

File

New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233-7010

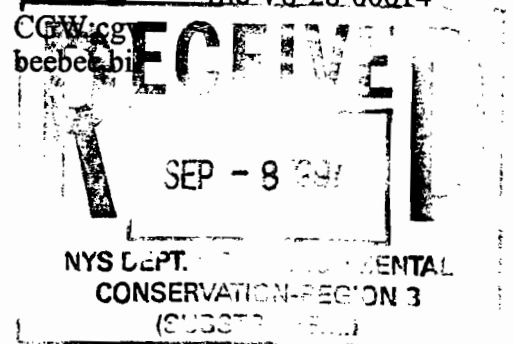
SEP 04 1997

CERTIFIED MAIL
RETURN RECEIPT REQ

bcc w/o enc.: J. McKeon
C. Sullivan
~~M.J. Peachey~~ → Todd
C. Costopoulos
D. Weigel
D. Norvik
C. Wabnick
file V8-28-00014

Mr. Kevin Hylton
Rochester Gas and Electric Corporation
89 East Avenue
Rochester, NY 14649

Thomas F. Walsh, Esq.
Nixon, Hargrave, Devans & Doyle LLP
Clinton Square
P.O. Box 1051
Rochester, NY 14603



Re: RG&E West Station (Beebe Park)
Rochester, Monroe County, NY
Site No. V00014-8
Voluntary Cleanup Agreement No. D8-0001-95-10
Volunteer: Rochester Gas and Electric Corporation
Bill No. 01

Dear Gentlemen:

Enclosed is a cost summary of expenditures incurred by New York State for activities performed as outlined in the voluntary cleanup agreement. In accordance with Paragraph VI of the agreement, signed November 16, 1995, the New York State Department of Environmental Conservation (NYSDEC) is requesting payment in the amount of \$14,351.07 within thirty (30) days from receipt of this letter.

The check should be made payable to the New York State Department of Environmental Conservation and sent to the address below:

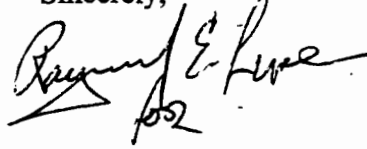
John McKeon, Director
Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road, Room 260A
Albany, New York 12233-7010

The summary includes all expenditures incurred for the site through April 4, 1997. This is your only bill under this voluntary cleanup agreement. The cost summary is explained in detail by the

enclosed exhibits. However, if you have any questions on the enclosed information, please contact Dottie Norvik at (518)457-0900.

Thank you for your attention to this matter.

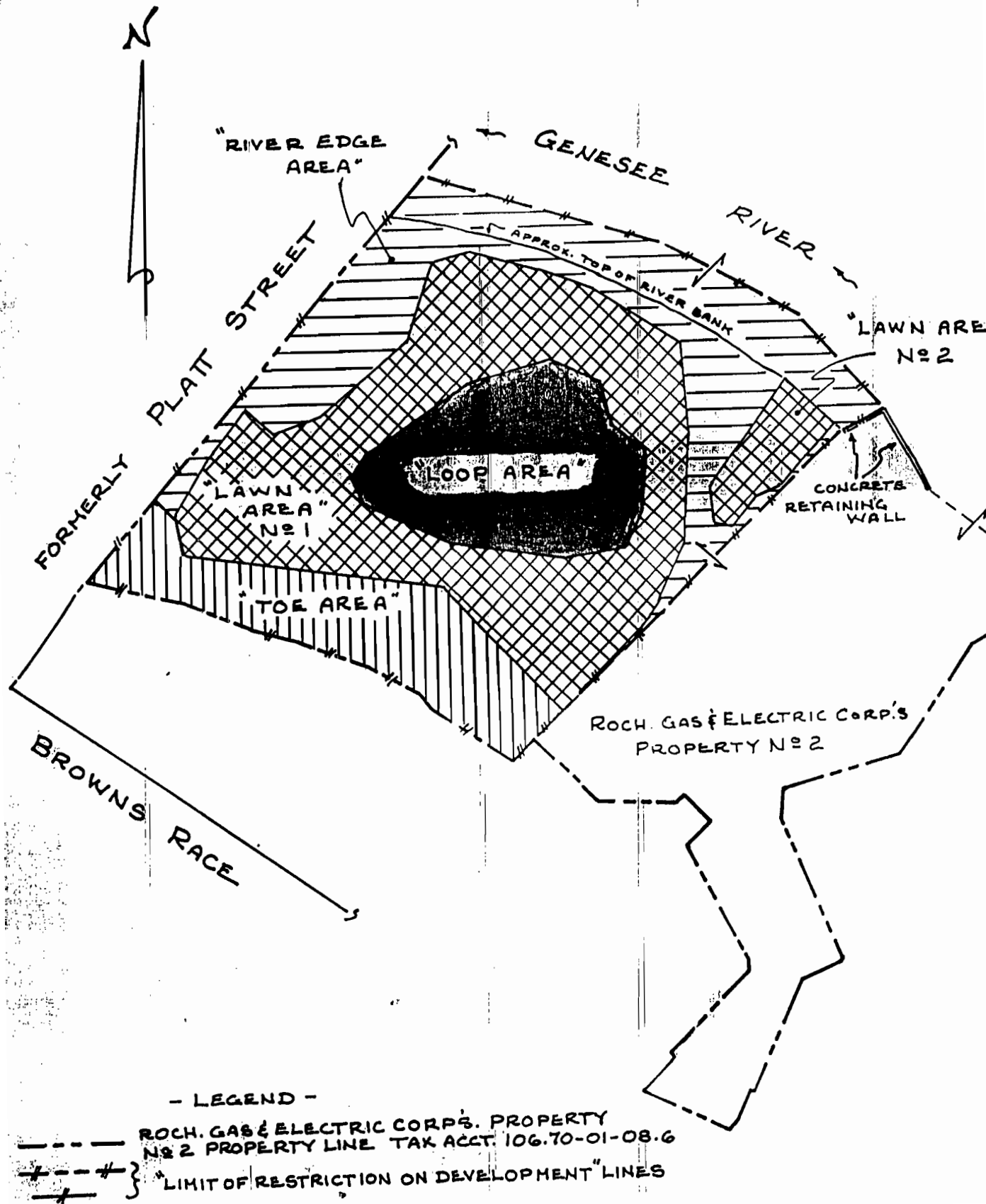
Sincerely,

A handwritten signature in black ink, appearing to read "John McKeon", with a stylized flourish underneath.

John McKeon
Director
Bureau of Program Management
Division of Environmental Remediation

enclosures

SCHEDULE B ATTACHMENT



%% RECEIPT
MONROE COUNTY CLERK'S OFFICE
Maggie Brooks, County Clerk

REC: 00896359 OPR: MAC
na

DESCRIPTION	TRANS AMOUNT
FILE FEE-S	4.75
FILE FEE-C	10.25
REC FEE	39.00
Total Fees	54.00
DECL RESTR COVT # T700000004651	
DATE: 10/14/97 TIME: 10:55:00	
B/P D 08928 0423 Control# 199710140251	
1 ROCHESTER GAS & ELECTRIC CORP	
2 ROCHESTER GAS & ELECTRIC CORP	

RECEIPT TOTAL	54.00
2 CASH	54.00
TOTAL AMOUNT TENDERED	54.00
TOTAL CHANGE RETURNED	.00
PAYMENT TOTAL	54.00

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION is made the 15th day of October, 1997 by **ROCHESTER GAS AND ELECTRIC CORPORATION**, a corporation having a principal place of business at 89 East Avenue, Rochester, New York 14649.

