

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION RESOURCE CONSERVATION AND RECOVERY ACT
("RCRA")
ECL §27-0900 *et seq.*

In the Matter of the Development and Implementation of
a Remedial Program for a RCRA Facility

**ORDER ON CONSENT AND
ADMINISTRATIVE
SETTLEMENT**
Index No.: R9-20150902-65

DEC Facility Name: United States Department of the Air Force
DEC Registry Site No.: 932106
EPA RCRA ID #: NY0570024273

Facility Address: Niagara Falls Air Reserve Station
Towns of Niagara and
Wheatfield
Niagara County

Hereinafter referred to as "Facility" or "Site"

by:
United States Department of the Air Force

Hereinafter referred to as "Respondent" or "Air Force"

1. A. i. The New York State Department of Environmental Conservation ("Department") is responsible for the administration of the RCRA Program (a/k/a the "Industrial Hazardous Waste Management Program") pursuant to Article 27, Title 9 of the Environmental Conservation Law ("ECL") and Parts 370 - 373 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR").

ii. The Department is responsible for the administration of inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the ECL and 6 NYCRR 375 and may issue orders consistent with the authority granted to the Commissioner by such statute. This Order, however, is issued solely under the Department's RCRA authorities as set for in paragraphs 1.B. and 1.D. of this Order.

B. The Department may issue orders pursuant to, *inter alia*, ECL Article 27, Title 9 and ECL § 71-2727(3) consistent with the authority granted to the Commissioner 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 ("SWMU") 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 or had interim status according to regulations adopted thereunder, regardless of the time at which the waste was placed in such unit.

C. The Department is responsible for carrying out the policy of the State of New York 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 3, Title 3 of the ECL.

D. This Order on Consent and Administrative Settlement ("Order") is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 9 and ECL § 71-2727.

2. There are no known violations at the Facility giving rise to this Order; rather, the goals of this Order are to establish the terms and conditions under which Respondent shall complete corrective action operating maintenance and monitoring requirements ("OM&M") in lieu of operating under a corrective action permit.

3. For purposes of this Order, except as provided otherwise in the Order, Respondent consents that certain provisions of 6 NYCRR 375 shall apply to the extent expressly provided herein.

4. On March 9, 2010, the Department renewed Respondent's Part B Permit, RCRA Permit EPA ID No. NY0570024273, DEC ID 9-2999-00005/00008 ("Corrective Action Permit") in accordance with 6 NYCRR 373 and ECL Article, 27 Title 9. The Corrective Action Permit was extended pursuant to the terms of the State Administrative Procedure Act. This Order supersedes and terminates the Corrective Action Permit.

5. The aforesaid OM&M requirements are set forth in a Corrective Action Permit, DEC No. 9-2999-00005/00008, under which Respondent has been conducting corrective-action maintenance and monitoring of the Facility.

6. 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; and/or (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site.

7. 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. Facility

A. Respondent is responsible for compliance with the Corrective Action Permit that was issued for the facility, which has been assigned EPA RCRA ID # NY0570024273 and Department of Environmental Conservation # 9-2999-00005/00008, and which consists of approximately 958 acres, located at Niagara Falls Air Reserve Station, Towns of Niagara and Wheatfield, Niagara County, New York ("Facility"). A map of the Facility is attached as Exhibit A.

B. The SWMUs within the Facility that are subject to this Order are set forth below:

- a. Site 1 – Building 600 JP-4 Pipeline Leak
- b. Site 2 – JP-4 Tank C
- c. Site 3 – Landfill
- d. Site 4 – BX MOGAS Tank Leak
- e. Site 5 – Former BOMARC Missile Site
- f. Site 6 – JP-4 Tank A
- g. Site 7 - JP-4 Tank Truck Spill
- h. Site 8 – Former Building 202 Drum Storage Yard
- i. Site 9 – Fire Training Area No. 3
- j. Site 10 Former Fire Training Area No. 1
- k. Site 11 – Fire Training Area No. 2
- l. Site 12 – Building 850 Drum Storage Yard
- m. Site 13 Closed 4,000-gallon Underground Storage Tank

2. Each of the above-referenced SWMUs shall remain subject to this Order, the SMP and subject to an Environmental Notice or Environmental Easement, as appropriate, until such time that unrestricted cleanup levels are achieved and no further corrective actions are required. Following the Respondent's demonstration that unrestricted use levels have been achieved for a specific SWMU and the submission of a closure report and petition, in accordance with Subparagraph D of Section III, and upon the Department's approval and concurrence by the Department of Health, as applicable, the Environmental Notice or Environmental Easement and the SMP shall be amended to reflect the achievement of unrestricted use levels and to state that the SMP measures including institutional and engineering controls are no longer necessary for the SMWU that is the subject of the petition.

