NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel
625 Broadway, 14th Floor, Albany, New York 12233-1500
P: (518) 402-9185 I F: (518) 402-9018
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July 25, 2018

SENT VIA FIRST CLASS MAIL AND BY
ELECTRONIC MAIL

Mr. Kevin J. Klesh, Esq.
Consolidated Edison Co. of New York, Inc.
4 Irving Place
New York, NY 10003
kleshk@coned.com

RE: Consolidated Edison Company of New York, Inc.
Multi-Site VCP Transition Order on Consent and
Administrative Settlement
Index No.: CO 0-20180516-519

Dear Mr. Klesh:

Enclosed to complete your files is a fully executed Order on Consent and Administrative Settlement referencing Consolidated Edison Company of New York, Inc. and the required remediation of sites depicted on Exhibit "A" of the Order.

If you have any further questions or concerns relating to this matter, please contact attorney, Dolores Tuohy at 518-402-9185.

Sincerely,

Maria Mastroianni
Remediation Bureau
Office of General Counsel

Enclosure

ec: D. Tuohy, Esq., NYSDEC

Mr. Kenneth J. Kaiser, PE
MGP Remediation Dept.
Consolidated Edison Co. of New York, Inc.
Kaiserk@coned.com

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE SUPERFUND PROGRAM AND NAVIGATION LAW

In the Matter of the Implementation of Investigation Programs and, if necessary, Remediation Programs for Certain Former Manufactured Gas Plant and Gas Holder Station Locations by:

Order on Consent and Administrative Settlement

Consolidated Edison Company of New York, Inc.,

Index No. CO 0-20180516-519

Respondent

Multiple Sites

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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 the regulations promulgated to carry out such programs at Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR").

B. The Department is authorized to regulate hazardous substances pursuant to ECL Article 37, Title 1 and 6 NYCRR Part 597.

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 to provide for the prevention and abatement of all water, land, and air pollution pursuant to the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

D. This Order is issued pursuant to the Department's authorities set forth above, and resolves Respondent's liability to the State for matters addressed as provided at 6 NYCRR 375-1.5(b)(5).

2. A. By letter dated October 22, 1999, the Department requested from Consolidated Edison Company of New York, Inc., ("Respondent") information regarding the existence of any locations, in addition to those identified in Respondent's prior notifications to the Department, at which Respondent or its corporate predecessors formerly operated manufactured gas plants or gas holder operations used for the storage of manufactured gas (collectively and individually referred to herein as "MGPs.")

B. In response to the Department's request for MGP information, Respondent tentatively identified the properties at which Respondent and/or its corporate predecessors

may have formerly owned or operated MGPs. Respondent subsequently identified additional such properties.

C. Respondent entered into Voluntary Cleanup Agreement Index No. D2-0003-02-08, executed on August 15, 2002, with an effective date of August 25, 2002, under the Department's Voluntary Cleanup Program committing Respondent to implement activities to address in whole or in part environmental contamination associated with MGP operations at each site subject to such agreement. Such agreement was modified on August 26, 2005 and September 10, 2007 to add additional sites. Such agreement and modifications are collectively referred to as the "VCA" herein.

D. Subject to the terms of this Order, Respondent is required to address "MGP-Site Contamination," which is defined as any substance which (1) is included on the list of hazardous substances promulgated pursuant to ECL § 37-0103 and is a component or constituent of the by-products, residuals or wastes associated with the MGP operated by Respondent and/or its corporate predecessors in the past at the Site, or which otherwise resulted from the operations of Respondent and/or its corporate predecessors at the Site (collectively "wastes"); or (2) is included on the list of hazardous substances promulgated pursuant to ECL § 37-0103 and is an extraneous contaminant not associated with the MGP operations or other operations that Respondent and/or Respondent's corporate predecessors conducted at the Site, but is commingled or intermingled with wastes from the MGP operations or other operations that Respondent and/or Respondent's corporate predecessors conducted at the Site; provided that the concentrations of hazardous substances contained in the comingled or intermingled wastes as a result of the MGP operations or other operations that Respondent and/or Respondent's predecessors conducted at the Site are such that the commingled or intermingled wastes would independently require the implementation of remedial action even if the wastes did not contain the extraneous contaminant. Contamination other than MGP-Site Contamination is not required to be addressed under this Order unless it is commingled or intermingled with MGP-Site Contamination that alone would independently require the implementation of remedial action as provided immediately above in Subparagraph 2.D.(2) While the foregoing shall be applicable for purposes of implementing this Order, none of the foregoing shall be considered dispositive in any allocation of liability between Respondent and any third party for comingled or intermingled wastes. All references in Appendix "A" to "contamination" or "hazardous waste" shall be deemed to mean "MGP-Site Contamination."