W I T N E S S E T H:

WHEREAS, Rochester Gas and Electric Corporation ("RG&E") is the owner of real property located at the foot of the High Falls on the west bank of the Genesee River in the City of Rochester, New York, being Tax Map Parcel No. 106.70-01-08.6, which is more fully described on attached Schedule A (the "Premises"); and

WHEREAS, on November 10, 1995, RG&E signed a voluntary cleanup agreement ("Agreement") with the New York State Department of Environmental Conservation (the "Department") to excavate and remove coal tar residues associated with the historic operations of a manufactured gas plant ("Response Action"), from the portion of the Premises within the "Limit of Restriction on Development," which is described and delineated on the attached description and plot plan in Schedule B, in preparation for the future use of the Premises as commercial, industrial and/or recreational land; and

WHEREAS, by letter dated April 3, 1997, the Department notified RG&E that it is satisfied that the Response Action was completed in compliance with the Agreement; and

WHEREAS, the Agreement requires RG&E to record an instrument, which shall run with the land, that shall prohibit the Premises from ever being used for purposes other than commercial, industrial and/or recreational uses without the express written waiver of such prohibition by the Department, RG&E or their successors and assigns; and

WHEREAS, the Department has executed and delivered to RG&E a limited release and covenant not to sue dated April 4, 1997, which releases RG&E, RG&E's lessees, sublessees, successors and assigns, and their secured creditors for the further investigation and remediation of the coal tar and other hazardous substances present at the Premises on or before November 10, 1995, provided that timely payment of the Department's past costs are made and that the Department-approved post-response operations and maintenance plan is effectuated; and

WHEREAS, in order to assure that the use of the Premises remains consistent with a commercial, industrial and/or recreational use mandated by the Agreement and the operation and maintenance plan is properly effectuated, and that such use does not disturb the Premises in a way that interferes with the Response Action and/or the protection of human health and the environment.

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OCT 14 2 14:05 PM '97

NOW, THEREFORE, Rochester Gas and Electric Corporation agrees for itself and on behalf of its successors and assigns as follows:

1. That the use of the Premises for purposes other than commercial, industrial and/or recreational uses is prohibited, unless such prohibition is waived expressly in writing by both the Department or its governmental successor or assign, and RG&E or its corporate successor or assign.

2. That the following activities are prohibited on the Premises, unless such prohibition is waived expressly in writing by both the Department or its governmental successor or assign, and RG&E or its corporate successor or assign:

- a. Any and all activities, including any excavation or disturbance of the surface of the ground or its cover, in the area described in Schedule C and delineated in the plot plan attached to Schedule B as the "Toe Area", which lies primarily on the south and southwesterly side of the existing fence, but which also includes land on the north and northeasterly side of the fence line extending to a line running parallel to and approximately six inches north and northeasterly of such fence line (hereinafter the "Toe Area");
- b. Except for excavations and disturbances not to exceed 9 inches of vertical depth, any and all excavation or disturbance of the surface of the ground in the areas described in Schedule D and delineated in the plot plan attached to Schedule B as the "Lawn Area Parcel Numbers 1 and 2" ("Lawn Area");
- c. Except for excavations and disturbances not to exceed 4½ feet (54 inches) of vertical depth, any and all excavations and disturbances of the surface of the ground in the area inside of the inner edge of the former Loop Road, which is described in Schedule E and delineated in the plot plan attached to Schedule B as the "Loop Area" ("Loop Area"); and
- d. Except for excavations and disturbances not to exceed one foot (12 inches) of vertical depth, any and all excavations and disturbances of the surface

of the ground in the area described in Schedule F and delineated in the plot plan attached to Schedule B as the "River Edge Area" ("River Edge Area").

3. That the following operation and maintenance measures shall be conducted, unless such requirement is waived expressly in writing by both the Department or its governmental successor or assign, and RG&E or its corporate successor or assign:

- a. The existing ground cover or its functional equivalent shall be maintained, and restored and repaired as soon as practicable. "Functional equivalent" shall be defined as that ground coverage, whether it is vegetative, asphaltic, gravel, concrete or other materials or structures, that RG&E or its corporate successor or assign determines, in an express written finding, should create the same or greater amount of protection of the underlying soil from contact with humans, animals, plants, precipitation, surface water and wind;
- b. Any breach in the yellow plastic warning ribbon demarcating the limit of the Response Action in the Lawn Area of the Premises which is buried at a level of approximately 1 foot (12 inches) beneath the surface of the Lawn Area, that is, buried 3 inches deeper than the permitted depth of excavation and disturbance pursuant to Subparagraph 2(b) of this Declaration of Restrictive Covenants, shall be repaired as soon as practicable; and
- c. The fence which runs parallel to and approximately six inches to the south and southeast of the north and notheast borders of the Toe Area, which is described in Subparagraph 2(a) of this Declaration of Restrictive Covenants, shall be maintained in order to prohibit any persons or vehicles from accessing the Toe Area and any breach shall be repaired as soon as practicable.

4. That this Declaration of Restrictive Covenants shall run with the land, shall inure to the benefit of the Department and RG&E and shall be binding upon each and every owner, operator, tenant, subtenant, invitee and licensee of the Premises, and cannot be modified or terminated without the consent of the Department or its governmental successor and assign, and RG&E and its corporate successor or assign.

Rochester Gas and Electric Corporation

By: [Signature]

Name: Thomas S. Richards

Title: President

STATE OF NEW YORK)
) SS:
COUNTY OF MONROE)

On this 13th day of October, 1997 before me personally came Thomas S. Richards to me known, who, being duly sworn, did depose and say that (s)he resides at _____, New York; that (s)he is the President of Rochester Gas and Electric Corporation, the corporation described in and which executed the within instrument; and that (s)he signed his name on behalf of Rochester Gas and Electric Corporation and was authorized to do so.

