

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

AMENDMENT
TO ORDER
ON
CONSENT

INDEX #B9-0046-84-10
B9-0047-91-02

ALLIEDSIGNAL INC.
GENERAL MOTORS CORP.
NIAGARA MOHAWK POWER CORP.

Site Codes #915063
and #915031

Respondents.

Whereas,

1. The New York State Department of Environmental Conservation (the "Department") and certain parties (the "Cherry Farm Respondents and the River Road Respondents", collectively the "Respondents") entered into an Order on Consent (Index Numbers B9-0046-84-10 and B9-0047-91-02) dated September 27, 1994, (the "Order") relating to certain remedial design and remedial action ("RD/RA") activities related to the Cherry Farm Site Number 915063 and the River Road Site Number 915031 (collectively the "Sites"). The Order is attached to this Amendment as Appendix "A".
2. The Respondents are among the corporations and individuals the Department alleges to be potentially responsible parties with respect to the Sites.
3. The Respondents have, among other things, completed the Remedial Design and a majority of the Remedial Action for the Sites to the Department's satisfaction.
4. In accordance with the Record of Decision ("ROD") (as amended) for the Cherry Farm Site and the ROD for the River Road Site, Respondents developed and the Department approved a Scope of Work ("SOW") for the Sites which was attached to and incorporated into the Order.

5. In accordance with the SOW and the Order Respondents performed several phases of investigation of sediments in the Niagara River in the vicinity of the Sites, the scope and results of which were reviewed and approved by the Department.

6. As a result of the Department-approved investigations of the sediments the Department has concluded in accordance with Subparagraph III.J of the Order that further actions are necessary to address Niagara River sediments

7. Respondents have prepared a Final Remedial Design Report for Sediment Removal at Cherry Farm Site/River Road Site (the "Sediment RD") which defines the nature and extent of the remedial actions necessary for the sediments in a manner consistent with the Cherry Farm and River Road RODs and the reasonably anticipated future use of the Sites. The Sediment RD is dated May, 1998, is attached to and incorporated into this Amendment as Appendix "B", and is an addendum to the June 1995 Remedial Design Report for the Cherry Farm/River Road Site.

8. Concurrence and/or approval of the sediment removal described in the Sediment RD has been received from New York State Department of Health and the U.S. Army Corps of Engineers.

9. The Department and Respondents agree that the goal of this Amendment is to amend the Order on Consent to provide for the performance of certain remedial actions with respect to the sediments in accordance with the Sediment RD.

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

- I. The Department has reviewed and hereby approves the Sediment RD.
- II. Respondents shall implement the Sediment RD in accordance with the schedule set forth therein.
- III. Respondents have constructed an on-site cell (the "Cell") which shall be used for

placement of the sediments removed from the Niagara River (the "River") pursuant to the Sediment RD. Attached to and incorporated into this Amendment as Appendix "C" is a statement of the effective working capacity of the Cell prepared and certified by a licensed surveyor.

IV. The limits of sediment to be removed from the River are delineated in the Sediment RD (the "Limits"). Respondents have developed an estimate of the volume of sediments within the Limits which it anticipates will be removed from the River and which is presented in the Sediment RD.

V. In the event that the volume of sediments within the Limits and removed from the River pursuant to the Sediment RD reaches the capacity of the Cell Respondents shall either, in their sole discretion, (1) expand the Cell to the extent technically and economically practical and consistent with reasonably anticipated future use of the Sites, or, (2) otherwise provide for disposal of the excess sediments.

VI. In the event that the Department determines that sediments beyond the Limits presented in the Sediment RD should be removed to protect human health or the environment, Respondents agree to meet with the Department to consider removal of the additional sediments pursuant to this Amendment.

VII. A. Respondents shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses incurred negotiating this Amendment, reviewing and revising submittals made pursuant to this Amendment, overseeing activities conducted pursuant to this Amendment, collecting and analyzing samples, and administrative costs associated with this Amendment. Reimbursements pursuant to Subparagraph VIII.B of the Consent Order and this Amendment shall not exceed \$360,000.


B. The Department will periodically submit itemized invoices to Respondents

and within 60 days after receipt of an itemized invoice from the Department, 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 Environmental Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, New York 12233-7010. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by 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.

VIII. This Amendment and Appendices shall be incorporated into and become a part of the Order on Consent between the Department and the Respondents dated September 27, 1994 and identified as Index #B9-0046-84-10 and B9-0047-91-02. The terms, provisions, conditions and requirements of the Order on Consent shall, to the extent consistent with this Amendment, remain in effect in its entirety as amended with the changes specified herein.

IX. The terms, conditions and modifications contained in this Amendment shall become effective on the date this Amendment is signed by the Commissioner or his designee.

Dated: 11/2, New York
1998


JOHN P. CAHILL
Commissioner
New York State Department
of Environmental Conservation
by: Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

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

GENERAL MOTORS CORPORATION

By: Don A Schiemann

Don A. Schiemann

(Type Name of Signer)

Title: Attorney

Date: September 4, 1998

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

On this 4th day of September, 1998, before me personally came Don A. Schiemann, to me known, who, being by me duly sworn, did depose and say that he resides in Oakland County; that he is an Attorney of the General Motors Corporation, the corporation described in and which executed the foregoing instrument; and is authorized to sign this Amendment to Order On Consent on behalf of said corporation.

Carolyn E. Stoeber

Notary Public

CAROLYN E. STOEHR
Notary Public, Wayne County, MI
My Commission Expires July 9, 2000

CONSENT BY RESPONDENT

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

NIAGARA MOHAWK POWER CORPORATION

By: Thomas H. Baron
Thomas H. Baron
Vice President – Fossil/Hydro Generation
and Environmental Affairs

Date: OCT. 7, 1998

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

On this 7th day of October, 1998, before me personally came Thomas H. Baron, to me known, who, being by me duly sworn, did depose and say that he resides in Syracuse, New York; that he is the Vice President – Fossil/Hydro Generation and Environmental Affairs of Niagara Mohawk Power Corporation, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by authorization of said corporation.

William C. Weiss
Notary Public
WILLIAM C. WEISS
Notary Public, State of New York
1925
Quadrant, Onondaga County
My Comm. Expires October 31, 1998