

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program 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
by

ORDER
ON
CONSENT
INDEX # B9-0133-91-02

NIAGARA MOHAWK POWER CORPORATION
OCCIDENTAL CHEMICAL CORPORATION
CITY OF NORTH TONAWANDA
BOOTH OIL COMPANY
BELL AEROSPACE TEXTRON
Respondents.

Site Code #932060

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 issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title 13, and ECL Section 3-0301, and is intended to constitute a State administrative settlement within the meaning of §113(f) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. 9613(f)).

2. The City of North Tonawanda, Niagara Mohawk Power Corporation, Occidental Chemical Corporation, Booth Oil Company, and Bell Aerospace Textron (referred to collectively as the "Respondents") are alleged to be potentially responsible

parties with respect to property located on River Road in the City of North Tonawanda, Niagara County, New York, known as the Gratwick-Riverside Park Site (the "Site").

3. The Site is an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301.2, has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 932060, and the Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305.4.b.

4. A. Pursuant to ECL Section 27-1313.3.a, whenever the Commissioner of the Department (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 Section 27-1313.3.a has a duty imposed by ECL Article 27, Title 13 to carry out the remedial program committed to under order and ECL Section 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. ECL Section 3-0301.1.i.

5. The Department performed a State funded Remedial Investigation/Feasibility Study at the Site. The Commissioner executed a Record of Decision ("ROD") on February 14, 1991, a copy of which is attached to this Order as Appendix "A."

6. The Department and Respondents agree that the goals of this Order are for Performing Party Respondents to develop and implement an inactive hazardous waste disposal site remedial program for the Site in accordance with the ROD and any amendments thereto that shall include design and implementation of the selected remedial alternative, and operation, maintenance and monitoring of the selected remedial alternative; and for Settling Party Respondents to contribute to the costs incurred by Performing Party Respondents in developing and implementing the remedial program for the Site.

7. The Department has determined that implementation and operation, maintenance and monitoring of the selected remedial alternative is protective of human health and the environment.

8. The City of North Tonawanda (the "City") has entered into this Order as a precondition to eligibility for financial assistance pursuant to ECL Article 52, Title 3. Pursuant to the City's obligations under ECL Article 52, Title 3, the City

has placed the City's insurer on notice of the Department's determination that the Site constitutes a significant threat to the environment and of the Department's claim, pursuant to ECL Article 27, Title 13, against the City. The City has agreed to continue to exercise all reasonable efforts, as required by the Department, to obtain indemnification or a commitment to indemnify from its insurance carriers. Further, the City has agreed to assist the Department in identifying all other responsible parties and compelling other responsible persons to bear the cost of the remedial program at the Site.

9. Niagara Mohawk has agreed to transfer its entire ownership interest in the Site to the City on a date to be selected by mutual agreement between the City and Niagara Mohawk. Such transfer of title may take place prior to or subsequent to completion of the required remedial program. The Department has determined that the remedial program should not prevent the Site from being used as a park after the remediation, however, the extent of the Site's use as a public park will be fully evaluated during the design of the remediation and after the Site remediation has been completed.

10. Respondents, having waived the 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 and conditions and 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 its validity or its terms.

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

I. Parties

The parties to this Order on Consent are:

A. The New York State Department of Environmental Conservation;

B. The City of North Tonawanda, Niagara Mohawk Power Corporation ("Niagara Mohawk"), and Occidental Chemical Corporation ("Occidental") (referred to collectively as the "Performing Party Respondents");

C. Booth Oil Company ("Booth Oil") and Bell Aerospace Textron ("Bell") (referred to collectively as the "Settling Party Respondents").

II. Purpose

In order to resolve this matter constructively, to avoid prolonged litigation, to permit expeditious implementation of the remedial activities described herein, and to serve the public interest by protecting the public health, welfare, and the environment at the Site and its environs by the implementation of the remedy required herein, the Department and the Respondents have agreed to forego their respective claims, allegations, responses and defenses in this matter and the Department issues this Order on Consent of the Respondents. Accordingly, the provisions, terms and conditions

of this Order shall not constitute or be construed as an adjudication or admission of any issue of fact or law, or as an admission by any party of any violation of any law or regulation.

