

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the  
Development and Implementation  
of an Interim Remedial Measure Program  
for an Inactive Hazardous Waste Disposal  
Site, Under Article 27, Title 13,  
and Article 71, Title 27 of the  
Environmental Conservation Law  
of the State of New York by

ORDER  
ON  
CONSENT  
INDEX # B9-0470-94-12

~~SKW Metals and Alloys, Inc.~~  
Respondent.

Site Code #932001

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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." This Order is issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13 and ECL 3-0301.
2. The Vanadium Corporation of America Site (the "Vanadium Site") is located in the Town of Niagara, Niagara County, and has an estimated size of "100+ acres" as reported in the Registry of Inactive Hazardous Waste Disposal Sites (the "Registry"). The Department has determined that the Vanadium Site is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, and presents a significant threat to the public health or environment. The Vanadium Site has been listed in the Registry as Site Number 932001. The Department has classified the Vanadium Site as a Classification "2" pursuant to ECL 27-1305.4.b.

3. SKW Metals and Alloys, Inc. ("Respondent") owns a portion of the Vanadium Site ("Respondent's Property"). A map of the Vanadium Site including the Respondent's Property is attached to this Order as Appendix "A."

4. A. 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."

B. The Department asserts that any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

C. The Department also has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution. See, e.g., ECL 3-0301.1.i.

5. Respondent has undertaken investigations of Respondent's Property and has developed an Interim Remedial Measure Program ("IRM Program") and Site Screening Program ("SS Program") for Respondent's Property. Respondent has submitted, and the Department has approved, an Interim Remedial Measures Work Plan (the "IRM WP") describing the IRM Program and a Revised Site Screening Work Plan ("SS WP") describing the SS Program. The IRM WP and the SS WP are incorporated into this Order and attached as Appendix "B."

6. The Department and Respondent agree that the goals of this Order are (i) for Respondent to implement the IRM Program and SS Program for Respondent's Property in accordance with the Department-approved IRM WP and the Department-approved SS WP, and (ii) for Respondent to reimburse the State's administrative costs as provided in Paragraph VII.

7. Respondent, without admitting any of the Department's determinations, classifications or conclusions of law, waives its right to a hearing herein as provided by ECL§27-1313(4), and 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.

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

I. Initial Submittal

Within 30 days after the effective date of this Order, Respondent shall submit to the Department all information in its possession or control regarding environmental conditions and waste disposal or releases on or related to the Vanadium Site to the extent that such information was not previously submitted to the Department.

II. Performance and Reporting of IRM Program and SS Program

A. Within 60 days after the effective date of this Order, or within such other reasonable time period depending on weather conditions, Respondent shall commence the IRM Program and SS Program provided that the Department has provided the approval provided for in Subparagraph XII.B.

B. Respondent shall perform the IRM Program and SS Program in accordance with the Department-approved IRM WP, the Department-approved submittals made pursuant to the IRM

WP and the Department-approved SS WP, all of which are or shall be attached to and made a part of this Order as Appendix "B."

C. During the performance of the IRM Program and SS Program, Respondent must have at Respondent's Property a full-time representative who is qualified to supervise the work done.

D. Within the time frame set forth in the IRM WP, Respondent must prepare an IRM report ("IRM Report") that includes all data generated and all other information obtained during the IRM Program and identifies any additional data that must be collected. The IRM Report shall be prepared by and have the signature and seal of a professional engineer who shall certify that the IRM Program was conducted, in accordance with this Order.

E. Within the time frame set forth in the SS WP Respondent shall prepare a Site Screening Report in accordance with the SS WP.

F. After receipt of the IRM Report, including as-built drawings, and certification, the Department shall notify Respondent in writing whether the Department is satisfied that the IRM Program was completed in compliance with the Department-approved IRM WP.

G. Respondent shall cooperate with the Department in undertaking a citizen participation program which at a minimum is consistent with the Department's publication, "New York State Inactive Hazardous Waste Site Citizen Participation Plan," dated August 30, 1988, any revisions thereto, and 6 NYCRR Part 375.

