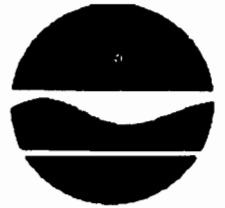


New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233-5500



J. Langdon Marsh
Acting Commissioner

31 March 1994

Dennis P. Harkawik, Esq.
Jaeckle, Fleischmann & Mugal
Fleet Bank Building
Twelve Fountain Plaza
Buffalo, New York 14202-2292

Re New York State Electric & Gas Corporation multisite Order on Consent
(your client code: 930944)

Dear Mr. Harkawik:

I enclose your client's original of the Department's multisite Order.

Thank you very much for your assistance in this matter.

Sincerely,

Charles E. Sullivan, Jr.
Chief, Inactive Hazardous Waste
Site Enforcement Bureau

cc: M. Gerstman
C. Goddard

CES/ces:NYSEG38.cst

RECEIVED

4/4
XC: Jim Van
C. Blough
D. Steen

NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development
and Implementation of a Former
Manufactured Gas Plant (MGP) Sites
Investigation and Remediation Program
by New York State Electric & Gas Corporation

ORDER ON CONSENT
Index #D0-0002-9309

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law, which, inter alia, requires the Department to carry out the environmental policy of the State set forth of the ECL 1-0101. ECL 3-0301.1.
2. The New York State Electric & Gas Corporation ("Respondent") is a business corporation organized under the laws of the State of New York.
3. Respondent is aware of former manufactured gas plant ("MGP") sites at the locations listed in Table "A" of Paragraph I of this Order at which coal tar and associated hazardous substances ("MGP wastes") were, or which may have been, disposed at various times in the past by Respondent or its predecessors or affiliates (individually, "the Site;" collectively, "the Sites"). Respondent also is the owner of other former MGP sites.
4. The Department asserts that its authority to require abatement and remediation of releases of, inter alia, hazardous substances as that term is defined in 42 U.S.C. 9601(14), including MGP wastes, that are in violation of law or that exceed State environmental quality standards (as those set forth in 6 NYCRR Part 703) ("hazardous substances"), is varied, including, but not limited to, ECL 1-0101, 3-0301, 71-1929, 71-2703, and 71-2705. In addition, the Department asserts that it has the power, inter alia, to provide for the prevention and abatement of all water, land, and air pollution caused by, inter alia, the release of hazardous substances into the environment. ECL 3-0301.1.i. Furthermore, the Department asserts that it has authority to require abatement and remediation of significant threats to the public health or the environment caused by threatened releases of hazardous substances that are hazardous wastes as that term is defined in ECL 27-1301.
5. The Department and Respondent agree that the goals of this Order are for Respondent to (i) gather and provide data pertaining to each of the Sites (other than Mechanicville [Central Avenue] and Owego) sufficient to constitute a Preliminary Site Assessment ("PSA") that will enable the Department to characterize hazardous

substances, as that term is defined in 42 USC 9601(14) (including MGP wastes) which are or may be present at the Site and to enable the Department to determine whether such hazardous substances constitute a significant threat to public health or the environment necessitating remediation; (ii) develop and implement a Remedial Investigation ("RI") and prepare a Feasibility Study ("FS") for any Site the Department determines, based upon the results of the PSA, to require the more comprehensive evaluations and assessments that would be provided through the Remedial Investigation/Feasibility Study ("RI/FS") process; (iii) remediate each Site that the Department determines is in need of remediation on a schedule and to an extent acceptable to the Department, including authorizing Respondent to develop and implement Interim Remedial Measures ("IRMs") that the Department determines to be appropriate; (iv) develop and implement acceptable methods of treating and disposing of nonhazardous coal tar soils ("CTS") that minimize any future impacts on public health and the environment and minimize cost, including, as appropriate, the burning of CTS in Respondent's existing utility steam generating facilities including but not limited to Respondent's Hickling and Jennison Stations; and (v) pay for the State's reasonable administrative and oversight costs associated with implementation of this Order.

6. Respondent, without admitting or denying the Department's authority to require investigation and remediation of hazardous substances at the sites listed in Table "A" of Paragraph I of this Order and having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this Order, agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order; and agrees not to contest the validity of this Order or its terms. However, should the Department request that this Order be revised, Respondent reserves all of its rights provided by law and the New York Environmental Conservation Law.

7. Respondent and the Department agree that Respondent shall not be responsible under this Order to investigate, gather data concerning, or remediate those hazardous substances that may exist at or originate from any Site listed in Table "A" of Paragraph I of this Order if, respecting that Site, all the following criteria are met:

- a. Respondent no longer owns or controls the Site where the hazardous substances are found;
- b. the original disposal and release of the hazardous substances occurred after Respondent or its predecessors or affiliates sold or returned control of the Site to its owner;
- c. the hazardous substances were not generated, stored, treated, or disposed at the Site while Respondent or its predecessors or affiliates owned or controlled the Site; and

d. investigation and remediation of the hazardous substances would require Respondent to perform activities and incur costs not necessary to study, characterize, and remediate hazardous substances at the Site that were generated, treated, stored, or disposed at the Site during the ownership or control of Respondent or any of its predecessors or affiliates.