3. Newly identified sites or SMWUs within the Facility that require corrective action shall be subject to this Order as provided in Section C of Exhibit B to this Order.

II. Site Work Plans

A. Respondent shall perform the corrective action activities in accordance with the Site Management Plan, to be developed and submitted to the Department in accordance with the Schedule attached as Exhibit B.

III. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

1. All activities at the Facility that comprise any element of corrective action shall be conducted pursuant to one or more Department-approved work plans ("Work Plan" or "Work Plans"). The Work Plan(s) under this Order shall address both on-Site and off-Site conditions and shall be developed and implemented consistent with the provisions in 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.

B. The Work Plans shall be captioned as follows:

1. "Corrective Action Work Plan": a Work Plan which provides for the development and implementation of final plans and specifications for implementing the remedial alternative set forth in the Statement of Basis ("SOB");

2. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any necessary monitoring and/or operation and maintenance of the remedy (including those elements implemented for corrective action and/or post-closure care as outlined in Exhibit B of the Order) ; or

3. "Supplemental" if additional work plans other than those set forth above are required to be prepared and implemented.

4. "IRM Work Plan" if the Work Plan provides for an interim remedial measure.

C. Submission/Implementation of Work Plans

1. 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.

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan.

i. The Department shall notify Respondent in writing if the Department determines that any element of a Department-approved Work Plan as set forth in Subparagraph III(A) needs to be modified in order to achieve the objectives of the Work Plan or to ensure that the Remedial Program otherwise protects human health and the environment. Upon receipt of such notification, Respondent shall, subject to dispute resolution pursuant to Paragraph XIII of this Order, modify the Work Plan, within 30 days.

ii. The Department may request, subject to dispute resolution pursuant to Paragraph XIII of this Order, that Respondent submit additional or supplemental Work Plans for the Facility to complete the corrective action relative to the Facility within thirty (30) days after the Department's written request.

3. A Site Management Plan shall be submitted in accordance with the schedule set forth in Exhibit B.

4. During all field activities conducted under a Department-approved Work Plan, Respondent shall have on-Site a representative who is qualified to supervise the activities undertaken in accordance with the provisions of 6 NYCRR 375-1.6(a)(3).

5. A Professional Engineer must stamp and sign all Work Plans involving engineering design.

D. Submission of Final Reports and Periodic Reports

1. In accordance with the schedule contained in a Work Plan, Respondent shall submit a final report that meets the requirements set forth at 6 NYCRR 375-1.6(b) and (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. Respondent shall submit an initial periodic report in accordance with the schedule in the Site Management Plan and annually thereafter. Such periodic report shall contain a certification as provided at 6 NYCRR 373-2.5(e)(10) and 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

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 be consistent with 6 NYCRR 375-1.6(d) and include an approval, modification request, or disapproval of the submittal, in whole or in part.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Order and shall be implemented in accordance with the schedule contained therein.

ii. If the Department modifies or requests modifications to a submittal, it shall specify the reasons for such modification(s). Within fifteen (15) days after the date of the Department's written notice that Respondent's submittal has been disapproved, Respondent shall notify the Department of its election in accordance with 6 NYCRR 375-1.6(d)(3). If Respondent elects to modify or accept the Department's modifications to the submittal, Respondent shall make a revised submittal that incorporates all of the Department's modifications to the first submittal in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(3). 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 XIII of this Order and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

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 notify the Department of its election in accordance with 6 NYCRR 375-1.6(d)(4). If Respondent elects to modify the submittal, Respondent shall make a revised submittal that addresses all of the Department's stated reasons for disapproving the first submittal within 30 days. 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 XIII of this Order and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

2. 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. Institutional/Engineering Control Certification

In the event that the remedial program for the Facility or any Work Plan for the Facility requires institutional or engineering controls, Respondent shall submit a written certification in accordance with 6 NYCRR 375-1.8(h)(3).

