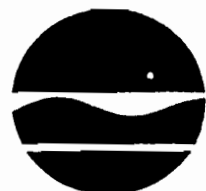


Bob S.

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



Michael D. Zagata  
Commissioner

January 11, 1996

John L. Carley, Esq.  
Senior Counsel  
Orange and Rockland Utilities, Inc.  
One Blue Hill Plaza  
Pearl River, New York 10965

RE: Orange and Rockland Utilities, Inc.'s Former Manufactured Gas Plant Sites

Dear Mr. Carley:

I enclose an original order covering the subject sites.

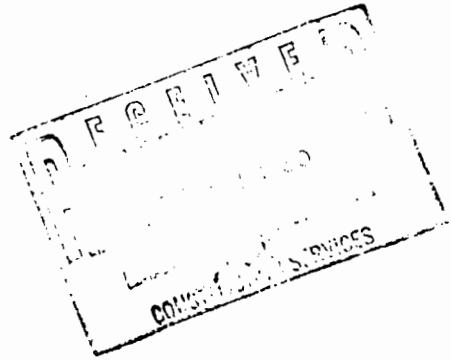
Thank you for your assistance in this matter.

Sincerely yours,

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

Enclosures

Jim Van Hoesen ✓



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----  
In the Matter of the Development  
and Implementation of a Former  
Manufactured Gas Plant (MGP) Sites  
Investigation and Remediation Program  
by Orange and Rockland Utilities, Inc.

ORDER ON  
CONSENT

Index #D3-0002-9412  
-----

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law, which, inter alia, requires the Department to carry out the environmental policy of the State set forth of the ECL 1-0101. ECL 3-0301.1.
2. Orange and Rockland Utilities, Inc. ("Respondent") is a business corporation organized under the laws of the State of New York.
3. Respondent is the present or former owner of the former manufactured gas plant ("MGP") sites at the following locations at which coal tar and associated hazardous substances ("MGP wastes") were, or which may have been, disposed at various times in the past: Middletown (Genung Street); Middletown (Fulton Street); Port Jervis; Suffern; Haverstraw; and Nyack (individually, "the Site;" collectively, "the Sites").
4. The Department's authority to require abatement and remediation of releases of, inter alia, hazardous substances as that term is defined in 42 U.S.C. 9601(14), including MGP wastes, that are in violation of law or that exceed State environmental quality standards (as those set forth in 6 NYCRR Part 703) ("hazardous substances"), is varied, including, but not limited to, ECL 1-0101, 3-0301, 71-1929, 71-2703, and 71-2705. In addition, the Department asserts that it has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution caused by, inter alia, the release of hazardous substances into the environment. ECL 3-0301.1.i. Furthermore, the Department asserts that it has authority to require abatement and remediation of significant threats to the public health or the environment caused by threatened releases of hazardous substances that are hazardous wastes as that term is defined in ECL 27-1301.
5. The Department and Respondent agree that the goals of this Order are for Respondent to (i) gather and provide data pertaining to each of the Sites sufficient to constitute a Preliminary Site Assessment ("PSA") that will enable the Department to characterize hazardous substances, as that term is defined in 42 USC 9601(14) (including

MGP wastes) which are or may be present at the Site and to enable the Department to determine whether such hazardous substances constitute a significant threat to public health or the environment necessitating remediation; (ii) authorize Respondent to develop and implement Interim Remedial Measures ("IRMs") that the Department determines to be appropriate; and (iii) pay for the State's reasonable administrative and oversight costs associated with implementation of this Order.

6. Respondent, without admitting or denying the Department's authority to require investigation and remediation of hazardous substances at the sites listed in Table "A" of Paragraph I of this Order and having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order; and agrees not to contest the validity of this Order or its terms.

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

I. Initial Submittals

Unless otherwise agreed with respect to specific Sites, no later than 45 days after the effective date of this Order, Respondent shall submit to the Department all data and information it has respecting each Site listed in Table "A" of this Paragraph. The data and other information shall include, at a minimum:

A. A brief history and description of the Site, including the types, quantities, physical state, location, and, if applicable, dates of disposal of MGP wastes, including methods of disposal and spillage of such wastes;

B. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of each Site and areas in the vicinity of each Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs; and

C. An 8.5 inch by 11 inch portion of a United States Geological Survey topographic map of the Site which contains the name of the quadrangle and an arrow indicating the orientation of a northern compass point.

TABLE "A"

Middletown Gas Works: Fulton Street	Middletown Gas Plant: Genung Street
Port Jervis Gas Plant	Suffern Gas Plant
Haverstraw Gas Plant	Nyack Gas Plant

## II. Preliminary Site Assessment

A. The Department shall review the data and information Respondent shall submit under Paragraph I of this Order for the purpose of determining whether additional data need to be obtained to enable it to characterize the nature and extent of distribution of any hazardous substances at the Site and to determine whether such substances constitute a significant threat to public health or the environment necessitating remediation. For those Sites pertaining to which the Department determines that there exist sufficient data to enable it to make such characterization and determination, the Department shall inform Respondent of its determination. For those Sites pertaining to which the Department determines that more data must be acquired to enable it to make such characterization and determination, the Department shall inform Respondent in writing of its determination and identify the information which must be obtained, and Respondent shall undertake such additional investigation (referred to below as a "Preliminary Site Assessment," or "PSA") as the Department shall require in accordance with a schedule the Department shall determine in consultation with Respondent. Such schedule shall include the date by which Respondent shall submit to the Department a work plan to acquire the information the Department shall require and a date by which field work necessary to develop such information shall commence ("PSA Work Plan"). In no event shall such schedule require Respondent to commence more than two PSAs in a single calendar year.