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

I. Initial Submittals

Unless otherwise agreed with respect to specific Sites, no later than 45 days after the effective date of this Order, Respondent shall submit to the Department all data and information it has respecting each Site listed in Table "A" of this Paragraph. The data and other information shall include, at a minimum:

A. A brief history and description of the Site, including the types, quantities, physical state, location, and, if applicable, dates of disposal of MGP wastes, including methods of disposal and spillage of such wastes;

B. A comprehensive list and copies of all existing relevant reports with titles, authors, and subject matter, as well as a description of the results of all previous investigations of each Site and areas in the vicinity of each Site, including copies of all available topographic and property surveys, engineering studies and aerial photographs; and

C. An 8.5 inch by 11 inch portion of a United States Geological Survey topographic map of the Site which contains the name of the quadrangle and an arrow indicating the orientation of a northern compass point.

TABLE "A"

✓1. Auburn (Clark Street) 7	1 Reg 3
✓2. Auburn (Green Street) 7	1 Reg 4
✓3. Auburn (McMaster Street) 7	5 Reg 5
✓4. Clyde 8	1 Reg 6
✓5. Cortland/Homer 7	9 Reg 7
✓6. Dansville 8	13 Reg 8
✓7. Elmira (Madison Avenue) 8	3 Reg 9
✓8. Elmira (Water Street) 8	
✓9. Geneva (Border City) 8	
✓10. Geneva (Wadsworth Street) 8	
✓11. Goshen 3	
✓12. Granville 5	
✓13. Ithaca (Cayuga Inlet) 7	

- ✓14. Ithaca (Court Street) 7
- ✓15. Ithaca First Street) 7
- ✓16. Lockport (State Road) 9
- ✓17. Lockport (Transit Road) 9
- ✓18. Lyons 8
- ✓19. Mechanicville (Central Avenue) 5
- ✓20. Mechanicville (Coon's Crossing) 5
- ✓21. Newark 8
- ✓22. Norwich 7
- ✓23. Oneonta 4
- ✓24. Owego 7
- ✓25. Palmyra 8
- ✓26. Penn Yan (Jackson Street) 8
- ✓27. Penn Yan (Water Street) 8
- ✓28. Plattsburgh (Bridge Street) 5
- ✓29. Plattsburgh (Saranac Street) 5
- ✓30. Seneca Falls 8
- ✓31. Warsaw 9
- ✓32. Waterloo 8
- ✓33. Waterville 6

II. Preliminary Site Assessment

A. The Department shall review the data and information Respondent shall submit under Paragraph I of this Order for the purpose of determining whether additional data need to be obtained to enable it to characterize the nature and extent of distribution of any hazardous substances at the Site and to determine whether such substances constitute a significant threat to public health or the environment necessitating remediation. For those Sites pertaining to which the Department determines that there exist sufficient data to enable it to make such characterization and determination, the Department shall inform Respondent of its determination, and if the Department determines that the hazardous substances found at the Site constitute a significant threat to the environment, Respondent shall undertake an RI/FS for such Site as described in this Order. For those Sites pertaining to which the Department determines that more data must be acquired to enable it to make such characterization and determination, the Department shall inform Respondent in writing of its determination and identify the information which must be obtained, and Respondent shall undertake such additional investigation (referred to below as a "Preliminary Site Assessment," or "PSA") as the Department shall require in accordance with a schedule the Department shall determine in consultation with Respondent. Such schedule shall include the date by which Respondent shall submit to the Department a work plan to acquire the information the Department shall require and a date by which field work necessary to develop such information shall commence ("PSA Work Plan").

Schedule
10/15/88

Schedule
10/15/88

B. The Department may revise the PSA Work Plan submittal date and the field work start date, or either of them, for any Site identified in Table "A" of Paragraph I if information is developed, or otherwise becomes available, indicating the existence of a condition or circumstance justifying immediate or near-term evaluation or response at that Site which otherwise would not be addressed until a later time.

