

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel

625 Broadway, 14th Floor, Albany, New York 12233-1500

P: (518) 402-9185 | F: (518) 402-9018

www.dec.ny.gov

July 13, 2018

SENT VIA FIRST CLASS MAIL AND
VIA ELECTRONIC MAIL

Jeremy_wolf@rge.com

Mr. Jeremy Wolf, Manager
Programs & Projects, Env. Remediation
Electric Capital Delivery
Rochester Gas and Electric Corp.
1300 Scottsville Road
Rochester, New York 14624

RE: Multi-Site Consent Order
Rochester Gas and Electric Corporation
Index No.: CO 8-20180517-48

Dear Mr. Wolf:

Enclosed to complete your files is a fully executed Multi-Site Order on Consent referencing the following sites: RGE West Station - V00593; RGE East Station - V00358; RGE Pavilion (T) – Ellicott Street Road – V00592.

If you have any further questions or concerns relating to this matter, please contact Dolores Tuohy at 518-402-9185.

Sincerely,



Maria Mastroianni
Remediation Bureau
Office of General Counsel

Enclosure

ec: M. Ryan, NYSDEC
G. Heitzman, NYSDEC
M. Cruden, NYSDEC



Department of
Environmental
Conservation

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

MULTI-SITE
ORDER ON CONSENT
index # CO 8-20180517-48

by Rochester Gas and Electric Corporation,
Respondent
Multiple Sites

WHEREAS:

1. The New York State Department of Environmental Conservation ("**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 by Article 3, Title 3 of the Environmental Conservation Law ("**ECL**") 3-0301 and Article 27, Title 13 of the ECL. The Department may issue and otherwise enter into orders consistent with the authority granted to the Commissioner by the ECL and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("**6 NYCRR**"), including this multi-site order on consent.

2. Rochester Gas and Electric Corporation ("**Respondent**") is a public utility established in accordance with the laws of the State of New York, with offices at 89 East Avenue, Rochester, New York 14649.

3. Respondent is aware of former manufactured gas plant ("**MGP**") sites, and other sites, at which wastes related to an MGP, including coal tar and its constituents ("**MGP Wastes**") were or may have been released at various times in the past by Respondent or its predecessors or affiliates (individually, a "**Site**;" and collectively, "**Sites**"), the locations of which are listed in Table "A" of Paragraph I of this RG&E Multi-Site Order (as defined below) and illustrated on the maps attached as Exhibit "A". The term "Site" shall be construed to mean: (i) each individual property, or (ii) collectively, all of the adjoining properties, once related to the MGP, when the context of this RG&E Multi-Site Order requires such construction to give full meaning to this Order. For purposes of the Department's issuance of a Release and Covenant Not to Sue, using the form set forth in Exhibit "C" of this RG&E Multi-Site Order ("Release and Covenant Not to Sue"), the term "Site" shall be construed to mean each such individual property or set of adjoining properties once related to the MGP for which the Department is satisfied that the remediation requirements have been or will be achieved in accordance with the time-frames set forth in the Department-approved remedial work plan.

4. The Department asserts that it has authority under, without limitation, ECL §§ 1-0101, 3-0301, 27-1313, 71-1929, 71-2703, and 71-2705 to require abatement and remediation of releases of any substance included on the list of hazardous substances promulgated pursuant to ECL § 37-0103 that is a component, degradation product or constituent of the MGP Wastes at a Site that resulted from the operations of Respondent or its predecessor or affiliate entities in the past at such Site that are in violation of law or that exceed State environmental quality standards (such as those set forth in 6 NYCRR Part 703).

5. a. Respondent was subject to a multi-site voluntary cleanup agreement that was executed on April 10, 2003 and subsequently amended and restated on December 23, 2014, Index No. B8-0535-98-07, pertaining to the Sites listed in Table "A" of Paragraph I (together with appendices and any other modifications and prior agreements or orders related to the listed Sites, the "**Original Multi-Site VCA**").

b. Due to circumstances unrelated to Respondent's performance under the Original Multi-Site VCA, the Department's Voluntary Cleanup Program is terminating, necessitating the completion of investigation and remediation pursuant to another legally controlling commitment document that replaces the Original Multi-Site VCA.

c. The Respondent at the request of the Department is proposing to further modify, amend and restate the Original Multi-Site VCA as this multi-site order on consent (together with appendices, the "**RG&E Multi-Site Order**").

d. For purposes of this RG&E Multi-Site Order, "MGP-Site Contamination" is defined as:

- (i) any contaminant (as that term is defined in 6 NYCRR 375-1.2(g)) that is a component or constituent of the by-products, residuals or wastes (collectively "Wastes") associated with the MGP and/or gas holder station operated by Respondent and/or its corporate predecessors at the Site, or which otherwise resulted from the operations of Respondent and/or its corporate predecessors at the Site ("Category 1 Substances"); or
- (ii) any contaminant (as that term is defined in 6 NYCRR 375-1.2(g)) that is an extraneous contaminant, i.e., not a component or constituent of the Wastes associated with the MGP and/or gas holder station operated by Respondent and/or its corporate predecessors at the Site, or which otherwise resulted from the operations of Respondent and/or its corporate predecessors at the Site, that is commingled or intermingled with a Category 1 Substance; provided that the concentrations of the Category 1 Substance would independently require the implementation of remedial action even if the waste did not contain the extraneous contaminant ("Category 2 Substances").