B. The Department may revise the PSA Work Plan submittal date and the field work start date, or either of them, for any Site identified in Table "A" of Paragraph I if information is developed, or otherwise becomes available, indicating the existence of a condition or circumstance justifying immediate or near-term evaluation or response at that Site which otherwise would not be addressed until a later time.

C. Each Site's PSA Work Plan shall describe the methods and procedures to be implemented in undertaking a study at the Site to which it pertains that will cause the generation of information sufficient to enable the Department to characterize the nature and extent of distribution of any hazardous substances at the Site and to determine whether such substances constitute a significant threat to public health or the environment necessitating remediation. Hence, each Site's PSA Work Plan shall include, but not be limited to, the following:

1. A chronological description of the anticipated investigative activities together with a schedule for the performance of these activities. Such schedule shall take into account, at a minimum, the submission of draft documents, Department review of such documents, and submission of final approvable documents;

2. A Sampling and Analysis Plan that shall include:

- a. A quality assurance project plan that describes the quality

assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience, and

b. A field sampling plan that defines sampling and data gathering methods in a manner consistent with appropriate provisions of the "Compendium of Superfund Field Operations Method" (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as supplemented by the Department; and

3. A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the investigation, which shall be prepared in accordance with 29 CFR 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan if necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.

### III. IRMs

A. 1. Respondent may propose one or more IRMs for any Site.

2. In proposing each IRM, Respondent shall submit to the Department a work plan that includes a chronological description of the anticipated IRM activities together with a schedule for performance of those activities (an "IRM Work Plan" for that Site).

3. Upon the Department's determination that the proposal is an appropriate IRM and upon the Department's approval of such work plan, the IRM Work Plan shall be incorporated into and become an enforceable part of this Order; and Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved IRM Work Plan, detailed documents and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, contingency plan, and (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto. Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this Order. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department.

4. During implementation of all construction activities identified in the Department-approved IRM Work Plan, Respondent shall have on-Site a full-time

representative who is qualified to supervise the work done.

5. Within the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by that individual that all activities that comprised the IRM were performed in full accordance with the Department-approved IRM Work Plan, detailed documents and specifications, and this Order.

a. If the performance of the Department-approved IRM encompassed construction activities, the final engineering report also shall include a detailed post-remedial operation, maintenance, and monitoring plan ("IRM O&M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification by a professional engineer that the IRM was implemented and all construction activities were completed in accordance with the Department-approved detailed documents and specifications for the IRM and all such activities were personally witnessed by him or her or by a person under his or her direct supervision. The IRM O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

b. Upon the Department's approval of the IRM O&M Plan, Respondent shall implement the IRM O&M Plan in accordance with the requirements of the Department-approved IRM O&M Plan.

6. After receipt of the final engineering report and certification, the Department shall notify Respondent in writing whether the Department is satisfied that the IRM was completed in compliance with the Department-approved IRM Work Plan and design.

B. 1. In implementing any IRM approved by the Department under this Order, Respondent shall be exempt from the requirement to obtain any permit issuable by the Department for an activity satisfying the criteria set out in Subparagraph III.B.2 of this Order.

2. The following criteria must be met:

a. The activity is conducted on the Site. For purposes of this Order, an activity is on the Site:

- (i) if it is conducted on the same premises as the Site, or
- (ii) if it is conducted on different premises that are under common control or are contiguous to or physically connected with the Site and the activity manages exclusively hazardous substances for which Respondent is liable (except

in situations where the PSA discloses the existence of off-Site hazardous substance deposits derived from, or otherwise related to materials deposited on-Site, in which case such deposits shall be deemed subject to this Order to the extent Respondent is able to obtain access for purposes of investigation and/or removal); and

(iii) the activity is conducted in a manner which satisfies all substantive technical requirements applicable if the activity were conducted pursuant to a permit issued by the Department.

#### IV. Performance and Reporting of PSA

A. 1. In accordance with the schedule contained in a Site's Department-approved PSA Work Plan, Respondent shall commence that Site's PSA.

2. Respondent shall perform the PSA in accordance with that Site's Department-approved PSA Work Plan.

3. During the performance of that Site's Department-approved PSA, Respondent shall have at such Site a full-time representative who is qualified to supervise the work done. Respondent's designated representative may be a qualified employee of a consultant or contractor.

4. In accordance with the schedule contained in a particular Site's Department-approved PSA Work Plan, Respondent shall prepare a PSA Study Report pertaining to that Site that shall:

a. include all data generated and all other information obtained during the investigation of that Site;

b. provide all of appropriate assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph II.D of this Order; and

c. include a certification by the individual or firm with primary responsibility for the day to day performance of the PSA for that Site that all activities that comprised the Investigation were performed in full accordance with the Department-approved PSA Work Plan for that Site.

#### V. Progress Reports and Meetings

A. Respondent shall submit to each of the parties set forth in Paragraph XIII of this Order two copies of written monthly progress reports that:

1. describe the actions which have been taken toward achieving

compliance with this Order during the previous month;

2. identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;

3. 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 each Site;

4. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; and

5. include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved. Respondent shall submit these progress reports to the Department with respect to each Site by the 10th day after the end of the month to which the report pertains.

B. Respondent shall allow the Department to attend, and shall provide the Department at least seven days advance notice of the occurrence of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however, that if circumstances are such as to prevent Respondent from providing the Department with such seven day notice period, Respondent shall provide as much advance notice as possible, under the circumstances.