G. Additional Requirements

1. Respondent shall not disturb, remove, or otherwise interfere with the installation, use, operations, and maintenance of engineering controls required for the remedy, including but not limited to those engineering controls described in the SMP, without the prior written approval of the Department.
2. The Air Force shall not allow the use of the groundwater underlying the Property, unless the Air Force first obtains permission to do so from the Department or Relevant Agency. Furthermore, the Air Force shall not allow the use of the groundwater underlying the Facility without treatment rendering it safe for drinking water or industrial purposes, as appropriate. Use of the groundwater without appropriate treatment may result in a significantly increased threat of harm or damage at any site.

IV. Penalties

A. 1. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and ECL § 71-2705. 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. All penalties and fines will be used in accordance with applicable law.

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 failure to make a 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 Paragraph IV Subparagraph (B)(2) of this Order, 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.

5. If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Paragraph IV Subparagraph (B)(2) of this Order, Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XIII of this Order and Respondent's position prevails.

V. Entry upon Facility

A. Respondent hereby consents, as conditioned and limited by Paragraph V, Subparagraphs C, D, E and F of this Order, upon reasonable notice under the circumstances presented, to entry upon the Facility (or areas in the vicinity of the Facility 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 Department, all of whom shall abide by the health and safety rules in effect for the Facility, for inspecting, sampling, copying records related to the contamination at the Facility, testing, and any other activities necessary to ensure Respondent's compliance with this Order. Upon request, Respondent shall (i) provide the Department with suitable work space at the Facility, including access to a telephone, to the extent available, and (ii) 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 on a continuing basis within 90 days of receipt of

the data from the lab. 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.

C. The Department and/or its representatives shall have the authority to enter the Site at all reasonable times for the purposes consistent with provisions of this Order. Such authority shall include, but not be limited to: inspecting records, logs, contracts, and other documents relevant to implementation of this Order; reviewing and monitoring the progress of the Respondent, and its contractors, in carrying out the activities under this Order; conducting, with prior notice to the Respondent, tests that Department deems necessary; assessing the need for planning additional remedial response actions at the Site; and verifying data or information submitted to Department. The Respondent shall honor all reasonable requests for access to the Site made by the Department, upon presentation of credentials showing the bearer's identification and that he/she is an employee or agent of the Department. The Respondent's Project Manager or his/her designee will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for installation passes, and coordinate any other access requests, which arise. The Respondent shall use its best efforts to ensure that conformance with the requirements of this Paragraph V, Subparagraph C do not delay access.

D. The rights described in Paragraph V, Subparagraphs C and F and granted to the Department regarding access shall be subject to regulations and statutes, including Niagara Falls Air Reserve Station security regulations, to include those as may be necessary to protect national security information ("classified information") as defined in Executive Order 12958, as amended, and comply with Niagara Falls Air Reserve Station's health and safety requirements. Such requirements shall not be applied so as to unreasonably hinder the Department from carrying out its responsibilities and authority pursuant to this Order.

E. The Respondent shall provide an escort whenever the Department requires access to restricted areas of Niagara Falls Air Reserve Station for purposes consistent with the provisions of this Order. The Department shall provide reasonable notice to the Respondent's Project Manager, or his or her designee, to request any necessary escorts for such restricted areas. The Respondent shall not require an escort to any area of this Site unless it is a restricted, controlled-access area. Upon request of the Department, the Respondent shall promptly provide a written list of current restricted or controlled-access areas.

F. The Department shall have the right to enter all areas of the Site that

are entered by contractors performing Work under this Order.

G. Upon a denial of any aspect of access, the Respondent shall provide an immediate explanation of the reason for the denial, including reference to the applicable regulations, and upon request, a copy of such regulations. Within forty-eight (48) hours, the Respondent shall provide a written explanation for the denial. To the extent possible, the Respondent shall expeditiously provide a recommendation for accommodating the requested access in an alternate manner.

H. The Respondent shall ensure that all response measures, ground water rehabilitation measures and remedial actions of any kind that are undertaken pursuant to this Order on any areas that: a) are presently owned by the United States and which are occupied by the Respondent or leased by the Air Force to any other entity; or b) are in any manner under the control of the Respondent or any lessees or agents of the Respondent, shall not be impeded or impaired in any manner by any transfer of title or change in occupancy or any other change in circumstances of such areas.

I. Nothing herein shall be construed as limiting the Department's statutory authority for access or information gathering.

VI. Payment of State Costs

A. Respondent is responsible for the payment of reasonable and nondiscriminatory hazardous waste program fees pursuant to ECL § 72-0402 and any other later enacted fees associated with the hazardous waste program as further provided in paragraph XIV of this Order and as authorized by the waiver of federal sovereign immunity at 42 USC § 6961.