6. The Department and Respondent agree that the goal of this RG&E Multi-Site Order is to ensure the completion of investigation and remediation, commencing with the stage of a remedial program applicable to each Site on the effective date of this RG&E Multi-Site Order, of MGP-Site Contamination, as defined below, at the Sites identified Paragraph 1, Table A, of this RG&E Multi-Site Order. With respect to each Site to be addressed pursuant to this RG&E Multi-Site Order, the following elements of a remedial program shall be applicable, as determined by the stage of the remedial program previously completed or currently underway at each Site:

- (i) prepare and append to the applicable work plan a site-specific Citizens Participation ("**CP**") Plan to facilitate the remedial process and enable citizens to participate more fully in decisions that affect their health in accordance with 6 NYCRR §375-1.10;
- (ii) develop and implement a Remedial Investigation ("**RI**") which provides for an investigation of the nature and extent of contamination at the Site and prepare a Feasibility Study ("**FS**") to develop options

- for remedial action to attain conditions protective of the Site's current, intended and reasonably anticipated use and which identifies and evaluates one or more of those remedial alternatives for effectiveness under the criteria for remedy selection in 6 NYCRR 375-1.8(f);
- (iii) develop and implement a Remedial Design ("**RD**") work plan which provides the final plans and specifications for implementing the remedial alternative selected in the Department's Record of Decision ("**ROD**") on a schedule and to an extent acceptable to the Department, or if a formal remedial design is not required prior to implementation of the remedy, a Remedial Action ("**RA**") work plan, to remediate each Site that the Department determines is in need of remediation, including authorizing Respondent to develop and implement one or more interim remedial measures which is a discrete set of activities which can be undertaken without extensive investigation and evaluation to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to a Site ("**IRMs**") that Respondent suggests or the Department determines to be appropriate;
 - (iv) prepare a Final Engineering Report ("**FER**") that documents the implementation of the completed remedial program and the creation of required institutional and engineering controls;
 - (v) develop and implement a Site Management Plan ("**SMP**") that provides for the monitoring and/or operation and maintenance of the remedy that the FER describes, including post-remedial construction restrictions or controls, including, without limitation, an Institutional and Engineering Control Plan, and, where necessary, an Operation and Maintenance Plan ("**O&M Plan**") for any mechanical or physical components of the remedial program, a Monitoring Plan for monitoring and reporting the performance and/or effectiveness of the remedy, and an Excavation Plan where the remedial program for the Site or area of the Site does not achieve a soil cleanup which allows for a residential use; and
 - (vi) pay for the State's reasonable administrative and oversight costs associated with implementation of this RG&E Multi-Site Order.

7. Solely with regard to the matters set forth below, Respondent, without admitting or denying the Department's authority to require investigation and remediation of any MGP-Site Contamination at the Sites listed in Table "A" of Paragraph I of this RG&E Multi-Site Order and having waived its right to a hearing herein as provided by law, and having consented to the issuance and entry of this RG&E Multi-Site 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 RG&E Multi-Site Order; and agrees not to contest the validity of this RG&E Multi-Site Order or its terms. However, should the Department request that this RG&E Multi-Site Order be modified, Respondent reserves all of its rights provided by law and the ECL.

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

I. Identification of Sites and Initial Submittals

A. The Sites set forth in Table "A" shall be addressed by this RG&E Multi-Site Order. The initial submittal pursuant to the RG&E Multi-Site Order is indicated for each Site.

TABLE "A" to PARAGRAPH I.

1. RGE West Station (City of Rochester): former site no. V00593, current site no. 828205
Initial Submittal: [Pre-Design Investigation Report]
2. RGE - East Station, (City of Rochester): former site no. V00358, current site no. 828204
Initial Submittal: [Remedial Investigation Report]
3. RGE – Pavilion (T) – Ellicott Street Road: former site no. V00592; current site no. 819024
Initial Submittal: [Remedial Design Work Plan]

No records search report is required pursuant to the terms of this RG&E Multi-Site Order.

B. Work Plans

(1) All work plans submitted pursuant to the RG&E Multi-Site Order shall be prepared in accordance with 6 NYCRR §375-1.6 and consistent with Department's generally applicable technical guidance. All work plans submitted to the Department shall be submitted with the time frames set forth in a conceptual target schedule in Exhibit "B" ("**Schedule**"), and each such Department-approved work plan shall be incorporated into and become an enforceable part of this RG&E Multi-Site Order. In accordance with the schedule contained in a work plan, Respondent shall submit a final report with a cover page containing the caption of that work plan.

(2) The work plans, studies, analyses, reports and other plans (generically, "**Work Plan**" or "**Work Plans**") under this RG&E Multi-Site Order shall be consistent with the Department's generally applicable technical guidance, in reference to the specific Site to which the Work Plan applies. Generally, the final report pertaining to a Work Plan's implementation shall include, but not be limited to: all data generated relative to the Site, and all other information obtained, as part of the implementation of the subject Work Plan; all of the assessments and evaluations required by the subject Work Plan; a statement of any additional data that must be collected; and "as-built" drawings, to the extent necessary, showing all changes made during implementation.

C. Updating of the Schedule

For 2018, Work Plans shall be submitted in accordance with the time frames set forth in the Schedule. Thereafter, the Respondent can submit such other and additional Work Plans as the Department deems appropriate. By November 15th of each year, Respondent shall submit for the review and approval of the Department an updated Schedule, and provided that Respondent has submitted for approval an updated Schedule by November 15th of each succeeding year, Respondent may also submit for the review and approval of the Department one or more other updates to the Schedule as circumstances may warrant. If the Department disapproves the proposed update to the Schedule, the Department's notice shall include an explanation of the basis for the disapproval. Within thirty (30) Days after receiving such written notice of disapproval, Respondent shall elect in writing to: (i) update the Schedule in accordance with the Department's comments, or (ii) invoke the dispute resolution procedure set forth in Subparagraph XVIII.A of this RG&E Multi-Site Order; and only if Respondent in its sole discretion is dissatisfied with the results of dispute resolution pursuant to Subparagraph XVIII.A of this Order, may Respondent elect in writing to terminate this RG&E Multi-Site Order in accordance with Subparagraph XVII.A with respect to such Site for which a schedule could not be agreed. The updated Schedule, once approved by the Department, shall

be substituted for the schedule in Exhibit "B" and become the applicable schedule under this RG&E Multi-Site Order.

II. Remedial Investigation ("RI")

For Sites at the RI stage of a remedial program, in addition to any IRMs the Department may approve or may have approved for the Site under Paragraph III of this RG&E Multi-Site Order, Respondent shall submit for the Department's review and approval a work plan for that Site under Paragraph IV of this RG&E Multi-Site Order that shall incorporate all appropriate elements of an RI/FS as set forth in the Department's Technical Guidance for Site Investigation and Remediation (DER-10) and be not inconsistent with 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 remedial investigation/feasibility study work plan is submitted, and 6 NYCRR §375-1.6; and be consistent with all other appropriate USEPA and Department technical and administrative guidance documents (the "**RI/FS Work Plan**" for that particular Site).