## VI. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent is required to make pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the submittal discussed in Subparagraph II.C.3 of this Order. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that in good faith attempts to address and resolve all of the Department's stated reasons for disapproving the first submittal. The Department may provide additional time to Respondent to make such revised submittal if the Department's comments are substantial.



b. Within a reasonable time after receipt of the revised submittal so as to not cause Respondent to be unable to comply with subsequent obligations and schedule deadlines as presented in Department-approved work plans, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law, unless Respondent exercises the dispute resolution procedure described in Paragraph XIV of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

#### VII. Penalties

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

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action for enforcement of this Order if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order.

#### VIII. Entry upon Site

Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of the Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order.

#### IX. Payment of State Costs

A. Within 30 days after receipt of an itemized invoice from the Department,

Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses (including, but not limited to, direct labor and fringe benefits, overhead, travel, analytical costs, and contractor costs) incurred by the State of New York for work associated with reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with administering the requirements of this Order.

B. Each payment shall be made by check payable to the Department of Environmental Conservation and shall be sent to:

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

C. Respondent may dispute an invoice by informing the Department in writing within 30 days of receipt of such invoice that the amount of such invoice is unreasonable. For purposes of this Order, the sole grounds for determining that an invoice is unreasonable are that it contains clerical errors; and that all or a portion of a billing cannot be substantiated by the documentation identified in Subparagraph IX.D or IX.E, as appropriate, of this Order; and/or that it does not cover an activity addressed by this Order. The procedures contained in Subparagraph XIV.A of this Order shall be used to resolve such dispute, and Respondent shall pay the amount as those procedures shall determine Respondent shall pay, within the time period they shall require.

D. Actual personal service costs will be based on Site-specific time and activity ("T&A") costs. Non-personal service costs will be prorated based on the type of cost incurred: general costs (such as, supplies and equipment) will be prorated evenly among the Sites subject to this Order; while other project-related costs will be prorated based on the percentage of T&A incurred for each Site subject to this Order during that time period.

E. Actual costs incurred will be documented by T&A reports for personal service costs. Copies of actual invoices will not be provided but shall be made available for auditing purposes.

X. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights.

B. Nothing contained in this Order shall be construed to prohibit the

Commissioner or his duly authorized representative from exercising any summary abatement powers.

**XI. Indemnification**

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, and/or Respondent's directors, officers, employees, servants, agents, successors, and assigns; provided, however, that Respondent shall not indemnify the Department, the State of New York, and their representatives and employees in the event that such claim, suit, action, damages, or cost relate to or arise from any unlawful, willful, grossly negligent, or malicious acts or omissions on the part of the Department, the State of New York, or their representatives and employees.

**XII. Public Notice**

A. Within 30 days after the effective date of this Order, Respondent shall file, with respect to those Sites, or portions of them, that Respondent owns, a Declaration of Covenants and Restrictions with the Clerk of the County within which each such Site is located to give all parties who may acquire any interest in such Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in any Site, Respondent shall, not fewer than 60 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 of the Site in question and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order and shall accompany such notification with a copy of this Order.

**XIII. Communications**

A. All formal submissions in writing of plans and reports required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

Submissions from Respondent shall be sent to:

Charles N. Goddard, P.E.  
Assistant Director  
Division of Hazardous Waste Remediation  
New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233-7010

with copies to:

1. G. Anders Carlson, Ph.D., Director  
Bureau of Environmental Exposure Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203
2. Regional Director  
New York State Department of Environmental Conservation  
21 South Putt Corners Road  
New Paltz, New York 12561
3. Charles E. Sullivan, Jr.  
Division of Environmental Enforcement  
New York State Department of Environmental Conservation  
50 Wolf Road, Room 410-A  
Albany, New York 12233-5550

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

1. Six copies (one unbound) to Mr. Goddard
2. Two copies to Dr. Carlson
3. One copy to Mr. Sullivan

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

John L. Carley, Esq.  
Orange and Rockland Utilities, Inc.  
One Blue Hill Plaza  
Pearl River, New York 10965

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

#### XIV. Miscellaneous

A. 1. This Subparagraph XIV.A applies only to those Sites identified in Table "A" of Paragraph I of this Order concerning which the Department determines under this Order that a PSA must be prepared.

2. If after conferring in good faith, there remains a dispute between Respondent and the Department concerning a provision of this Order identified as subject to this Subparagraph's procedures, within the time period provided in that provision Respondent serve on the Department a request for an appointment of an Administrative Law Judge ("ALJ"), and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis, or opinion supporting its position, and all supporting documentation on which Respondent relies (hereinafter called the "Statement of Position"). The Department shall serve upon Respondent its Statement of Position, including supporting documentation no later than ten (10) business days after receipt of Respondent's Statement of Position. Respondent shall have five (5) business days after receipt of the Department's Statement of Position within which to serve upon the Department a reply to the Department's Statement of Position, and in the event Respondent serves such a reply, the Department shall have five (5) business days after receipt of Respondent's reply to the Department's Statement of Position within which to serve upon Respondent its own further reply. In the event that the periods for exchange of Statements of Position and replies may cause a delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice by the Department as agreed to by Respondent.

3. The Department shall maintain an administrative record of any dispute being addressed under this Subparagraph. The record shall include the Statement of Position of each party served pursuant to Subparagraph XIV.A(2) and any relevant information. The record shall be available for review of all parties and the public.