8280

[Signature]

JAMES GRIM
Notary Public, State of New York
No. 4870178
Qualified in Monroe County
Commission Expires Sep. 2, 1998

SCHEDULE A

ROCHESTER GAS AND ELECTRIC CORPORATION PROPERTY NUMBER 2 DESCRIPTION

ALL THAT TRACT or parcel of land being part of Farm Lot 48, Township 1, Short Range, Mill Seat Tract, situated in the City of Rochester, Monroe County, New York and described as follows:

Commencing at a point that is the intersection of the northeasterly line of Browns Race and the southeasterly line of the former Platt Street. Running thence the following three courses along the southeasterly line of former Platt Street, N 44° 27' 59" E 64.1 feet to a point. Thence N 36° 23' 44" E 76.83 feet to a point. Thence N 41° 40' 59" E 10.00 feet to the point of beginning. Running thence along the southeasterly line of former Platt Street N 41° 40' 59" E 387.10 feet. Thence along a line of "Limit of Restriction on Development" S 72° 42' 14" E 181.21 feet to a point. Thence along said line S 59° 47' 55" E 118.16 feet to a point. Thence along said line S 42° 12' 31" E 89.57 feet to a point. Thence along the easterly face of a concrete retaining wall S 26° 21' 00" E 69.57 feet to a point. Thence along a survey tie line S 50° 54' 59" E 119.86 feet to a point. Thence S 59° 14' 14" W 73.51 feet to a point. Thence S 35° 27' 49" W 99.24 feet to a point. Thence S 75° 08' 12" W 88.18 feet to a point. Thence S 4° 13' 31" W 20.00 feet to a point. Thence S 21° 09' 32" E 113.41 feet to a point. Thence S 66° 30' 00" W 31.99 feet to a point. Thence S 25° 06' 52" W 90.73 feet to a point. Thence the following four courses along a parcel of land appropriated by the People of the State of New York for Commercial Street and Browns Race Street over Browns Race, known as parcel Number 4, N 64° 36' 53" W 2.54 feet to a point. Thence along said parcel line S 25° 23' 07" W 25.48 feet to a point. Thence along said parcel line S 44° 49' 29" W 7.99 feet to a point. Thence along said parcel line N 63° 27' 57" W 70.38 feet to a point. Thence N 45° 33' 45" E 33.48 feet to a point. Thence N 44° 26' 15" W 5.00 feet to a point. Thence N 45° 33' 45" E 85.25 feet to a point. Thence N 5° 57' 36" W 6.08 feet to a point. Thence N 26° 35' 15" W 96.55 feet to a point. Thence N 45° 33' 45" E 24.20 feet to a point. Thence N 44° 26' 15" W 26.60 feet to a point. Thence S 45° 33' 45" W 7.21 feet to a point. Thence N 87° 23' 22" W 57.38 feet to a point. Thence 44° 26' 15" W 67.00 feet to a point. Thence S 45° 33' 45" W 22.50 feet to a point. Thence N 55° 17' 48" W 72.29 feet to a point. Thence N 34° 48' 09" W 13.55 feet to a point. Thence N 61° 01' 33" W 41.67 feet to a point. Thence N 67° 40' 58" W 54.59 feet to a point. Thence N 74° 32' 22" W 37.25 feet to a point. Thence N 67° 41' 08" W 53.31 feet to a point. Thence N 75° 44' 05" W 74.04 feet to the point of beginning, containing 204,267 square feet or 4.689 acres. Said area includes lands up to the line of "Limit of Restriction on Development", face of concrete retaining wall and survey tie line as previously described above, but does not include all of the land that Rochester Gas and Electric Corporation owns in the bed of the Genesee River.

SCHEDULE B

ROCHESTER GAS AND ELECTRIC CORPORATION PROPERTY NUMBER 2 "LIMIT OF RESTRICTION ON DEVELOPMENT" DESCRIPTION

Commencing at a point that is the intersection of the north easterly line of Browns Race and the southeasterly line of the former Platt Street. Running thence the following three courses along the southeasterly line of former Platt Street, N 44° 27' 59" E 6.41 feet to a point. Thence N 36° 23' 44" E 76.83 feet to a point. Thence N 41° 40' 59" E 10.00 feet to the point of beginning. Running thence along the southeasterly line of former Platt Street N 41° 40' 59" E 387.10 feet to a point. Thence along the following three courses passing through the waters of the Genesee River S 72° 42' 14" E 181.21 feet to a point. Thence through said waters S 59° 47' 55" E 118.16 feet to a point. Thence through said waters S 42° 12' 31" E 89.57 feet to a point on the corner of a concrete retaining wall. Thence along said wall S 64° 06' 30" W 36.91 feet to a point. Thence along a line passing through the lands of Rochester Gas and Electric Corporation's property Number 2 S 46° 40' 12" W 319.42 feet to a point on Rochester Gas and Electric Corporation's boundary line. Thence along Rochester Gas and Electric Corporation's boundary line the following eight courses S 45° 33' 45" W 22.50 feet to a point. Thence N 55° 17' 48" W 72.29 feet to a point. Thence N 34° 48' 09" W 13.55 feet to a point. Thence N 61° 01' 33" W 41.67 feet to a point. Thence N 67° 40' 58" W 54.59 feet to a point. Thence N 74° 32' 22" W 37.25 feet to a point. Thence N 67° 41' 08" W 53.31 feet to a point. Thence N 75° 44' 05" W 74.04 feet to the point of beginning, containing 132,096 square feet or 3.032 acres. The above described "Limit of Restriction on Development" being shown on a plot plan attached hereto.

File
Borner West Station

JAECKLE FLEISCHMANN & MUGEL, LLP
ATTORNEYS AT LAW

ELLWANGER AND BARRY BUILDING 39 STATE STREET ROCHESTER, NEW YORK 14614-1310 USA
TEL (716) 262-3640 FAX (716) 262-4133
E-Mail: twalsh@netacc.net

THOMAS F. WALSH
Partner

October 14, 1997

Charles E. Sullivan, Jr., Esq.
Chief, State Superfund and
Voluntary Cleanup Practice Group
Division of Environmental Enforcement
New York State Department of
Environmental Conservation
50 Wolf Road, Room 410A
Albany, NY 12233-5550

NOV - 5

RE: RG&E Voluntary Remediation Agreement
DEC Index No.: D8-0001-95-10

Dear Charlie:

Enclosed please find a copy of the Declaration of Restrictive Covenants on the portion of Rochester Gas and Electric Corporation's "West Station" property which was the subject of the above-referenced Agreement ("Site"). The Declaration was filed today with the Monroe County Clerk's Office. A copy of the receipt of filing is also enclosed.

By a letter dated April 3, 1997, Todd Caffoe, P.E. of the Department's Region 8 office, informed RG&E that the Department was satisfied with the remediation completed at the Site. Paragraph X of the Agreement requires RG&E to record a deed restriction which prohibits the Site from being used for purposes other than commercial/industrial/recreational uses, within thirty days after receiving the April 3 notification letter. After we notified you that we would need additional time to file the deed restrictions due to federal notice and consultation requirements relating to RG&E's adjoining hydroelectric facility, you extended to October 15 the deadline to file the deed restrictions.

The filing of the enclosed Declaration fulfills the deed restriction requirement in Paragraph X of the Agreement. It restricts the present and future use of the Site to industrial/commercial/recreational uses and prohibits disturbances of the surface that could interfere with the appropriate post-remediation operation and maintenance of the Site. It will ensure that the Site remains in a condition that is protective of human health and the environment.

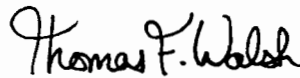
Charles E. Sullivan, Jr., Esq.

April 23, 1997

Page 2

Thank you for your cooperation in this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Thomas F. Walsh".