3. Respondent has conducted investigatory and remedial work pursuant to the VCA. Respondent has received a Release and Covenant Not to Sue for certain sites for which all required work plans have been successfully completed under the VCA.

4. A number of the sites and/or off-site areas associated with the sites subject to the VCA require completion of investigation and remediation, as set forth in Exhibit "A" hereto.

5. Due to circumstances unrelated to Respondent's performance under the VCA, the Department's Voluntary Cleanup Program is terminating, necessitating the completion of

investigation and remediation pursuant to another legally controlling commitment that replaces the VCA.

6. This Order is entered into between Respondent and the Department for the purpose of ensuring the completion of investigation and remediation, as necessary, of MGP-Site Contamination at the sites or portions of sites identified in Exhibit "A" of this Order. For purposes of this Order, each location listed in Exhibit "A" is defined as a "Site." If multiple Sites are addressed by provisions of this Order, the term "Site" shall be read and construed in the plural.

7. The Sites addressed by this Order are not listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State ("Registry"). The Department does not intend to list any individual Site on the Registry unless Respondent fails to comply with the terms of this Order applicable to such Site, Respondent is unable to obtain access to such Site despite Respondent's reasonable efforts to do so, or this Order terminates with respect to such Site in accordance with Paragraph III, Subparagraph E.2 of Appendix "A" or Paragraph XIV, Subparagraph A.1 of Appendix "A."

8. Respondent represents, and the Department has relied upon Respondent's representations in entering into this Order, that Respondent's involvement with the Sites addressed by this Order is limited to Respondent's past and/or present ownership of such Sites and to former ownership and/or past operation of an MGP on or in proximity to each such Site by Respondent and/or one or more of Respondent's corporate predecessors.

9. The Department has determined that it is in the public interest to enter into this Order as a means for Respondent to address MGP Site Contamination at the Sites while ensuring the protection of human health and the environment.

10. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, agreement (including without limitation the VCA), 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 any Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from any Site constitutes a significant threat to the public health or environment.

11. 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. Real Property

The Sites subject to this Order are set forth in Exhibit "A" of this Order.

II. Previously Approved Work Plans and Work Performed Under the VCA

A. All Releases and Covenants Not to Sue issued under the VCA shall remain valid and in full force and effect under this Order.

B. Each Work Plan approved under the VCA as of the effective date of this Order is listed in Exhibit "A" and deemed approved under this Order, subject to any terms and conditions of the Department's approval under the VCA, and incorporated as an enforceable part of this Order (the "Previously Approved Work Plans"). Respondent shall implement the Previously Approved Work Plans in accordance with the schedules contained therein (as may have been amended). Work conducted under these Work Plans or otherwise conducted under the VCA (including without limitation, site characterizations, remedial investigations, remedial planning activities, remedial actions, or operation, monitoring and maintenance activities) for which Respondent has submitted a written report that the Department has approved shall be deemed approved for purposes of this Order, subject to the terms of the Department's approval. Other work conducted under the Previously Approved Work Plans pursuant to the VCA is acknowledged as satisfactorily completed pursuant to this Order to the extent such has been accepted by the Department under the VCA.

III. Initial Work Plan

As applicable, the title of the initial work plan to be submitted for each Site and the time frame within which each initial work plan shall be submitted to the Department are described in Exhibit "A."

IV. Work Plans

The Work Plans to be submitted pursuant to this Order shall be captioned as follows:

A. Remedial Investigation: A Work Plan which provides for the investigation of the nature and extent of contamination within the boundaries of the Site and emanating from such Site. Any initial assessment of each Site will include a screen for full TCL/TAL analysis;

B. Alternatives Analysis and Proposed Remedial Action Work Plan: A study undertaken to develop and evaluate options for a remedial program for MGP-Site Contamination associated with a Site, which study shall consider the use of the Site consistent with 6 NYCRR §§ 375-1.8(f)(9) and 375-1.8(g) and provide sufficient conceptual detail regarding the recommended remedy for the MGP-Site Contamination to enable the Department to solicit public comment and prepare a Decision Document;

C. IRM Work Plan: A work plan that provides for interim remedial measures related to MGP-Site Contamination;

D. Site Management Plan ("SMP"): A Work Plan that 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, in each case, related to MGP-Site Contamination; or

E. Supplemental Work Plan: If additional Work Plans other than those set forth in Subparagraph IV.A-D of this Order are required to be prepared and implemented to address MGP-Site Contamination.

