identified in Subparagraph VI.A, for work performed at or in connection with the Site through and including the Termination Date, as provided at 6 NYCRR 375-1.5(b)(3).

C. Costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

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

Edward F. Neuhauser
Principal Environmental Engineer
National Grid
300 Erie Blvd. West
Syracuse, New York 13202

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

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

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

G. Respondent may contest invoiced costs as provided at 6 NYCRR 375-1.5(b)(3)(v) and (vi).

VII. Reservation of Rights

A. Except as provided at 6 NYCRR 375-1.9 and 375-2.9, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Nothing contained in this Order shall be deemed to release Respondents from liability for hazardous substances at the Site, the Vanadium site, or the State's response costs except as provided in this Order.

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

VIII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless as provided by 6 NYCRR 375-2.5(a)(3)(i). For purposes of this Paragraph VIII and this Agreement generally, the terms "State of New York" and "State" shall not refer to or otherwise include NYPA or its successors or assigns.

IX. Public Notice

A. Within thirty (30) Days after the effective date of this Order, Respondent shall provide notice as required by 6 NYCRR 375-1.5(a). Within sixty (60) Days of such filing, Respondent shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy.

B. If Respondent proposes to transfer by sale or lease the whole or any part of Respondent's interest in the Site, or becomes aware of such transfer, Respondent shall, not fewer than forty-five (45) Days before the date of transfer, or within forty-five (45) Days

after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person not affiliated with Respondent to secure the repayment of money or the performance of a duty or obligation.

X. Environmental Easement

In accordance with the ROD and the Department-approved final engineering report for the Site, Respondent (or the owner of the Site) shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2). Upon acceptance of Environmental Easement by the State, Respondent shall comply with the requirements of 6 NYCRR 375-1.8(h)(2).

XI. 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:

1. Communication from Respondent shall be sent to:

Gregory Sutton
Regional Hazardous Waste Remediation Engineer
Division of Environmental Remediation
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203
gpsutton@gw.dec.state.ny.us

Note: one hard copy and one electronic copy in the latest Adobe® pdf format are required to be sent

with copies to:

Steven Bates
Bureau of Environmental Exposure Investigation
New York State Department of Health
Flanigan Square
547 River Street
Troy, New York 12180-2216
smb02@health.state.ny.us

Maura C. Desmond
Senior Attorney
Office of General Counsel
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203
mcdesmon@gw.dec.state.ny.us
correspondence only

2. Communication to be made from the Department, as well as copies of correspondence sent by any Respondent to the Department in accordance with Subparagraph XI.A.1, shall be sent to:

Cyprus Amax Minerals Company
c/o: Stuart M. Brown
333 North Central Avenue
Phoenix, Arizona 85004
Stuart_Brown@fmi.com

with copy to:
Jason W. Hughes
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016
jason.hughes@gknct.com

Niagara Mohawk Power Corporation d/b/a/National Grid
Donna L. Riccobono,
Assistant General Counsel
175 E. Old Country Road
Hicksville, New York 11801

with copy to:
Richard R. Capozza
Hiscock & Barclay, LLP
300 South State Street
Syracuse, New York 13202-2078
rcapozza@hblaw.com

New York Power Authority
General Counsel
123 Main Street
Mail Stop 11 - D
White Plains, New York 10601-3170

with copy to:
New York Power Authority
123 Main Street
Mail Stop 5-E
White Plains, New York 10601-3170
Attention: John Kahabka
Vice President Environment Health and Safety

Chemetall Foote Corp.
Ronald A. France
President & CFO
348 Holiday Inn Drive
Kings Mountain, North Carolina 28086

3. In addition to the requirements of Subparagraph XI.A.2, a copy of any written communication made from the Department to Cyprus pursuant to Paragraphs IV (Penalties), VIII (Indemnification), or XII (Dispute Resolution) shall be sent to:

L. Richards McMillan
General Counsel
Cyprus Amax Minerals Company
333 North Central Avenue
Phoenix, Arizona 85004

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

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

XII. Dispute Resolution

In the event disputes arise under this Order, Respondent may, within fifteen (15) Days after any Respondent knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2). Nothing contained in this Order shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy.

XIII. Termination of Order

A. This Order will terminate upon the Department's written determination that Respondent has completed all phases of the Remedial Program (including Site Management), in which event the termination shall be effective on the 5th Day after the date of the Department's approval of the final report relating to the final phase of the Remedial Program ("Termination Date").

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VI and VIII shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4), subjecting Respondent to penalties as provided under Paragraph IV so long as such obligations accrued on or prior to the Termination Date.

