

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Joint Remedial Program for
Inactive Hazardous Waste Disposal
Sites, Under Article 27, Title 13,
and Article 71, Title 27 of the
Environmental Conservation Law
of the State of New York
by

ORDER
ON
CONSENT
INDEX # B9-0046-84-10
B9-0047-91-02

THE PARTIES SET FORTH IN
APPENDIX "C"

Respondents.

Site Codes #915063
and #915031

WHEREAS,

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites." This Order is entered into pursuant to the Department's authority under ECL Article 27, Title 13 and ECL 3-0301.

2. Certain of the Respondents ("Cherry Farm Respondents") are among the corporations or individuals which the Department alleges to be potentially responsible parties with respect to certain contamination which exists at a Site near 4000 River Road in the Town of Tonawanda, Erie County, New York, known as the Niagara Mohawk-Cherry Farm Site (the "Cherry Farm Site"). The Cherry Farm Site is further defined in the Site plan attached hereto as Appendix "A". A list of the Respondents to

this Order is attached hereto as Appendix "C".

3. Certain of the Respondents ("River Road Respondents") are among the corporations or individuals which the Department alleges to be potentially responsible parties with respect to certain contamination which exists at a Site on River Road in the Town of Tonawanda, Erie County, New York known as the River Road Site (the "River Road Site"). The River Road Site is further defined in the Site Plan attached hereto as Appendix "B". A list of the Respondents to this Order is attached hereto as Appendix "C".

4. The Department alleges that each Site is an "inactive hazardous waste disposal Site," as that term is defined at ECL 27-1301.2, and presents a significant threat to the public health or environment. The Cherry Farm Site has been listed by the Department in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 915063. The River Road Site has been listed by the Department in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 915031. The Department has classified each Site as a Classification "2" pursuant to ECL 27-1305.4.b.

5. A. 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."

B. Any person under order pursuant to ECL 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order. ECL 71-2705 provides that any person who fails to perform any duty imposed by ECL Article 27, Title 13 shall be liable for civil, administrative and/or criminal sanctions.

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

6. Cherry Farm Respondent Niagara Mohawk Power Corporation developed and implemented a Remedial Investigation and Feasibility Study for this Site pursuant to an Order on Consent executed by the Commissioner on April 27, 1988.

7. The Department selected a final remedial alternative for the Cherry Farm Site in a Record of Decision dated February 15, 1991. Following a period of public comment an Amended Record of Decision was signed by the Commissioner on October 7, 1993. The Amended Record of Decision which incorporates the February 15, 1991 Record of Decision is attached to and incorporated into this Order as Appendix "D" and shall be referred to in this Order as the "Cherry Farm ROD".

8. The Department selected a final remedial alternative

for the River Road Site in a Record of Decision dated March 24, 1994. This Record of Decision is attached to and incorporated into this Order as Appendix "E" and shall be referred to in this Order as the "River Road ROD."

9. The Respondents have prepared, and the Department has approved, the Scope of Work ("SOW") for the joint remedial program for both the Cherry Farm and River Road Sites which is attached to and incorporated into this Order as Appendix "F".

10. The Department, the Cherry Farm Respondents and the River Road Respondents agree that the goals of this Order are for Respondents to (i) develop and implement, in accordance with the RODs and the SOW, a joint inactive hazardous waste disposal site remedial program ("Remedial Program") for the Sites that shall include design and implementation, and operation, maintenance and monitoring of the remedial alternative specified in the RODs and SOW; and (ii) reimburse the Department's past and future administrative costs as limited by Paragraph VIII of this Order.

11. Respondents, without the admission of any liability or of the veracity of any of the facts alleged herein, having waived Respondents' right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agree to be bound by its terms. Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agree 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. Within 60 days after the effective date of this Order, Respondents shall submit to the Department all data within their possession or control regarding environmental conditions on-Site and off-Site (to the extent off-Site conditions may be causally related to the on-Site disposal of hazardous waste at the Cherry Farm or River Road Site) to the extent that such data has not previously been provided to, or is not otherwise in the possession or control of, the Department.

Pursuant to applicable State laws and regulations, any Respondent may assert a confidentiality claim with respect to data required to be submitted pursuant to this Paragraph. In documents that are protected by attorney client privilege, are considered to be attorney work-product, or are otherwise protected by privilege, Respondents are hereby required to provide only technical information related to the Site. Where such information is contained in a document containing other material, provision of such information shall not be construed to waive any applicable disclosure exemption privilege that may exist with respect to such other material.