Thomas F. Walsh

Enclosures

cc: M. J. Peachey
J. Clark
K. Hylton

8301

SCHEDULE C

ROCHESTER GAS AND ELECTRIC CORPORATION PROPERTY NUMBER 2
"TOE AREA" DESCRIPTION

Commencing at a point that is the intersection of the northeasterly line of Browns Race and the southeasterly line of the former Platt Street. Running thence the following three courses along the southeasterly line of former Platt Street, N 44° 27' 59" E 6.41 feet to a point. Thence N 36° 23' 44" E 76.83 feet to a point. Thence N 41° 40' 59" E 10.00 feet to the point of beginning. Running thence along the southeasterly line of the former Platt Street N 41° 40' 59" E 76.51 feet to a point. Thence S 45° 25' 07" E 18.03 feet to a point. Thence S 10° 50' 28" E 31.01 feet to a point. Thence S 81° 21' 12" E 193.66 feet to a point. Thence S 42° 24' 13" E 126.00 feet to a point. Thence S 46° 40' 12" W 25.84 feet to a point. Thence S 45° 33' 46" W 22.50 feet to a point. Thence N 55° 17' 48" W 72.29 feet to a point. Thence N 34° 48' 09" W 13.55 feet to a point. Thence N 61° 01' 33" W 41.67 feet to a point. Thence N 67° 40' 58" W 54.59 feet to a point. Thence N 74° 32' 22" W 37.25 feet to a point. Thence N 67° 41' 08" W. 53.31 feet to a point. Thence N 75° 44' 05" W 74.04 feet to the point of beginning, containing 18,689 square feet or 0.429 acres. The above described "Toe Area" being shown on a plot plan attached to Schedule B.

SCHEDULE D

ROCHESTER GAS AND ELECTRIC CORPORATION PROPERTY NUMBER 2 "LAWN AREA" PARCEL NUMBERS 1 AND 2

Commencing at a point that is the intersection of the northeasterly line of Browns Race and the southeasterly line of the former Platt Street. Running thence the following four courses along the southeasterly line of former Platt Street, N 44° 27' 59" E 6.41 to a point. Thence N 36° 23' 44" E 76.83 feet to a point. Thence N 41° 40' 59" E 10.00 feet to a point. Thence N 41° 40' 59" E 131.79 feet to a point. Thence S 48° 19' 01" E 8.42 feet to the point of beginning.

Running thence N 40° 45' 00" E 39.00 feet to a point. Thence S 48° 30' 00" E 27.50 feet to a point. Thence N 72° 37' 39" E 36.25 feet to a point. Thence N 51° 18' 19" E 82.60 feet to a point. Thence 21° 02' 00" E 61.50 feet to a point. Thence N 72° 24' 36" E 25.05 feet to a point. Thence S 74° 30' 00" E 54.00 feet to a point. Thence S 68° 45' 00" E 45.00 feet to a point. Thence S 57° 20' 00" E 75.00 feet to a point. Thence S 03° 55' 00" E 70.00 feet to a point. Thence S 04° 23' 19" W 78.40 feet to a point. Thence S 27° 08' 19" W 43.50 feet to a point. Thence S 35° 28' 19" W 41.03 feet to a point. Thence S 46° 40' 12" W 70.46 feet to a point. Thence N 42° 24' 13" W 126.00 feet to a point. Thence N 81° 21' 12" W 193.66 feet to a point. Thence N 10° 50' 28" W 31.01 feet to a point. Thence N 32° 00' 00" E 57.00 feet to the point of beginning.

Excepting from the above described "Lawn Area" Parcel Number 1 the area known as the "Loop Area" more particularly described as

Commencing at a point that is the intersection of the northeasterly line of Brown Race and the southeasterly line of the former Platt Street. Running thence the following four courses along the southeasterly line of former Platt Street, N 44° 27' 59" E 6.41 feet to a point. Thence N 36° 23' 44" E 76.83 feet to a point. Thence N 41° 40' 59" E 10.00 feet to a point. Thence N 41° 40' 59" E 202.27 feet to a point. Thence S 48° 19' 01" E 98.79 feet to the point of beginning.

Running thence N 56° 59' 47" E 94.90 feet to a point. Thence N 76° 48' 30" E 60.20 feet to a point. Thence S 65° 31' 43" E 39.50 feet to a point. Thence S 15° 31' 43" E 32.00 feet to a point. Thence S 50° 01' 43" E 30.90 feet to a point. Thence S 03° 53' 17" W 46.30 feet to a point. Thence S 25° 53' 17" W 28.40 feet to a point. Thence S 81° 23' 17" W 44.60 feet to a point. Thence N 81° 41' 43" W 85.50 feet to a point. Thence N 63° 26' 44" W 73.27 feet to a point. Thence N 20° 51' 16" W 20.54 feet to a point. Thence N 34° 12' 16" E 19.02 feet to the point of beginning.

The above described "Lawn Area" Parcel Number 1, with the exception of the area known as the "Loop Area", contains 50,572 square feet or 1.161 acres. The above described "Lawn Area" Parcel Number 1 being shown on a plot plan attached to Schedule B.

Also that area known as "Lawn Area" Parcel Number 2, described as

Commencing at a point that is the intersection of the northeasterly line of Browns Race and the southeasterly line of the former Platt Street. Running thence the following four courses along the southeasterly line of former Platt Street, N 44° 27' 59" E 6.41 to a point. Thence N 36° 23' 44" E 76.83 feet to a point. Thence N 41° 40' 59" E 10.00 feet to a point. Thence N 41° 40', 59" E 345.92 feet to a point. Thence S 63° 23' 48" E 368.50 feet to a point. Thence N 46° 33' 28" W 9.35 feet to the point of beginning.

Running thence S 41° 15' 00" W 60.80 feet to a point. Thence S 68° 17' 00" W 19.38 feet to a point. Thence S 36° 55' 00" W 28.70 feet to a point. Thence N 75° 32' 00" W 13.50 feet to a point. Thence N 07° 28' 00" W 27.00 feet to a point. Thence N 35° 25' 00" E 96.50 feet to a point. Thence S 47° 31' 00" E 48.80 feet to the point of beginning, containing an area of 4,327 square feet or 0.099 acres. The above described Lawn Area Parcel Number 2 being shown on a plot plan attached to Schedule B.

SCHEDULE E

ROCHESTER GAS AND ELECTRIC CORPORATION PROPERTY NUMBER 2
"LOOP AREA" DESCRIPTION

Commencing at a point that is the intersection of the northeasterly line of Brown Race and the southeasterly line of the former Platt Street.

Running thence the following four courses along the southeasterly line of the former Platt Street N 44° 27' 59" E 6.41 feet to a point. Thence N 36° 23' 44" E 76.83 feet to a point. Thence N 41° 40' 59" E 10.00 feet to a point. Thence N 41° 40' 59" E 202.27 feet to a point. Thence S 48° 19' 01" E 98.79 feet to the point of beginning.

Running thence N 56° 59' 47" E 94.90 feet to a point. Thence N 76° 48' 30" E 60.20 feet to a point. Thence S 65° 31' 43" E 39.50 feet to a point. Thence S 15° 31' 43" E 32.00 feet to a point. Thence S 50° 01' 43" E 30.90 feet to a point. Thence S 03° 53' 17" W 46.30 feet to a point. Thence S 25° 53' 17" W 28.40 feet to a point. Thence S 81° 23' 17" W 44.60 feet to a point. Thence N 81° 41' 43" W 85.50 feet to a point. Thence N 63° 26' 44" W 73.27 feet to a point. Thence N 20° 51' 16" W 20.54 feet to a point. Thence N 34° 12' 16" E 19.02 feet to the point of beginning, containing an area of 21,957 square feet or 0.504 acres. The above described "Loop Area" being shown on a plot plan attached to Schedule B.