III. IRMs

A. (1) Respondent may propose one or more IRMs for any Site, and 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 RG&E Multi-Site 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 CP Plan. Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this RG&E Multi-Site Order. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved IRM 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 report, designated a Construction Completion Report ("**CCR**"), that includes a certification that all activities that comprised the IRM were performed in full accordance with the Department-approved IRM Work Plan, the detailed documents and specifications, and this RG&E Multi-Site Order.

(i) The CCR shall include "as-built" drawings and a certification by a professional engineer with primary responsibility for the day-to-day performance of the activities that the IRM was implemented and all construction activities were completed in accordance with the Department-approved IRM Work Plan, including the detailed documents and specifications for the IRM. The CCR shall be prepared under the supervision of, and, signed and sealed by, a professional engineer.

(ii) If the Department-approved IRM Work Plan encompasses activities that require operation, monitoring, or maintenance, the CCR shall also include a detailed, interim SMP ("**Interim SMP**"), which may be certified by a qualified environmental professional.

(iii) Upon the Department's approval of the CCR and, if any, the Interim SMP, Respondent shall implement the O & M Plan, Monitoring Plan and Excavation Plan, if any, in accordance with the requirements of the Department-approved Interim SMP.

(6) After receipt of the CCR, Interim SMP, if any, and certification(s), 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.

(7) The Department shall determine, upon its approval of each CCR resulting from the implementation of an IRM Work Plan, whether additional remediation is needed to allow the Site to be used for its current, intended and reasonably anticipated use.

B. In implementing any IRM approved by the Department under this RG&E Multi-Site Order, Respondent shall be exempt from the requirement to obtain any permit issuable by the Department for an activity that is conducted on the Site and the Department determines that 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. For purposes of this RG&E Multi-Site Order, an activity is "on the Site" if it is conducted on the same premises as the Site, or 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 MGP-Site Contamination for which Respondent is liable (except in situations of off-Site MGP-Site Contamination 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 RG&E Multi-Site Order to the extent Respondent is able to obtain access for purposes of investigation and/or removal).

IV. Performance and Reporting of RI

This Paragraph applies only to those Sites identified in Table "A" of Paragraph I of this RG&E Multi-Site Order concerning which the Department determines under this RG&E Multi-Site Order that an RI/FS must be prepared.

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

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

(3) During the performance of that Site's RI, 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 RI Report pertaining to that Site that shall:

(i) include all data generated and all other information obtained as part of the implementation of the RI/FS Work Plan for 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 Paragraph II of this RG&E Multi-Site Order, and the RI/FS Work Plan for that Site; and

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

(5) The Department-approved RI Report shall be submitted to the Department in an electronic format acceptable to the Department within forty-five (45) Days of approval of such RI Report, which format is to be identified by the Department at the time of the Department's approval of the final report.

V. Feasibility Study ("FS")

This Paragraph applies only to those Sites identified in Table "A" of Paragraph I of this Order concerning which the Department determines under this RG&E Multi-Site Order that an RI/FS must be prepared.

A. Within one hundred fifty (150) Days after receipt of the Department's approval of the RI Report pertaining to a particular Site, unless specified otherwise in the Schedule, Respondent shall submit a FS evaluating on-Site and off-Site remedial actions to address MGP Site Contamination at that Site, and must result in the conditions at such Site being protective of public health and the environment for the Site's current, intended and reasonably anticipated use. Such evaluation also shall take into account any and all Department-approved IRMs that were implemented at the Site. The FS 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 FS was prepared in accordance with this Order.

B. Unless the Department otherwise specifies for a particular Site, Respondent shall perform and prepare the FS 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 Paragraph II of this Order. If the Department specifies otherwise for a particular Site, Respondent shall perform and prepare the FS in accordance with the Department's specifications. The FS shall include, among other requirements, an evaluation of the proposed remedy considering the factors set forth in 6 NYCRR 375-1.8(f).

C. (1) Within thirty (30) Days after the Department's approval of the FS, Respondent shall cooperate and assist the Department in soliciting public comment on the RI/FS and the accompanying Proposed Remedial Action Plan ("PRAP") developed by the Department, in accordance with appropriate provisions of CERCLA, the NCP, the guidance documents identified in Paragraph II of this RG&E Multi-Site 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 its draft PRAP for a Site before the release of the PRAP to the public using the following procedure: the Department shall prepare a draft PRAP and shall mail or email a copy of same to Respondent at least fifteen (15) Working Days before the scheduled date of the publication of the notice of availability of the PRAP; Respondent shall have ten (10) Working Days to meet with the Department to discuss the draft PRAP; and in the event that Respondent disagrees with the draft PRAP, within that ten day period, Respondent may request in writing revisions to address errors and omissions, or an informal resolution of its disagreement using the procedures set forth below in Subparagraphs V.C.2.i-iv of this RG&E Multi-Site Order. Any informal resolution of the disagreement through the use of those procedures shall concern only the contents of the PRAP 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 PRAP that shall have been released to the public; provided, however, that, at least fifteen (15) Working Days before the Department prepares a Record of Decision ("ROD") for a Site, the Department shall notify Respondent in writing of any concerns raised in the public comment period or by the Department with respect to the PRAP released to the public that the Department determines will likely result in a change to the Department-proposed remedy for the Site or operable unit(s) set forth in the PRAP, and Respondent shall have ten (10) Working Days to meet with the Department to discuss it, and within that ten day period, in the event that Respondent disagrees with the determination regarding a likely change to the Department-proposed remedy for the Site or operable unit(s) set forth in the PRAP, Respondent may request in writing informal resolution of its disagreement using the procedures set forth below in Subparagraphs V.C.2.i-iv of this Order.