III. Site Information

Within thirty (30) days after the effective date of this Order, Respondents shall submit to the Department all data within Respondents' possession or control regarding environmental conditions relating to the Site, whether on-Site or off-Site, to the extent such data has not previously been provided to the Department.

IV. State Assistance Contract Submittal

A. Within thirty (30) days after the effective date of this Order, the City shall submit to the Department an application, in a format acceptable to the Department, for State assistance pursuant to ECL Article 52, Title 3, and a resolution, in a format acceptable to the Department, authorizing the execution of a contract for such State assistance.

B. Within sixty (60) days after the effective date of this Order, the City shall submit to the Department an executed State Assistance Contract.

C. Within ninety (90) days after the effective date of this Order and every six months thereafter (unless the

Department informs the City otherwise), the City shall provide a written report to the Department of the efforts that it has made to obtain indemnification from the City's insurers and to assist the Department in identifying and compelling other responsible parties to bear the costs associated with the development and implementation of a remedial program at the Site.

V. Performance of the ROD

A. The Performing Party Respondents shall be responsible for the design, construction, operation and maintenance of the remedial program for the Site in accordance with and to the extent provided by this Order.

B. The Performing Party Respondents shall take all steps promptly and reasonably necessary to implement the remedial program, as described below.

VI. Remedial Program Design

A. The Performing Party Respondents previously submitted and the Department approved the scope of work (the "Scope of Work") for the design and implementation of the remedial program as set forth therein ("Remedial Program"). (The Scope of Work for the Remedial Program is attached as Appendix "B" hereto.) A time schedule to design and implement the Remedial Program and provisions for periodic work-in-progress reports during the course of such design and implementation are included in the Scope of Work.

B. In accordance with the schedule contained in the Scope of Work, the Performing Party Respondents shall submit a proposed remedial design work plan ("Work Plan") and submittals thereunder. The Work Plan and submittals thereunder shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Work Plan and submittals thereunder were prepared in accordance with this Order. The Work Plan and submittals thereunder shall include the following:

1. A detailed description of the remedial objectives and the means by which each essential element of the Remedial Program will be designed and implemented to achieve those objectives, 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 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 or portions thereof during construction of the Remedial Program;

- e. health and safety of persons living and/or working at or in the vicinity of the Site during construction of the Remedial Program;
- f. quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Program; and
- g. monitoring which integrates needs which are present on-Site and off-Site during implementation of the Remedial Program.

2. "Biddable Quality" documents for the Remedial Program 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. The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Program, including a schedule for periodic sampling of groundwater monitoring wells on-Site and off-Site;

4. A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Program, including the period of time during which such activities will be performed;

5. A contingency plan to be implemented in an emergency situation if any element of the Remedial Program

fails to achieve any of its objectives or otherwise fails to protect human health or the environment;

6. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction of the Remedial Program. This plan shall be prepared in accordance with 29 C.F.R. 1910 by a certified health and safety professional,

Additionally the Department will prepare and implement, with the cooperation and assistance of the Performing Party Respondents, a 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, and 6 NYCRR Part 375.

VII. Remedial Design Construction and Reporting

A. Following approval of the Work Plan and submittals thereunder in accordance with the Scope of Work schedule, the Performing Party Respondents shall commence construction of the Remedial Program, subject to seasonal weather limitations, in accordance with the approved Work Plan and the approved submittals thereunder. The approved Work Plan and the approved submittals shall be incorporated into and deemed an enforceable part of this Order.

B. During implementation of all construction

activities identified in the Remedial Program, the Performing Party Respondents shall have on-Site a full-time representative who is qualified to supervise the work. Such designated representative may be a qualified employee of a consultant or contractor.