SCHEDULE F

ROCHESTER GAS AND ELECTRIC CORPORATION PROPERTY NUMBER 2 "RIVER EDGE AREA" DESCRIPTION

Commencing at a point that is the intersection of the northeasterly line of Browns Race and the southeasterly line of the former Platt Street.

Running thence the following four courses along the southeasterly line of the former Platt Street N 44° 27' 59" E 6.41 feet to a point. Thence N 36° 23' 44" E 76.83 feet to a point. Thence N 41° 40' 59" E 10.00 feet to a point. Thence N 41° 40' 59" E 76.51 feet to the point of beginning.

Running thence along the southeasterly line of the former Platt Street N 41° 40' 59" E 310.59 feet to a point. Thence along the following three courses passing through the waters of the Genesee River S 72° 42' 14" E 181.21 feet to a point. Thence through said waters S 59° 47' 55" E 118.16 feet to a point. Thence through said waters S 42° 12' 31" E 889.57 feet to a point on the corner of a concrete retaining wall. Thence along said wall S 64° 06' 30" W 36.91 feet to a point. Thence S 46° 40' 12" W 223.11 feet to a point. Thence N. 35° 28' 19" E 41.03 feet to a point. Thence N 27° 08' 19" E 43.50 feet to a point. Thence N 04° 23' 19" E 78.40 feet to a point. Thence N 03° 55' 00" W 70.00 feet to a point. Thence N 57° 20' 00" W 75.00 feet to a point. Thence N 68° 45' 00" W 45.00 feet to a point. Thence N 74° 30' 00" W 54.00 feet to a point. Thence S 72° 24' 36" W 25.05 feet to a point. Thence S 21° 02' 00" W 61.50 feet to a point. Thence S 51° 18' 19" W 82.60 feet to a point. Thence S 72° 37' 39" W 36.25 feet to a point. Thence N 48° 30' 00" W 27.50 feet to a point. Thence S 40° 45' 00" W 39.00 feet to a point. Thence S 32° 00' 00" W 57.00 feet to a point. Thence N 45° 25' 07" W 18.03 feet to the point of beginning.

Excepting from the above described "River Edge Area", the area known as the "Lawn Area Parcel Number 2", more particularly described as

Commencing at a point that is the intersection of the northeasterly line of Browns Race and the southeasterly line of the former Platt Street. Running thence the following four courses along the southeasterly line of former Platt Street, N 44° 27' 59" E 6.41 feet to a point. Thence N 36° 23' 44" E 76.83 feet to a point. Thence N 41° 40' 59" E 10.00 feet to a point. Thence N 41° 40' 59" E 345.92 feet to a point. Thence S 63° 23' 48" E 368.50 feet to a point. Thence N 46° 33' 28" W 9.35 feet to the point of beginning.

Running thence S 41° 15' 00" W 60.80 feet to a point. Thence S 68° 17' 00" W 19.38 feet to a point. Thence S 36° 55' 00" W 28.70 feet to a point. Thence N 75° 32' 00" W 13.50 feet to a point. Thence N 07° 28' 00" W 27.00 feet to a point. Thence N 35° 25' 00" E 96.50 feet to a point. Thence S 47° 31' 00" E 48.80 feet to the point of beginning. The above described "River Edge Area", with the exception of the area known as the "Lawn Area Parcel Number 2" also described above, contains 36,550 square feet or 0.839 acres. The above described "River Edge Area" being shown on a plot plan attached to Schedule B.

Timing

~~Set~~ Sequencing

- River work
 - Demolition
 - on-site work
- Aug.
- investigation

→ need Army corp permit
2 wks.

→ make sure
River is v. far down

→ IRM Order.

Larger agreement for work.

Work Plan + Order for IRM

RGE / DEC Mtg 7-27-98

Mary Jane Peachey	DEC	2262466
Todd M. Call	DEC	226-2466
JOSEPH RYAN	DEC	851-7050
Kevin Hyton	RGE	724-8428
DENNIS MONEY	RGE	771-2113
Tom Walsh	JFM	262-3640
Jeff Williams	RGE	724-8129
Dave Napier	NYSDOH	423-8071

- Todd fix
- file

RG+E / DEC mtg. 7-27-98

- RG+E ^{internal} structure

- Buckingham Agreement

- Communication

2-way street

- RG+E was trying to ascertain \$ for cleanup.

- RG+E Conceptual Approach

Operable Units

- gasoline - cont. Soil

- intention to comply w/ STARS → SVE

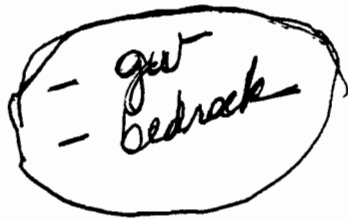
~~2~~ Ben-gas stored in tanks @ this location

one filled in w/ sand + the other is gone
free product encountered - follow the plume,

- demerition

~~to~~

- trenching 30' N+S of southern source



Structure

- Cantilever 12" out over River "should" be saved.
~~the~~ becomes sidewalk. ←
- City maintains

- discuss this
w/ Mark
redevelopment
removal of slabs
+ other side of
Front St.

- Future use. ???

spring office commercial w/ residential
Seed restriction; soil management

holder

- leave in-place; air sparge.
- have we defined nature + extent of contamination?
wrt to the holder. ↓
in + around holder
- split spoons

→ 400,000 water management
\$600,000 - 800,000
to remove holder mat'l.

- geoprobe in courtyard too.

New York State Department of Environmental Conservation
Division of Environmental Enforcement
50 Wolf Road, Room 410-A
Albany, New York 12233-5550
Telephone: (518) 457-4347
Fax: (518) 457-7819 [not for service of process]



Michael D. Zagata
Commissioner

16 November 1995

Thomas F. Walsh, Esq.
Nixon, Hargrave, Devans, & Doyle
Clinton Square, P.O. Box 1051
Rochester, New York 14603

Re RG&E (West Station)

Dear Mr. Walsh:

I enclose a duly executed original voluntary remedial agreement for your forwarding to your client.

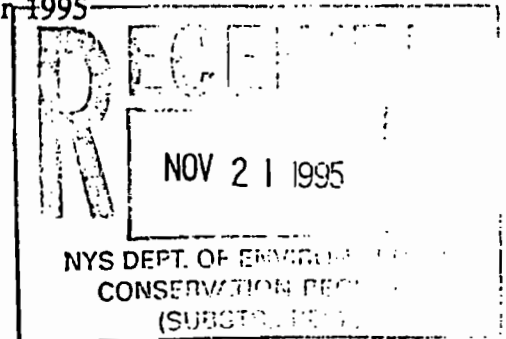
I look forward to working with you again in the future.

Sincerely,

Charles E. Sullivan, Jr.
Chief, Inactive Hazardous Waste
Site Enforcement Bureau

cc: M. Peachey (w/ copy of agreement)
C. Goddard
C. Christopoulos

CES:ces:c:r8vcp047.cst



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Response Program
for Rochester Gas and Electric
Corporation's West Station Property
by

AGREEMENT

INDEX NUMBER: D8-0001-95-10

Rochester Gas and Electric Corporation,
Volunteer.