- (i) Respondent shall submit any disagreement under Subparagraph V.C.2 of this RG&E Multi-Site Order in writing to the Director, Remedial Bureau C, with a copy to the DER Project Manager (Site Specific);
- (ii) The Director, Remedial Bureau C, shall render a written determination regarding such matter and furnish a copy to Respondent which shall be the agency determination regarding such matter unless Respondent files a written appeal of that determination to the Assistant Director of the Division of Environmental Remediation within 20 days of receipt of that determination;
- (iii) Upon receipt of the written appeal, the Assistant Director of the Division of Environmental Remediation will review the disagreement and the determination of the Director, Remedial Bureau C, regarding such matter, and shall take one of the following actions, with written notice to Respondent:
 - (a) Remand the matter to the DER Project Manager (Site Specific) for further discussion or information if it is determined that the matter is not ripe for review,
 - (b) Determine that there is no need for further action and that the determination of the Director, Remedial Bureau C, regarding such matter is confirmed, or
 - (c) Make a determination regarding the disagreement;

- (iv) Neither the determination of the Director, Remedial Bureau C, under Subparagraph V.C.2.ii of this Order, nor the determination of the Assistant Director of the Division of Environmental Remediation under Subparagraph V.C.2.iii of this Order, regarding the disagreement shall be deemed a final agency decision subject to review pursuant to CPLR article 78.

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

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

(5) If the ROD selects the "no action" or "no further action" alternative, i.e., the Department determines that remediation, or additional remediation, is not needed to allow the Site for which the FS was submitted by Respondent to be used for its current, intended and reasonably anticipated use, Respondent shall prepare and submit an FER for such Site. If such determination is based upon use restrictions, Respondent shall record an Environmental Easement setting forth the use restrictions for such Site in accordance with Subparagraph XVIII.O and Respondent shall, within sixty (60) Days, prepare a SMP for the Site, subject to the Department's approval, with a copy of the recorded Environmental Easement appended.

VI. Remedial Design ("RD")

This Paragraph applies only to those Sites concerning which the Department determines under this RG&E Multi-Site Order and in the ROD that a remedial alternative must be implemented to allow such Site to be used for its current, intended and reasonably anticipated use such that a RD Work Plan ought to be prepared.

A. Unless the ROD selects the "no action" or "no further action" alternative or Respondent elects not to submit a RD Work Plan or RA Work Plan pursuant to Subparagraph D of this Paragraph VI, and unless specified otherwise in the Schedule, within one hundred eighty (180) Days after the ROD is signed, Respondent shall submit to the Department a RD Work Plan to implement the remedial alternative for the Site selected by the Department in the ROD. The RD Work Plan shall be prepared by and have the signature and seal of a professional engineer who shall certify that the RD was prepared in accordance with this Order.

B. The RD Work Plan 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 identification of any data needed to complete the design and the work plan to gather this information;
- (ii) the identification of the remedial technology(ies) for which the design is to be provided;
- (iii) the identification of all permits or authorizations required;
- (iv) the construction and operation of any structures;

(v) the collection, destruction, treatment, and/or disposal of any soil or other materials containing MGP-Site Contamination above the applicable standards, criteria and guidance ("SCGs") and/or site-specific cleanup levels selected in the ROD;

(vi) the collection, destruction, treatment, and/or disposal of any groundwater, leachate, soil vapor, and sub-slab vapor containing MGP-Site Contamination above the applicable SCGs and/or site-specific cleanup levels selected in the ROD;

(vii) physical security and posting of the Site;

(viii) health and safety of persons living and/or working at or in the vicinity of the Site;

(ix) quality control and quality assurance procedures and protocols to be applied during implementation of the RD Work Plan; and

(x) 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 RD Work Plan 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 RD Work Plan;

(4) A description of the requirements for the FER, including without limitation, the parameters, conditions, procedures, and protocols to determine the effectiveness of the RD, including, if the RD encompasses groundwater monitoring, a schedule for periodic sampling of groundwater monitoring wells on-Site and off-Site;

(5) A description of the requirements of the SMP, including without limitation, operation, maintenance, and monitoring activities to be undertaken after the Department has approved the RD, including the number of years during which such activities will be performed;

(6) A contingency plan to be implemented if any element of the RD fails to achieve any of its objectives or otherwise fails to protect human health or the environment for the current, intended and reasonably anticipated use of the Site;

(7) A health and safety plan, including where appropriate a community air monitoring plan, for the protection of persons at and in the vicinity of the Site during construction and after completion of construction of the RD, which plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional; and

(8) A copy of any Department-approved, site-specific CP Plan for the Site.

C. Where no design is needed to implement the remedial technologies selected in the ROD, a Remedial Action ("RA") Work Plan in a format that otherwise conforms to Subparagraph VI.B of this RG&E Multi-Site Order may be submitted in lieu of an RD Work Plan; provided, however, that, although the RA Work Plan may have less detail than anticipated by a formal design, the description of the remedial action and the remedial technology to be conducted for each area of concern must be of sufficient detail for a contractor to delineate any areas targeted for removal, construct necessary

engineering controls, or design and install the necessary treatment systems. The final RA Work Plan shall have the signature and seal of a professional engineer who shall certify that the RA Work Plan was prepared in accordance with this RG&E Multi-Site Order.

D. If the Department determines in the ROD that a remedial alternative, or additional remediation, is needed to allow such a Site to be used for its current, intended and reasonably anticipated use, but Respondent elects not to submit a RD Work Plan or RA Work Plan under this Paragraph VI, then the Department may elect to terminate, for cause, the applicability of this RG&E Multi-Site Order to such Site pursuant to Subparagraph XVII.A and pursue whatever remedies may be available under this RG&E Multi-Site Order or under law with respect to that property.

VII. Remedial Construction

This Paragraph applies only to those Sites concerning which the Department determines in the ROD that a remedial alternative, or additional remediation, is needed to allow such a Site to be used for its current, intended and reasonably anticipated use and Respondent has submitted and the Department has approved an RD Work Plan, or RA Work Plan, under this RG&E Multi-Site Order.