C. Within ninety (90) days after completion of the construction of the Remedial Program, the Performing Party Respondents shall submit to the Department a detailed 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 Program was implemented and all construction activities were completed in accordance with the Work Plan and approved submittals thereunder. The O & M Plan, "as built" drawings and final engineering report must be prepared, signed, and sealed by a professional engineer.

D. Upon the Department's approval, the Performing Party Respondents shall implement the O & M Plan.

E. After receipt of the "as-built" drawings, final engineering report, and certification, the Department shall notify the Performing Party Respondents in writing whether the Department is satisfied that all construction activities have been completed in compliance with the Work Plan and submittals thereunder.

F. 1. Prior to its acceptance and approval of the professional engineer's certification that construction was completed in accordance with the approved Work Plan and approved submittals thereunder, the Department may require the Performing Party Respondents to modify the remedial design and undertake additional remedial activities if the Department determines that such measures are necessary due to:

a. environmental conditions on-site or off-site which are related to the presence of hazardous wastes at the Site and were unknown to the Department at the time of the Record of Decision or

b. information received, in whole or in part, after the Record of Decision; and

c. such unknown environmental conditions or such information indicates that the Remedial Program is not fully protective of human health or the environment.

2. Upon learning of any such environmental condition or information the Department may amend and/or revise the ROD for the Site.

G. If the Department concludes that any element of the Remedial Program fails to achieve its objectives or otherwise fails to fully protect human health or the environment the Performing Party Respondents shall take whatever action the Department determines necessary to achieve those objectives or to ensure that the Remedial Program

otherwise protects human health and the environment.

VIII. Remedial Program Reporting

During the period of implementation of all construction activities identified in the Remedial Program and until such time as the Department has issued approval pursuant to Subparagraph VII.E, the Performing Party Respondents shall submit to the Department's project coordinator identified under Subparagraph XIII.A, copies of 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 a summary of all results of sampling and tests and all other data received or generated by Performing Party Respondents or their contractors or agents in the previous month related to the Site whether conducted pursuant to this Order or conducted independently by Performing Party Respondents; (iii) identify all work plans, reports, and other deliverables required by this Order which were completed and submitted during the previous month; (iv) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month and provide other information relating to the progress at the Site; (v) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Performing Party Respondents' obligations under the Order, and

description of efforts made to mitigate those delays or anticipated delays; (vi) include any modifications to any work plans that the Performing Party Respondents have proposed to the Department or that have been approved by the Department; 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. The Performing Party Respondents shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order unless such day falls upon a weekend or holiday, in which case the report will be due the following business day.

IX. Review of Submittals

A. 1. The Department shall review each of the submittals Performing Party 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 the Performing Party Respondents in writing of its approval or disapproval of the submittal as soon as practicable. 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 the Performing Party Respondents

in writing and shall specify the reasons for its disapproval. Within thirty (30) days after receiving written notice that Performing Party Respondents' submittal has been disapproved Performing Party 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 Performing Party Respondents in writing of its approval or disapproval. If the Department disapproves the revised submittal, the Performing Party 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, unless, within ten (10) days of the date of the Department's notice of disapproval, the Department receives written notice from the Performing Party Respondents notifying the Department of the existence of a dispute in accordance with Paragraph XV 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 the Performing Party Respondents 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. Department determinations pursuant to this Subparagraph IX.B shall be subject to the dispute resolution procedure provided by Paragraph XV of this Order, provided that within ten (10) days of the date of the Department's determination, the Performing Party Respondents provide written notice of the existence of a dispute in accordance with Paragraph XV of this Order.

X. Violations and Delays in Performance

A. The failure of any Performing or Settling Party Respondent to comply with any term of this Order applicable to it shall be a violation of this Order and the ECL.