CONSIDERING,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Agreement is entered into pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13 and ECL 3-0301.
2. Rochester Gas and Electric Corporation ("Volunteer") is a public utility with its principal offices at 89 East Avenue, Rochester, New York 14649. Volunteer owns a parcel of real property located at the foot of the High Falls on the west bank of the Genesee River in the City of Rochester. The property is sometimes known as "Beebee Park." A portion of the Beebee Park property that is the subject of this Agreement and that is more fully described in Exhibit "A" of this Agreement ("Site") contains residues associated with the historic operations of a manufactured gas plant. The residues are principally coal tar and soil containing coal tar ("Existing Contamination"). Volunteer intends to excavate and remove the Existing Contamination from the Site ("Response Action") in preparation for the property's future use as commercial/industrial/recreational land.
3. The Department alleges that the Site may be an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, based upon the presence of, inter alia, the coal tar which contains, among other constituents, benzene; and the presence of the coal tar may or may not constitute a significant threat to the environment.
4. A. ECL 27-1313.3 provides that the Department shall be responsible for inactive hazardous waste disposal site remedial programs, except as provided in Section 1389-b of the Public Health Law. ECL 27-1313.3.a(i) provides that whenever the Commissioner of Environmental Conservation finds that hazardous wastes at an inactive hazardous waste disposal site constitutes a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site to develop an inactive hazardous waste disposal site remedial program within reasonable time limits specified in the order.

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

5. Volunteer wishes to enter into this Agreement in order to ensure, and the Department hereby determines that this Agreement constitutes a demonstration, that the Response Action will be in compliance with the ECL and will not:

A. prevent or interfere significantly with any proposed, ongoing or completed remedial program at the Site, or

B. expose the public health or the environment to a significantly increased threat of harm or damage.

Volunteer also wishes to enter into this Agreement in order to resolve any potential liability it may have respecting the Site's remediation, and the Department finds that such resolution, undertaken in accordance with the terms of this Agreement, is in the public interest.

6. The Department and Volunteer, therefore, agree that the goals of this Agreement are:

A. for Volunteer to, (i) implement a Department-approved response action for the Site ("Response Program"); and (ii) reimburse the State's administrative costs, and

B. for the Department and the Trustee of New York State's environmental resources (the "Trustee"), under the circumstances described within this Agreement, to release the Volunteer and its successors and assigns, under the conditions set forth in this Agreement, from any and all claims, actions, suits, and proceedings (including but not limited to any claims for State administrative costs) by the Department or by the Trustee, which may arise under any applicable law as a result of the Existing Contamination.

7. Volunteer agrees to be bound by the terms of this Agreement. Volunteer consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Agreement, and agrees not to contest the validity of this Agreement or its terms.

IN CONSIDERATION OF AND IN EXCHANGE FOR THE DEPARTMENT'S RELEASE AND COVENANT NOT TO SUE SET FORTH IN THIS AGREEMENT, VOLUNTEER AGREES TO THE FOLLOWING:

I. Performance and Reporting of the Response Program

A. Within 30 days after the effective date of this Agreement, the Volunteer shall commence the Response Action in accordance with the Department-approved Response Program work plan (the "Work Plan") attached to this Agreement and made part of this Agreement as Exhibit "B."

B. Volunteer shall perform the Response Program in accordance with the Work Plan. The Volunteer shall notify the Department of any significant difficulties that may be encountered in implementing the Work Plan, any Department-approved modification to the Work Plan, or any Department-approved details, documents, or specifications prepared by or on behalf of Volunteer pursuant thereto, and shall not modify any such obligation unless first approved by the Department.

C. During implementation of all construction activities identified in, or to be identified in accordance with, the Work Plan, Volunteer shall have on-Site a full-time representative who is qualified to supervise the work done.

D. In accordance with the schedule contained in the Work Plan, Volunteer shall submit to the Department a final engineering report. The final engineering report shall include a detailed post-remedial operation and maintenance plan ("O&M Plan"), to the extent necessary; "as-built" drawings showing all changes made during construction, to the extent necessary; and a certification that the Response Program was implemented and all construction activities were completed in full accordance with the Work Plan, any Department-approved detail, document, or specification prepared by or on behalf of Volunteer pursuant thereto, and this Agreement. The O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

E. Should post-remedial operation and maintenance prove to be necessary, upon the Department's approval of the O&M Plan, Volunteer shall implement the O&M Plan in accordance with the schedule and requirements of the Department-approved O&M Plan.

F. Within 60 days after receipt of the final engineering report and certification, the Department shall notify Volunteer in writing whether the Department is satisfied that the Response Action was completed in compliance with the Work Plan and design.

G. Once the Site-specific cleanup objectives identified in, or to be identified in accordance with, the Work Plan have been reached, the Department shall, except for the reservations identified below, forebear from bringing any action, proceeding, or suit against Volunteer for the further investigation and remediation of the Site based upon the release or threatened release of any Existing Contamination. Nevertheless, the Department hereby reserves all of its rights concerning, and such forbearance shall not extend to, any further investigation or remedial action the Department deems necessary:

1. due to environmental conditions related to the Site that were unknown to the Department at the time of its approval of the Work Plan or the last written modification approved by the Department thereto; or

2. due to information received, in whole or in part, after the Department's approval of the final engineering report and certification, which indicates that the Response Action performed under this Agreement is not sufficiently protective of human health for the reasonably anticipated commercial/industrial/recreational uses of the Site by Volunteer

or its lessees, sublessees, licensees, or invitees.

Additionally, the Department hereby reserves all of its rights concerning, and any such release and satisfaction shall not extend to, any further investigation or abatement it deems necessary to be undertaken in the event that, Volunteer causes or suffers the 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]) after the effective date of this Agreement; or Volunteer causes a, or suffers the use of the Site to, change from the reasonably anticipated commercial/industrial/recreational uses of the Site to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health.

H. If the Department is satisfied that the Response Action was completed in compliance with the Work Plan and design, the Department shall provide Volunteer with the separate written "clean site notification" letter that is attached to this Agreement and incorporated in this Agreement as Exhibit "C" agreeing, subject to the limitations set forth in that letter, to release, covenant not to sue, and forbear from bringing any action, proceeding, or suit against the current or future owners and operators of the Site or any interest in the Site, including Volunteer, for the further investigation and remediation of the Site based upon the release or threatened release of any Existing Contamination.

II. Progress Reports

A. Volunteer shall submit to the parties identified in Subparagraph XI.A.1, in the numbers specified therein, copies of written monthly progress reports that:

1. describe the actions which have been taken toward achieving compliance with this Agreement during the previous month;
2. include all results of sampling and tests and all other data received or generated by Volunteer or Volunteer's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Agreement or conducted independently by Volunteer;
3. identify all work plans, reports, and other deliverables required by this Agreement that were completed and submitted during the previous month;
4. describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Site;
5. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of Volunteer's obligations under the Agreement, and efforts made to mitigate those delays or anticipated delays; and

6. include any modifications to any work plans that the Volunteer has proposed to the Department or that the Department has approved; and include any modifications to the Work Plan that Volunteer has proposed to the Department or that the Department has approved.