II. Remedial Design Contents

A. Within 45 days or less, after the effective date of this Order Respondents shall submit a work plan which addresses both Sites (the "Workplan") to the Department to implement the Remedial Program as identified in the RODs and the

SOW. The Workplan shall include a schedule for all future deliverables under this Order.

B. In accordance with the schedule set forth in the Work plan and the SOW, Respondents shall submit to the Department a joint remedial design to implement the Remedial Program for the Sites as set forth in the RODs and the SOW (the "Remedial Design"). The Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design was prepared in accordance with this Order.

C. The Remedial Design shall include the following:

1. A detailed description of the remedial objectives and goals and the means by which each essential element of the Remedial Program will be implemented to achieve those objectives and goals consistent with the RODs and the SOW, including, but not limited to:

a. the construction and operation of any structures;

b. the collection, destruction, treatment, and/or disposal of hazardous wastes and substances and their constituents and degradation products, and of any soil, sediments in drainage channels at the site or other materials contaminated thereby;

c. the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;

d. physical security and posting of the

Site;

e. health and safety of persons living and/or working at or in the vicinity of the Sites;

f. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Design; and

g. monitoring requirements during implementation of the Remedial Program.

2. "Biddable Quality" documents for the Remedial Design including, but not limited to, documents and specifications prepared, signed, and sealed by a professional engineer. These plans shall satisfy all applicable local, state and federal laws, rules and regulations;

3. A time schedule to implement the Remedial Design;

4. The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design, including a schedule for periodic sampling of groundwater monitoring wells as may be required on-Site and off-Site;

5. A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design, including the number of years during which such activities will be performed;

6. A joint contingency plan describing organized, planned, and technically coordinated courses of action to be followed in case of emergency or other special

conditions, including but not limited to equipment breakdowns, fire, odor, explosion, spills, receipt or release of hazardous or toxic materials or substances, and other incidents that could threaten human health or safety or the environment;

7. A joint health and safety plan for the protection of persons at and in the vicinity of the Sites during construction and after completion of construction. This plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional; and

8. A joint citizen participation plan which incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, any subsequent revisions thereto, and 6 NYCRR Part 375.

III. Remedial Design Construction and Reporting

A. Within 30 days of the Department's approval of the Remedial Design, Respondents shall solicit bids for the implementation of the Remedial Design for the Sites.

B. Within 90 days of the Department's approval of the Remedial Design, Respondents shall award the construction contract. Respondents shall commence construction of the Remedial Design in accordance with the schedule in the Workplan and the Remedial Design.

C. Respondents shall implement the Remedial Design in accordance with the Department-approved Remedial Design.

D. During field activities associated with the

implementation of all construction activities identified in the Remedial Design, Respondents shall have on the Sites a full-time representative who is qualified to supervise the work done. Such representative may be an employee of a consultant or a contractor.

E. In the event during field activities at a Site a condition is discovered which poses a threat to human health or the environment, the Department may seek to require that Respondents for that Site modify the Scope of the Remedial Design and Remedial Construction to address the condition.

F. Within 60 days after completion of the construction activities identified in the Remedial Design, Respondents shall submit to the Department a detailed joint post-remedial operation and maintenance plan ("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 Remedial Design was implemented and all construction activities were completed in accordance with the Department-approved Remedial Design. The O & M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

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

H. After receipt of the "as-built" drawings, final

engineering report, and certification, the Department shall notify Respondents in writing whether the Department is satisfied that all construction activities have been completed in accordance with the approved Remedial Design.

I. If the Department determines that all construction activities at a Site have not been completed in accordance with the approved Remedial Design, Respondents for that Site shall be in violation of this Order and the ECL.

J. If the Department concludes (1) that any element of the Remedial Program at a Site fails to achieve the remedial objectives or goals set forth in the ROD for the site or otherwise fails to protect human health or the environment; or (2) that further actions are necessary to address Niagara River sediments which have been studied pursuant to this Order, the Department may seek to require Respondents for either or both sites, depending on the applicability of the Department's conclusions, to take whatever action the Department determines necessary to achieve those objectives or goals, to ensure that the Remedial Program otherwise protects human health and the environment, or to address sediments in the Niagara River which have been studied pursuant to this Order.