V. Payment of State Costs

Invoices shall be sent to Respondent at the following address(es):

Department Manager, MGP Remediation
Attention: Kenneth J. Kaiser, PE, BCEE
Consolidated Edison Company of New York, Inc.
31-01 20th Avenue, Bldg. 138
Astoria, NY 11105
kaiserk@coned.com

In addition to the requirement to pay future state costs as set forth in Appendix "A," Respondent understands that it is required to pay past State Costs not yet paid by Respondent pursuant to the VCA. Such costs are payable as State Costs pursuant to the terms of this Order.

VI. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Respondent shall be sent to:

Director, Remedial Bureau C
Attention: George Heitzman, P.E.
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233
george.heitzman@dec.ny.gov

Director, Bureau of Environmental Exposure Investigation
Attention: Krista Anders (electronic copy only)
New York State Department of Health

Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
krista.anders@health.ny.gov

Manufactured Gas Plant Attorney
Attention: Dolores A. Tuohy, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, NY 12233-1500
dolores.tuohy@dec.ny.gov

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

Department Manager, MGP Remediation
Attention: Kenneth J. Kaiser, PE, BCEE
Consolidated Edison Company of New York, Inc.
31-01 20th Avenue, Bldg. 138
Astoria, NY 11105
kaiserk@coned.com

Associate Counsel – Environmental (correspondence only)
Attention: Kevin J. Klesh, Esq.
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, NY 10003
kleshk@coned.com

B. The Department and Respondent reserve the right to designate additional or different addressees for communication on a Site-specific basis 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 or in Paragraph V.

VII. Termination of Sites from Voluntary Cleanup Program

Upon the effective date of this Order, each Site addressed by this Order shall be terminated from the Voluntary Cleanup Program and from the VCA referenced in Paragraph 2.C, above.

VIII. Applicability of Appendix "A" – Standard Clauses for All New York State, State Superfund Orders

Subject to the other terms of, and to the extent amended by, this Order, Appendix "A" - "Standard Clauses for All New York State, State Superfund Orders" is attached to and hereby made a part of this Order as if set forth fully herein.

A. Paragraph I of Appendix "A" is amended to provide that within 45 days of the effective date of this Order, Respondent shall submit to the DEC an updated generic Citizen Participation Plan.

B. Paragraph II of Appendix "A" shall be deemed deleted in its entirety as Respondent shall not be required to prepare and submit Records Search Reports for the Sites.

C. Paragraph III, Subparagraph A of Appendix "A" is amended to provide that the term "ROD" is replaced by "Decision Document." All other elements of the subparagraph remain as set forth in Appendix "A."

D. Paragraph III, Subparagraph E of Appendix "A" is amended to provide that the term "proposed remedial action plan ("PRAP")" is replaced by "Alternatives Analysis and Proposed Remedial Work Plan," and the term "ROD" is replaced by "Decision Document." All other elements of the subparagraph remain as set forth in Appendix "A."

E. Paragraph III, Subparagraph F of Appendix "A" is applicable to Respondent to the extent Respondent owns a particular Site, or if Respondent does not own a particular Site, to the extent that the property owner provides the certifications specified thereunder to Respondent or the necessary access for Respondent to prepare such certifications.

F. Paragraph IV, Subparagraph B.2 of Appendix "A" is amended to provide that the required notification period for a Force Majeure Event is within ten (10) working days of the onset of any Force Majeure Event. All other elements of the subparagraph remain as set forth in Appendix "A."

G. Paragraph X, Subparagraph A of Appendix "A" is amended to provide that, if Respondent does not own a particular Site, the notice provided to the Site owner pursuant to 6 NYCRR 375-1.5(a)(2) shall include reference to (i) 6 NYCRR 375-1.5(a)(2) and the owner obligations set forth therein and (ii) 6 NYCRR 375-1.11(d) and the owner obligations set forth therein. All other elements of the subparagraph remain as set forth in Appendix "A."