XIV. Miscellaneous

A. Respondent agrees to comply with and be bound by the provisions of 6 NYCRR Subparts 375-1 and 375-2; the provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Order to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Order.

B. The Department may exempt Respondent from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Order in accordance with 6 NYCRR 375-1.12(b), (c), and (d).

C. 1. Respondent shall use best efforts to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Respondent's obligations under this Order, including all Department-approved Work Plans and the schedules contained therein. If, despite Respondent's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Respondent in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Respondent's inability to obtain such interest.

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

E. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and Respondent concerning the implementation of the activities required by this Order. 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 shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work

Plan(s). Respondent consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Order.

2. i. Except as set forth herein, if Respondent desires that any provision of this Order be changed, Respondent shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XI.A.1.

ii. If Respondent seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph XI.A.1.

iii. Requests for a change to a time frame set forth in this Order shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Respondent promptly.

F. 1. If there are multiple parties signing this Order, the term "Respondent" shall be read in the plural, the obligations of each such party under this Order are joint and several, and the insolvency of or failure by any Respondent to implement any obligations under this Order shall not affect the obligations of the remaining Respondent(s) under this Order.

2. If Respondent is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Order are joint and several and the insolvency or failure of any general partner to implement any obligations under this Order shall not affect the obligations of the remaining partner(s) under this Order.

3. Notwithstanding the foregoing Subparagraphs XIV.F.1 and 2, if multiple parties sign this Order as Respondents but not all of the signing parties elect to implement a Work Plan, all Respondents are jointly and severally liable for each and every obligation under this Order through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Respondents electing to perform additional work shall be jointly and severally liable under this Order for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Order relative to the activities set forth in such Work Plan(s). Further, only those Respondents electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

G. Respondent shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL 27-1421(6) and 6 NYCRR 375-1.5(b)(5).

II. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

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

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

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

L. The effective date of this Order is the 10th Day after it is signed by the Commissioner or the Commissioner's designee.

DATED: 2/3/2011

JOSEPH MARTENS
ACTING COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:


Dale A. Desnoyers, Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

Cyprus Amax Minerals Company

By: *J.R.W. McDaniel*

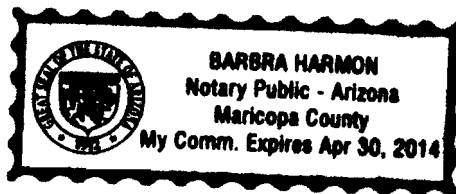
Title: Senior Vice President

Date: November 17, 2010

STATE OF Arizona)
) ss:
COUNTY OF Maricopa, AZ)

On the 17th day of November, in the year 2010, before me, the undersigned, personally appeared J.R.W. McDaniel personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Barbra Harmon
Signature and Office of individual
taking acknowledgment



CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

Chemtell Foote Corp.

By: Ronald A. France

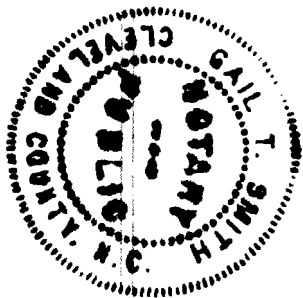
Title: President

Date: Nov 23, 2010

STATE OF North Carolina
COUNTY OF Cleveland) ss:

On the 23rd day of Nov, in the year 2010, before me, the undersigned, personally appeared Ronald A. France personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Gail T. Smith, Notary
Signature and Office of individual
taking acknowledgment



GAIL T. SMITH
Notary Public, North Carolina
Cleveland County
My Commission Expires
April 23, 2013

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

Niagara Mohawk Power Corporation d/b/a National Grid

By: Robert D. Tetz

Title: Vice President

Date: JANUARY 27, 2011

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 27th day of January, in the year 2011, before me, the undersigned, personally appeared Robert D. Tetz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Beth P. Santanello
Signature and Office of individual taking acknowledgment

BETH P. SANTANELLO
NOTARY PUBLIC, State of New York
No. 018A6197484
Qualified in Nassau County
Commission Expires December 1, 2012

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

New York Power Authority

By: John M. Kulek

Title: VP. EHS

Date: Jan. 10, 2011

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

On the 10th day of January, in the year 2011, before me, the undersigned, personally appeared John M. Kulek, personally known to me or proved to me on the basis of satisfactory evidence to be the individual() whose name is () subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature() on the instrument, the individual() or the person upon behalf of which the individual() acted, executed the instrument.