B. A Performing Party Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action if it cannot comply with any requirement hereof because of "force majeure." "Force majeure" for the purpose of this Order is an unforeseeable event arising exclusively from natural causes or the acts of third parties beyond the control of Respondents which the exercise of ordinary human prudence could not have prevented. The Performing Party Respondents shall, within five (5) working days after obtaining knowledge of any such condition, notify the Department in writing. The Performing Party Respondents shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice in a

timely manner shall constitute a waiver of any claim that a delay is not subject to penalties. The Performing Party Respondents shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this subparagraph. If the Department agrees that the delay was attributable to a "force majeure" event, the parties may stipulate to a reasonable extension. If they do not agree that the delay was caused by a "force majeure" event, or if, regardless of the cause of the delay, the parties are unable to agree on a stipulated extension of time to be granted, the Department shall so notify the Performing Party Respondents in writing and the Performing Party Respondents shall be in violation of this Order, unless, within ten (10) days of the date of the Department's written notice, the Department receives Performing Party Respondents' written notice of the existence of a dispute in accordance with Paragraph XV of this Order.

XI. Entry upon Site

A. Respondent Niagara Mohawk and the City, should it acquire an ownership interest in the Site prior to completion of the requirements of this Order, hereby consent to the entry upon the Site or areas in the vicinity of the Site which may be under either or both of 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 Performing Party Respondents' compliance with this Order. During implementation of the Remedial Program, Performing Party Respondents shall provide the Department with suitable office space at or near the Site, including access to a telephone, and shall permit the Department full access to all records and weekly schedule update meetings relating to matters addressed by this Order.

B. With respect to the Department's access to records pursuant to Subparagraph XI.A, Performing Party Respondents reserve the right to assert applicable evidentiary privileges recognized by law. However, Performing Party Respondents agree that no privilege will be asserted with respect to records, or portions of records, containing factual data and/or information. In the event that Performing Party Respondents assert a privilege, they shall provide written notice of same, describing the records for which the privilege is asserted and the nature of the claimed privilege. The written notification shall contain sufficient particularity to place the Department on notice as to the nature of the documents withheld and the basis for the Performing Party Respondents' privilege claim. The Department will review Performing Party Respondents' written notification and advise the Performing Party Respondents as to whether the Department objects to any document being claimed as privileged. If the Performing Party Respondents disagree with any of the

Department's objections, and continue to claim a disputed document as privileged, the Performing Party Respondents will be in violation of this Order, unless, within ten (10) days of receipt of the Department's objection to the claimed privilege, the Department receives Performing Party Respondents' written notice of the existence of a dispute in accordance with Paragraph XV of this Order.

XII. Authorizations

A. The Performing Party Respondents shall use their best 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 their obligations under the Order. The Performing Party Respondents shall promptly notify the Department in the event of their inability to obtain such authorizations on a timely basis. In such event, the parties shall proceed as follows:

The Department shall use its best efforts, consistent with its legal authority, to assist in obtaining, as appropriate, all such authorizations which the Performing Party Respondents were 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, the Performing Party Respondents shall reimburse the

Department for the amount of just compensation so provided in the exercise of such power. If, despite the Performing Party Respondents' best efforts described in this Paragraph XII, they do not obtain the aforementioned authorizations on a timely basis or if they obtain authorizations containing terms and conditions which effectively prevent compliance with the terms and conditions of the Order, the time for performance of their obligations under the Order shall be extended, as appropriate. If the Performing Party Respondents and the Department agree that, despite the Performing Party Respondents' best efforts, such authorizations or access cannot be obtained, the Department shall enlarge times for or modify or excuse performance, as appropriate. If, however, they cannot agree on such enlargement, modification or excuse, Performing Party Respondents shall be in violation of this Order unless, within ten (10) days of the date of the Department's refusal to enlarge the times or modify or excuse performance the Department receives written notice from the Performing Party Respondents notifying the Department of the existence of a dispute in accordance with Paragraph XV of this Order.

B. The Performing Party 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.

XIII. Project Coordinator

A. The Performing Party Respondents and the Department shall each designate a Project Coordinator to monitor the progress of the work in developing, implementing, operating and maintaining the Remedial Program and to coordinate communication. Within fifteen (15) days of the effective date of this Order, each such party shall advise the others of the name and title of the individual so designated. To the maximum extent possible, communications between the Department and the Performing Party Respondents concerning the terms and conditions of compliance with this Order shall be made between said Coordinators. Each Coordinator shall be responsible for assuring that all communications are appropriately disseminated and processed.