A. Within such time as identified in the Department-approved RD Work Plan, or RA Work Plan, (such time being determined in consultation with Respondent), Respondent shall commence construction of the remedy. 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 remedy in accordance with the Department-approved RD Work Plan, or RA Work Plan. In implementing an RD Work Plan or RA Work Plan approved by the Department under this RG&E Multi-Site Order, Respondent shall be exempt from the requirement to obtain any permit issuable by the Department for an activity that is conducted on the Site and the Department determines that 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. For purposes of this RG&E Multi-Site Order, an activity is "on the Site" if it is conducted on the same premises as the Site, or 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 MGP-Site Contamination for which Respondent is liable (except in situations where the RI discloses the existence of off-Site MGP-Site Contamination derived from, or otherwise related to materials deposited on-Site, in which case such deposits shall be deemed "on-Site" and subject to this RG&E Multi-Site Order to the extent Respondent is able to obtain access for purposes of investigation and/or removal).

C. During implementation of all construction activities identified in the RD Work Plan, or RA Work Plan, Respondent shall have on-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.

D. Within ninety (90) Days after completion of the construction activities identified in the RD Work Plan, or RA Work Plan, or within the time frames set forth in the Schedule, Respondent shall submit to the Department a detailed FER. The FER shall contain a description of the remedial actions completed; "as-built" drawings, showing to the extent necessary all changes made during construction; the recorded Environmental Easement, if applicable; and the results of all analyses.

(1) If the FER states that the remedy requires post-remedial construction restrictions or controls, or any operation, monitoring or maintenance, then an SMP that provides for the monitoring and/or operation and maintenance of the remedy must be prepared and certified by a qualified environmental professional.

(2) The FER must include a description of the remedial actions completed, "as-built" drawings, and a certification by the professional engineer with the primary responsibility for the day-to-day performance of the activities under this RG&E Multi-Site Order, that the RD Work Plan, or RA Work Plan, was implemented and all construction activities were completed in accordance with the Department-approved RD Work Plan, or RA Work Plan, and the FER, SMP, "as built" drawings and certification shall be prepared under the supervision of, and signed and sealed by, such professional engineer.

(3) If the performance of the Department-approved RD Work Plan, or RA Work Plan, did not encompass construction activities or the only construction activity encompassed was a remedial excavation, the FER must include a description of the remedial actions completed, a detailed SMP which may be certified by a qualified environmental professional, "as-built" drawings, and a certification by the professional engineer with the primary responsibility for the day-to-day performance of the activities under this RG&E Multi-Site Order, that the RD Work Plan, or RA Work Plan, was implemented and all construction activities were completed in accordance with the Department-approved RD Work Plan, or RA Work Plan, and the FER, "as built" drawings and certification shall be prepared under the supervision of, and, signed by such professional engineer or qualified environmental professional.

E. After receipt of the FER and, if any, SMP, 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 RD Work Plan, or RA Work Plan.

F. If the Department concludes that any element of the RD Work Plan, or RA Work Plan, fails to achieve its objectives or otherwise fails to protect human health or the environment for the current, intended and reasonably anticipated use of the Site, Respondent shall take whatever action the Department determines necessary to achieve those objectives or to ensure that the remedy otherwise protects human health and the environment for the current, intended and reasonably anticipated use of the Site. Within thirty (30) Days after receiving such a request for action, Respondent shall elect in writing to: (i) undertake such action to address the Department's concerns, or (ii) invoke dispute resolution as set forth in Subparagraph XVIII.A; and only if Respondent in its sole discretion is dissatisfied with the results of dispute resolution pursuant to Subparagraph XVIII.A of this Order, may Respondent elect in writing to terminate the applicability of this RG&E Multi-Site Order to the Site to which the submittal applied pursuant to Subparagraph XVII.A.

G. Upon the Department's approval of the FER and, if any, SMP, Respondent shall implement any such SMP in accordance with the requirements of the Department-approved SMP. The Department shall issue the Release and Covenant Not to Sue attached hereto as Exhibit "C," for the real property constituting the Site, upon the determination by the Department that the FER for the Site is approved.

H. If institutional or engineering controls are relied upon as part of the remedy implemented for any Site under this RG&E Multi-Site Order, Respondent shall submit an initial periodic report ("Periodic Review Report") in accordance with the schedule in the SMP and thereafter in accordance with such schedule as the Department determines until the Department notifies Respondent in writing that the remedial process is concluded. Such Periodic Review Report shall be certified consistent with the Department's generally applicable technical guidance. The certification shall state that the institutional and engineering controls put in place pursuant to this RG&E Multi-Site Order are still in place and effective, and have not been changed or otherwise altered from the previous certification without the prior approval of the Department, and identify any upset, interruption or termination of any of such controls that occurred during the past year and explain the steps taken to cure any problem and

maintain conditions at such Site that are protective of public health and the environment for the current, intended and reasonably anticipated use of the Site and, if such upset, interruption, or termination has not been addressed to the Department's satisfaction, propose a corrective measures work plan, subject to the Department's approval, which will re-establish conditions.

VIII. Progress Reports and Meetings

Respondent shall report by the 15th of every month, or until such time as directed to submit by another schedule, a progress report of its actions at each Site for which activities were implemented pursuant to a Department-approved work plan under this RG&E Multi-Site Order during the applicable reporting period commencing with the month subsequent to the approval of the first Work Plan for a Site and ending with the date for such Site upon which the COC is issued or the Department approves the final report relative to the SMP for the Site, whichever is later; or this RG&E Multi-Site Order terminates for the Site pursuant to Paragraph XVII. Such progress report shall be consistent with Department technical guidance and submitted by Respondent to the parties identified in Subparagraph XVI.A.1 in one consolidated report, and at a minimum, shall:

A. describe all actions relative to a Site pursuant to the Work Plan which have been taken toward achieving compliance with this RG&E Multi-Site Order during the previous month;

B. identify all Work Plans, reports, data received or generated by Respondent, and other deliverables required by this RG&E Multi-Site Order that were completed and submitted during the previous month;

C. describe all actions, including, but not limited to, data collection and implementation of Work Plans, that are scheduled or anticipated relative to a Site for the next month and provide other information relating to the progress at each Site;

D. include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Respondent's obligations relative to a Site under this RG&E Multi-Site Order, and efforts made to mitigate those delays or anticipated delays, and information regarding any citizen participation activities undertaken during the previous reporting period and those to be undertaken in the next reporting period; and

E. include any modifications to any Work Plans that Respondent has proposed to the Department or that the Department has approved.