C. Each Site's PSA Work Plan shall describe the methods and procedures to be implemented in undertaking a study at the Site to which it pertains that will cause the generation of information sufficient to enable the Department to characterize the nature and extent of distribution of any hazardous substances at the Site and to determine whether such substances constitute a significant threat to public health or the environment necessitating remediation. Hence, each Site's PSA Work Plan shall include, but not be limited to, the following:

(1) A chronological description of the anticipated investigative activities together with a schedule for the performance of these activities. Such schedule shall take into account, at a minimum, the submission of draft documents, Department review of such documents, and submission of final approvable documents;

(2) A Sampling and Analysis Plan that shall include:

(a) A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives. This plan shall designate a data validation expert and must describe such individual's qualifications and experience, and

(b) A field sampling plan that defines sampling and data gathering methods in a manner consistent with appropriate provisions of the "Compendium of Superfund Field Operations Method" (EPA/540/P-87/001, OSWER Directive 9355.0-14, December 1987) as supplemented by the Department; and

(3) A health and safety plan to protect persons at and in the vicinity of the Site during the performance of the investigation, which shall be prepared in accordance with 29 CFR 1910 and all other applicable standards by a certified health and safety professional. Respondent shall add supplemental items to this plan if necessary to ensure the health and safety of all persons at or in the vicinity of the Site during the performance of any work pursuant to this Order.

D. If after review of the data generated during and after implementation of the Department-approved PSA Work Plan for a particular Site the Department determines that the hazardous substances found at the Site constitute a significant threat to the environment and that response actions are needed in addition to any IRMs the Department may approve or may have approved for the Site under Paragraph III of this Order to address adverse environmental conditions at the Site, the Department shall

notify Respondent of that determination and within 90 days after receipt of that notification, Respondent shall submit to the Department a work plan for that Site that shall incorporate all appropriate elements of an RI/FS as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") [42 USC 9601 et seq.], as amended; the National Contingency Plan ("NCP") of March 8, 1990 [40 CFR Part 300]; the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988 and any subsequent revisions to that guidance document in effect at the time the RI/FS Work Plan is submitted; and appropriate USEPA and Department technical and administrative guidance documents (the "RI/FS Work Plan" for that particular Site). (However, Respondent shall undertake RI/FSs for Mechanicville [Central Avenue] [546033] and Owego [754008] under the terms of, respectively, Department Orders on Consent A5-0276-91-10 dated 23 February 1993 and A7-0150-88-09 dated 2 January 1991.)

Schedule language

III. IRMs

A. (1) Respondent may propose one or more IRMs for any Site. Respondent may propose a treatability study as an IRM.

(2) In proposing each IRM, Respondent shall submit to the Department a work plan that includes a chronological description of the anticipated IRM activities together with a schedule for performance of those activities (an "IRM Work Plan" for that Site).

(3) Upon the Department's determination that the proposal is an appropriate IRM and upon the Department's approval of such work plan, the IRM Work Plan shall be incorporated into and become an enforceable part of this Order; and Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved IRM Work Plan, detailed documents and specifications prepared, signed, and sealed by a professional engineer to implement the Department-approved IRM. Such documents shall include a health and safety plan, contingency plan, and (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto. Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this Order. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department.

(4) During implementation of all construction activities identified in the Department-approved IRM Work Plan, Respondent shall have on-Site a full-time

representative who is qualified to supervise the work done.

(5) Within the schedule contained in the Department-approved IRM Work Plan, Respondent shall submit to the Department a final engineering report prepared by a professional engineer that includes a certification by that individual that all activities that comprised the IRM were performed in full accordance with the Department-approved IRM Work Plan, detailed documents and specifications, and this Order.

(i) If the performance of the Department-approved IRM encompassed construction activities, the final engineering report shall include 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 IRM was implemented and all construction activities were completed in accordance with the Department-approved detailed documents and specifications for the IRM. The O & M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

(ii) Upon the Department's approval of the O & M Plan, Respondent shall implement the O & M Plan in accordance with the requirements of the Department-approved O & M Plan.

(6) After receipt of the final engineering report and certification, the Department shall notify Respondent in writing whether the Department is satisfied that the IRM was completed in compliance with the Department-approved IRM Work Plan and design.

B. (1) In implementing any IRM approved by the Department under this Order, Respondent shall be exempt from the requirement to obtain any permit issuable by the Department for an activity satisfying the criteria set out in Subparagraph III.B(2) of this Order.

(2) The following criteria must be met:

(i) The activity is conducted on the Site. For purposes of this Order, an activity is on the Site:

(a) if it is conducted on the same premises as the Site, or

(b) if it is conducted on different premises that are under common control or are contiguous to or physically connected with the Site and the activity manages exclusively hazardous substances for which Respondent is liable (except

in situations where the PSA discloses the existence of off-Site hazardous substance deposits derived from, or otherwise related to materials deposited on-Site, in which case such deposits shall be deemed "on-Site" and subject to this Order to the extent Respondent is able to obtain access for purposes of investigation and/or removal); and

(c) the activity is conducted in a manner which satisfies all substantive technical requirements applicable if the activity were conducted pursuant to a permit issued by the Department.

IV. Performance and Reporting of PSA and of Remedial Investigation

A. (1) In accordance with the schedule contained in a Site's Department-approved PSA Work Plan, Respondent shall commence that Site's PSA.