H. Paragraph XI of Appendix "A" is applicable to Respondent to the extent Respondent owns a particular Site or, if Respondent does not own a particular Site, to the extent that the property owner provides notice to Respondent of a change of use.

I. Paragraph XII of Appendix "A" is amended to provide that the terms "Record of Decision" and "ROD" are replaced by "Decision Document." All other elements of the subparagraph remain as set forth in Appendix "A."

J. Paragraph XIII of Appendix "A" is amended to provide that such Progress Reports shall be provided to the Department quarterly (due by the 15th day after the end of a quarter) unless a different frequency is approved by the Department in writing, in which event Respondent shall submit such reports consistent with the approved frequency. The Department, at its sole discretion, may agree to submittal of a consolidated Progress Report covering all active Sites. All other elements of the subparagraph remain as set forth in Appendix "A."

K. Paragraph XIV, Subparagraph A of Appendix "A" shall be deemed deleted in its entirety and replaced with the following:

"A. This Order will terminate with respect to a particular Site upon the earlier of the following events:

1. Respondent's election in accordance with Paragraph III.E.2 not to implement the remedial activities required pursuant to the Decision Document for a particular Site. In the event of termination in accordance with this Subparagraph, this Order shall terminate with respect to the specific Site effective the 5th day after the Department's receipt of the written notification, provided, however, that if there are one or more Work Plan(s) for which a final report has not been approved at the time of Respondent's notification of its election not to implement the remedial activities in accordance with the Decision Document, Respondent shall complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein. Thereafter, this Order shall terminate with respect to the specific Site effective the 5th day after the Department's approval of the final report for all previously approved Work Plans; or

2. The Department's written determination that Respondent has completed all phases of the Remedial Program (including Site Management) for a particular Site, 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, subject to the terms of the Release and Covenant Not to Sue for the particular Site."

L. Paragraph XV is amended to provide that the term "ROD" is replaced by "Decision Document." All other elements of the Paragraph remain as set forth in Appendix "A."

M. Paragraph XVI, Subparagraph C of Appendix "A" shall be deemed deleted in its entirety and replaced with the following:

"C. 1. Respondent shall use best efforts to obtain all Site permits, approvals,

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 permits, approvals, 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. Notwithstanding anything in Paragraph XII of Appendix "A," Respondent shall be required to use reasonable efforts to obtain all Site access, easements (including without limitation any environmental easements), and/or institutional controls necessary to perform Respondent's obligations under this Order. If, despite Respondent's reasonable efforts, any access, easements, and/or institutional controls cannot be obtained, Respondent shall promptly notify the Department and include a summary of the steps taken. Respondent shall not be deemed in violation of this Order or applicable law based solely on its inability to obtain access, easements and/or institutional controls for an individual Site despite reasonable efforts, and the Department may, as it deems appropriate and within its authority, assist Respondent. In such event, the Department reserves all of its rights to take additional action outside the terms of the Order.

3. 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 reserves all rights and authorities to ensure a remedy protective of public health and the environment is implemented, whether pursuant to or outside the terms of this Order."

N. Paragraph XVI, Subparagraph H of Appendix "A" shall be deemed deleted in its entirety and replaced with the following:

"H. Any time limitations set forth in Section 113(g)(1) of CERCLA, as amended, 42 U.S.C. § 9613(g)(1), Section 1012(h)(2) of the Oil Pollution Act, as amended, 33 U.S.C. § 2712(h)(2), the Federal Water Pollution Control Act, the New York Navigation Law, the New York Environmental Conservation Law, or any other federal or state statute or regulation with respect to potential claims for natural resource damages against Respondent with respect to a particular Site or any other time limitations for the filing of potential natural resource damages claims against Respondent under any other applicable state or federal law with respect to a particular Site are tolled in their entirety from the effective date of this Order until termination of this Order with respect to a particular Site."

IX. Miscellaneous

A. No Record of Decision shall be issued pursuant to this Order. A Decision Document for each Site, as referenced above, shall document the process for the Department's selection of a remedy for each Site.