IV. Progress Reports

During the pendency of construction activities Respondents shall submit to the parties set forth in paragraph XII copies of joint written monthly progress reports that: (i) describe the actions which have been taken toward achieving

compliance with this Order during the previous month; (ii) include all results of sampling and tests and all other data received or generated by Respondents or Respondents' contractors or agents in the previous month, as may be required by the Department, including quality assurance/quality control information; (iii) identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide other information relating to the progress at the Sites; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondents' obligations under the Order, and efforts made to mitigate those delays or anticipated delays; (vi) include any modifications to any work plans that Respondents have proposed to the Department or that the Department has approved; and (vii) describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondents shall submit these progress reports to the Department by the fifteenth day of every month following the commencement of on-Site activities.

V. Review of Submittals

A. (1) The Department shall review each of the submittals Respondents 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 Respondents in writing of its approval or disapproval of the submittal, except for the submittals discussed in Paragraphs II.C.(7) and IV. 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 Respondents in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondents' submittal has been disapproved, or within such further time as the Department may provide, Respondents shall make a revised submittal to the Department that addresses all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondents in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondents 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. If any disapproval of a revised submittal is based upon conditions existing at one of the two Sites, or is based upon any action or inaction on the part of the Respondents in connection with one of the Sites, then Respondents for the other

Site shall not be in violation of this Order. Such disapproval by the Department shall be considered final agency action for purposes of Article 78 of the CPLR. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

B. The Department may seek to require Respondents for a Site 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 at a Site is necessary.

VI. Penalties

A. Respondents' failure to comply with any term of this Order constitutes a violation of this Order and the ECL. A Respondent shall only be liable for any failure to comply which relates to the Site for which the Department alleges that Respondent to be a potentially responsible party.

B. Respondents shall not suffer any penalty under this Order or be subject to any proceeding or action if Respondents cannot comply with any requirement hereof because of war, riot, or other causes which are beyond the reasonable control of Respondents and which the exercise of ordinary human prudence could not have prevented. Respondents shall, within five business days of when they obtain knowledge of any such condition, notify the Department in writing. Respondents shall include in such notice the measures taken and to be taken by

Respondents 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. Respondents shall have the burden of proving that an event is a defense to compliance with this Order.

VII. Entry upon Site

A. Respondent Niagara Mohawk Power Corporation hereby consents to the entry upon the Cherry Farm Site or areas in the vicinity of the Site which may be under the control of Niagara Mohawk Power Corporation 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 Respondents' compliance with this Order.

B. River Road Respondents, to the extent they are a party to this Order, hereby consent to the entry upon the River Road Site or areas in the vicinity of the River Road Site which may be under their control 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 Respondents' compliance with this Order.

C. Respondents shall provide the Department, during the time on-Site offices are maintained by Respondents, with suitable office space at the Site, including access to a telephone, and shall permit the Department full access to all records relating to implementation of the Remedial Program.

Respondents also shall allow the Department to attend, and shall provide the Department at least seven days advance notice of, any of the following: prebid meetings, formal and/or regularly scheduled job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

VIII. Payment of State Costs

A. Within 60 days of the effective date of this Order, Respondents shall make payment to the Department in the amount of \$649,074.00 which represents the past response costs incurred by the State of New York up to December 15, 1993, for the Sites. These costs are itemized as set forth in subparagraph VIII.B. Payment shall be made in the manner as set forth below.

B. Thereafter, the Department will periodically submit itemized invoices to Respondents and within 60 days after receipt of an itemized invoice from the Department, Respondents shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses incurred negotiating 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 this Order. Such reimbursements pursuant to subparagraph VIII.B., in total, shall not exceed \$300,000. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste

Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by 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.

C. If the Department concludes that the total sum of money paid pursuant to this Paragraph VIII is insufficient to reimburse the State's costs, the Department may, at its option, in a separate proceeding, seek to recover additional reimbursement.

IX. Department Reservation of Rights

A. Except as provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights including, but not limited to nor exemplified by, the following:

1. the Department's right to bring any action or proceeding against anyone other than Respondents and/or any of Respondents' successors and assigns;

2. the Department's right to enforce this Order against Respondents and/or any of Respondents' successors and assigns if Respondents fail to satisfy any of the terms of this Order; or

3. the Department's right to bring any action or proceeding against Respondents and/or any of Respondents' successors and assigns with respect to claims for natural resources damages as a result of the release or threatened release of hazardous substances or constituents at or from the Sites;

4. the Department's right to gather information and enter and inspect property and premises.

