

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Implementation of
Remedial Investigations and Feasibility Studies
and the Development and Implementation of
Remedial Programs for Several Former
Manufactured Gas Plant (MGP) Sites
By Orange and Rockland Utilities, Inc., Respondent.

**MODIFICATION
TO ORDER ON
CONSENT**

Index # D3-0001-98-08

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of the Environmental Conservation Law ("ECL") of the State of New York, and Title 6 of the Official Compilation of the Codes, Rules and Regulations of the State of New York and any Orders issued thereunder; and
2. It is the responsibility of the Department to conserve, improve and protect New York's natural resources and environment and control water, land and air pollution in order to enhance the health, safety and welfare of the people of the State and their overall economic and social well-being; and
3. Orange and Rockland Utilities, Inc. ("Respondent") is a corporation incorporated under the laws of the State of New York with offices at One Blue Hill Plaza, Pearl River, New York 10965; and
4. Respondent is subject to an Order on Consent executed on March 11, 1999, DEC Index No. D3-0001-98-08 (together with appendices and any subsequent modifications, the "March 11, 1999 Order") pertaining to the former manufactured gas plant ("MGP") site located at Gedney Street, Nyack, New York at which coal tar and associated hazardous substances ("MGP Wastes") were, or which may have been, disposed at various times in the past, as described in the March 11, 1999 Order; and
5. The Department and the Respondent now desire to make certain modifications to Paragraph ~~X~~IX "Payment of State Costs" of the March 11, 1999 Order. The purpose of this modification is to: (1) reflect the reorganization of the environmental monitoring program; (2) simplify the Department's administration and invoicing procedures; and (3) revise the language to conform to the Department's current practice; and

6. The Respondent hereby waives its right to a hearing in the manner provided for by law with respect to this matter, consents to the issuance of this Modification to Order on Consent, and agrees to be bound by the terms, provisions and conditions contained herein.

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

ARTICLE I. Paragraph IX of the March 11, 1999 Order is hereby and henceforth revised to read as follows:

IX. Payment of State Costs

A. Any outstanding payment amount for costs incurred through April 21, 2004 through the billing system set forth in the March 11, 1999 Order for which the Respondent is responsible shall be paid via finds in the interest-bearing account referenced in the immediately following paragraph within fifteen (15) days of the execution of this Modification. Respondent acknowledges that additional charges may be billed at a later date for State costs incurred prior to April 21, 2004 that have not yet been billed.

B. Effective April 22, 2004, and within forty-five (45) Days after receipt by Respondent of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State costs, for work performed at or in connection with the Site. Any balance remaining in the interest-bearing account established in Paragraph IX of the March 11, 1999 Order, by reference to Paragraph VIII of Department Order Index D3-0001-98-03 (September 29, 1998), shall be applied by the Department against any outstanding or future costs, or refunded after the final reconciliation, as appropriate.

C. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify 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. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (*e.g.*, supplies, materials, travel, contractual) and shall be documented by expenditure reports. The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

D. Such invoice shall be sent to Respondent at the following address:

Ms. Maribeth McCormick

Orange and Rockland Utilities, Inc.
390 West Route 59
Spring Valley, NY 10977

E. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

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

F. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

G. Respondent may contest, in writing, invoiced costs under Subparagraphs IX.A or B if it believes that (i) the cost documentation contains clerical, mathematical, or accounting errors; (ii) the costs are not related to the State's activities with respect to the Remedial Program for the Site; or (iii) the Department is not otherwise legally entitled to such costs. If Respondent objects to an invoiced cost, Respondent shall pay all costs not objected to within the time frame set forth in Subparagraph IX.A or B and shall, within thirty (30) Days after its receipt of an invoice, identify, in writing, all costs objected to and the basis of the objection. This objection shall be filed with the BPM Director. The BPM Director or the BPM Director's designee shall have the authority to relieve Respondent of the obligation to pay invalid costs. Within forty-five (45) Days after the date of the Department's determination of the objection, Respondent shall either pay to the Department the amount which the BPM Director or the BPM Director's designee determines Respondent is obligated to pay or commence an action or proceeding seeking appropriate judicial relief.

H. If any negotiable instrument submitted to the Department pursuant to this Order is not honored when presented for payment, Respondent shall be in violation of this Order, provided that (i) the Department gives Respondent written notice of same, and (ii) the Department does not receive a certified check or bank check in the amount of the uncollected funds within fourteen (14) Days after the date of the Department's written notification.

ARTICLE II. All references to "environmental monitors" and/or "monitors", including the terms "Environmental Monitor" and "Monitor", in the March 11, 1999 Order, not otherwise revised herein, shall be replaced with, collectively, the "Department Staff".

ARTICLE III. Except for the Modifications set forth herein, the March 11, 1999 Order shall remain in full force and effect and the terms thereof and the obligations therein are incorporated herein and shall apply with the same force and effect to the provisions of this Modification. The terms of the March 11, 1999 Order, including all appendices and subsequent modifications, are not otherwise modified or expanded in any way.

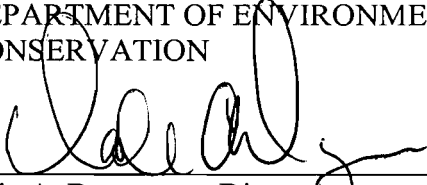
ARTICLE IV. The terms hereof shall constitute this complete and entire Modification of the March 11, 1999 Order. No term, condition, understanding or agreement purporting to modify the terms of the March 11, 1999 Order shall be binding unless subscribed to by both parties in accordance with the terms of the March 11, 1999 Order.

ARTICLE V. The effective date of this Modification to the March 11, 1999 Order shall be the date signed by the Commissioner or her designee.

DATED: Albany, New York
AUG 31, 2005

DENISE M. SHEEHAN, ACTING
COMMISSIONER, NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL
CONSERVATION

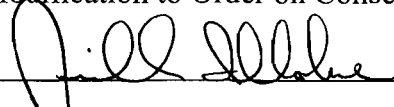
By:



Dale A. Desnoyers, Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent, Orange and Rockland Utilities, Inc. hereby consents to the issuing and entering of this Modification to Order on Consent, waives its right to a hearing herein as provided by law, and agrees to be bound by this Modification to Order on Consent.

By: 


Nicholas Illobre
Director – Human Resources and
Environmental, Health, Safety &
Training

Title: _____

Date: 8/25/05

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

On the 25th day of August, in the year 2005, before me, the undersigned, personally appeared Nicholas Illobre, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person(s) upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

PAUL FARRELL MAPELLI
Notary Public, State of New York
No. 4967056
Qualified in Rockland County
Commission Expires May 21, 2006