

In the Matter of the
Development and Implementation of a
Remedial Investigation/Feasibility Study
for an Inactive Hazardous Waste Disposal
Site, Under Article 27, Title 13,
and Article 71, Title 27
of the Environmental Conservation
Law of the State of New York

ORDER
ON
CONSENT
INDEX #9-0233-88-07

NIAGARA FRONTIER TRANSPORTATION AUTHORITY
Respondent

Site ID #915026

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the 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 Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13 and ECL 3-0301.
2. Niagara Frontier Transportation Authority ("Respondent") is a public benefit corporation responsible for the development and improvement of public transportation facilities in the Niagara Frontier Transportation District.
3. Respondent owns real property located at 910 Fuhrmann Boulevard, Buffalo, New York, County of Erie (the "Site"). In large part the Site was developed through a series of land reclamation activities which date back to the 1800s and which altered the Lake Erie shoreline. A locus plan attached to this order as Appendix "A" indicates the location of the site on the real property owned by Respondent.

4. The Site known as the Niagara Frontier Transportation Authority (Port Site) has been determined by the Department to be an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2 and the Department has determined that the Site presents a significant threat to the public health or environment. The site has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 915026. The Department has classified the Site as a Classification "2" pursuant to ECL 27-1305.4.b.

5. Respondent entered into a Consent Order with the Department on June 8, 1989, whereby Respondent conducted a Phase II Investigation for the Site. A copy of the June 8, 1989 Order is attached to this Order as Appendix "B".

6. Pursuant to ECL 27-1313.3.a, whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute 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 (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

7. The Department has determined that it is appropriate to develop and implement a Remedial Investigation/Feasibility Study for the Site. The Respondent has agreed that the

Department shall undertake the Remedial Investigation/Feasibility Study and Respondent shall reimburse the Department for State funds expended in an amount not to exceed One Million Dollars (\$1,000,000).

8. The Department and Respondent agree that the goal of this Order is to establish the terms and conditions under which Respondent shall reimburse the Department for State funds expended in the development and implementation of a Remedial Investigation/Feasibility Study for the Site.

9. Respondent, 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. In the event this Order is invalidated by law, the Respondent reserves all rights and defenses it may have in connection with the Site.

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

I. A. In accordance with Paragraph II of this Order, Respondent shall reimburse the Department in an amount not to exceed One Million Dollars (\$1,000,000) for the costs the State has and shall expend for the development and implementation of a Remedial Investigation/Feasibility Study for the Site.

II. A. Within 60 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, fringe benefits, indirect costs, travel, analytical costs, and contractor costs) incurred by the State of New York in the development and implementation of the Remedial Investigation/Feasibility Study. The Department shall submit such invoices periodically, but no more frequently than once quarterly, that shall itemize the State's expenses incurred since the previous invoice. Within 60 days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department the itemized amount, however, the Respondent's obligation is limited as follows:

1. The Respondent's total contribution through March 31, 1994 shall not exceed \$100,000.00. Any State costs incurred through March 31, 1994, which are in excess of \$100,000.00 shall be paid by Respondent following March 31, 1994.

2. The Respondent's total contribution through March 31, 1995 shall not exceed \$500,000.00. Any State costs incurred through March 31, 1995 which are in excess of \$500,000 shall be paid by Respondent following March 31, 1995.

3. The Respondent's total cumulative reimbursement for State costs incurred in the development and implementation of the Remedial Investigation/Feasibility Study

in connection with this Consent Order shall not exceed \$1,000,000.00.

4. Any amounts rolled over in accordance with Subparagraph II.A.1 shall be paid by May 31, 1994 or within 60 days of receipt of an invoice for the rolled over amount, and any amount rolled over in accordance with Subparagraph II.A.2 shall be paid by May 31, 1995 or within 60 days of receipt of the invoice for the rolled over amount.

B. Payments pursuant to this Order shall be made by certified check payable to the New York State Department of Environmental Conservation. Payments shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, NYSDEC, 50 Wolf Road, Room 208, Albany, New York 12233-7010.