B. Site Specific Release and Covenant Not to Sue: Upon the Department's determination that: (i) Respondent is in compliance with the terms of this Order; and (ii) no requirements other than those remedial actions already conducted at a Site, if any, other than on-going Site Management activities or engineering or institutional controls being implemented, as may be applicable, at a particular Site are necessary to assure that conditions at such Site are protective of the public health and the environment, the Department shall provide Respondent with the Release and Covenant Not to Sue attached hereto as Exhibit "D," subject to the terms and conditions stated therein, for the applicable Site.

C. A Certificate of Completion, as defined in 6 NYCRR 375-2.9, shall not be issued pursuant to this Order.

D. The Department reserves all rights and authorities to address contaminants, as defined in 6 NYCRR Part 375, other than MGP-Site Contamination outside the terms of this Order.

E. Respondent shall cooperate with the Department and provide reasonable assistance to the Department as it solicits public comment on an Alternatives Analysis and Proposed Remedial Work Plan for each Site.

F. In the event of a conflict between the main body of this Order (including any and all attachments thereto and amendments thereof) and the terms of Appendix "A", the main body of this Order (including any and all attachments thereto (other than Appendix "A") and amendments thereof) shall control.

G. Respondent shall not be considered an operator of a Site solely by virtue of being subject to and/or having implemented this Order.

H. Respondent may, at any time, propose to divide a Site into smaller discrete Sites for the purpose of facilitating the implementation and completion of remedial investigations or actions at one or more of the discrete Sites. The Department shall approve any such reasonable request made pursuant to this Order.

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

DATED: July 13, 2018

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: _____
Michael J. Ryan, P.E., Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

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

Consolidated Edison Company of New York, Inc.

By: Andrea Schmitz

Title: Vice President, Environment, Health and Safety

Date: 7-13-18

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

On the 13th day of July in the year 2018, before me, the undersigned, personally appeared Andrea Schmitz *(full name)* 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 executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Barbara Dunne
Notary Public, State of New York

Barbara Dunne
Notary Public, State of New York
No. 02DU6341704
Qualified in Richmond County
Commission Expires May 9, 2020

EXHIBIT "A"

List of Sites

Site Name	Current Site No./ Prior (VCP) Site No.	Initial Work Plan (WP)/ WP Submittal Date
CE - Central Ave. - Peekskill MGP	360167 V00567	Final Supplemental Scope of Work February 2010 / Final SMP and Deed Restriction, December 2018
CE - E. 99th St. Works	231113	Groundwater Monitoring V00538 WP, May 2018 / Revised AA Report, November 2019
CE - E. 111th St. Works	231114 V00539	RI Report, January 2006 / AA Work Plan, October 2018
CE – E. 21st St. Works Off-Site	231112 V00536	N/A / RI Work Plan March 2019
CE - Farrington St. MGP	241208 2018 /	Supplemental RIWP, May V00560 Draft AA Report, December 2019
Hunt's Point Off-site: Sediment and Groundwater	203112 Multiple sites	OU3: SCWP June 2011 / AAR November 2017 OU5: Supplemental Sediment Investigation WP, November 2014 / Supplemental Sediment Investigation Report, December 2018
CE - Pelham MGP Offsite	360165 V00565	RIWP, February 2009 / RI report, December 2019

Site Name	Current Site No./ Prior (VCP) Site No.	Initial Work Plan (WP)/ WP Submittal Date
CE - Pemart Ave. - Peekskill MGP	360166 V00566	Draft RD February 2016 / OU1: Final RD, December 2018 OU2: Final RD March 2019
CE - Rye MGP	360168 V00571	RAWP, February 2018 / FER, June 2019
CE - Unionport Works	203109 Analysis July 2014 /	OU1: Alternatives V00553 Draft RD June 2019 OU2: Draft RAWP June 2018 / Final RAWP December 2018
CE - Woodworth Ave. MGP Yonkers	360164 V00564	SCWP, May 2008 / SC report, December 2018
CE - Zerega Ave. Station	203110 V00558	SCWP, April 2017 / Final AA, September 2018
CE - Cedar St MGP New Rochelle	360173 V00570	RI Report, July 2017 / AAR June 2018
CE - E. 11th St. MGP	231110 V00534	OU1: AA Report, February 2013 / SMP March 2019 OU2: N/A / Supplemental RI Work Plan March 2019 OU4: RAWP, October 2017 / Final RAWP December 2018
CE - E. 108th St. Station	231118	Supplemental SCWP V00545 August, 2006 / AA Work Plan, October 2018