B. If, after review, the Department accepts and approves the engineer's certification that construction of the Remedial Program was completed in accordance with the approved Remedial Design, then, unless a supplementary remedial program is determined to be necessary by the Department pursuant to Paragraph II.C.6, or determined to be necessary by the Department pursuant to Paragraph III.E, III. J and/or V.B, and except for the provisions of subparagraphs A and C of Paragraph IX, and the provisions of paragraph X; and except for the future Operation and Maintenance of the Sites, reimbursement of Department expenditures in accordance with Paragraph VIII, and any Natural Resource Damage claims that may arise, such acceptance shall constitute a release for each and every claim, demand, remedy or action whatsoever against Respondents, their

successors and assigns, which the Department has or may have pursuant to Article 27, Title 13 of the ECL, CERCLA, or otherwise, relative to or arising from the disposal of hazardous wastes at the Sites; provided, however, that the Department specifically reserves all of its rights concerning, and any such release and satisfaction shall not extend to, any investigation or remediation the Department deems necessary due to:

(1) environmental conditions on-site or off-site which are related to the disposal of hazardous wastes at the Sites and were unknown to the Department at the time of its approval of the Remedial Design; or

(2) information received, in whole or in part, after the Department's approval of the Remedial Design,

and such unknown environmental conditions or information indicates that the Remedial Program is not protective of human health or the environment. The Department shall notify the Respondent of such environmental conditions or information and its basis for determining that the Remedial Program is not protective of human health and the environment.

This release shall inure only to the benefit of Respondents, their successors and assigns.

Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone

other than Respondents, their successors and assigns.

C. 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

Respondents 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 Respondents, and/or Respondents' directors, officers, employees, servants, agents, successors, and assigns. Respondents shall not indemnify the Department or the State of New York for unlawful, grossly negligent, willful or malicious acts or omissions on the part of the State, State agencies, or their officers, employees or agents.

XI. Public Notice

A. Within 30 days after the effective date of this Order, every Respondent who owns any portion of the Sites shall file a Declaration of Covenants and Restrictions with the Clerk of Erie County to give all parties who may acquire any interest in the Sites notice of this Order.

B. If any Respondent who owns any portion of the Sites proposes to convey the whole or any part of that Respondent's ownership interest in either of the Sites, that

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 and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

C. Within 30 days after Department approval of the "as-built" drawings every Respondent who owns any portion of the Sites shall file with the Clerk of Erie County a Notice of Restrictions of Use which shall refer to the Record of Decision and shall describe the remedy which is in place at the Sites, and to which shall be attached as an appendix the "as-built" drawings.

D. If any Respondent transfers the whole or any portion of its ownership interest in the either Site, that Respondent shall include restrictions in the property deed to specify that any future use of the property must be limited to activities and purposes which shall not interfere with remedial structures or equipment located upon or beneath that Site, or with activities required to be conducted in conjunction with the remedial action. Any such deed shall further specify that the restriction stated in 6 NYCRR § 375-1.2(e)(2) is applicable to the transferred property, by virtue of the property having been listed in the Registry of Inactive Hazardous Waste Sites, and shall specify that these restrictions are covenants which run with the land.

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:

Communication from Respondents shall be sent to:

1. Director, Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010
2. Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, New York 12203
3. Regional Engineer, Region 9, Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999
4. Division of Environmental Enforcement
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, New York 14203-2999

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

1. Four copies (one unbound) to
Division of Hazardous Waste Remediation.
2. Two copies to the Director, Bureau of
Environmental Exposure Investigation.
3. One copy to Region 9
4. One copy to Buffalo Field Unit

C. Within 30 days of the Department's approval of

any report submitted pursuant to this Order, Respondents shall submit to the project manager a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format.

D. Communication to be made from the Department to the Respondents shall be sent to the parties set forth in Appendix "C".

E. The Department and Respondents reserve the right to designate in writing additional or different addressees for communication or written notice to the other.

XIII. Miscellaneous

A. All activities and submittals required by this Order shall, consistent with the RODs and the SOW, address both on-Site contamination and off-Site contamination (to the extent off-Site conditions may be causally related to the on-Site disposal of hazardous waste) at either of the Sites resulting from the alleged disposal of hazardous waste at the Sites.

B. Respondents shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and data validators reasonably acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. A summary of the experience, capabilities, and qualifications of the firms or individuals selected by Respondents shall be submitted to the Department within 60 days after the effective date of this Order. The Department's

approval of these firms or individuals shall be obtained before the start of any activities for which the Respondents and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondents shall rest solely with Respondents.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondents. The Department also shall have the right to take its own samples and Respondents may obtain split samples of any such samples and the results of any Department sampling/analysis. Respondents shall make available to the Department the results of all sampling and/or tests or other data generated by Respondents with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

D. Respondents shall notify the Department at least 10 working days in advance of the commencement of any field activities to be conducted pursuant to this Order.