B. The Performing Party Respondents and the Department have the right at any time to change their respective Project Coordinators. Such a change shall be accomplished by notifying the other party in writing at least seven (7) days prior to the change.

C. The Performing Party Respondents' Project Coordinator may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

D. The Department's Project Coordinator may assign other representatives, including other DEC employees or contractors, to serve as a Site representative for oversight of

performance of daily operations.

XIV. Releases, Covenants Not to Sue and Reservations of Rights

A. Department and Performing Party Respondents

In consideration of the actions that will be taken under the terms of this Order, including but not limited to implementation of the Remedial Program, performance of future Operation and Maintenance of the Site, payment of State costs pursuant to Paragraph XX, payment of indemnification pursuant to Paragraph XVI, and, with respect to the City, its obligation to seek insurance indemnification and to assist in identifying and compelling other responsible persons to bear the costs of the Remedial Program, and subject to Subparagraph XIV.F.2, the Department agrees to fully and completely release from civil and criminal liability and covenants not to sue the Performing Party Respondents and their present and former parents and subsidiaries, officials, officers, directors, shareholders, employees and agents for Covered Matters (as defined below). With respect to all such liability, these releases and covenants not to sue shall become effective upon complete and satisfactory performance by the Performing Party Respondents of their obligations under this Order, including, without limitation, the Department's acceptance and approval of the engineer's certification that construction of the Remedial Program was completed in accordance with the approved Remedial

Design.

B. Department and Settling Party Respondents

In consideration of the actions that will be taken under the terms of this Order and the payment of specified sums in such proportions as the Performing Party Respondents and the Settling Party Respondents have agreed among themselves, the Department agrees to fully and completely release from civil and criminal liability and covenants not to sue the Settling Party Respondents and their present and former parents and subsidiaries, officials, officers, directors, shareholders, employees and agents for Covered Matters (as defined below). With respect to all such liability, these releases and covenants not to sue shall become effective on the date the Performing Party and Settling Party Respondents provide written notice to the Department that Settling Party Respondents have paid the sums specified in the agreement entered into by the Performing Party and Settling Party Respondents.

C. Covered Matters

"Covered Matters" shall include any and all claims, express or implied, for civil or criminal liability to the State of New York and the Department arising under any federal or state law, including the common law, for costs, expenses, liabilities or damages of any nature or description, past, present or future, arising out of or relating to the past, present or future release or threat of release, disposal, or

the presence on the Site of hazardous wastes, however, the "Covered Matters" do not include:

1. Actions for injunctive relief based on the liability of the Performing Party Respondents arising from the disposal of waste materials attributable to performance of the Remedial Program in an unlawful manner and not in accordance with the approved method of implementation of the Remedial Program, or the future disposal of waste materials in an unlawful manner;

2. Claims based on any obligations of law or in equity which arise from releases of hazardous substances, pollutants or contaminants to the environment which are unrelated to the hazardous wastes which are the subject of this Order, unless such releases are identified and made subject to this Order by modification hereof;

3. Claims based on:

a. environmental conditions on-Site or off-Site which are related to the disposal of hazardous wastes at the Site and were unknown by the Department at the time of the Record of Decision, or

b. Claims based on information received, in whole or in part, after the Record of Decision, and

c. such unknown environmental conditions or such information indicates that the Remedial Program is not fully protective of human health and the environment. In such

event, the Department shall notify the Performing Party Respondents of such environmental information and its basis for determining that the Remedial Program is not protective of human health and the environment;

4. Claims based on any Respondent's failure to satisfy any of the terms of this Order applicable to such Respondent, including Performing Party Respondents' obligation to provide indemnification in accordance with Paragraph XVI;

5. Claims for natural resource damages as a result of the release or threatened release of hazardous substances or constituents at or from the Site;

6. 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.