### III. Progress Reports

A. If the IRM Program field work requires more than two months for completion, then Respondent and the Department shall discuss the status of the field work and, if requested by the Department, Respondent shall submit to the parties identified in Paragraph XI, in the numbers

specified therein, copies of written progress reports that:

1. describe the actions which have been taken toward achieving compliance with this Order during the reporting period;
2. include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents during the reporting period, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent;
3. identify all submittals, reports, and other deliverables required by this Order that were completed and submitted during the reporting period;
4. describe all actions, including, but not limited to, data collection and implementation of submittals, that are scheduled for the next reporting period and provide other information relating to the progress at the Respondent's Property;
5. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; and
6. include any modifications to any submittals that Respondent has proposed to the Department or that the Department has approved. Respondent shall submit these progress reports to the Department by a date to be determined by the Department.

B. Respondent also shall allow the Department to attend, and shall, unless the Department agrees otherwise, provide the Department at least seven days advance notice of, any of the following: preconstruction meetings, job progress meetings, substantial completion meeting and

inspection, and final inspection and meeting. The Department will indicate to Respondent whether it shall attend such meetings or inspections in order to facilitate efficient and timely meetings and inspections.

#### IV. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent 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 Respondent in writing of its approval or disapproval of a submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. The parties shall promptly convene a working session to discuss the reasons for disapproval. Within a time frame established at the working session Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal the parties shall attempt in good faith to resolve the dispute informally. If the dispute cannot be so resolved the Department shall consider Respondent in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law and Respondent may interpose any defense and/or assert any rights in response to the dispute or to any action by the Department. If the Department approves the

revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may direct Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. An appropriate modification of the project schedule shall be developed by Respondent for Department approval. If Respondent disagrees with the Department's direction the parties shall attempt in good faith to resolve the dispute informally. If the dispute cannot be so resolved the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law and Respondent may interpose any defense and/or assert any right in response to the dispute or any Department action. If the Department approves the modified and/or amplified and expanded submittal, it shall be incorporated into and become an enforceable part of this Order.

#### V. Penalties

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

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within ten (10) days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to

give such notice within such ten-day period constitutes a waiver of any claim that a delay is not subject to penalties for the period during which notice is not given. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this subparagraph.

VI. Entry upon Respondent's Property

Respondent hereby consents to the entry upon Respondent's Property or areas in the vicinity of Respondent's Property which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. The Department shall make reasonable efforts to provide Respondent with notice in advance of any entry on Respondent's Property. During construction activities Respondent shall provide the Department with office space if Respondent maintains a trailer on Respondent's Property, access to a telephone, and shall permit the Department full access to all non-privileged records relating to matters addressed by this Order and job meetings, provided, however, that any assertion of privilege shall not extend to records, or portions thereof, containing data relating to the Site.

VII. Payment of State Costs

A. Within 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 the State's expenses including, but 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 development, implementation and approval of the IRM Program and SS Program for



Respondent's Property which is being performed pursuant to this Order. Such costs shall include costs incurred reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order.

B. The costs payable pursuant to this Order shall be those costs associated with Respondent's Property incurred after January 1, 1998 through the Department approval described in subparagraph II.F. of this Order. Notwithstanding the above, the sum of money to be paid by Respondent pursuant to this Paragraph shall not exceed \$35,000.00.

C. 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 Environmental Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010.

D. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by reports of Direct Personal Service. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports.

E. The Department reserves the right to seek reimbursement for any State costs associated with the Vanadium Site not reimbursed under this Order.

#### VIII. 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.

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

C. Nothing in Paragraph VIII shall be construed as creating or conferring on the Department any right or authority not otherwise created or conferred by law. Nor shall anything in Paragraph VIII be construed to limit any defense which Respondent may have in response to an action taken by the Department pursuant to this reservation of rights.

IX. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors, and assigns except to the extent that such claims, suits, actions, damages and/or costs arise out of or result from the gross negligence or willful misconduct of the Department, the State of New York and/or their representatives and employees.

X. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Clerk of the County wherein Respondent's Property is located to give all parties who may acquire any interest in Respondent's Property notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in Respondent's Property, Respondent shall, not fewer than thirty (30) 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 notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

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:

Communication from Respondent shall be sent to:

Regional Environmental Remediation Engineer Region 9  
New York State Department of Environmental Conservation  
270 Michigan Avenue  
Buffalo, New York 14203

with copies to:

1. Director, Bureau of Environmental  
Exposure Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203
2. Director, Division of Environmental Remediation  
New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233-7010
3. New York State Department of Environmental Conservation  
Division of Environmental Enforcement, Western Field Unit  
270 Michigan Avenue  
Buffalo, New York 14203

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

1. Four copies to  
Regional Environmental Remediation Engineer Region 9  
New York State Department of Environmental Conservation  
270 Michigan Avenue  
Buffalo, New York 14203

2. Two copies to the Director, Bureau of Environmental Exposure Investigation.  
Director, Bureau of Environmental Exposure Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203
3. One copy to  
New York State Department of Environmental Conservation  
Division of Environmental Enforcement, Western Field Unit  
270 Michigan Avenue  
Buffalo, New York 14203

C. Within 30 days after the Department's approval of the IRM Report, Respondent shall submit to the Department Project Manager one microfilm copy (16 millimeter roll film M type cartridge) of all Department-approved drawings and submittals.

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

1. Edward Bredniak  
SKW Metals and Alloys, Inc.  
P.O. Box 217  
Route 95  
Calvert City, KY 42029
2. Guy Van Doren  
LAN Associates, Inc.  
66 Cuna Street  
St. Augustine, FL 32084; and
3. Paul D. Meosky  
Hodgson, Russ, Andrews, Woods & Goodyear, LLP  
1800 One M & T Plaza  
Buffalo, New York 14203-2391

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

## XII. Miscellaneous

A. All activities and submittals required by this Order shall address contamination of Respondent's Property and/or contamination resulting from the disposal of hazardous wastes on Respondent's Property.

B. Respondent 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 Respondent and such firms or individuals will be responsible. Department approval shall not be unreasonably withheld. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order following Respondent's internal QA/QC procedure and shall promptly submit these results to the Department. Respondent has the right to obtain split samples of any Department samples and has the right to obtain the results of any Department sampling.

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

E. Respondent shall use its best efforts to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order.

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

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to Respondent's Property and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. 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. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

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

J. 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.

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

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

New York State Department of Environmental Conservation  
Division of Environmental Enforcement, Western Field Unit  
270 Michigan Avenue  
Buffalo, New York 14203

Michael J. Hinton, P.E.  
Environmental Engineer II  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
Region 9  
270 Michigan Avenue  
Buffalo, New York 14203


L. In accordance with Paragraph VI of this Order Respondent agrees to cooperate in providing access to Respondent's Property to the State or designated agents of the State performing any investigations of the Vanadium Site.

M. The effective date of this Order is the date Respondent receives written notice that it has been signed by the Commissioner or his designee.

DATED: 7/1, New York  
1998

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

By:

  
Michael J. O'Toole, Jr.



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 ECL §27-1313(4), and agrees to be bound by this Order.

SKW Metals and Alloys, Inc.

By:

Edward S. Bredniak  
Edward S. Bredniak

(TYPE NAME OF SIGNER)