B. Invoices shall be sent to Respondent at the address listed in Paragraph XV of the Order.

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 rights or authorities which the Department has under RCRA, CERCLA, or any other statute, regulation or common law under the authority of the State of New York, 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. 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 Facility 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. Public Notice

A. Within thirty (30) days after the effective date of this Order, Respondent shall provide notice consistent with the requirements set forth in 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 Facility, or becomes aware of such transfer, Respondent shall, not fewer than sixty (60) days before the date of transfer 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 and the requirement to file an Environmental Easement as described in Exhibit C. 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.

IX. Change of Use

Respondent shall notify the Department at least sixty (60) days in advance of any change of use, which is proposed for the Facility, in accordance with the provisions of 6 NYCRR 375-1.11(d). For purposes of this Order, "change of use" shall be as defined in 6 NYCRR 375-2.2(a).

X. Environmental Notice

A. Within one hundred and eighty (180) days of the effective date of this Order, Respondent shall prepare, for execution by the Department, an Environmental Notice. Following the Department's review, approval and execution of the proposed Environmental Notice, the Respondent shall record and provide proof of recording of the Environmental Notice. A copy of the Environmental Notice that shall be completed is

attached as Exhibit C. The provisions of the environmental Notice are not incorporated into or made part of this Order.

B. If the remedial program for the Facility relies upon one or more institutional and/or engineering controls, and in the event of a future property transfer to a non-federal entity, Respondent is required to place the restrictions and requirements found in the environmental notice into the transferring deed and prepare for review, approval and execution by the Department a standard form Environmental Easement, which runs to the NYSDEC, prior to the transfer.

C. At least one hundred and twenty (120) days before the transfer of the property to a non-federal entity, Respondent 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 the Environmental Easement by the State, Respondent shall comply with the requirements of 6 NYCRR 375-1.8(h)(2) by ensuring that the transferee executes the Environmental Easement and that the Environmental Easement is recorded contemporaneously with the transfer of the property to such non-federal entity.

D. If Respondent does not cause such environmental notice and environmental easement, as applicable, to be recorded in accordance with 6 NYCRR 375-1.8(h)(2), the Respondent shall be in violation of this Order.

XI. Progress Reports

Respondent shall submit a written progress report of its actions under this Order to the parties identified in Paragraph XV of the Order by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination date as set forth in Paragraph XII of this Order, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Facility during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Respondent in connection with this Facility, whether under this Order or otherwise, in the previous 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.

XII. 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 letter stating that all phases of the remedial program have been completed.

B. Notwithstanding the foregoing, the provisions for payment of state costs contained in Paragraphs VI of this Order shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, and the ECL, subjecting Respondent to penalties as provided under Paragraph IV of this Order so long as such obligations accrued on or prior to the Termination Date.

XIII. Dispute Resolution

A. In the event disputes arise under this Order, Respondent may, within fifteen (15) Days after 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). All costs incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Order, unless otherwise limited by the Defense/State Memorandum of Agreement ("DSMOA"), as described in Paragraph XIV of this Order .

XIV. Payment of State Costs

A. There is currently a DSMOA with the Department of Defense ("DOD"), which addresses Department reimbursement for reasonable oversight charges related to this Order as provided in 42 USC § 6961(a). The DSMOA will be the binding document for New York State's reimbursement for oversight costs associated with this Site and Facility.

B. If the DSMOA were no longer valid or was inapplicable, as to this Site, or in general, for whatever reason, Respondent agrees to request funding and reimburse the State, subject to the conditions and limitation set forth in Paragraph VI, for all nondiscriminatory and reasonable oversight costs it incurs in providing services.

C. Invoices shall be sent to Respondent via hard copy at the following address:

MS. KIMBERLY POWELL
914 MSG/CEV
2405 FRANKLIN DRIVE
NIAGARA FALLS, NY 14304-5063
kimberly.powell@us.af.mil

D. Notwithstanding any of the above provisions, Respondent is responsible for all nondiscriminatory and reasonable state costs not covered by the DSMOA, including annual hazardous waste program fees, in accordance with Paragraph VI and ECL § 72- 0402 (hazardous waste program fees), and or any other later enacted fee associated with the hazardous waste program that may be applicable and allowed by 42 U.S.C § 6961.