C. Itemization 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 quarterly 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.

D. Respondent may dispute a billing by informing the Department in writing within 30 days of receipt of such billing that the amount of such billing is unreasonable. For purposes of this Order, the sole grounds for determining that a billing is unreasonable are that it contains clerical errors; and/or that all or a portion of a billing cannot be substantiated by the documentation identified in Subparagraph II.A or II.C of this Order; or that the costs incurred by the Department are a result of arbitrary or capricious actions or decisions attributable to the Department. If Respondent's objections cannot be resolved within 30 days of the Department's receipt of written objections Respondent shall pay the invoice amount in accordance with this Order. Respondent may identify the disputed costs and shall retain any rights it may have under Article 78 of Civil Practice Law and Rules of New York State.

E. The Department shall maintain and require each of its contractors and subcontractors to maintain accurate records, documents and other evidence with sound accounting procedures and practices, of all expenditures made and all costs, liabilities and obligations incurred during the performance of this Order.

F. Interest shall be payable at the annual rate of four per centum on any overdue amount for each day, from the day on which it was due, a payment, or any portion thereof,

remains unpaid. Payments received shall first be applied to accrued interest charges and then to any unpaid balance.

III. Throughout the course of the Remedial Investigation/ Feasibility Study the Department shall give to Respondent for review copies of the draft Remedial Investigation Work Plan, the draft Remedial Investigation Report and the draft Feasibility Study Report. The Department shall give due consideration to any comments offered by the Respondent. Prior to the finalization of the Department's Record of Decision, Respondent shall be afforded the opportunity to review and comment on the selected remedial action.

IV. Within 90 days after the effective date of this Order, Respondent shall submit to the Department all data within its possession or control regarding environmental conditions on-Site and off-Site, and other information described below, unless such data has been previously provided to the Department. The data and other information shall include:

a. a brief history and description of the Site, including the types, quantities, physical state, location and dates of disposal of hazardous waste including methods of disposal and spillage of such wastes, if known;

b. a concise summary of information held by the Respondent and its attorneys with respect to all entities responsible for such disposal of hazardous wastes, including but not limited to names, addresses, dates of disposal and any

information or proof linking each such entity with hazardous wastes identified pursuant to the investigations herein;

c. 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 the Site and areas in the vicinity of the Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs.

V. Respondent shall permit any duly designated employee, consultant, contractor or agent of the Department or any State agency to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent. In accordance with the New York State Freedom of Information Law Respondent shall have access to data and information developed by the Department, its contractors and subcontractors, regarding the Site and contamination at or in proximity to the Site.

VI. Respondent shall cooperate with the Department in obtaining whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary to perform the Remedial Investigation/Feasibility Study for the site.

VII. The failure of the Respondent to comply with any provision of this Order shall be a violation of this Order and the ECL.

VIII. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any rights which the Department may have or, except as provided in Paragraph 9 of this Order, which the Respondent may have under Article 78 of the CPLR, or under the ECL.

IX. This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

X. 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, its directors, officers, employees, servants, agents, successors or assigns.

XI. The effective date of this Order shall be the date a fully executed copy of the Order is received by Respondent.

XII. If Respondent desires that any provision of this Order be changed, it shall make timely written application to the Commissioner setting forth reasonable grounds for the relief sought. A copy of such written application shall be delivered or mailed to the project manager for the site.

XIII. Within 45 days after the effective date of this Order, Respondent shall file a Declaration of Covenants and Restrictions with the Erie County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

XIV. A. The State of New York and the Respondent each reserve its right to legally pursue any responsible party to compel participation in the Site Remedial Program or to recover costs incurred in connection with the Site.

B. Any and all costs and damages recovered by the State of New York from any responsible party not a party to this Order shall be applied first to reimburse the Department for all unreimbursed State costs and damages not reimbursed under this Order and then to reimburse the Respondent.