Title: President

Date: June 4, 1998

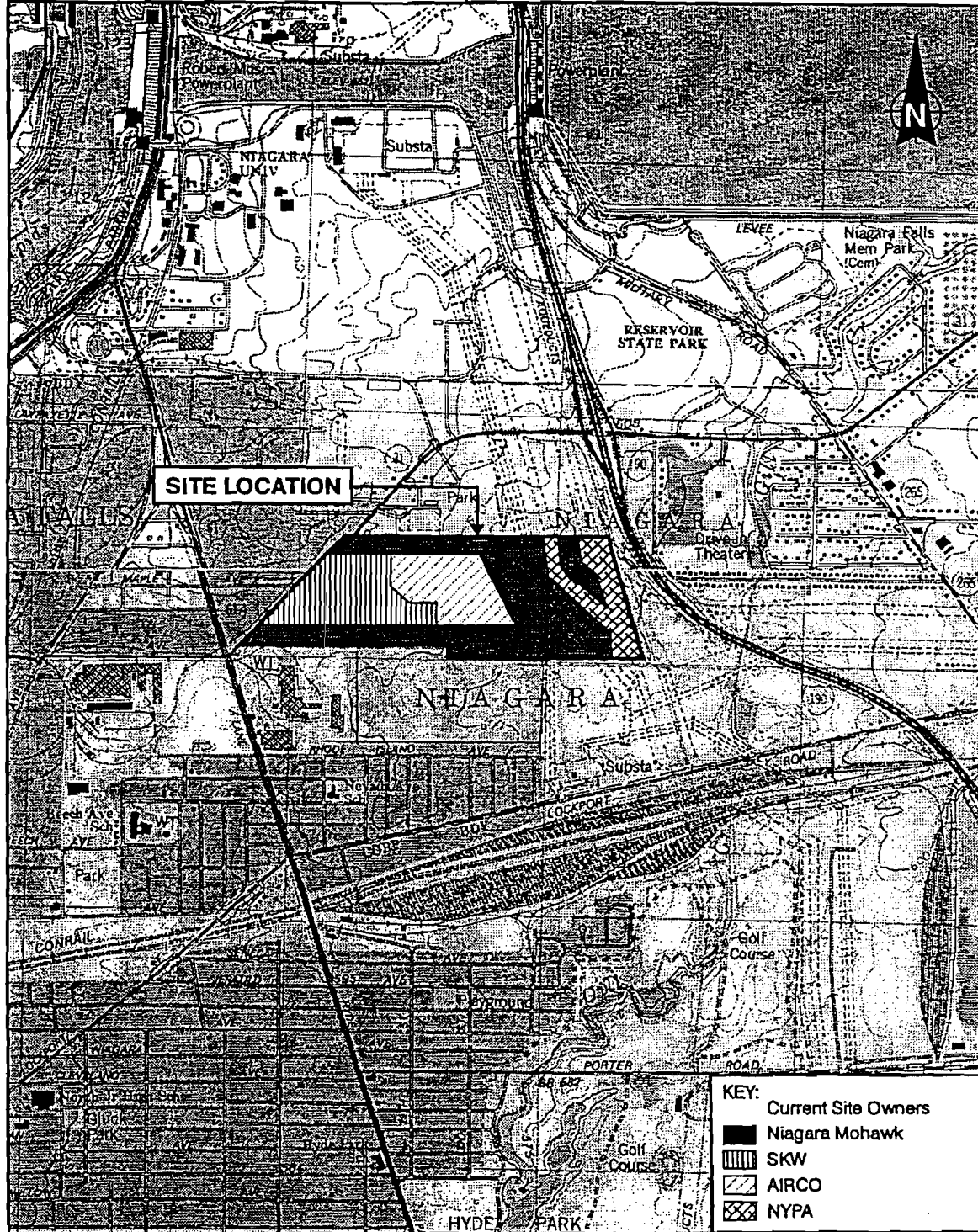
STATE OF KENTUCKY    )  
                                  ) s.s.:  
COUNTY OF MARSHALL    )

On this 4th day of JUNE, 1998, before me personally came  
Edward S. Bredniak, to me known, who being duly sworn, did depose and  
say that he resides in PADUCAH, KENTUCKY;  
that he is the PRESIDENT of  
SKW Metals & Alloys Inc., the 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.

Audlene Latta

Notary Public

MY COMMISSION EXPIRES:  
1/27/2000



SOURCE: USGS 7.5 Minute Series (Topographic) Quadrangles: Niagara Falls, NY - Ont.1980;  
Lewiston, NY - Ont.1980.

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Location Map