4. Upon review of the administrative record as developed pursuant to this Subparagraph, the ALJ shall issue a final decision and order resolving the dispute. If the matter in dispute concerns a submittal,

a. Respondent shall revise the submittal in accordance with the Department's specific comments, as may be modified by the ALJ and except for those which have been withdrawn by the ALJ, and shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless the ALJ revises the time frame in the ALJ's final decision and order resolving the dispute.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval of the revised submittal.

c. If the revised submittal fails to address the Department's specific comments, as may be modified by the ALJ, and the Department disapproves the revised submittal for this reason, Respondent shall be in violation of this Order and the ECL.

5. In review by the ALJ of any dispute pursued under this Subparagraph, Respondent shall have the burden of proving by a preponderance of the evidence that the Department's position should not prevail.

6. A deadline involving any matter that is the subject of the dispute resolution process described in this Subparagraph shall be held in abeyance while it is the subject of the dispute resolution process unless the Department and Respondent otherwise agree in writing. The invocation of the procedures stated in this Subparagraph shall constitute an election of administrative remedies by Respondent, and such election of this remedy shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Respondent regarding the issue in dispute.

B. All activities and submittals required by this Order shall address, to the extent practicable, both on-Site and off-Site contamination resulting from the disposal of hazardous substances at each Site.

C. Respondent 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 Order. Within 30 days after completion of Respondent's retainer process resulting in the selection of a particular firm or individual to perform any of such obligations, Respondent shall submit to the Department a summary of the experience, capabilities, and qualifications of the firm or individual retained. Respondent must obtain the Department's approval of these firms or individuals before the initiation of any activities for which the Respondent and such firms or individuals will be responsible, and such approval will not be unreasonably withheld.

D. The Department and Respondent each shall have the right to take its own samples and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the other party. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order, shall include a tabular summary of any such results in the progress reports required by this Order.

E. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order. The Department's project manager is hereby authorized to approve any modification to an activity to be conducted under a Department-approved work plan in order to adapt the activities to be undertaken under such work plan to the conditions actually encountered in the field.

F. Respondent shall use reasonable efforts to obtain on a timely basis, authorizations, including, without limitation, permits, easements, rights of way, rights of entry, and approvals which are necessary to carry out any of its obligations under the

Order. Respondent shall promptly notify the Department in the event of its inability to obtain such authorizations on a timely basis. In such event, the parties shall proceed as follows:

The Department may, consistent with its legal authority, assist in obtaining, as appropriate, all such authorizations which Respondent was unable to obtain, or could not obtain without terms and conditions which effectively prevent implementation of the order. In the event that the Department exercises its power of eminent domain in order to effectuate the purpose and goals of the order, Respondent shall reimburse the Department for the amount of just compensation so provided in the exercise of such power. If, despite Respondent's efforts described in this Subparagraph, Respondent does not obtain the aforementioned authorizations on a timely basis or if Respondent obtains authorizations containing terms and conditions which effectively prevent compliance with the terms and conditions of the Order, the time for performance of obligations under the Order shall be extended, as appropriate. If, despite Respondent's reasonable efforts, such authorizations or access cannot be obtained, the Department and Respondent shall negotiate a modification to this Order enlarging times for or modifying or excusing performance, as appropriate. If however, the parties cannot agree on such modification, Respondent shall be in violation of this Order unless, within ten (10) days of the date of the Department's decision not to modify this Order, the Department receives written notice from Respondent notifying the Department of the existence of a dispute in accordance with Subparagraph XIV.A of this Order.

Respondent shall not be required to obtain permits for certain work conducted under this Order consistent with the criteria set forth in 6 NYCRR 375-1.7.

G. If Respondent determines, in connection with any given Site, that a valid claim exists in favor of Respondent as against any other potentially responsible party, for contribution toward response costs deemed necessary by the Department in connection with such Site (or for recovery of an appropriate portion of such costs previously incurred by Respondent), the Department shall provide, in a timely manner, information responsive to any reasonable request (otherwise in conformity with Freedom of Information Law requirements) by such party related to conditions at the Site and any other relevant information that may be helpful in substantiating Respondent's claim. Similarly, if Respondent requests access to non-privileged and otherwise disclosable information in the Department's possession and relevant to the potential liability of any person or entity who may be subject to such claim by Respondent for contribution or cost recovery, the Department will take reasonable steps to expedite Respondent's access to such information.

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

and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

I. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work to be done under this Order in accordance with this Order.

J. All references to "professional engineer" in this Order are to an individual licensed and registered to practice professional engineering 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.

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

L. 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 of the provisions of this Order.

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

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

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

O. The effective date of this Order shall be the date it is signed by the



Commissioner or his designee.

DATED: 1/18, New York  
, 1996

MICHAEL D. ZAGATA  
Commissioner  
New York State Department of Environmental Conservation

  
by: Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

Respondent hereby waives its right to a hearing herein as provided by law; consents to the issuance and entry of this Order; and agrees to be bound by its terms, not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and not to contest the validity of this Order or its terms.

ORANGE AND ROCKLAND UTILITIES, INC.

by:

[Handwritten Signature]

Typed name of signer: G. D. CALIENDO

Title of signer: VICE PRESIDENT & GENERAL COUNSEL

Date signed: 1/2/96

STATE OF NEW YORK )

) ss:  
COUNTY OF Rockland)

On this 2nd day of January, 1996, before me personally appeared G. D. Caliendo, to me known, who, being duly sworn, did depose and say that he resides in 4 Valenza Lane, Blauvelt NY; that he is Vice President & General Counsel of Orange and Rockland Utilities, Inc.; that he executed the foregoing instrument on behalf of Orange and Rockland Utilities, Inc.; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

[Handwritten Signature]