C. Any and all costs and damages recovered by the Respondent from any responsible party not a party to this Order shall be applied first to reimburse the Department for any unreimbursed State costs and damages not reimbursed under this Order and then to reimburse the Respondent.

XV. In the event Respondent proposes to convey the whole or any part of its ownership interest in the Site, Respondent shall, not fewer than 60 days prior to the proposed conveyance, notify the Department in writing of the identity of the transferee and of the nature and date of the proposed conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. 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 obligations under this Order.

XVI. Respondent shall cooperate with the Department in the development and implementation of a citizen participation program for the Site. The citizen participation program shall be consistent with 6 NYCRR Part 375.

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

A. Communication from Respondent shall be made as follows:

1. Chief, Technical Support Section
Bureau of Western Remedial Action
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010
2. Division of Environmental Enforcement
New York State Department of
Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999
3. Regional Director
New York State Department of
Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999

B. Communication to be made from the Department to Respondent shall be made as follows:

Administrative & Engineering Issues:	Cynthia E. Locklear, Sr. Counsel
Engineering & Technical Issues:	David Skoney, Transportation Planner II
Invoicing:	Kevin McCarthy, Mgr., Property Management

Address for all:

181 Ellicott Street
Buffalo, NY 14203

C. The Department and Respondent respectively reserve the right to designate additional or different addresses for communication or written notice to the other.

XVIII. This Order was executed in good faith to avoid, among other things, protracted litigation and is a settlement of claims that were vigorously contested. Respondent denies any allegations of fact or law or any liability to the Department or the State arising out of the transactions or occurrences alleged with respect to the Site. Nothing in this Order shall constitute an admission of any liability. Respondent also reserves and retains its right to assert all defenses to any claim that any other party asserts in any action or proceeding.

XIX. The terms hereof 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 hereof 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 its obligations under this Order.

DATED: *Albany*, New York
Jan. 24, 1994

THOMAS C. JORLING
Commissioner
New York State Department of
Environmental Conservation

A handwritten signature in cursive script, reading "Thomas C. Jorling", is written over a horizontal line.

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, and agrees to be bound by this Order.

NIAGARA FRONTIER
TRANSPORTATION AUTHORITY

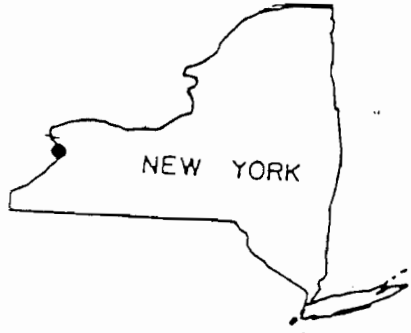
By: Richard T. Swist
RICHARD T. SWIST, EXECUTIVE DIRECTOR

Date: 1/6/94

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

On this 6th day of January, 1994,
before me personally came Richard T. Swist, to me
known, who being duly sworn, did depose and say that he resides
in Town of Kenmore, County of ERIE and State of New York;
that he is the Exec. Director of NIAGARA FRONTIER TRANSPORTATION
AUTHORITY, the corporation described in and which executed the
foregoing instrument; that he knows the seal of said
Corporation; that the seal affixed to said instrument is such
corporate seal; that it was so affixed by the order of the
Board of Commissioners of said corporation, and that he signed
his name thereto by like order.

Cynthia E. Locklear
Notary Public
CYNTHIA E. LOCKLEAR
NOTARY PUBLIC, State of New York
Qualified in Niagara County
My Commission Expires Sept 30, 1994



NOTE:
 BASE MAP ADAPTED FROM
 U.S.G.S. QUADRANGLE MAP
 BUFFALO SE, N.Y. - 1965.

DRAWN BY: ARH

DATE: FEB. 1991

SCALE IN FEET



NIAGARA FRONTIER
 TRANSPORTATION AUTHORITY
 OUTER HARBOR SITE

LOCUS PLAN

PROJECT No.
 R5938

FIGURE No.



GeoEnvironmental of New York