(2) Respondent shall perform the PSA in accordance with that Site's Department-approved PSA Work Plan.

(3) During the performance of that Site's Department-approved PSA, Respondent shall have at such Site a full-time representative who is qualified to supervise the work done. Respondent's designated representative may be a qualified employee of a consultant or contractor.

(4) In accordance with the schedule contained in a particular Site's Department-approved PSA Work Plan, Respondent shall prepare a PSA Report pertaining to that Site that shall:

(i) include all data generated and all other information obtained during the investigation of that Site;

(ii) provide all appropriate assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph II.D of this Order; and

(iii) include a certification by the individual or firm with primary responsibility for the day to day performance of the PSA for that Site that all activities that comprised the Investigation were performed in full accordance with the Department-approved PSA Work Plan for that Site.

B. This Subparagraph applies only to those Sites identified in Table "A" of Paragraph I of this Order concerning which the Department determines under this Order that an RI/FS must be prepared. (Respondent shall undertake RI/FSs for Mechanicville [Central Avenue] [546033] and Owego [754008] under the terms of, respectively, Department Orders on Consent A5-0276-91-10 dated 23 February 1993 and A7-0150-88-09 dated 2 January 1991.)

(1) In accordance with the schedule contained in a particular Site's Department-approved RI/FS Work Plan, Respondent shall commence that Site's Remedial Investigation.

(2) Respondent shall perform the Remedial Investigation in accordance with that Site's Department-approved RI/FS Work Plan.

(3) During the performance of that Site's Remedial Investigation, Respondent shall have at such Site a full-time representative who is qualified to supervise the work done. Respondent's designated representative may be a qualified employee of a consultant or contractor.

(4) In accordance with the schedule contained in a particular Site's Department-approved RI/FS Work Plan, Respondent shall prepare a Remedial Investigation Report pertaining to that Site that shall:

(i) include all data generated and all other information obtained during the remedial investigation of that Site;

(ii) identify any additional data that must be collected; and

(iii) provide all appropriate assessments and evaluations set forth in CERCLA, the NCP, and the guidance documents identified in Subparagraph II.D of this Order; and

(iv) include a certification by the individual or firm with primary responsibility for the day to day performance of the Remedial Investigation at that Site that all activities that comprised the Remedial Investigation were performed in full accordance with the Department-approved RI/FS Work Plan for that Site.

C. As an element of the Feasibility Study pertaining to a Site, Respondent may undertake a treatability study of remedial alternatives for potential use at such Site, including two EPRI-sponsored demonstration projects, one involving a clean soil process and another involving a contaminated groundwater biotreatment demonstration project (the "study"). The Department agrees with Respondent that the data generated during the course of the study will be beneficial to both Respondent and the Department. In implementing the study, Respondent shall be exempt from the requirement to obtain any permit issuable by the Department for an activity that is conducted on the Site. For purposes of this Order, an activity is on the Site:

1. if it is conducted on the same premises as the Site, or
2. if it is conducted on different premises that are under common control or are contiguous to or physically connected with the Site and the activity

manages exclusively hazardous substance for which Respondent is liable (except in situations where the PSA discloses the existence of off-Site hazardous substance deposits derived from, or otherwise related to materials deposited on-Site, in which case such deposits shall be deemed "on-Site" and subject to this Order and this Subparagraph to the extent Respondent is able to obtain access for purposes of investigation and/or removal); and

3. the activity satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit as determined by the Department.

Respondent, under the provisions of the Freedom of Information Law, may request that the Department treat as confidential any technology descriptions and data submitted to the Department as part of the study; and the Department, under the provisions of the Freedom of Information Law, shall maintain as confidential any of those descriptions or data that the Department determines is confidential.

V. Feasibility Study

This Paragraph applies only to those Sites identified in Table "A" of Paragraph I of this Order concerning which the Department determines under this Order that an RI/FS must be prepared. (Respondent shall undertake RI/FSs for Mechanicville [Central Avenue] [546033] and Owego [754008] under the terms of, respectively, Department Orders on Consent A5-0276-91-10 dated 23 February 1993 and A7-0150-88-09 dated 2 January 1991.)