Notary Public State of New York

Registration number: 4906281

My commission expires: 8/31/97

JVH-Original  
XC: Lori King  
Laura Zeppke  
Gardiner Cross  
10/2/98

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of  
Remedial Investigations and Feasibility Studies      ORDER  
for four Former Manufactured Gas Plant              ON  
(MGP) Sites    CONSENT  
by

Orange and Rockland Utilities, Inc.                      Index #D3-0001-98-03

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law, which, *inter alia*, requires the Department to carry out the environmental policy of the State set forth of the ECL 1-0101. ECL 3-0301.1.
2. Orange and Rockland Utilities, Inc. ("Respondent") is a business corporation organized under the laws of the State of New York.
3. Respondent is the present or former owner of the former manufactured gas plant ("MGP") sites at the following locations at which coal tar and associated hazardous substances ("MGP wastes") were, or which may have been, disposed at various times in the past: Middletown (Fulton Street); Suffern; Haverstraw (Clove & Maple); and Haverstraw (Maple & West) (individually, "the Site;" collectively, "the Sites").
4. The Department's authority to require abatement and remediation of releases of, *inter alia*, hazardous substances as that term is defined in 42 U.S.C. 9601(14), including MGP wastes, that are in violation of law or that exceed State environmental quality standards (as those set forth in 6 NYCRR Part 703) ("hazardous substances"), is varied, including, but not limited to, ECL 1-0101, 3-0301, 71-1929, 71-2703, and 71-2705. In addition, the Department asserts that it has the power, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution caused by, *inter alia*, the release of hazardous substances into the environment. ECL 3-0301.1.i. Furthermore, the Department asserts that it has authority to require abatement and remediation of significant threats to the public health or the environment caused by threatened releases of hazardous substances that are hazardous wastes as that term is defined in ECL 27-1301.
5. The Department and Respondent agree that the goals of this Order are for Respondent to (i) implement a Remedial Investigation and Feasibility Study ("RI/FS") for each of the Sites in accordance with the RI Work Plans attached to this Order as Exhibits "A," "B," and

"C;" and "D" and with the FS Work Plans to be developed under this Order; (ii) authorize Respondent to develop and implement Interim Remedial Measures ("IRMs") that the Department determines to be appropriate; and (iii) pay for the State's reasonable administrative and oversight costs associated with implementation of this Order.

6. Respondent, without admitting or denying the Department's authority to require investigation and remediation of hazardous substances at the Sites and having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order; and agrees not to contest the validity of this Order or its terms.

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

I. Performance and Reporting of Remedial Investigation

A. Respondent shall commence and perform the Remedial Investigation for each of the Sites in accordance with the schedule contained in the Department-approved RI Work Plan pertaining to that Site.

B. During the performance of a Remedial Investigation, Respondent shall have on-site a full-time representative who is qualified to supervise the work done.

C. Within the time frame set forth in the Department-approved RI Work Plan for a Site, Respondent shall prepare a Remedial Investigation Report that shall:

1. include all data generated and all other information obtained during the Remedial Investigation:

2. provide all of the assessments and evaluations set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 USC 9601 *et seq.*], as amended, the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300], the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted, and appropriate USEPA and Department technical and administrative guidance documents;

3. identify any additional data that must be collected; and

4. include a certification by the individual or firm with primary responsibility for the day to day performance of the Remedial Investigation that all activities that comprised the Remedial Investigation were performed in full accordance with the

Department-approved RI Work Plan.

## II. Feasibility Study

A. 1. Within 30 days after the Department's acceptance of the Remedial Investigation Report for a Site, Respondent shall submit to the Department for its review and acceptance an FS Work Plan for that Site that shall provide a chronological description of the anticipated FS activities together with a schedule for the performance of those activities and that shall incorporate all elements of an FS as set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph I.C.2 of this Order.

2. In accordance with the schedule contained in the Department-approved FS Work Plan for that Site, Respondent shall submit a complete Feasibility Study evaluating on-Site and off-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards at that Site attributable to the disposal of hazardous substances; provided, however, that the Feasibility Study for the Suffern Site shall evaluate on-Site and off-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards at that Site attributable only to the disposal of hazardous substances related to the operations and activities of Respondent and its predecessors. The Feasibility Study shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Feasibility Study was prepared in accordance with this Order.

B. Respondent shall perform and prepare the Feasibility Study in accordance with the Department-approved FS Work Plan and in a manner consistent with CERCLA, the NCP, and the guidance documents identified in Subparagraph I.C.2 of this Order.

C. After the Department's approval of the Feasibility Study, Respondent shall cooperate and assist the Department in soliciting public comment on the FS and on the proposed remedial action plan, in accordance with CERCLA, the NCP, the guidance documents identified in Subparagraph I.C.2 of this Order, and with any Department policy and guidance documents in effect at the time the public comment period is initiated. After the close of the public comment period, the Department shall select a final remedial alternative for the Site in a Record of Decision.

## III. Interim Remedial Measures

A. 1. Respondent may propose one or more IRMs for any Site.

2. In proposing each IRM, Respondent shall submit to the Department a work plan that includes a chronological description of the anticipated IRM activities together with a schedule for performance of those activities (an "IRM Work Plan" for that Site).

3. Upon the Department's determination that the proposal is an appropriate IRM and upon the Department's approval of such work plan, the IRM Work Plan shall be incorporated into and become an enforceable part of this Order; and Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved IRM Work Plan, detailed documents and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, contingency plan, and (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto. Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this Order. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department.