Gerald C. Goldstein
Signature and Office of individual
taking acknowledgment

GERALD C. GOLDSTEIN
Notary Public, State of New York
No. 02GO5043727
Qualified in New York County
Commission expires June 26, 2011

EXHIBIT "A"

MAP OF SITE

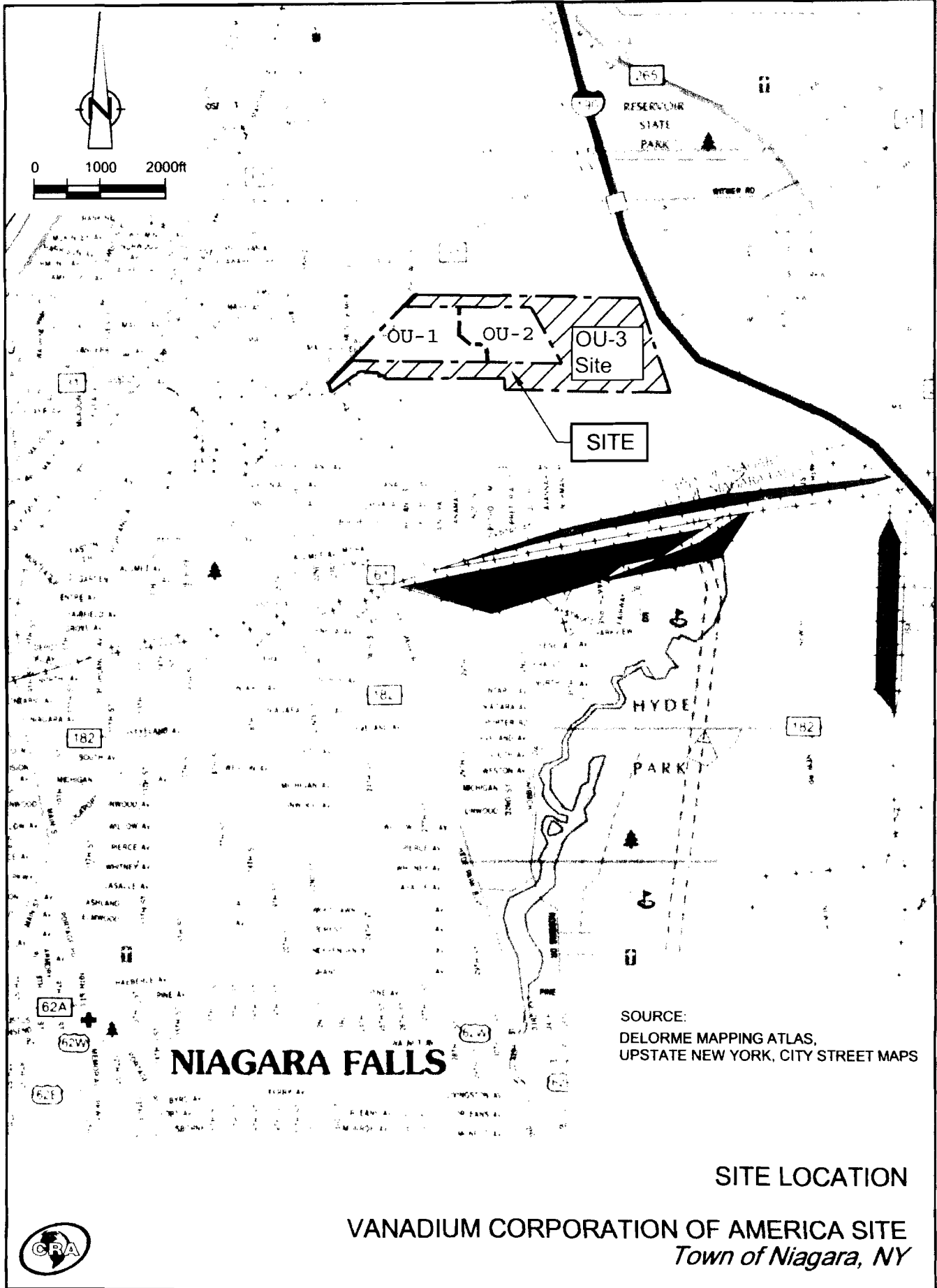


EXHIBIT "B"

RECORDS SEARCH REPORT

1. Detail all environmental data and information within Respondent's or Respondent's agents' or consultants' possession or control regarding environmental conditions at or emanating from the Site.
2. A comprehensive list of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of the Site and of areas immediately surrounding the Site which are or might be affected by contamination at the Site, including all available topographic and property surveys, engineering studies, and aerial photographs.
3. A concise summary of information held by Respondent and Respondent's attorneys and consultants with respect to:
 - (i) a history and description of the Site, including the nature of operations;
 - (ii) the types, quantities, physical state, locations, methods, and dates of disposal or release of hazardous waste at or emanating from the Site;
 - (iii) a description of current Site security (i.e. fencing, posting, etc.); and
 - (iv) the names and addresses of all persons responsible for disposal of hazardous waste, including the dates of such disposal and any proof linking each such person responsible with the hazardous wastes identified.