A. Within 150 days after receipt of the Department's approval of the Remedial Investigation Report pertaining to a particular Site, Respondent shall submit a Feasibility Study evaluating on-Site and off-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to hazardous substance disposal at that Site. Such evaluation may include remediation cleanup levels based upon a Site-specific risk assessment that shall consider a range of exposure scenarios and assumptions that take into account the form, nature, biodegradation, fate, and transport of the contaminant present, and available toxicological data that are based upon generally accepted and peer-reviewed scientific evidence or methodologies. Such Site-specific risk assessment shall be consistent with guidance and regulations for exposure assessment developed by the United States Environmental Protection Agency pursuant to CERCLA and other statutory authorities as applicable; and any proposed remediation cleanup level based upon a Site-specific risk assessment shall be protective of the public health and safety and of the environment. In the event that Respondent intends to undertake such evaluation using a Site-specific risk assessment, Respondent shall submit such risk assessment to the Department for its review no later than 90 days before Respondent shall be required to submit the Feasibility Study for the Site. Unless the Department determines that such risk

assessment is not consistent with peer-reviewed scientific evidence or methodologies, or appropriate guidance and regulations--in which case, the Department shall provide Respondent with a written explanation of the basis for such a determination--the Site-specific risk-based remediation cleanup level determined by application of the risk assessment shall be approved by the Department and shall be used for purposes of selecting the remedial alternative for the Site. Such evaluation also shall take into account any and all Department-approved IRMs that were implemented at the Site. The Feasibility Study shall be prepared by and have the signature and seal of an individual licensed and registered to practice professional engineering in the State of New York who shall certify that the Feasibility Study was prepared in accordance with this Order.

B. Unless the Department otherwise specifies for a particular Site, Respondent shall perform and prepare the Feasibility Study in accordance with the Department-approved RI/FS Work Plan in a manner consistent with appropriate sections of CERCLA, the NCP, and the guidance documents identified in Subparagraph II.D of this Order. If the Department specifies otherwise for a particular Site, Respondent shall perform and prepare the Feasibility Study in accordance with the Department's specifications.

C. (1) Within 30 days after the Department's approval of the Feasibility Study, Respondent shall cooperate and assist the Department in soliciting public comment on the RI/FS and the proposed remedial action plan identified therein, in accordance with appropriate provisions of CERCLA, the NCP, the guidance documents identified in Subparagraph II.D of this Order, and with any Department policy and guidance documents in effect at the time the public comment period is initiated.

(2) The Department shall afford Respondent an opportunity to review and comment upon the proposed remedial action plan for a Site before its release to the public using the following procedure: the Department shall prepare a proposed remedial action plan and shall mail a copy of same to Respondent at least fifteen business days before the scheduled date of the publication of the notice of availability of the document. Respondent shall have ten business days to meet with the Department to discuss it. In the event that Respondent disputes the proposed remedial action plan, within that ten day period, it may request in writing a resolution of its dispute using the procedures contained in Subparagraph XVII.A of this Order. Any resolution of the dispute through the use of those procedures shall concern only the contents of the proposed remedial action plan to be released to the public and shall not preclude the Department from selecting a final remedial alternative for the Site that may be inconsistent with the contents of the proposed remedial action plan that shall have been released to the public.

(3) After the close of the public comment period, the Department shall select a final remedial alternative for the Site in a Record of Decision ("ROD").

The ROD shall be incorporated into and become an enforceable part of this Order.

VI. Remedial Design

This Paragraph applies only to those Sites concerning which the Department determines under this Order that an RI/FS must be prepared, and to Mechanicville (Central Avenue) (546033) and Owego (754008).

A. Unless the ROD selects the "no action" alternative, within 180 days after the ROD is signed, or as otherwise specified in the ROD, Respondent shall submit to the Department a remedial design to implement the remedial alternative for the Site selected by the Department in the ROD (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.

B. The Remedial Design shall include the following:

(1) A detailed description of the remedial objectives and the means by which each essential element of the selected remedial alternative will be implemented to achieve those objectives, including, but not limited to:

- (i) the construction and operation of any structures;
- (ii) the collection, destruction, treatment, and/or disposal of hazardous substances and their constituents and degradation products, and of any soil or other materials contaminated thereby;
- (iii) the collection, destruction, treatment, and/or disposal of contaminated groundwater, leachate, and air;
- (iv) physical security and posting of the Site;
- (v) health and safety of persons living and/or working at or in the vicinity of the Site;
- (vi) quality control and quality assurance procedures and protocols to be applied during implementation of the Remedial Design; and
- (vii) monitoring which integrates needs which are present on-Site and off-Site during implementation of the Department-selected remedial alternative.

(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, if the Remedial Design encompasses groundwater monitoring, a schedule for periodic sampling of groundwater monitoring wells 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 contingency plan to be implemented if any element of the Remedial Design fails to achieve any of its objectives or otherwise fails to protect human health or the environment;

(7) 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. This plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional; and

(8) 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 any subsequent revisions thereto.

VII. Remedial Construction

This Paragraph applies only to those Sites concerning which the Department determines under this Order that an RI/FS must be prepared, and to Mechanicville (Central Avenue) (546033) and Owego (754008).

A. Within such time as identified in the Department's approval of the Remedial Design (such time being determined in consultation with Respondent), Respondent shall commence construction of the Remedial Design. The Department will extend this period if reasonably necessary to accommodate weather-related limitations or other restrictions upon the construction season.