D. Release Among Themselves

Except as provided in a separate agreement among the Respondents concerning the performance of their obligations under this Order, the Respondents hereby release and covenant not to sue each other or their present and former parents and subsidiaries, officials, officers, directors, shareholders, employees or agents with respect to any past, present or future civil claim arising out of or relating to the past, present, or future release or threat of release, disposal, or the presence on the Site of hazardous substances addressed by this Order.

E. Contribution Protection

By performance of its obligations and responsibilities as set forth in this Order, each of the Respondents shall be deemed to have resolved its liability to the Department for matters addressed in this Order. With regard to claims for contribution for matters addressed in this Order, Respondents are hereby entitled to all such protection from contribution actions as is provided by applicable law, including, without limitation, CERCLA.

F. Reservation of Rights

1. Respondents

a. Except as otherwise set forth herein, nothing contained in this Order 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 available to the Respondents or their present and former parents and subsidiaries, officials, directors, shareholders, employees, agents, successors and assigns.

b. Respondents expressly retain and reserve the rights to assert claims against other Respondents as set forth in any separate agreements relating to the performance of their respective obligations under this Order.

c. Nothing contained in this Order shall be construed to create any rights in or grant any cause of action to any person not a Respondent to this Order. Except as

provided herein, each of the Respondents and their present and former parents and subsidiaries, officials, officers, directors, shareholders, employees, agents, successors and assigns expressly reserves any and all rights (including any right of contribution), defenses, claims, demands and causes of action which each may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

2. Department

a. Except as otherwise set forth herein, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's legal or equitable rights or claims, actions, suits; causes of action or demands.

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

XV. Dispute Resolution Procedure

A. In the event the Performing Party Respondents and the Department cannot informally resolve any dispute under Subparagraph IX.A.2.b, IX.B, X.B, or XI.B of this Order (as it may be modified in accordance with its terms), then Performing Party Respondents shall provide written notice of the existence of the dispute and the parties shall proceed as described

below.

1. Any dispute that arises under any of the Paragraphs of this Order listed in Subparagraph XV.A shall, in the first instance, be the subject of informal negotiations. Unless the parties agree otherwise, such period of informal negotiations shall not extend beyond thirty (30) days from the date the Performing Party Respondents provide written notice to the Department bringing such dispute to the Department's attention.

2. If any such dispute cannot be resolved informally within such time period, the Department shall make a written determination concerning the subject of the dispute, and the Performing Party Respondents shall comply with such determination within the time period stated therein, unless, upon judicial review, such determination is found to be arbitrary and capricious.

B. Nothing in this Paragraph XV shall be deemed to affect any argument any of the Respondents or the Department may otherwise have pursuant to any applicable regulation or principle of law that it has a right to obtain an administrative hearing or judicial review concerning Department action taken pursuant to this paragraph.

XVI. Indemnification

Performing Party 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 their directors, officers, employees, servants, agents, successors and assigns, provided, however, that Performing Party Respondents do not assume any liability arising from the negligent or intentionally tortious acts or omissions of the Department, the State of New York, and their representatives and employees during the course of any activities conducted pursuant to this Order.

XVII. Public Notice

A. Within thirty (30) days after the effective date of this Order, the Performing Party Respondents shall file a Declaration of Covenants and Restrictions with the Niagara County Clerk to give all parties who may acquire any interest in the Site notice of this Order.

B. If Niagara Mohawk or the City, should it acquire an ownership interest in the Site prior to completion of the requirements of the Order, proposes to convey the whole or any part of its ownership interest in the Site, it shall, not fewer than sixty (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.

XVIII. Communications

A. Unless otherwise agreed to by the project coordinators described in Paragraph XIII, all formal submissions in writing of required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

Submissions from the Performing Party 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
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 Director, Division of Hazardous Waste Remediation.

2. One copy to the Director, Bureau of Environmental Exposure Investigation.
3. Two copies to Regional Engineer.
4. One copy to Division of Environmental Enforcement, Buffalo.