XV. Communications

A. The Department has implemented an Environmental Information Management System ("EIMS"). The EIMS requires that electronic data be provided in specific formats. In an effort to better manage environmental data, the Department is requiring that all data submissions be in the Department-approved Electronic Data Deliverable ("EDD") format. All work plans and reports (including all attachments and appendices) shall be submitted in print, as well as in an electronic format which is acceptable to the Department.

1. Communication from Respondent shall be sent to:

Chad Staniszewski, P.E.
Interim Regional Hazardous Waste Remediation Engineer
NYS Department of Environmental Conservation Division of Environmental Remediation
270 Michigan Avenue
Buffalo, NY 14203
chad.staniszewski@dec.ny.gov

Stanley Radon, P.G. Project Manager
NYS Department of Environmental Conservation Division of Environmental Remediation
270 Michigan Avenue
Buffalo, NY 14203
stanley.radon@dec.ny.gov
(1 hard copy (unbound for work plans) & 1 electronic copy)

Jennifer Dougherty, Project Attorney
NYS Department of Environmental Conservation
270 Michigan Avenue
Buffalo, NY 14203
jennifer.dougherty@dec.ny.gov (correspondence only)

2. Communication from the Department to Respondent shall be sent to:

MS. KIMBERLY POWELL
914 MSG/CEV
2405 FRANKLIN DRIVE
NIAGARA FALLS, NY 14304-5063
kimberly.powell@us.af.mil

B. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Respondent provide more than

one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph.

XVI. FUNDING

A. The Air Force agrees to and shall seek sufficient funding through the Department of Defense budgetary process to fulfill its obligations under this Order.

B. Any requirement for the payment or obligation of funds, to include penalties, established by the Air Force by the terms of this Order, shall be subject to the availability of appropriated funds. No term or provision of this Order shall require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 USC § 1341. In cases where the payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates requiring the obligation or payment of such funds shall be appropriately adjusted.

C. If appropriated funds are not available to fulfill the Air Force's obligations under this Order, the Department reserves the right to initiate an action against the Air Force, or to take any corrective action which would be appropriate absent this Order.

XVII. Miscellaneous

A. 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.

B. 1. Respondent shall use best efforts to obtain all Facility 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.

C. Respondent shall notify the Department, in writing, of any additional SWMUs, which are identified during the course of implementing any activities under this Order within thirty (30) days of discovery. The Department may request additional remedial activities in accordance with Paragraphs II and III.

D. 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 Paragraph XV of this Order.

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 Paragraph XV of the Order.

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.

E. Respondent shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by law.

F. 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.

G. 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.

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

I. 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.

J. Pursuant to 6 NYCRR 373-2.8(a)(3), the Respondent, a federal

governmental entity, is exempt from the requirement to provide financial assurances.

K. In the event of a conflict between the terms of this Order (including any and all attachments thereto and amendments thereof) the terms of this Order shall control.

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

DATED:

AUG 22 2016

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:


Robert W. Schick, P.E., Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

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

United States Department of the Air Force

By: *Brian S. Bowman*

Printed Name: Brian S. Bowman

Title: Col, USAF

Date: 8 July 2016

ACKNOWLEDGMENT

State of New York)
)ss.:
County of)

On the 8th day of July in the year 2016 before me, the undersigned, personally appeared Brian S. Bowman
(full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at 9165 Blewett Ave Niagara Falls, NY 14304 and
(full mailing address),

that he/she is (are) the 914 Airift Wing
(Wing Commander)

of the Niagara Falls Reserve Station, the federal agency, department or instrumentality described in and which executed the above instrument, and that he/she/they signed his/her/their name(s) thereto by the authority of the United States Department of the Air Force.

Amanda N Forster

Notary Public, State of New York

AMANDA N FORSTER
Notary Public, State of New York
No. 01FO6264947
Qualified in Niagara County
Commission Expires 07/02/2020