B. Respondent shall implement the Remedial Design in accordance with the Department-approved Remedial Design.

C. During implementation of all construction activities identified in the Remedial Design, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

D. Within 90 days after completion of the construction activities identified in the Remedial Design, Respondent 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 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.

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

F. After receipt of the "as-built" drawings, final engineering report, and certification, the Department shall notify Respondent in writing whether the Department is satisfied that all construction activities have been completed in compliance with the approved Remedial Design.

G. If the Department concludes that any element of the Remedial Program fails to achieve its objectives or otherwise fails to protect human health or the environment, Respondent 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. Progress Reports and Meetings

A. Respondent shall submit to each of the parties set forth in Paragraph XVI of this Order two copies of written monthly progress reports that:

1. describe the actions which have been taken toward achieving compliance with this Order during the previous month;

2. identify all work plans, reports, and other deliverables required by this Order that were completed and submitted during the previous month;

3. 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 each Site;

4. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations under the Order, and efforts made to mitigate those delays or anticipated delays; and

5. include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved. Respondent shall submit these progress reports to the Department with respect to each Site by the 10th day after the end of the month to which the report pertains.

B. Respondent shall allow the Department to attend, and shall provide the Department at least seven days advance notice of the occurrence of, any of the following: prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however, that if circumstances are such as to prevent Respondent from providing the Department with such seven day notice period, Respondent shall provide as much advance notice as possible, under the circumstances.

IX. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent is required to 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. Respondent shall include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent, in the submittal to which such sampling, tests, and other data pertain. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the health and safety plans identified in Paragraph III and in Subparagraphs II.C(3) and VI.B(7) of this Order. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order.

(2) (i) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

(ii) Within a reasonable time after receipt of the revised submittal so as to not cause Respondent to be unable to comply with subsequent obligations and schedule deadlines as presented in Department-approved work plans, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, Respondent 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 Respondent exercises the dispute resolution procedure described in Subparagraph XVII.A 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 Respondent 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.

X. Penalties

A. Respondent's failure to comply with any term of this Order constitutes a violation of this Order and the ECL.

B. Respondent shall not suffer any penalty under this Order or be subject to any proceeding or action for enforcement of this Order if it cannot comply with any requirement hereof because of war, riot, or an unforeseeable disaster which the exercise of ordinary human prudence could not have prevented. Respondent shall, within five days of when it obtains knowledge of any such condition, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent 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. Respondent shall have the burden of proving that an event is a defense to compliance with this Order.

XI. Entry upon Site

Subject to conditions that may be described in a particular Site's health and safety plan, Respondent hereby consents to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Respondent 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 Respondent's compliance with this Order.

XII. Payment of State Costs

The Department shall establish an interest-bearing account into which the Department shall place all monies received from Respondent under the provisions of this Paragraph in order to pay for the State's expenses (including, but not limited to, direct labor and fringe benefits, overhead, travel, analytical costs, and contractor costs) incurred by the State of New York to fund environmental monitors for work associated with

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 administering the requirements of this Order. Respondent shall make payments to the Department as follows:

A. Respondent shall submit to the Department the sum of \$310,000, which shall represent the State's estimate of the first year expenses (including, but not limited to, direct labor and fringe benefits, overhead, travel, analytical costs, and contractor costs) incurred by the State of New York to fund environmental monitors for work associated with reviewing and revising submittals made pursuant to this Order to date, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with administering the requirements of this Order. The \$310,000 shall be submitted as follows: \$110,000 on or before the effective date of this Order; \$100,000 on or before the 60th day after the effective date of this Order; and \$100,000 on or before the 120th day after the effective date of this Order. Respondent shall make subsequent quarterly payments to the Department for the duration of this Order in order to maintain an account balance sufficient to meet the next nine months' anticipated above-described State costs, however, not exceeding on an annual basis \$310,000 (which amount may be increased on an annual basis based upon increases in the Consumer Price Index). Each quarterly billing will be based on expenditures incurred to date. The quarterly billing will take into account matters such as inflation, salary increases, accrued interest to be applied to the balance, changes in operating hours and procedures and the need for additional personnel and supervision of such personnel by full-time supervisors. Costs and expenses to be covered by this account include:

(1) Direct personal service costs and fringe benefits of the State's staff assigned to work associated with 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 administering the requirements of this Order, including their supervisors and including the costs of replacement personnel for the persons regularly assigned to these duties;

(2) Direct non-personal service costs, including but not limited to purchase of a vehicle if necessary and its full operating costs, any appropriate chemical sampling and analysis, travel, supplies, and contractual costs;

(3) Indirect support or overhead costs at the annually approved indirect support cost rate; and

(4) Consultant services.