EXHIBIT "C"
COST SUMMARY

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New York State Department of Environmental Conservation
Division of Environmental Remediation
Bureau of Program Management, 12th Floor
625 Broadway, Albany, New York 12233-7012
Phone: (518) 402-9764 • Fax: (518) 402-9020
Website: www.dec.ny.gov



Alexander B. Grannis
Commissioner

Transmitted via E-Mail
MEMORANDUM

TO: Maura Desmond, Office of General Counsel, Region 9

FROM: Laura Zeppetelli, Bureau of Program Management, DER

SUBJECT: Cost Summary -- Vanadium, Site ID #932001 (OU2 & OU3)

DATE: SEP 15 2009

This cost recovery summary has been prepared in response to your August 21, 2009, request. The following summarizes costs incurred by the New York State Department of Environmental Conservation (DEC) and the New York State Department of Health (DOH) to date. There may be additional future costs associated with this site that are not included in this summary. Please contact the project manager to determine if additional future costs are anticipated.

The total unreimbursed costs incurred by the State in association with the Vanadium Site (OU2 & OU3) are \$126,822.25. This amount includes emergency response costs incurred at the site by a hazardous material spill, if any. Please note that if the site involves a petroleum spill, any costs incurred by the Oil Spill Fund would be recovered separately by the Office of the State Comptroller and are not included in this summary.

DEC and DOH costs for this site have been included through June 24, 2009. Please note that there are no open contracts for this site for which we have outstanding obligations.

Please contact Susan Bolesky at (518) 402-9732, if you have any questions on this summary.

Attachments

cc: M. Hinton, Region 9
G. Sutton, Region 9

EXHIBIT I

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
 DIVISION OF ENVIRONMENTAL REMEDIATION
 BUREAU OF PROGRAM MANAGEMENT

COST SUMMARY

SITE NAME: VANADIUM
 SITE NO.: 932001

| COST CATEGORY | TOTAL AMOUNTS | OU2 Costs | OU3 Costs | EXHIBIT NO. |
|--|---------------------|---------------------|---------------------|-------------------------|
| DIRECT PERSONAL SERVICES | \$127,238.86 | \$71,152.38 | \$56,086.48 | |
| FRINGE | \$45,379.72 | \$24,275.47 | \$21,104.25 | |
| INDIRECT | \$57,013.29 | \$31,737.21 | \$25,276.08 | |
| <i>PERSONAL SERVICES SUBTOTAL</i> | <i>\$229,631.87</i> | <i>\$127,165.06</i> | <i>\$102,466.81</i> | II.A (1&2) & II.B (1&2) |
| CONTRACTUAL | \$0.00 | \$0.00 | \$0.00 | |
| TRAVEL | \$0.00 | \$0.00 | \$0.00 | |
| OTHER NPS | \$0.00 | \$0.00 | \$0.00 | |
| <i>NON-PERSONAL SERVICES SUBTOTAL</i> | <i>\$0.00</i> | <i>\$0.00</i> | <i>\$0.00</i> | |
| DEC TOTAL | \$229,631.87 | \$127,165.06 | \$102,466.81 | |
| DOH TOTAL | \$12,772.37 | \$8,864.98 | \$3,907.39 | III |
| MINUS PREVIOUSLY REIMBURSED AMOUNT (IF APPLICABLE) | (\$115,581.99) | (\$75,000.00) | (\$40,581.99) | |
| <i>DEC & DOH TOTAL</i> | <i>\$126,822.25</i> | <i>\$61,030.04</i> | <i>\$65,792.21</i> | |
| COST CAP | N/A | N/A | N/A | |
| GRANDTOTAL | \$126,822.25 | \$61,030.04 | \$65,792.21 | |

EXHIBIT "D"
REMEDIAL DESIGN REPORT

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**REMEDIAL DESIGN OU #3
100% DESIGN REPORT**

**VANADIUM CORPORATION OF AMERICA SITE
TOWN OF NIAGARA, NEW YORK**

PRINTED ON

OCT 27 2010

OCTOBER 2010

REF. NO. 019867 (25)

This report is printed on recycled paper.

**Prepared by:
Conestoga-Rovers
& Associates**

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