4. During implementation of all construction activities identified in the Department-approved IRM Work Plan, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

5. Within the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by that individual that all activities that comprised the IRM were performed in full accordance with the Department-approved IRM Work Plan, detailed documents and specifications, and this Order.

a. If the performance of the Department-approved IRM encompassed construction activities, the final engineering report also shall include "as-built" drawings (including all changes made to the Remedial Design during construction); and a certification by a professional engineer that the IRM was implemented and all construction activities were completed in accordance with the Department-approved detailed documents and specifications for the IRM and all such activities were personally witnessed by him or her or by a person under his or her direct supervision. Respondent shall submit a detailed post-remedial operation, maintenance, and monitoring plan ("IRM O&M Plan"), if needed, alongwith the final engineering report. The IRM O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

b. Upon the Department's approval of the IRM O&M Plan, Respondent shall implement the IRM O&M Plan in accordance with the requirements of the Department-approved IRM O&M Plan.

6. After receipt of the final engineering report and certification, the

Department shall notify Respondent in writing whether the Department is satisfied that the IRM was completed in compliance with the Department-approved IRM Work Plan and design.

B. 1. In implementing any IRM approved by the Department under this Order, Respondent shall be exempt from the requirement to obtain any permit issuable by the Department for an activity satisfying the criteria set out in Subparagraph III.B.2 of this Order.

2. The following criteria must be met:

a. The activity is conducted on the Site. For purposes of this Order, an activity is on the Site:

(i) if it is conducted on the same premises as the Site, or

(ii) if it is conducted on different premises that are under common control or are contiguous to or physically connected with the Site and the activity manages exclusively hazardous substances for which Respondent is liable (except in situations where the PSA discloses the existence of off-Site hazardous substance deposits derived from, or otherwise related to materials deposited on-Site, in which case such deposits shall be deemed subject to this Order to the extent Respondent is able to obtain access for purposes of investigation and/or removal); and

(iii) the activity is conducted in a manner which satisfies all substantive technical requirements applicable if the activity were conducted pursuant to a permit issued by the Department.

#### IV. Progress Reports

A. Respondent shall submit to each of the parties identified in Subparagraph XII.B of this Order in the numbers set forth therein copies of written monthly progress reports that:

1. describe the actions which have been taken toward achieving compliance with this Order during the previous month;

2. identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;

3. 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 each Site;

4. include information regarding percentage of completion, unresolved

delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; and

5. include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved. Respondent shall submit these progress reports to the Department with respect to each Site by the 10th day after the end of the month to which the report pertains.

B. Respondent shall allow the Department to attend, and shall provide the Department at least seven days advance notice of the occurrence of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however, that if circumstances are such as to prevent Respondent from providing the Department with such seven day notice period, Respondent shall provide as much advance notice as possible, under the circumstances. At any such meetings or inspections, the Department will direct its comments or suggestions to those present representing Respondent.

#### V. Review of Submittals

A. 1. The Department shall review each of the submittals Respondent is required to make pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done, in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for any health and safety plan. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

2. a. If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that in good faith attempts to address and resolve all of the Department's stated reasons for disapproving the first submittal. The Department may provide additional time to Respondent to make such revised submittal if the Department's comments are substantial.

b. Within a reasonable time after receipt of the revised submittal so as to not cause Respondent to be unable to comply with subsequent obligations and schedule deadlines as presented in Department-approved work plans, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent shall be in violation of this Order and the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law, unless Respondent exercises the dispute resolution procedure described in Paragraph XIII



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

B. The Department may require Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

## VI. Penalties

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

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action for enforcement of this Order if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster arising exclusively from natural causes which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five-day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order.

## VII. Entry upon Site

Respondent hereby consents to the entry upon each of the Sites or areas in the vicinity of each of the Sites which may be under the control of Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order.

## VIII. Payment of State Costs

The Department shall establish an interest-bearing account into which the Department shall place all monies received from Respondent under the provisions of this Paragraph in order to pay for the State's expenses (including, but not limited to, direct labor and fringe benefits, overhead, travel, analytical costs, and contractor costs) incurred by the State of New York to the date of the Department's ROD for the last of the Sites whose RI/FS is performed under this Order, to fund work associated with each Site to the effective date of this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with administering the requirements of this Order. Respondent shall make payments to the Department as follows:

A. Within 30 days after the effective date of this Order, Respondent shall submit to the Department the sum of \$160,000, which shall represent the State's estimate of the first year expenses (including, but not limited to, direct labor and fringe benefits, overhead, travel, analytical costs, and contractor costs) incurred by the State of New York to fund environmental monitors for work associated with reviewing and revising submittals made pursuant to this Order to date, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with administering the requirements of this Order. Respondent shall make subsequent quarterly payments to the Department for the duration of this Order in order to maintain an account balance sufficient to meet the next nine months' anticipated above-described State costs. Each quarterly billing will be based on expenditures incurred to date. The quarterly billing will take into account matters such as inflation, salary increases, accrued interest to be applied to the balance, changes in operating hours and procedures and the need for additional personnel and supervision of such personnel by full-time supervisors. Costs and expenses to be covered by this account include:

1. Direct personal service costs and fringe benefits of the State's staff assigned to work associated with the Site to the effective date of this Order, reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with administering the requirements of this Order, including their supervisors and including the costs of replacement personnel for the persons regularly assigned to these duties;

2. Direct non-personal service costs, including but not limited to purchase of a vehicle if necessary and its full operating costs, any appropriate chemical sampling and analysis, travel, supplies, and contractual costs;

3. Indirect support or overhead costs at the annually approved indirect support cost rate; and

4. Consultant services, provided, however, that the Department shall consult with Respondent before retaining same.

B. The Department shall notify Respondent in writing when a quarterly payment is due by submitting a quarterly billing. Respondent shall make such payment in the form of a check payable to the order of the New York State Department of Environmental Conservation and shall submit such payment to the Department at the following address no later than 30 days from receipt of such billing:

New York State Department of Environmental Conservation  
50 Wolf Road, Room 611  
Albany, NY 12233-1510  
ATTENTION: Director of Environmental Monitors

Payments are to be in advance of the period in which they will be expended.