Notwithstanding the requirements of this Paragraph VIII, Respondent shall not be obligated, absent a written request by the Department, to provide operational data unrelated to the remedial program.

IX. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent is required to make pursuant to this RG&E Multi-Site 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 RG&E Multi-Site Order, applicable State and federal regulations and guidance documents, and generally accepted technical and scientific principles. Respondent shall include all results of sampling and tests and all other data concerning contamination at a Site 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 timely notify Respondent in writing of its approval or disapproval of the submittal, except for the health and safety plans identified in

Subparagraph III.A.3 and in Subparagraph VI.B.7 of this RG&E Multi-Site Order. All Department-approved submittals shall be incorporated into and become an enforceable part of this RG&E Multi-Site Order.

(2) (i) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval, and may request Respondent to modify or expand the submittal. Within forty-five (45) Days after receiving written notice that Respondent's submittal has been disapproved, Respondent shall elect in writing to: (x) modify or expand the submittal to address the Department's concerns, or (y) invoke dispute resolution as set forth in Subparagraph XVIII.A; and only if Respondent in its sole discretion is dissatisfied with the results of dispute resolution pursuant to Subparagraph XVIII.A of this Order, may Respondent elect in writing to terminate the applicability of this RG&E Multi-Site Order to the Site to which the submittal applied pursuant to Subparagraph XVII.A. If Respondent elects to modify or expand the submittal to address the Department's concerns, 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 of the revised submittal. If the Department disapproves the revised submittal, the Department may elect to make a further request to Respondent to modify or expand the already revised submittal, terminate for cause the applicability of this RG&E Multi-Site Order to the Site to which the disapproved revised submittal relates pursuant to Subparagraph XVII.A, or hold Respondent in violation of this RG&E Multi-Site Order with respect to the Site to which the disapproved revised submittal relates in which case the Department may take any action or pursue whatever rights it has with respect to that Site pursuant to any provision of statutory or common law, unless within thirty (30) Days after receiving such written notice Respondent invokes the dispute resolution procedure set forth in Subparagraph XVIII.A of this RG&E Multi-Site Order; and only if Respondent in its sole discretion is dissatisfied with the results of dispute resolution pursuant to Subparagraph XVIII.A of this Order, may Respondent elect in writing to terminate the applicability of this RG&E Multi-Site Order to the Site to which the disapproved revised submittal relates pursuant to Subparagraph XVII.A of this RG&E Multi-Site Order.

(iii) If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this RG&E Multi-Site Order.

B. The Department may require Respondent to modify and/or amplify and expand an already approved submittal if the Department determines, as a result of reviewing data generated by an activity required under this RG&E Multi-Site Order or as a result of reviewing any other data or facts, that further work is necessary to maintain conditions at such Site that are protective of public health and the environment for the Site's current, intended and reasonably anticipated use. If the Department requests such a modification to a submittal, including without limitation a Work Plan, as a result of reviewing data generated by an activity or reviewing any other data or facts, the reasons for such modification shall be provided to Respondent in writing. Within thirty (30) Days after receiving such a request for modification, Respondent shall elect in writing to: (i) modify or expand the submittal to address the Department's concerns, or (ii) invoke dispute resolution as set forth in Subparagraph XVIII.A; and only if Respondent in its sole discretion is dissatisfied with the results of dispute resolution pursuant to Subparagraph XVIII.A of this Order, may Respondent elect in writing to terminate the applicability of this RG&E Multi-Site Order to the Site to which the submittal applied pursuant to Subparagraph XVII.A.

X. Penalties

A. Respondent's failure to comply with any term of this RG&E Multi-Site Order constitutes a violation of this RG&E Multi-Site Order and the ECL.

B. (1) Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this RG&E Multi-Site Order as a result of any Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Respondent must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Respondent's economic inability to comply with any obligation, the failure of Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this RG&E Multi-Site Order.

(2) Respondent shall notify the Department in writing within ten (10) Days of the onset of any Force Majeure Event. Failure to give such notice within such ten day period constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

(3) Respondent shall have the burden of proving by a preponderance of the evidence that: (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay and the modification or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Respondent complied with the requirements of Subparagraph X.B.2 regarding timely notification.

(4) If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force Majeure event, in accordance with 6 NYCRR 375-1.5(4).

(5) If the Department rejects Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraph X.B, Respondent shall be in violation of this Order unless it invokes dispute resolution as set forth in Subparagraph XVIII.A and Respondent's position prevails.

XI. Entry Upon Site

A. Respondent hereby consents, upon reasonable notice under the circumstances presented, 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 officer or employee of the Department or any State agency having jurisdiction with respect to matters addressed pursuant to a Department-approved Work Plan applicable to such Site, and by any agent, consultant, contractor, or other person so authorized by the Commissioner with respect to matters addressed pursuant to this RG&E Multi-Site Order, all of whom shall abide by the health and safety rules in effect for the Site, for inspecting, sampling, copying records related to the MGP-Site Contamination at the Site, observing the implementation of activities under this RG&E Multi-Site Order, and testing and any other activities necessary to ensure Respondent's compliance with this RG&E Multi-Site Order. Upon request, Respondent shall: (i) provide the Department with suitable work space at the Site, including access to a telephone, to the extent available, and (ii) permit the Department full access to all non-privileged records relating to matters addressed by this RG&E Multi-Site Order. Raw data is not considered privileged and that portion of any privileged document containing raw data must be provided to the Department. In the event Respondent is unable to obtain any authorization from third-

party property owners necessary to perform its obligations under this RG&E Multi-Site Order, the Department may, consistent with its legal authority, assist in obtaining such authorizations.

B. The Department shall have the right to take its own samples and scientific measurements, and the Department and Respondent shall each have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the other party. The Department shall make the results of any such sampling and scientific measurements available to Respondent and Respondent shall make the results available pursuant to its reporting obligations.

XII. Payment of State Costs

A. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR 375-1.5(b)(3)(i), for work performed at or in connection with a Site.

B. Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary or billable hourly rate, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports. The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Such invoice shall be sent to Respondent at the following address:

Mr. Jeremy Wolf
Manager – Programs and Projects, Environmental Remediation
Electric Capital Delivery
Rochester Gas and Electric Corporation
1300 Scottsville Road
Rochester, NY 14624

D. Each such payment shall be made payable to the Commissioner of the NYSDEC and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-7012

E. Each party shall provide written notification to the other within thirty (30) Days of any change in the foregoing addresses.

F. Respondent may contest, in writing, invoiced costs under Subparagraph XII.A if it believes that: (i) the cost documentation contains clerical, mathematical, or accounting errors; or (ii) the invoice includes costs that are not related to the State's activities with respect to the remedial program for the Site. If Respondent objects to an invoiced cost, Respondent shall pay all costs not objected to within the time frame set forth in Subparagraph XII.A and shall, within thirty (30) Days after its receipt of an invoice, identify, in writing, all costs objected to and the basis of the objection. This objection shall be

filed with the Director of the Division of Environmental Remediation (“**DER Director**”). The DER Director or the DER Director’s designee shall have the authority to relieve Respondent of the obligation to pay invalid costs. Within forty-five (45) Days after the date of the Department’s determination of the objection, which determination shall constitute a final agency decision, Respondent shall pay to the Department the amount which the DER Director or the DER Director’s designee determines Respondent is obligated to pay, provided however, that such payment shall be stayed until 45 days after the final determination of any challenge which is brought pursuant to Article 78 of the Civil Practice Law and Rules.

G. If any negotiable instrument submitted to the Department pursuant to this RG&E Multi-Site Order is not honored when presented for payment, Respondent shall be in breach of this RG&E Multi-Site Order, provided that: (i) the Department gives Respondent written notice of same, and (ii) the Department does not receive a certified check or bank check in the amount of the uncollected funds within fourteen (14) Days after the date of the Department’s written notification.

H. The Department can bill under this Paragraph for the State’s costs and expenses incurred with respect to each Site subject to this RG&E Multi-Site Order up to and including the date upon which the Department issues a release letter, approves the final site management report, or this RG&E Multi-Site Order is terminated with respect to such Site pursuant to Subparagraph XVII.A, whichever is later. Respondent must pay those State’s costs and expenses incurred with respect to such Site prior to such termination or notification even though the Department’s invoice will be dated after such termination or notification. If the applicability of this RG&E Multi-Site Order to a Site is terminated pursuant to Subparagraph XVII.A, neither this Order nor its termination shall affect any liability of Respondent for remediation of the Site and/or for payment of the State’s costs and expenses incurred with respect to such Site after such termination or notification, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA, nor shall it affect any defenses to such liability that may be asserted by Respondent.

I. In addition to the requirement to pay future State Costs, Respondent understands that it is required to pay State Costs not yet paid by Respondent pursuant to the Original Multi-Site VCA. Such costs are payable as State Costs pursuant to the terms of this RG&E Multi-Site Order.

XIII. Reservation of Rights

A. Except as provided in this RG&E Multi-Site Order or in a Release and Covenant Not to Sue after its issuance with respect to a particular Site, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department’s rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Except as otherwise provided in this RG&E Multi-Site Order, Respondent specifically reserves all rights and defenses under applicable law to contest, defend against, dispute or disprove any actions, proceedings, allegations, assertions, determination or order of the Department, including any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights and defenses, including the rights to notice, to be heard, to appeal, and to any other due process, respecting any action or proceeding by the Department, including the enforcement of this RG&E Multi-Site Order. The existence of this RG&E Multi-Site Order or Respondent’s compliance with it shall not be construed as an admission of liability, fault, wrongdoing, violation of law or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution,

indemnification, and/or any other form of recovery from any other person or entity, including without limitation, its insurers and from other potentially responsible parties or their insurers, for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at a Site as may be provided by law, including but not limited to rights of contribution under CERCLA Section 113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B).

C. To the extent authorized under CERCLA Section 113, 42 U.S.C. § 9613, New York General Obligations Law Section 15-108, and any other applicable law, Respondent shall be deemed to have resolved its liability to the State for purposes of contribution protection provided by CERCLA Section 113(f)(2) for "matters addressed" at each Site pursuant to and in accordance with this RG&E Multi-Site Order. "Matters addressed" in this RG&E Multi-Site Order shall mean, with respect to a Site listed in Table "A" of Paragraph I of this RG&E Multi-Site Order, all response actions taken to implement this RG&E Multi-Site Order for the Site and all response costs incurred and to be incurred by any person or party in connection with the work performed under this RG&E Multi-Site Order, including reimbursement of the State's costs and expenses pursuant to Paragraph XII of this RG&E Multi-Site Order.

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 RG&E Multi-Site 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, or from vehicular accidents occurring during travel to or from a Site.

XV. Public Notice

A. Unless otherwise agreed with respect to specific Sites, no later than thirty (30) Days after this RG&E Multi-Site Order becomes applicable to a Site listed in Table "A" to Paragraph I of this RG&E Multi-Site Order, Respondent shall provide notice of the existence of this Order to all parties who may acquire an interest in that Site as required by 6 NYCRR 375-1.5(a). Within sixty (60) Days of either Respondent or the owner of such Site recording a notice of the existence of this RG&E Multi-Site Order with respect to a Site in the office of the recording officer for the county or counties where the Site is situated in the manner prescribed by 6 NYCRR 375-1.5(a), Respondent shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy. Respondent and/or the owner of any of the real property comprising a Site listed in Table "A" to Paragraph I of this RG&E Multi-Site Order may terminate such notice on or after the date that the applicability of this Order to a Site has been terminated pursuant to Paragraph XVII of this RG&E Multi-Site Order.

B. If Respondent proposes to transfer by sale or lease the whole or any part of Respondent's interest in a Site listed in Table "A" to Paragraph I of this RG&E Multi-Site Order, or becomes aware of such transfer by the owner of a Site, Respondent shall, not fewer than sixty (60) Days before the date of transfer, or within sixty (60) Days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed or actual date of such conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this RG&E Multi-Site Order. However, such obligation shall not extend to a conveyance by means of a corporate reorganization or merger or the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease, or any other right accruing to a person

not affiliated with Respondent to secure the repayment of money or the performance of a duty or obligation.