Site Name	Current Site No./ Prior (VCP) Site No.	Initial Work Plan (WP)/ WP Submittal Date
CE - Ossining MGP	360172 V00568	RIWP, December 2007 (all 3 OUs) RI Report, September 2019 (all 3 OUs) / OU3: IRM WP, September 2008 / IRM CCR June 2019
CE - W. 18th St. Gas Works Bayview Correctional Facility	231005 V00530	AA Report SMP, October 2018
CE - W. 18th St. Gas Works Block 688/Lot 1001 and 1002	231005 V00530	RI Report, December 2009 RAWP December 2019
CE - W. 18th St. Gas Works Block 715/Lot 59 Verizon	231005 V00530	RI Report, December 2009 RAWP March 2019
CE - W. 45th St. Gas Works	231109	OU1: SMP November V00532 2016 / OU2: AAR November 2016 / Combined OUs: SMP November 2018
CE - York Ave Station	231117 V00544	RI Report October 2017 / SMP/Deed Restriction December 2018
CE - Hester Street Works Block 207/Lots 6,7,8 and 10	231120 V00528	SCWP, February 2009 / SMP and Deed Restriction, September 2018
CE - E. 138th St. - Bronx Works	203108 V00551	RI Report May 2012 / Final SMP October 2018
CE – Hastings Gas Works 8 Washington Avenue	360170 V00728	RWP October 2017 / FER December 2019

EXHIBIT "B"

RECORDS SEARCH REPORT

NOT APPLICABLE

EXHIBIT "C"

Cost Summary

INTENTIONALLY BLANK

EXHIBIT "D"

Form for Release and Covenant Not to Sue

Unless otherwise specified in this letter, all terms used in this letter shall have the meaning assigned to them under the terms of the Order on Consent entered into between the New York State Department of Environmental Conservation (the "Department") and Consolidated Edison Company of New York, Inc. ("Respondent"), Index No._____ (the "Order").

The Department is pleased to report that the Department is satisfied that the Order's Work Plan(s) relative to the [name of site] Site, identified as site number [number], located at_____, has been successfully implemented. [Reference Tax Map Identification Number, and reference and attach a map, metes and bounds description, and/or other appropriate identifying information.]

The Department, therefore, hereby releases and covenants not to sue, and shall forbear from bringing any action, proceeding, or suit against Respondent and Respondent's lessees and sublessees, grantees, successors, and assigns, and their respective secured creditors, for the further investigation and remediation of the Site, based upon the release or threatened release of MGP-Site Contamination, provided that (a) timely payments of the amounts specified in Paragraph V of the main body of the Order continue to be or have been made to the Department, (b) appropriate institutional controls were created and remain recorded in accordance with Paragraph VIII.M of the main body of the Order and Paragraph XII of Appendix "A" to the Order, and (c) Respondent and/or its lessees, sublessees, successors, or assigns comply with the requirements of the Site Management Plan, if any. Nonetheless, the Department hereby reserves all of its rights concerning, and such release and covenant not to sue shall not extend to, natural resource damages or to any further investigation or remedial action the Department deems necessary due to:

- migration off-Site of contaminants, as defined in 6 NYCRR Part 375, resulting in impacts that are not inconsequential to environmental resources, to human health, or to other biota and to off-Site migration of petroleum;

- a finding by the Department that a change in an environmental standard, factor, or criteria upon which a remedial work plan was based renders the remedial program implemented at the Site no longer protective of public health or the environment, and Respondent is not in good faith negotiating, and/or following its approval by the Department, implementing a work plan to achieve conditions at the Site which are protective of public health or the environment;

- a change in the Site's use subsequent to the Department's issuance of this Release and Covenant Not to Sue, unless additional remediation is undertaken which shall meet the standard for protection of the public health and environment applicable to 6 NYCRR Part 375;

- Respondent's failure to implement the Order to the Department's satisfaction; or

- fraud committed by Respondent in entering into or implementing this Order.