C. Upon termination of this Order and upon payment of any outstanding costs and expenses, the Department shall return the unexpended balance, including interest, to Respondent.

D. Actual personal service costs will be based on a Site-specific time and activity ("T&A") code. Non-personal service costs are prorated based upon the percentage of T&A incurred for each Site for that time period.

E. Actual costs incurred will be documented by quarterly T&A reports for personal service costs. Non-personal service costs will be documented by expenditure reports. Copies of actual invoices will not be provided but shall be made available for auditing purposes.

F. Respondent may dispute an invoice by informing the Department in writing within 30 days of receipt of such invoice that the amount of such invoice is unreasonable. For purposes of this Order, the sole grounds for determining that an invoice is unreasonable are that it contains clerical errors; and that all or a portion of a billing cannot be substantiated by the documentation identified in this Paragraph VIII of this Order; and/or that it does not cover an activity addressed by this Order. The procedures contained in Subparagraph XIII.A of this Order shall be used to resolve such dispute, and Respondent shall pay the amount as those procedures shall determine Respondent shall pay, within the time period they shall require.

#### IX. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's civil, criminal, or administrative rights (including, but not limited to, nor exemplified by, the right to recover natural resource damages) or authorities.

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

#### X. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, and/or Respondent's directors, officers, employees, servants, agents, successors, and assigns; provided, however, that Respondent shall not indemnify the Department, the State of New York, and their representatives and employees in the event that such claim, suit, action, damages, or cost relate to or arise from any unlawful,

willful, grossly negligent, or malicious acts or omissions on the part of the Department, the State of New York, or their representatives and employees.

XI. Public Notice

A. Within 30 days after the effective date of this Order, Respondent shall file, with respect to each of the Sites, or portions of them, that Respondent owns, a Declaration of Covenants and Restrictions with the Clerk of the County within which each such Site is located to give all parties who may acquire any interest in such Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in any Site, Respondent shall, not fewer than 60 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 of the Site in question and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order and shall accompany such notification with a copy of this Order.

XII. Communications

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

1. Communication from Respondent shall be sent to:

James G. Van Hoesen, P.E.  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233-7010 ..

with copies to:

Director, Bureau of Environmental Exposure Investigation  
New York State Department of Health  
2 University Place  
Albany, New York 12203

Regional Director  
New York State Department of Environmental Conservation  
21 South Putt Corners Road  
New Paltz, New York 12561

Charles E. Sullivan, Jr., Esq.  
Division of Environmental Enforcement  
New York State Department of Environmental Conservation  
50 Wolf Road, Room 627  
Albany, New York 12233-5500

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

John L. Carley, Esq.  
Orange and Rockland Utilities, Inc.  
One Blue Hill Plaza  
Pearl River, New York 10965

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

1. Four copies (one unbound) to Director, Division of Environmental Remediation
2. Two copies to Dr. Carlson

C. 1. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to Director, Division of Environmental Remediation, a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

2. Within 30 days after the Department's approval of the RI/FS for a Site, Respondent shall submit one electronic copy (AutoCad or Intergraph) copy of that RI/FS to Director, Division of Environmental Remediation.

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

### XIII. Miscellaneous

A. 1. If after conferring in good faith, there remains a dispute between Respondent and the Department concerning a provision of this Order identified as subject to this Subparagraph's procedures, within the time period provided in that provision Respondent serve on the Department a request for an appointment of an Administrative Law Judge ("ALJ"), and a written statement of the issues in dispute, the relevant facts upon which the

dispute is based, and factual data, analysis, or opinion supporting its position, and all supporting documentation on which Respondent relies (hereinafter called the "Statement of Position"). The Department shall serve upon Respondent its Statement of Position, including supporting documentation no later than ten (10) business days after receipt of Respondent's Statement of Position. Respondent shall have five (5) business days after receipt of the Department's Statement of Position within which to serve upon the Department a reply to the Department's Statement of Position, and in the event Respondent serves such a reply, the Department shall have five (5) business days after receipt of Respondent's reply to the Department's Statement of Position within which to serve upon Respondent its own further reply. In the event that the periods for exchange of Statements of Position and replies may cause a delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice by the Department as agreed to by Respondent.

2. The Department shall maintain an administrative record of any dispute being addressed under this Subparagraph. The record shall include the Statement of Position of each party served pursuant to Subparagraph XIII.A.1 and any relevant information. The record shall be available for review of all parties and the public.

3. Upon review of the administrative record as developed pursuant to this Subparagraph, the ALJ shall issue a final decision and order resolving the dispute. If the matter in dispute concerns a submittal,

a. Respondent shall revise the submittal in accordance with the Department's specific comments, as may be modified by the ALJ and except for those which have been withdrawn by the ALJ, and shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless the ALJ revises the time frame in the ALJ's final decision and order resolving the dispute.

b. After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval of the revised submittal.

c. If the revised submittal fails to address the Department's specific comments, as may be modified by the ALJ, and the Department disapproves the revised submittal for this reason, Respondent shall be in violation of this Order and the ECL.

4. In review by the ALJ of any dispute pursued under this Subparagraph, Respondent shall have the burden of proving by a preponderance of the evidence that the Department's position should not prevail.