EXHIBIT A

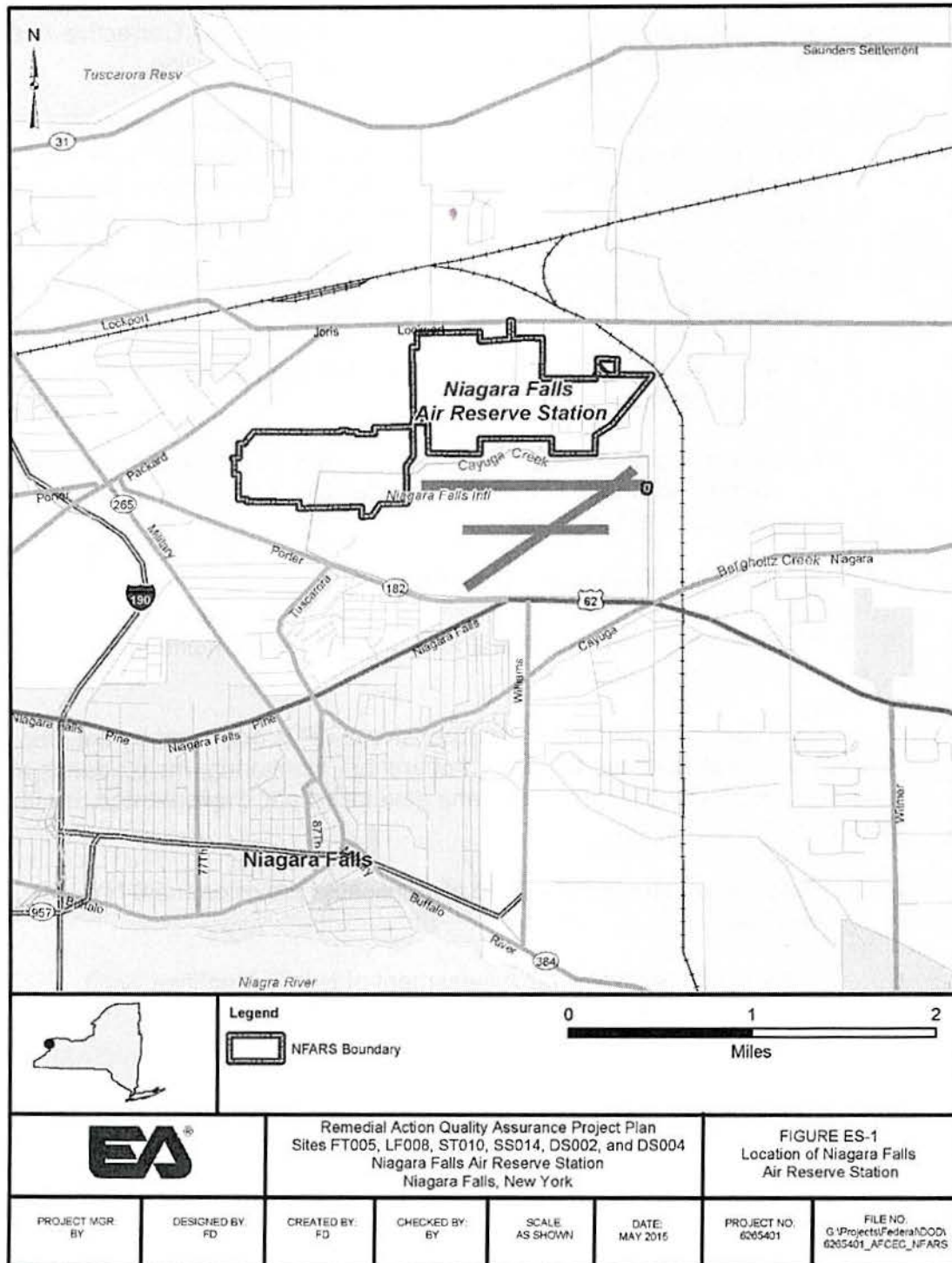


EXHIBIT B

Corrective Action Requirements and Schedule

The corrective action program for this Facility consists of actions that have already been implemented pursuant to 6 NYCRR Part 373 under the Corrective Action Permit with on-going operation, monitoring, maintenance, and reporting.

A. Respondent shall continue to perform corrective action maintenance and monitoring in accordance with a Site Management Plan ("SMP") which shall be submitted to the Department, for review and approval, within ninety (90) days of the effective date of the Order. The SMP shall be developed in accordance with the Department's Technical Guidance for Site Investigation and Remediation (DER-10) and 6 NYCRR Part 373 regulations and shall include, at a minimum, the following components:

1. Monitoring Plan for monitoring the performance and effectiveness of the remedy;
2. Institutional and Engineering Control Plan (IC/EC) to ensure that the controls remain in place and are effective, even upon a transfer of the ownership of the property;
3. Operation and Maintenance Plan; and
4. Periodic Review Reports and Institutional and Engineering Controls Certification.