E. 1. Respondents shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondents' obligations under this Order.

2. Respondents 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. Further, for purposes of implementing the Remedial Program, the Sites shall

constitute a single Site for purposes of 6 NYCRR 376.

3. In the event Respondents are unable to obtain the necessary authorizations required to perform the obligations under this Order, the Department shall, consistent with its legal authority, assist in obtaining all such authorizations Respondents were unable to obtain. If Respondents cannot obtain such authorizations on a timely basis, Respondents may request that the time for performance of any obligation dependent upon such authorization be appropriately extended. If Respondents cannot obtain such authorization, Respondents may request that this Order be appropriately modified.

F. This Order shall bind the Respondents, and any successors or assigns. Any change in ownership or corporate status of any Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondents' responsibilities under this Order.

G. Respondents shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondents with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondents or Respondents' contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondents shall nonetheless be

responsible for ensuring that Respondents' contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

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

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

J. 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.

K. Except as otherwise provided in this Order, the obligations of Respondents under this Order are joint and several. In the event of the insolvency or failure of any or more of Respondents to implement any obligation of this Order at a Site, the remaining Respondents for that Site shall complete all such obligations.

L. (1) The terms of this Order shall constitute the complete and entire Order between Respondents and the Department concerning the Sites. 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,

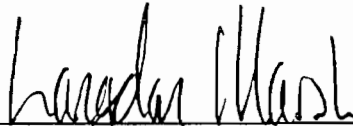
specification, schedule, or any other submittal shall be construed as relieving Respondents of Respondents' obligation to obtain such formal approvals as may be required by this Order.

(2) If Respondents desire that any provision of this Order be changed, Respondents shall make timely written application, signed by the Respondents, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Department project manager for the Site and the Division of Environmental Enforcement, Buffalo offices.

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

N. The parties to this Order may sign the Order by counterpart.

DATED: Sept 27, New York
, 1994



J. LANGDON MARSH
Commissioner
New York State Department
of Environmental Conservation

CONSENT BY RESPONDENT

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

ALLIEDSIGNAL INC.

By: L Ray Taunton
L. Ray Taunton
(Type Name of Signer)

Title: Vice President, Operations

Date: August 30, 1994

STATE OF NEW JERSEY)
) s.s.:
COUNTY OF Morris)

On this 30th day of August, 1994, before me personally came L. Ray Taunton, to me known, who, being by me duly sworn, did depose and say that he resides in Morris Plains, New Jersey; that he is the Vice President, Operations of the AlliedSignal Inc., the corporation described in and which executed the foregoing instrument; 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 the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Cathleen Storzum
Notary Public
Comm Exp Sept 1, 1997

CONSENT BY RESPONDENT

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

GENERAL MOTORS CORPORATION

By: Don A. Schiemann

DON A. SCHIEMANN

(Type Name of Signer)

Title: Attorney

Date: September 2, 1994

STATE OF MICHIGAN)
 :SS
COUNTY OF Wayne)

On this 2nd day of September, 1994, before me personally came Don A. Schiemann, to me known, who, being by me duly sworn, did depose and say that he resides in Detroit, Michigan; that he is in the General Counsel's Office of General Motors Corporation, the corporation described in and which executed the foregoing instrument and that he has the authority to execute this instrument on behalf of General Motors Corporation.

Janet Maxwell
Notary Public

JANET MAXWELL
Notary Public, Wayne County, Michigan
My Commission Expires April 1, 1995

CONSENT BY RESPONDENT

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

NIAGARA MOHAWK POWER CORPORATION

By: Fair MCP

Thomas R. Fair
(Type Name of Signer)

Title: Vice President-Environmental Affairs

Date: August 24, 1994

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

On this 24th day of August, 1994, before me personally came Thomas R. Fair, to me known, who, being by me duly sworn, did depose and say that he resides in Manlius, New York; that he is the Vice President-Environmental Affairs of the Niagara Mohawk Power Corp., the corporation described in and which executed the foregoing instrument; ~~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 the order of the Board of Directors of said corporation,~~ and that he signed his name thereto ~~by like order.~~

 William C. Weiss
Notary Public

WILLIAM C. WEISS
Notary Public, State of New York
No. 4719925
Qualified in Onondaga County
My Commission Expires October 31, 1994