B. Volunteer shall submit these progress reports to the Department by the twentieth day of every month following the effective date of this Agreement and the Volunteer's obligation to submit the progress reports shall terminate upon their receipt of the notification pursuant to Subparagraph I.F of this Agreement.

C. Volunteer also shall allow the Department to attend, and shall provide the Department at least five days advance notice of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting, if any.

III. Review of Submittals

A. 1. The Department shall review each of the submittals Volunteer makes pursuant to this Agreement to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Agreement and generally accepted technical and scientific principles. The Department shall notify Volunteer in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. a. If the Department disapproves a submittal, it shall so notify Volunteer in writing and shall specify the reasons for its disapproval within 30 days after its receipt of the submittal (in the case of the review of the final engineering report and certification, however, such period shall be 60 days), and may request Volunteer to modify or expand the submittal; provided, however, that the matters to be addressed by such modification or expansion is within the specific scope of work as described in the Work Plan. Within 30 days after receiving written notice that Volunteer's submittal has been disapproved, Volunteer shall make a revised submittal to the Department which endeavors to address and resolve all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Volunteer in writing within 30 days of its approval or disapproval. If the Department disapproves the revised submittal, the Department and the Volunteer may pursue whatever remedies may be available at law or in equity (by declaratory relief) that may be available to them, without prejudice to either's right to contest the same. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Agreement.

B. Within 30 days after the Department's approval of the final engineering report and certification, Volunteer shall submit to the Department one microfilm copy

(16 millimeter roll film M type cartridge) of that report and all other Department-approved drawings and submittals. Such submission shall be made to Michael J. O'Toole, Jr., Director; Division of Hazardous Waste Remediation; New York State Department of Environmental Conservation; 50 Wolf Road; Albany, New York 12233-7010.

IV. Enforcement

A. This Agreement shall be enforceable as a contractual agreement under the laws of the State of New York.

B. Volunteer shall not suffer any penalty under this Agreement or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement because of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond the Volunteer's reasonable control ("force majeure event"). Volunteer shall, within five working days of when it obtains knowledge of any such force majeure event, notify the Department in writing. Volunteer shall include in such notice the measures taken and to be taken by the Volunteer to prevent or minimize any delays and shall request an appropriate extension or modification of this Agreement. Volunteer shall have the burden of proving by a preponderance of the evidence that an event is a defense to compliance with this Agreement pursuant to this Subparagraph IV.B.

V. Entry upon Site

A. Volunteer hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer by any duly designated employee, consultant, contractor, or agent of the Department or any State agency having jurisdiction with respect to the Remedial Program for purposes of inspection, sampling, and testing and to ensure the Volunteer's compliance with this Agreement. The Department shall abide by the health and safety rules in effect for work performed at the Site under the terms of this Agreement. Upon request, Volunteer shall provide the Department with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to matters addressed by this Agreement and job meetings.

VI. Payment of State Costs

Within thirty days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money not to exceed \$45,000.00 which shall represent reimbursement for the State's expenses reasonably incurred during the implementation of this Agreement with respect to the Existing Contamination including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site to date, as well as for negotiating this Agreement, reviewing and revising submittals made pursuant to this Agreement, overseeing activities conducted pursuant to this Agreement, collecting and analyzing samples, and administrative costs associated with this Agreement. Such payment shall be made by certified check payable to the Department of Environmental

Conservation. Payment shall be sent to:

Director, Bureau of Program Management
Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010.

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

VII. Reservation of Rights

A. Except as specifically provided in this Agreement with respect to Volunteer and its lessees, sublessees, successors, and assigns, and their respective secured creditors, nothing contained in this Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights with respect to any party.

B. Nothing contained in this Agreement shall prejudice any rights of the Department to take any investigatory or remedial action it may deem necessary if Volunteer fails to comply with this Agreement or if environmental conditions unknown or unforeseen at the effective date of this Agreement are encountered at the Site.

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

D. Volunteer reserves any rights it may have to contest, defend against, dispute or disprove any actions, proceedings, allegations, assertions, determinations, or orders of the Department, except with respect to the validity of this Agreement or its terms, and reserves its rights to notice, to be heard, to appeal, and to any other due process in any action or proceeding by the Department, including any action or proceeding pursuant to or to enforce this Agreement. The existence of this Agreement or the fact that Volunteer participated in activities pursuant to this Agreement shall not constitute, be construed as, nor be considered an admission of liability, fault, wrongdoing, or violation of any law, regulation, or permit condition by Volunteer, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

VIII. Indemnification

Volunteer shall indemnify and hold the Department, the State of New York, and

their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Volunteer and/or any of Volunteer's directors, officers, employees, servants, agents, successors, and assigns; provided, however, that Volunteer shall not indemnify the Department, the State of New York, and their representatives and employees if such claim, suit, action, damages, or costs relates to or arises from any unlawful, willful, negligent, grossly negligent, or malicious act or omission on the part of the Department, the State of New York, or their representatives and employees.

IX. Notice of Sale or Conveyance

A. Within 30 days after the effective date of this Agreement, the Volunteers shall file the Notice of Agreements which is attached to this Agreement as Exhibit "D," with the Monroe County Clerk to give all parties who may acquire any interest in the Property notice of this Agreement.

B. If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in the Property before the Department has notified Volunteer that the Department is satisfied that the Response Action was completed in compliance with the Work Plan and design pursuant to Subparagraph I.F of this Agreement, Volunteer shall, not fewer than 30 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Agreement.

C. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property to another person after the Department has notified Volunteer that the Department is satisfied that the Response Action was completed in compliance with the Work Plan and design pursuant to Subparagraph I.F of this Agreement, the assignee or transferee shall be bound by all the terms and conditions, and subject to all the benefits, of this Agreement, except as the Department and the assignee or transferee agree otherwise and modify this Agreement, in writing, accordingly.

X. Deed Restriction

Within 30 days of the receipt of the Department's notification pursuant to Subparagraph I.F of this Agreement, Volunteer shall, unless the requirements of this Paragraph X are waived in writing by the Department, record an instrument with the Monroe County Clerk, to run with the land, that shall prohibit the Site from ever being used for purposes other than commercial/industrial/recreational use without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department. Volunteer shall provide the Department with a copy of such instrument certified by the Monroe County Clerk to be a true and faithful copy of the instrument as recorded in the Office of the Monroe County Clerk.

XI. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

1. Communication from Volunteer shall be sent to:

Mary Jane Peachey, P.E.
New York State Department of Environmental Conservation
6274 East Avon-Lima Road
Avon, New York 14414

with copies to:

G. Anders Carlson, Ph.D.
Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203

Charles E. Sullivan, Jr.
New York State Department of Environmental Conservation
50 Wolf Road, Room 410A
Albany, New York 12233-5550

Copies of work plans and reports shall be submitted as follows:

- Four copies (one unbound) to Ms. Peachey
- Two copies to Dr. Carlson
- One copy to Mr. Sullivan

2. Communication to be made from the Department to Volunteer shall be sent to:

Kevin Hylton
Rochester Gas and Electric Corporation
89 East Avenue
Rochester, New York 14649

Thomas F. Walsh, Esq.
Nixon, Hargrave, Devans & Doyle LLP
Clinton Square
P.O. Box 1051
Rochester, NY 14603

B. The Department and Volunteer reserve the right to designate additional or different addressees for communication on written notice to the other given in accordance with this Paragraph XI.