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

2. Within thirty (30) days after the Department's approval of the Remedial Design Work Plan, Respondent shall submit to the Department one microfilm copy (16 millimeter roll film M type cartridge) of the Department-approved Remedial Design Work Plan. Within thirty (30) days after its approval of the drawings and submittals described in Subparagraph VII.C of this Order, Respondent shall submit one microfilm copy (16 millimeter roll film M type cartridge) of such Department-approved drawings and submittals, as well as all other Department-approved submittals other than the Department-approved RI/FS. Such submissions shall be made to Director, Division of Hazardous Waste Remediation.

D. Responses to formal submissions from the Department to the Performing Party Respondents shall be sent to:

Dale Marshall
City of North Tonawanda
216 Payne Avenue
North Tonawanda, NY 14120-5484

Dr. Alan Weston
Occidental Chemical Corporation
360 Rainbow Blvd. South
Niagara Falls, NY 14302

William Weiss, Esq.
Managing Counsel
Niagara Mohawk Power Corporation
300 Erie Blvd. West
Syracuse, NY 13202

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

XIX. City and Private Party Respondents

A. Cooperation between the City and the other Respondents is governed by a separate agreement ("Agreement") between those parties. In accordance with that Agreement and this Order, and subject to Subparagraph B. below, the City is responsible for thirty-four and eight-tenths percent (34.8%) of the cost of developing and implementing the remedial program required by this Order. The other Respondents shall pay the balance of the costs associated with the remedial program as set forth in the Agreement. Proof of such payment shall be submitted to the Department within fourteen (14) days of such payment.

B. The Performing Party Respondents other than the

City shall be responsible for the cost of developing and designing the remedial program (including the cost associated with procurement of an RA Contractor). The cost of the remedial design work is presently estimated to total approximately \$600,000. Documentation of the costs for the remedial design work shall be provided to the Department. In the event the actual cost of such work is at variance with this estimate, the City's share of the cost of developing and implementing the remedial program as described in Subparagraph A. will be adjusted accordingly to ensure that the City is responsible for thirty-three percent (33%) of the total costs of designing, developing and implementing the remedial program.

XX. Payment of State Costs

A. Within thirty (30) days of the effective date of this Order, the Performing Party Respondents shall make payment to the Department in the amount of \$500,000.00, which represents a portion of the past costs incurred by the State of New York for the Site. Payment shall be made in the manner as set forth in Subparagraph XX.B.

B. Thereafter, the Department will periodically submit itemized invoices to the Performing Party Respondents and within thirty (30) days after receipt of an itemized invoice from the Department, Performing Party Respondents 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, overhead, travel, analytical costs, and contractor costs incurred by the State of New York for work performed at the Site after the effective date of this Order, including reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, and collecting and analyzing samples pursuant to this Order. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Such reimbursements pursuant to this Subparagraph XX.B, in total, shall not exceed \$100,000.00. 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. The Department's approved 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.

XXI. Miscellaneous

A. In accordance with the Remedial Program, all activities and submittals required by this Order shall address,

to the extent applicable, both on-Site and off-Site contamination resulting from the disposal of hazardous wastes at the Site.

B. The Performing Party Respondents 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. A summary of the experience, capabilities, and qualifications of the firms or individuals selected by the Performing Party Respondents shall be submitted to the Department within fourteen (14) days before the start of any activities for which such Respondents and such firms or individuals will be responsible. The Department's approval of these firms or individuals shall be obtained before the start of any such activities. The Department's approval shall not be unreasonably withheld. The responsibility for the performance of the professionals retained by the Performing Party Respondents shall rest solely with such Respondents.

C. The Department and the Performing Party Respondents shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the other. The Department also shall have the right to take its own samples. The Performing Party Respondents shall make available to the Department the results of all

sampling and/or tests or other data generated by them with respect to implementation of this Order and shall submit these results in the progress reports required by this Order.

D. Unless otherwise agreed, the Performing Party Respondents shall notify the Department at least ten (10) working days in advance of any field activities (other than routine operational and maintenance activities) to be conducted pursuant to this Order.