B. The Department shall notify Respondent in writing when a quarterly payment is due by submitting a quarterly billing. Respondent shall make such payment

in the form of a check payable to the order of the New York State Department of Environmental Conservation and shall submit such payment to the Department at the following address no later than 30 days from receipt of such billing:

New York State Department of Environmental Conservation
50 Wolf Road, Room 608
Albany, NY 12233-1510
ATTENTION: Director of Environmental Monitors

Payments are to be in advance of the period in which they will be expended. Respondent may dispute a quarterly billing by informing the Department in writing within 30 days of receipt of such billing that the amount of such billing is unreasonable. For purposes of this Order, the sole grounds for determining that a billing is unreasonable are that it contains clerical errors; and that all or a portion of a billing cannot be substantiated by the documentation identified in Subparagraph XII.D or XII.E, as appropriate, of this Order. The procedures contained in Subparagraph XVII.A of this Order shall be used to resolve such dispute, and Respondent shall pay the amount as those procedures shall determine Respondent shall pay, within the time period they shall require.

C. Upon the later termination of this Order and upon payment of any outstanding costs and expenses, the Department shall return the unexpended balance, including interest, to Respondent.

D. Actual personal service costs will be based on Site-specific time and activity ("T&A") costs. Non-personal service costs will be prorated based on the type of cost incurred: general costs (such as, supplies and equipment) will be prorated evenly among the Sites subject to this Order; while other project-related costs will be prorated based on the percentage of T&A incurred for each Site subject to this Order for that time period.

E. Actual costs incurred will be documented by quarterly T&A reports for personal service costs. Copies of actual invoices will not be provided but shall be made available for auditing purposes.

XIII. Department Reservation of Rights

A. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights.

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

XIV. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, and/or Respondent's directors, officers, employees, servants, agents, successors, and assigns; provided, however, that Respondent shall not indemnify the Department, the State of New York, and their representatives and employees in the event that such claim, suit, action, damages, or cost relate to or arise from any unlawful, willful, grossly negligent, or malicious acts or omissions on the part of the Department, the State of New York, or their representatives and employees.

XV. Public Notice

A. Within 30 days after the effective date of this Order with respect to each Site Respondent owns as of the effective date of this Order, or within 30 days after Respondent acquires ownership in any Site, Respondent shall file, with respect to each Site, a Declaration of Covenants and Restrictions with the Clerk of the County within which each such Site is located to give all parties who may acquire any interest in such Site notice of this Order.

B. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in any Site, 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 of the Site in question and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order and shall accompany such notification with a copy of this Order.

XVI. 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 Respondent shall be sent to:

- (1) Charles N. Goddard, P.E.
Assistant 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) Department Regional Director in whose Region the Site in question is located
- (4) Charles E. Sullivan, Jr.
Division of Environmental Enforcement
New York State Department of Environmental Conservation
50 Wolf Road, Room 609
Albany, New York 12233-5500

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

- (1) Six copies (one unbound) to Mr. Goddard
- (2) Two copies to the Director, Bureau of Environmental Exposure Investigation
- (3) One copy to Mr. Sullivan

C. Within 30 days of the Department's approval of any report submitted pursuant to this Order, Respondent shall submit to Mr. Goddard a computer readable magnetic media copy of the approved report in American Standard Code for Information Interchange (ASCII) format. This requirement shall not apply to past reports that will be submitted to the Department but have already been completed by Respondent.

D. Communication to be made from the Department to Respondent shall be sent to:

Phillip M. Murphy, Manager--Alternative Methods
Environment & Research Department
New York State Electric & Gas Corporation
Corporate Drive, Kirkwood Industrial Park
P.O. Box 5227
Binghamton, New York 13902-5227

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

XVII. Miscellaneous

A. (1) This Subparagraph applies only to those Sites identified in Table "A" of Paragraph I of this Order concerning which the Department determines under this Order that an RI/FS must be prepared.

(2) If after conferring in good faith, there remains a dispute between Respondent and the Department concerning a provision of this Order identified as subject to this Subparagraph's procedures, within the time period provided in that provision Respondent serve on the Department a request for an appointment of an Administrative Law Judge ("ALJ"), and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis, or opinion supporting its position, and all supporting documentation on which Respondent relies (hereinafter called the "Statement of Position"). The Department shall serve upon Respondent its Statement of Position, including supporting documentation no later than ten (10) business days after receipt of Respondent's Statement of Position. Respondent shall have five (5) business days after receipt of the Department's Statement of Position within which to serve upon the Department a reply to the Department's Statement of Position, and in the event Respondent serves such a reply, the Department shall have five (5) business days after receipt of Respondent's reply to the Department's Statement of Position within which to serve upon Respondent the Department's reply to Respondent's reply to the Department's Statement of Position. In the event that the periods for exchange of Statements of Position and replies may cause a delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice by the Department as agreed to by Respondent.

(3) The Department shall maintain an administrative record of any dispute being addressed under this Subparagraph. The record shall include the Statement of Position of each party served pursuant to Subparagraph XVII.A(2) and any relevant information. The record shall be available for review of all parties and the public.