Until such time that the comprehensive SMP is approved by the Department, Respondent shall continue to perform operation, monitoring, maintenance and reporting per previously approved plans developed and implemented through the Corrective Action Permit.

B. Respondent shall comply with all applicable provisions of 6 NYCRR 370-374 and 376.

C. Compliance Schedule for Assessment of Newly Identified Solid Waste Management Units ("SWMUs") and Areas of Concern ("AOCs")

1. Notification of Assessment. Respondent shall notify the Department, in writing, of any additional SWMUs and/or AOCs which are identified during the course of groundwater monitoring, field investigations, environmental audits, or other means within thirty (30) days of discovery.
2. SWMU/AOC Assessment Report. Within thirty (30) days after notifying the Department, Respondent shall submit a SWMU/AOC Assessment Report. This Report must provide, at a minimum, the following information for each newly identified SWMU/AOC:

- a. Type of unit/area;
 - b. Location of each unit/area on a topographic map of appropriate scale;
 - c. Dimensions, capacities and structural descriptions of the unit/area (supply available engineering drawings);
 - d. Function of unit/area;
 - e. Dates that the unit/area was operated;
 - f. Description of the wastes that were placed or spilled in the unit/area;
 - g. Description of any known releases from the unit/area (to include groundwater data, soil analyses, air monitoring data, and/or surface water/sediment data);
 - h. The results of any sampling and analysis required for the purpose of determining whether releases of hazardous wastes, including hazardous constituents, have occurred, are occurring or are likely to occur from the unit/area; and
 - i. Whether this unit/area, individually or in combination with other units/areas is a significant source of contaminant release.
3. SWMU/AOC Sampling and Analysis Plan. Within ninety (90) days after submittal of the SWMU/AOC Assessment Report, Respondent shall submit to the Department for approval a Plan in accordance with the most recent version of the Department's RCRA Quality Assurance Project Plan Guidance, for any sampling and analysis of groundwater, land surface and subsurface strata, surface water/sediment or air, as necessary to determine whether a release of hazardous waste, including hazardous constituents, from such unit/area has occurred, is likely to have occurred, or is likely to occur. The SWMU/AOC Sampling and Analysis Plan must demonstrate that the sampling and analyses program, if applicable, is capable of yielding representative samples and must include parameters sufficient to identify migration of hazardous waste, including hazardous constituents, from the newly discovered SWMU(s) and/or AOC(s) to the environment.
4. Subsequent Assessment Actions. Following submission of the SWMU/AOC Assessment Sampling and Analysis Plan, subsequent activities for the Plan shall proceed in accordance with the following schedule:
 - a. Meeting between Respondent and the Department to discuss Plan comments, as appropriate;
Submission of a revised Plan to the Department for approval within thirty (30) days of the above referenced meeting. If the above referenced meeting is determined not to be necessary, Respondent shall submit a revised Plan to the Department, according to a schedule specified by the Department, not to

- exceed forty-five (45) days after Respondent's receipt of Plan comments from the Department;
- b. Begin implementation of the SWMU/AOC Sampling and Analysis Plan within thirty (30) days following written approval from the Department for the Plan.
5. SWMU/AOC Sampling and Analysis Report. Within thirty (30) days of receipt by Respondent of validated analytical data generated under the approved SWMU/AOC Sampling and Analysis Plan, Respondent shall follow reporting requirements in the approved Plan and submit a SWMU/AOC Sampling and Analysis Report to the Department. The Report shall describe all results obtained from the implementation of the approved Plan.
6. Assessment Conclusions. Based on the results of the SWMU/AOC Sampling and Analysis Report, the Department shall determine the need for further investigations at the specific unit(s) covered in the SWMU/AOC Assessment Report. The Department will notify Respondent if the Department determines that such investigations are needed. Thereafter, Respondent shall prepare and submit for approval a RCRA Facility Investigation Work Plan in accordance with the Department's notification.
7. Within 180 days of the execution of this Order, Respondent shall prepare and submit for the Department's approval and execution an Environmental Notice describing each of the following SWMUs:
- Site 1 -Building 600 JP-4 Pipeline Leak
 - Site 2- JP-4 Tank C
 - Site 3 – Landfill
 - Site 4 – BX MOGAS Tank Leak
 - Site 5 – Former BOMARC Missile Site
 - Site 6 – JP-4 Tank A
 - Site 7 – JP-4 Tank Truck Spill
 - Site 8 - Former Building 202 Drum Storage Yard
 - Site 9 – Fire Training Area No. 3
 - Site 10 - Former Fire Training Area No. 1
 - Site 11 – Fire Training Area No. 2
 - Site 12 – Building 850 Drum Storage Yard
 - Site 13 - Closed 4,000 Gallon Underground Storage Tank.