Additionally, the Department hereby reserves all of its rights concerning and any such release and covenant not to sue shall not extend to Respondent nor to any of Respondent's lessees, sublessees, successors, or assigns who cause or allow a release or threat of release at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than MGP-Site Contamination; or cause or allow the use of the Site to change from the current use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to any of Respondent's lessees, sublessees, successors, or assigns who are otherwise responsible under law for the remediation of the MGP-Site Contamination independent of any obligation that party may have respecting same resulting solely from the Order's execution.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release and covenant not to sue shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to MGP-Site Contamination and is not subject to the qualifiers and reopeners set forth herein.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance:

- if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this letter shall be construed or deemed to preclude the State of New York from recovering such claim;

- except as provided in this letter and the Order, nothing contained in this letter or the Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, the right to recover natural resources damages) with respect to any party, including Respondent;

- nothing contained in this letter shall prejudice any rights of the Department to take any investigatory or remedial action it deems necessary if Respondent fails to comply with the Order or if contaminants, as defined in 6 NYCRR Part 375, other than MGP-Site Contamination is encountered at the Site;

- nothing contained in this letter shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers; and

- nothing contained in this letter shall be construed to affect the Department's right to terminate the Order under the terms of the Order at any time during its implementation if Respondent fails to comply substantially with the Order's terms and conditions.

In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

DATED: _____

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

_____
Director, Division of Environmental Remediation

APPENDIX "A"

STANDARD CLAUSES FOR ALL NEW YORK STATE STATE SUPERFUND ORDERS

The parties to the State Superfund Order (hereinafter "Order") agree to be bound by the following clauses which are hereby made a part of the Order. The word "Respondent" herein refers to any party to the Order, other than the New York State Department of Environmental Conservation (hereinafter "Department").

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Order, Respondent shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of ECL §27-1417 and 6 NYCRR sections 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Order.

II. Initial Submittal

Within thirty (30) days after the effective date of this Order, Respondent shall submit to the Department a Records Search Report prepared in accordance with Exhibit "B" attached to the Order. The Records Search Report can be limited if the Department notifies Respondent that prior submissions satisfy specific items required for the Records Search Report.

III. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

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), 375-3.6, and 375-6. 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.

The Work Plans shall be captioned as follows:

1. Site Characterization ("SC") Work Plan: a Work Plan which provides for the identification of the presence of any hazardous waste disposal at the Site;

2. Remedial Investigation/Feasibility Study ("RI/FS") Work Plan: a Work Plan which provides for the investigation of the nature and extent of contamination within the boundaries of the Site and emanating from such Site and a study of remedial alternatives to address such on-site and off-site contamination;

3. Remedial Design/Remedial Action ("RD/RA") 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 ROD;

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

5. "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; or

6. "Supplemental" if additional work plans other than those set forth in II.A.1-5 are required to be prepared and implemented.

B. 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 needs to be modified in order to achieve the objectives of the Work Plan as set forth in Subparagraph III.A 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 XV, modify the Work Plan.

ii. The Department may request, subject to dispute resolution pursuant to Paragraph XV, that Respondent submit additional or supplemental Work Plans for the Site to complete the current remedial phase within thirty (30) Days after the Department's written request.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

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 licensed and registered in New York State must stamp and sign all Work Plans other than SC or RI/FS Work Plans.

C. Submission of Final Reports and Periodic 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 initial periodic report by in accordance with the schedule in the Site Management Plan and thereafter in accordance with a schedule determined by the Department. Such periodic 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.

4. Within sixty (60) days of the Department's approval of a Final Report, Respondent shall submit such additional Work Plans as is required by the Department in its approval letter of such Final Report. Failure to submit any additional Work Plans within such period shall be a violation of this Order.

D. 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 include, in accordance with 6 NYCRR 375-1.6(d), 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 XV and its position prevails. Failure to make an election or failure to comply with the election is a violation of this Order.

iii. 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 in accordance with the time period set forth in 6 NYCRR 375-1.6(d)(4). 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 XV 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.

E. Department's Issuance of a ROD

1. Respondent shall cooperate with the Department and provide reasonable assistance, consistent with the Citizen Participation Plan, in soliciting public comment on the proposed remedial action plan ("PRAP"), if any. After the close of the public comment period, the Department shall select a final remedial alternative for the Site in a ROD. Nothing in this Order shall be construed to abridge any rights of Respondent, as provided by law, to judicially challenge the Department's ROD.

2. Respondent shall have 60 days from the date of the Department's issuance of the ROD to notify the Department in writing whether it will implement the remedial activities required by such ROD. If the Respondent elects not to implement the required remedial activities, then this order shall terminate in accordance with Paragraph XIV.A. Failure to make an election or failure to comply with the election is a violation of this Order.