E. Respondents and their officers, directors, agents, servants, employees, successors, and assigns shall be bound by the provisions of this Order as applicable to each. 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 such Respondent's responsibilities under this Order.

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

their contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

G. 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. If that individual is a member of a firm, that firm must be authorized to offer professional engineering services in accordance with Article 145 of the New York State Education Law.

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

I. 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.

J. 1. The terms of this Order shall constitute the complete and entire understanding between Respondents 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 the Performing Party Respondents of their obligation to obtain such formal

approvals as may be required by this Order.

2. If Performing Party Respondents, and where appropriate, the Settling Party Respondents, desire that any provision of this Order be changed, Respondents shall make timely written application, signed by the Performing Party Respondents, and, where appropriate, the Settling Party Respondents, to the Department setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to: Division of Environmental Enforcement, Buffalo and the Director, Division of Hazardous Waste Remediation.


K. Notwithstanding Paragraph XIX of this Order, the obligations of Performing Party Respondents to finance and perform obligations under this Order and to pay amounts owed the Department under this Order are joint and several. In the event of the insolvency or other failure of any one or more of such Respondents to implement the requirements of this Order, the remaining Performing Party Respondents shall complete all such requirements.

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

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

DATED: 5/14 , New York
, 1996

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



CONSENT BY RESPONDENT

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: TR Fair WCU

Thomas R. Fair

(Type Name of Signer)

Title: Vice President - Environmental Affairs

Date: March 4, 1996

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

On this 4th day of March, 1996, 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.~~ authorization of said corporation.

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, 1996

CONSENT BY RESPONDENT

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.

OCCIDENTAL CHEMICAL CORPORATION

By: *Keith C. McDole*

Keith C. McDole

(Type Name of Signer)

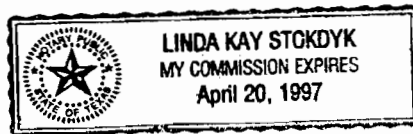
Title: Vice President & General Counsel

Date: April 22, 1996

TEXAS
STATE OF ~~NEW YORK~~)
) s.s.:
COUNTY OF DALLAS)

On this 22nd day of April, 1996, before me personally came Keith C. McDole, to me known, who, being by me duly sworn, did depose and say that he resides in Dallas County; that he is the Vice President & General Counsel of ~~the~~ Occidental Chemical Corporation, 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.

Linda Kay Stokdyk
Notary Public



CONSENT BY RESPONDENT

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.

CITY OF NORTH TONAWANDA

By: James A. McGinnis

JAMES A. MCGINNIS
(Type Name of Signer)

Title: MAYOR

Date: 4/8/96

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

On this 8TH day of APRIL, 1996, before me personally came James A. McGinnis, to me known, who being duly sworn, did depose and say that he resides in the City of North Tonawanda, New York ; that he is the Mayor of the City of North Tonawanda, New York, the municipal corporation described in and which executed the foregoing instrument; that she knows the seal of said City; that the seal affixed to said instrument is such corporate seal; that he was duly authorized by the Common Council of said corporation to affix the seal and that he signed his name thereto pursuant to said resolution.

Nancy M. Bolduc
Notary Public

NANCY M. BOLDUC
Notary Public, State of New York
No. 01B05026543
Qualified in Niagara County
Commission Expires 4/10/96

CONSENT BY RESPONDENT

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.

BOOTH OIL COMPANY

By: [Signature]

L.S. SCHOFIELD

(Type Name of Signer)

Title: PRESIDENT

Date: MARCH 13 1996

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

On this 13th day of MARCH, 1996, before me personally came L.S. SCHOFIELD, to me known, who, being by me duly sworn, did depose and say that he resides in BELLEVILLE, ONTARIO, CANADA; that he is the PRESIDENT of the BOOTH OIL Co 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.

[Signature]

Notary Public

DAVID L. ROACH
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Jan. 23, 1997

APPENDIX A

RECORD OF DECISION

APPENDIX B

**PROPOSED SCOPE OF WORK FOR THE
REMEDIAL DESIGN**

November 1992