5. A deadline involving any matter that is the subject of the dispute resolution process described in this Subparagraph shall be held in abeyance while it is the subject of the dispute resolution process unless the Department and Respondent otherwise

agree in writing. The invocation of the procedures stated in this Subparagraph shall constitute an election of administrative remedies by Respondent, and such election of this remedy shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Respondent regarding the issue in dispute.

B. All activities and submittals required by this Order shall address, to the extent practicable, both on-Site and off-Site contamination attributable to the disposal of hazardous substances at each Site.

C. Respondent 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 Order. Within 30 days after completion of Respondent's retainer process resulting in the selection of a particular firm or individual to perform any of such obligations, Respondent shall submit to the Department a summary of the experience, capabilities, and qualifications of the firm or individual retained. Respondent must obtain the Department's approval of these firms or individuals before the initiation of any activities for which the Respondent and such firms or individuals will be responsible, and such approval will not be unreasonably withheld.

D. The Department and Respondent each shall have the right to take its own samples and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the other party. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order, shall include a tabular summary of any such results in the progress reports required by this Order.

E. Respondent shall notify the Department at least 10 working days in advance of any field activities to be conducted pursuant to this Order. The Department's project manager is hereby authorized to approve any modification to an activity to be conducted under a Department-approved work plan in order to adapt the activities to be undertaken under such work plan to the conditions actually encountered in the field.

F. 1. Respondent shall use reasonable efforts to obtain on a timely basis, authorizations, including, without limitation, permits, easements, rights of way, rights of entry, and approvals which are necessary to carry out any of its obligations under the Order. Respondent shall promptly notify the Department in the event of its inability to obtain such authorizations on a timely basis. In such event, the parties shall proceed as follows:

The Department may, consistent with its legal authority, assist in obtaining, as appropriate, all such authorizations which Respondent was unable to obtain, or could not obtain without terms and conditions which effectively prevent implementation of the order. In the event that the Department exercises its power of eminent domain in order to effectuate the purpose and goals of the order, Respondent shall reimburse the Department for the amount of

just compensation so provided in the exercise of such power. If, despite Respondent's efforts described in this Subparagraph, Respondent does not obtain the aforementioned authorizations on a timely basis or if Respondent obtains authorizations containing terms and conditions which effectively prevent compliance with the terms and conditions of the Order, the time for performance of obligations under the Order shall be extended, as appropriate. If, despite Respondent's reasonable efforts, such authorizations or access cannot be obtained, the Department and Respondent shall negotiate a modification to this Order enlarging times for or modifying or excusing performance, as appropriate. If however, the parties cannot agree on such modification, Respondent shall be in violation of this Order unless, within ten (10) days of the date of the Department's decision not to modify this Order, the Department receives written notice from Respondent notifying the Department of the existence of a dispute in accordance with Subparagraph XIII.A of this Order.

2. Respondent shall not be required to obtain permits for certain work conducted under this Order consistent with the criteria set forth in 6 NYCRR 375-1.7.

G. If Respondent determines, in connection with any given Site, that a valid claim exists in favor of Respondent as against any other potentially responsible party, for contribution toward response costs deemed necessary by the Department in connection with such Site (or for recovery of an appropriate portion of such costs previously incurred by Respondent), the Department shall provide, in a timely manner, information responsive to any reasonable request (otherwise in conformity with Freedom of Information Law requirements) by such party related to conditions at the Site and any other relevant information that may be helpful in substantiating Respondent's claim. Similarly, if Respondent requests access to non-privileged and otherwise disclosable information in the Department's possession and relevant to the potential liability of any person or entity who may be subject to such claim by Respondent for contribution or cost recovery, the Department will take reasonable steps to expedite Respondent's access to such information.

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

I. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work to be done under this Order in



accordance with this Order.

J. All references to "professional engineer" in this Order are to an individual licensed and registered to practice professional engineering 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.

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

L. 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 of the provisions of this Order.

M. 1. The terms of this Order shall constitute the complete and entire Order issued to Respondent by the Department concerning the implementation of Exhibits "A," "B," "C," and "D." No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

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

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

DATED: 9/29/98

JOHN P. CAHILL, COMMISSIONER  
New York State Department  
of Environmental Conservation

By:

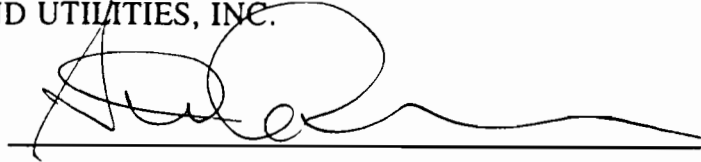
  
Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

Respondent hereby waives its right to a hearing herein as provided by law; consents to the issuance and entry of this Order; and agrees to be bound by its terms, not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and not to contest the validity of this Order or its terms.

ORANGE AND ROCKLAND UTILITIES, INC.

by:



Typed name of signer: G. D. CALIENDO

Title of signer: SENIOR VICE PRESIDENT

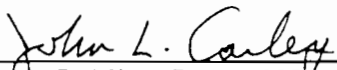
Date signed: JULY 12, 1998

STATE OF NEW YORK )

) ss:

COUNTY OF ROCKLAND )

On this 12<sup>TH</sup> day of JULY, 1998, before me personally appeared G. D. CALIENDO, to me known, who, being duly sworn, did depose and say that he resides in 4 VALENZA LANE BLAUVELT NY; that he is SENIOR VICE PRESIDENT of Orange and Rockland Utilities, Inc.; that he executed the foregoing instrument on behalf of Orange and Rockland Utilities, Inc.; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

  
Notary Public State of New York  
Registration number: 02CA4906281  
My commission expires: 8/31/99