3. Nothing in this Order, in any submittal, or in any work plan(s) submitted pursuant to this Order shall modify, expand, reduce, or otherwise change the remedial activities (including site management) required by a ROD issued by the Department.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Respondent shall submit a written certification in accordance with 6 NYCRR 375-1.8(h)(3) and 375-3.8(h)(2).

IV. Penalties

A. 1. 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 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 XV and Respondent's position prevails.

V. Entry upon Site

A. Respondent hereby consents, 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 (i) provide the Department with suitable work space at the Site, 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. 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. 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 as provided by 6 NYCRR 375-1.5 (b)(3)(i). Failure to timely pay any invoice will be subject to late payment charge and interest at a rate of 9% from the date the payment is due until the date the payment is made.

B. Costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3). 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.

C. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

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

D. The Department shall provide written notification to the Respondent of any change in the foregoing addresses.

E. If Respondent objects to any invoiced costs under this Order, the provisions of 6 NYCRR 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph VI.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph IV or the Department may commence an enforcement action for non-compliance with ECL '27-1423 and ECL 71-4003.

VII. 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.

VIII. 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. 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).

IX. 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).

X. 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.

XI. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in 6 NYCRR 375-2.2(a), which is proposed for the Site, in accordance with the provisions of 6 NYCRR 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

XII. Environmental Easement

A. If a Record of Decision for the Site relies upon one or more institutional and/or engineering controls, 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 the Environmental Easement by the State, Respondent shall comply with the requirements of 6 NYCRR 375-1.8(h)(2).

B. If the ROD provides for no action other than implementation of one or more institutional controls, Respondent shall cause an environmental easement to be recorded under the provisions of Subparagraph XII.A.

C. If Respondent does not cause such environmental easement to be recorded in accordance with 6 NYCRR 375-1.8(h)(2), Respondent will not be entitled to the benefits conferred by 6 NYCRR 375-1.9 and 375-2.9 and the Department may file an Environmental Notice on the site.

XIII. Progress Reports

Respondent shall submit a written progress report of its actions under this Order to the parties identified in Subparagraph IV.A.1 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 XIV, unless a different frequency is set forth in a Work Plan. Such reports shall, at a minimum, include: all actions relative to the Site 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 Site, 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; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XIV. Termination of Order

A. This Order will terminate upon the earlier of the following events:

1. Respondent's election in accordance with Paragraph III.E.2 not to implement the remedial activities required pursuant to the ROD. In the event of termination in accordance with this Subparagraph, this Order shall terminate effective the 5th Day after the Department's receipt of the written notification, provided, however, that if there are one or more Work Plan(s) for which a final report has not been approved at the time of Respondent's notification of its election not to implement the remedial activities in accordance with the ROD, Respondent shall complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein. Thereafter, this Order shall terminate effective the 5th Day after the Department's approval of the final report for all previously approved Work Plans; or

2. 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 contained in Paragraphs VI and IX 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.

C. If the Order is terminated pursuant to Subparagraph XIV.A.1, neither this Order nor its termination shall affect any liability of Respondent for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA, nor shall it affect any defenses to such liability that may be asserted by Respondent. Respondent shall also ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which existed before any activities under this Order were commenced. Further, the Department's efforts in obtaining and overseeing compliance with this Order shall constitute reasonable efforts under law to obtain

a voluntary commitment from Respondent for any further activities to be undertaken as part of a Remedial Program for the Site.

XV. 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).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Order.

C. 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.

XVI. 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 IV.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 IV.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 XVI.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 release and covenant not to sue referenced in Paragraph VII.

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).

H. Any time limitations set forth in Section 113(g)(1) of CERCLA, as amended, 42 U.S.C. § 9613(g)(1), Section 1012(h)(2) of the Oil Pollution Act, as amended, 33 U.S.C. § 2712(h)(2), the Federal Water Pollution Control Act, the New York Navigation Law, the New York Environmental Conservation Law, or any other federal or state statute or regulation with respect to potential claims for natural resource damages against Respondent or any other time limitations for the filing of potential natural resource damages claims against Respondent under any other applicable state or federal law are tolled in their entirety from the effective date of this Order until termination of this Order.

I. 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.

J. 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.

K. 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.

L. 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.