(4) Upon review of the administrative record as developed pursuant to this Subparagraph, the ALJ shall issue a final decision and order resolving the dispute. If the matter in dispute concerns a submittal,

(i) Respondent shall revise the submittal in accordance with the Department's specific comments, as may be modified by the ALJ and except for those which have been withdrawn by the ALJ, and shall submit a revised submittal. The period of time within which the submittal must be revised as specified by the Department in its notice of disapproval shall control unless the ALJ revises the time frame in the ALJ's final decision and order resolving the dispute.

(ii) After receipt of the revised submittal, the Department

shall notify Respondent in writing of its approval or disapproval of the revised submittal.

(iii) If the revised submittal fails to address the Department's specific comments, as may be modified by the ALJ, and the Department disapproves the revised submittal for this reason, Respondent shall be in violation of this Order and the ECL.

(5) In review by the ALJ of any dispute pursued under this Subparagraph, Respondent shall have the burden of proving by a preponderance of the evidence that the Department's position should not prevail.

(6) a deadline involving any matter that is the subject of the dispute resolution process described in this Subparagraph shall be held in abeyance while it is the subject of the dispute resolution process unless the Department and Respondent otherwise agree in writing. The invocation of the procedures stated in this Subparagraph shall constitute an election of administrative remedies by Respondent, and such election of this remedy shall constitute a waiver of any and all other administrative remedies which may otherwise be available to Respondent regarding the issue in dispute.

B. All activities and submittals required by this Order shall address both on-Site and off-Site contamination resulting from the disposal of hazardous substances at each Site.

C. Respondent 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. Within 30 days after completion of Respondent's retainer process resulting in the selection of a particular firm or individual to perform any of such obligations, Respondent shall submit to the Department a summary of the experience, capabilities, and qualifications of the firm or individual retained. Respondent must obtain the Department's approval of these firms or individuals before the initiation of any activities for which Respondent and such firms or individuals will be responsible.

D. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. Respondent shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the Department, and Respondent also shall have the right to take its own samples. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order, including a tabular summary of any such results in any report submitted pursuant to this Order requiring such results.

E. Respondent shall notify the Department at least 10 working days in

advance of any field activities to be conducted pursuant to this Order. The Department's project manager is hereby authorized to approve any modification to an activity to be conducted under a Department-approved work plan in order to adapt the activities to be undertaken under such work plan to the conditions actually encountered in the field.

F. Respondent shall use reasonable efforts to obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations are necessary to perform Respondent's obligations under this Order. If Respondent is unable, after exhaustion of such reasonable efforts, to obtain any such permissions, the Department will exercise whatever authority is available to it, in its discretion, to obtain same. In no event will Respondent be determined to be in violation of this Order if it fails to obtain any such permissions after exhausting reasonable efforts to obtain same. This is in recognition of the fact that, with respect to certain Sites, the New York State Electric and Gas Corporation is the current owner of only part of the potential area of disposal of MGP wastes, and may in fact, as to certain Sites, not be the owner of any portion of the Site. Significant impediments may, therefore, be encountered as to Respondent's ability to obtain access for purposes of carrying out the requirements of this Order.

G. If Respondent determines, in connection with any given Site, that a valid claim exists in favor of Respondent as against any other potentially responsible party, for contribution toward response costs deemed necessary by the Department in connection with such Site (or for recovery of an appropriate portion of such costs previously incurred by Respondent), the Department shall provide, in a timely manner, information responsive to any reasonable request (otherwise in conformity with Freedom of Information Law requirements) by such party related to conditions at the Site and any other relevant information that may be helpful in substantiating Respondent's claim. Similarly, if Respondent requests access to non-privileged and otherwise disclosable information in the Department's possession and relevant to the potential liability of any person or entity who may be subject to such claim by Respondent for contribution or cost recovery, the Department will take reasonable steps to expedite Respondent's access to such information.

H. Respondent and its successors and assigns shall be bound by this Order. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this Order in the performance of their designated duties on behalf of Respondent.

I. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into hereunder upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to

perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work to be done under this Order in accordance with this Order.

J. All references to "professional engineer" in this Order are to an individual licensed and registered to practice professional engineering in accordance with Article 145 of the New York State Education Law.

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


L. 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.

M. (1) The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term 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 Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order. However, in the event that Respondent determines that it cannot continue burning CTS at either its Jennison Station or Hickling Station, then Respondent may request that the Department modify its obligations regarding the Sites listed in Table "A" of Paragraph I of this Order. The Department's decision on whether to grant Respondent's request shall not be unreasonably denied and shall consider, but not be limited to, Respondent's costs of proceeding with its obligations under this Order.

(2) If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by the Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to Messrs. Goddard and Sullivan.

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

DATED: *Albany*, New York
March 30, 1994



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