EXHIBIT C

Environmental Notice

THIS ENVIRONMENTAL NOTICE is made the _____ day of _____ 20____, by the New York State Department of Environmental Conservation (Department), having an office for the transaction of business at 625 Broadway, Albany, New York 12233.

WHEREAS, a parcel of real property identified as Enter Site Name (Site 932106), located on Enter Street Address in the Choose Municipality Type of Enter Municipality Name, County of Enter County Name, State of New York, which is part of lands conveyed by Enter Former Owner's Name to Enter Current Owner's Name by deed dated Enter Date and recorded in the Enter Recording County County Clerk's Office on Enter Recording Date in Book Enter Book Number of Deeds at Page Enter Page Number and being more particularly described in Appendix "A", attached to this notice and made a part hereof, and hereinafter referred to as "the Property" is the subject of an Order on Consent executed by the United States Department of the Air Force as part of the Department's administration of the Resource Conservation and Recovery ("RCRA") Program (a/k/a the "Industrial Hazardous Waste Management Program").

WHEREAS, the Department approved a Corrective Action program for the Site under the RCRA Program; and

WHEREAS the Corrective Action measures for the Site was conditioned upon certain limitations.

NOW, THEREFORE, the Department provides notice that:

FIRST, the Property subject to this Environmental Notice is as shown on a map attached to this Notice as Appendix "B" and made a part hereof.

SECOND, unless prior written approval by the Department or, if the Department shall no longer exist, any New York State agency or agencies subsequently created to protect the environment of the State and the health of the State's citizens, hereinafter referred to as "the Relevant Agency," is first obtained, where contamination remains at the Property subject to the provisions of the Site Management Plan ("SMP"), there shall be no disturbance or excavation of the Property which threatens the integrity of the engineering controls or which results or may result in a significantly increased threat of harm or damage at any site as a result of exposure to soils.

THIRD, no person shall disturb, remove, or otherwise interfere with the installation, use, operations, and maintenance of engineering controls required for the remedy, including but not limited to those engineering controls described in the SMP and listed below, unless in each instance they first obtain a written waiver of such prohibition from the Department or Relevant Agency.

FOURTH, the remedy was designed to be protective for the following uses: **its current use as an Air Reserve Station for the United States Department of the Air Force**. Therefore, any use for purposes other than **Choose abbreviated land use** without the express written waiver of such prohibition by the Relevant Agency may result in a significantly increased threat of harm or damage at any site.

FIFTH, no person shall use the groundwater underlying the Property, unless the user first obtains permission to do so from the Department or Relevant Agency. Furthermore, no person shall use the groundwater underlying the Property without treatment rendering it safe for drinking water or industrial purposes, as appropriate. Use of the groundwater without appropriate treatment may result in a significantly increased threat of harm or damage at any site.

SIXTH, it is a violation of 6 NYCRR 375-1.11(b) to use the Property in a manner inconsistent with this environmental notice.

SEVENTH, at the time of the transfer of the property, described in this Environmental Notice, to a non-federal entity, agency, instrumentality, department or person, the Order requires the United States Department of the Air Force to prepare and record on behalf and or in conjunction with the new owner an Environmental Easement and record the requirements of this Environmental Easement, which shall run with the land and to the Department of Environmental Conservation. It shall be the responsibility of the United States Department of the Air Force to ensure that an Environmental Easement is recorded, and such Environmental Easement shall be recorded prior to and/or contemporaneously with the transfer of the property from the United States to any other entity. At least one hundred and twenty (120) days before the transfer of the property subject to this Environmental Notice, the United States Department of the Air Force 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). The Department must approve the Environmental Easement prior to its Recordation.

EIGHTH, this Environmental Notice is an informational document, intended to alert anyone searching the public land records to the above-referenced SMP and the existing institutional and engineering controls at the Site, and this Environmental Notice is not intended to, nor does it, transfer any interest in the real property under Federal or State law.

IN WITNESS WHEREOF, the undersigned, acting by and through the Department of Environmental Conservation as Designee of the Commissioner, has executed this instrument the day written below.

By: _____
Robert W. Schick, P.E.,
Director, Division of Environmental Remediation

COUNTY OF