XII. Miscellaneous

A. Volunteer shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Agreement. The responsibility for the performance of the professionals retained by Volunteer shall rest solely with Volunteer.

B. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Volunteer, and the Department also shall have the right to take its own samples. Volunteer shall make available to the Department the results of all sampling and/or tests or other data generated by Volunteer with respect to implementation of this Agreement and shall submit these results in the progress reports required by this Agreement. Volunteer shall have the right to obtain split samples and/or a copy of analytical results of all substances and materials sampled by the Department.

C. Volunteer shall notify the Department at least five working days in advance of field activities to be conducted pursuant to this Agreement.

D. 1. Subject to Subparagraph XII.D.2, Volunteer shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Volunteer's obligations under this Agreement.

2. In performing Volunteer's obligations under this Agreement, Volunteer shall be exempt from the requirement to obtain any Department permit for any activity that is conducted on the Site and that satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

E. Volunteer's officers, directors, agents, servants, and employees (in the performance of their designated duties on behalf of Volunteer) shall be bound by this Agreement. Any change in ownership or corporate status of Volunteer including, but not limited to, any transfer of assets or real or personal property shall in no way alter Volunteer's responsibilities under this Agreement. Volunteer's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Agreement in the performance of their designated duties on behalf of Volunteer.

F. Volunteer shall be responsible for ensuring that the Volunteer's contractors and subcontractors perform the work in satisfaction of the requirements of this Agreement.

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

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

H. All references to "days" in this Agreement are to calendar days unless otherwise specified.

I. The section headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Agreement.

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

2. If Volunteer desires that any provision of this Agreement be changed, Volunteer shall make timely written application, signed by Volunteer, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Ms. Peachey and to Mr. Sullivan. However, nothing in this Agreement shall be deemed to prohibit Ms. Peachey from authorizing field changes without first having received permission to do so from the Commissioner under this Subparagraph XII.J.2.

K. This Agreement constitutes an exercise of the Department's enforcement discretion and accordingly, the remedial activities required herein shall be exempt from the provisions of the State Environmental Quality Review Act. Volunteer is also exempt from any Department permitting requirement in the implementation of the Response Program and is authorized to undertake the foregoing Response Program under the authority of this Agreement.

L. The provisions of this Agreement do not constitute and shall not be deemed a waiver of any right Volunteer otherwise may have to seek and obtain contribution and/or indemnification from other potentially responsible parties or their insurers, or Volunteer's insurers, for payments made previously or in the future for response costs. To the extent authorized under 42 USC 9613 and any other applicable law, Volunteer shall not, while performing its obligations under this Agreement or thereafter, be liable for any claim, now or in the future, in the nature of contribution, indemnity or indemnification, however, characterized, by potentially responsible parties concerning the alleged Existing Contamination which is the subject matter of this Agreement. In any future action brought by Volunteer against a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the

provision of 42 USC 9613(f)(3) shall apply. Volunteer specifically reserves all rights that it may have to assert claims against its insurer and/or the potentially responsible parties with respect to the matters addressed in this Agreement, including, without limitation, claims for breach of contract, cost recovery, contribution, tortious conduct and indemnity.

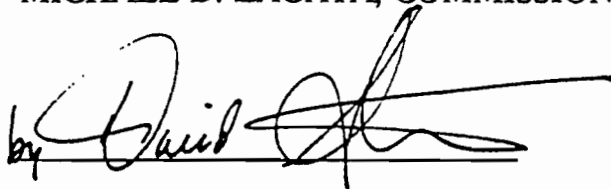
M. Volunteer's obligations under this Agreement, other than its indemnification obligation under Paragraph VIII of this Agreement, terminate when:

1. the Department has notified Volunteer that the Department is satisfied with the work as completed pursuant to Subparagraph I.F of this Agreement;
2. Volunteer has fully implemented the O&M Plan, if one is necessary at all, in accordance with the schedule and requirements of the Department-approved O&M Plan; and
3. the Department has received the sums due under Paragraph VI of this Agreement.

N. The effective date of this Agreement shall be the later of the date it is signed by the Commissioner or his designee.

DATED: , New York
, 1995

NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION
MICHAEL D. ZAGATA, COMMISSIONER


A handwritten signature in black ink, appearing to read "Michael D. Zagata", is written over a horizontal line.

CONSENT BY VOLUNTEER

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

Rochester Gas and Electric Corporation

Date: 11/10, 1995

By: 
[name and title of the signatory]

Its: Senior Vice President

STATE OF NEW YORK)
) s.s.:
COUNTY OF MONROE)

On this 10TH day of November, 1975, before me personally came Thomas S. Richards, to me known, who being duly sworn, did depose and say that s/he resides in Rochester; that s/he is the 1st Vice President of Rochester Gas and Electric Corporation, the corporation described in the Agreement and which executed the foregoing instrument; and that Thomas S. Richards signed his/her name on behalf of Rochester Gas and Electric Corporation and was authorized to do so.

Loretta Marshall Parker
Notary Public
 LORETTA MARSHALL-PARKER
 Notary Public in the State of New York
 MONROE COUNTY
 Commission Expires Dec. 12, 1996

EXHIBIT "A"

Map of Beebe Park Property Description of the Site

Commencing at a point that is the intersection of the east line of Browns Race with the south line of the former Platt Street Bridge. Running thence along the south line of the former Platt Street Bridge, the following three courses, N 44° 27' 59" E a distance of 6.41 feet to a point. Thence N 36° 23' 44" E a distance of 76.83 feet to a point. Thence N 41° 40' 59" E a distance of 10.00 feet to the point of beginning, thence,

1. N 41° 40' 59" E along the south street line of Platt Street Bridge a distance of 345.92 feet to a point on the top of the west bank of the Genesee River, thence
2. South easterly along the top of the river bank to a point on the north foundation wall of Rochester Gas & Electric Corporation's old station no. 2. Said point being S 63° 23' 48" E a distance of 368.50 feet (tie line course) from the previously described point, thence
3. S 46° 40' 11" W a distance of 319.42 feet to a point that is the northeast corner of lands owned, now or formerly, by the City of Rochester, thence
4. S 45° 33' 45" W a distance of 22.50 feet to a point, thence
5. N 55° 17' 48" W a distance of 72.29 feet to a point, thence
6. N 34° 48' 09" W a distance of 13.55 feet to a point, thence
7. N 61° 01' 33" W a distance of 41.67 feet to a point, thence
8. N 67° 40' 58" W a distance of 54.59 feet to a point, thence
9. N 74° 32' 22" W a distance of 37.25 feet to a point, thence
10. N 67° 41' 08" W a distance of 53.31 feet to a point, thence
11. N 75° 44' 05" W a distance of 74.04 feet to a point in the south line of the former Platt Street Bridge also being the place of beginning, intending to describe a parcel of land containing 2.548 acres up to tie line.

EXHIBIT "B"

Department-Approved Work Plan