XVI. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, hand delivered or via electronic mail as follows:

- (1) Communication from Respondent shall be sent to:

DER Project Manager (Site Specific)
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7014

Note: one hard copy of work plans is required, as well as one electronic copy to be submitted in accordance with Department's technical guidance.

with electronic copies to:

Director, Remedial Bureau C
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7014
george.heizman@dec.ny.gov

Krista Anders, Director
Bureau of Environmental Exposure Investigation
New York State Department of Health 2
Empire State Plaza - Corning Tower, Room 1787
Albany, New York 12237
krista.anders@doh.ny.gov

Dolores A. Tuohy, Esq.
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway, 14th Floor
Albany, New York 12233-1500
dolores.tuohy@dec.ny.gov
correspondence only

- (2) Communication to be made from the Department shall be sent to:

Jeremy Wolf,
Manager –
Programs and Projects, Environmental Remediation
Electric Capital Delivery
Rochester Gas and Electric Corporation
1300 Scottsville Road
Rochester, New York 14624
jeremy_wolf@rge.com

with electronic copies to:

Manager Electric Capital Delivery
Rochester Gas and Electric Corporation
1300 Scottsville Road
Rochester, New York 14624

Jeffrey A. Rosenbloom, Esq.
NYSEG and RG&E
89 East Avenue
Rochester, New York 14649
jeffrey.rosenbloom@avangrid.com

Thomas F. Walsh, Esq.
Barclay Damon, LLP
100 Chestnut Street
Rochester, New York 14604
twalsh@barclaydamon.com

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

C. Each party shall notify the other within thirty (30) Days after any change in the addresses in Paragraph XII or in this Paragraph XVI.

XVII. Termination of Order

A. Only after invoking dispute resolution as set forth in Subparagraph XVIII.A of this Order and being in its sole discretion dissatisfied with the results of such dispute resolution, Respondent may elect in writing to terminate this RG&E Multi-Site Order with respect to one or more Sites, or all such Sites, listed in Table "A" of Paragraph I, without cause, while the Department may only elect to terminate this RG&E Multi-Site Order with respect to one or more such Sites, or all such Sites, for cause, which shall be established so long as the Department's stated reason is not arbitrary and capricious. The Department shall include in its notice of termination with respect to one or more such Sites, or all such Sites, the basis for its election to terminate this RG&E Multi-Site Order. The termination of the applicability of this RG&E Multi-Site Order to a particular Site or Sites named in such written notice of termination does not terminate the applicability of this Order to any other Site or Sites not named in such written notice. This RG&E Multi-Site Order will also terminate with respect to a Site upon the earlier of the following events:

(1) Respondent's election to terminate with respect to a Site: (i) pursuant to Subparagraphs IX.A.2.i or IX.A.2.ii so long as such election is made after dispute resolution pursuant to Subparagraph XVIII.A of this Order and Respondent is in its sole discretion dissatisfied with the results of such dispute resolution and prior to the Department's approval of the RD Work Plan or RA Work Plan for such Site; (ii) pursuant to Subparagraph I.C for a failure to agree upon an update to the schedule after dispute resolution pursuant to Subparagraph XVIII.A and Respondent is in its sole discretion dissatisfied with the results of such dispute resolution, and regardless if the Department has previously approved RD Work Plan or RA Work Plan for such Site; or (iii) pursuant to Subparagraphs VII.F or IX.B regardless if the Department has requested further action after implementation of, or a modification to, a previously approved RD Work Plan or RA Work Plan for such Site. In the event of termination in accordance with

this Subparagraph XVII.A.1, this RG&E Multi-Site Order shall terminate effective the 5th Day after the Department's receipt of the written notification terminating this RG&E Multi-Site Order, provided, however, that if there are one or more Work Plan(s) with respect to such Site for which a final report has not been approved at the time of Respondent's notification of its election to terminate this RG&E Multi-Site Order or its failure to timely make such an election and the Department elected to terminate with respect to a Site pursuant to Subparagraphs VI.D or IX.A.2.ii, Respondent shall promptly complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein, and thereafter, this Order shall terminate with respect to such Site effective the 5th Day after the Department's approval of the final report for all previously approved Work Plans; or

(2) Department's election to terminate with respect to a Site pursuant to Subparagraphs VI.D or IX.A(2)(ii), this Order shall terminate effective the 5th Day after the Respondent's receipt of the written notification terminating this Order, provided, however, that if within five (5) Days of receipt of the Department's notice of termination, Respondent invokes the dispute resolution set forth in Subparagraph XVIII.A with respect to whether the Department has cause to terminate and (i) Respondent's position prevails, then this RG&E Multi-Site Order shall not terminate with respect to such Site, or (ii) the Department's position prevails, then the applicability of this RG&E Multi-Site Order terminates with respect to such Site on the 5th Day after Respondent receives notice that the Department's position has prevailed, provided, further however, that if there are one or more Work Plan(s) with respect to such Site for which a final report has not been approved at the time of Department's notification of its election to terminate this RG&E Multi-Site Order pursuant to Subparagraphs VI.D or IX.A.2.ii, Respondent shall promptly complete the activities required by such previously approved Work Plan(s) consistent with the schedules contained therein, and thereafter, this Order shall terminate with respect to such Site effective the 5th Day after the Department's approval of the final report for all previously approved Work Plans; or

(3) The Department's written determination that Respondent has completed all phases of the remedial program (including site management), in which event the termination with respect to such Site shall be effective on the 5th Day after the date of the Department's approval of the final report relating to the final phase of the remedial program.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs X, XII, XIII and XIV shall survive the termination of this RG&E Multi-Site Order with respect to a Site, and any violation of such surviving Paragraphs shall be a violation of this RG&E Multi-Site Order, the ECL, and 6 NYCRR 375-2.11(a)(4), subjecting Respondent to penalties as provided under Paragraph X; provided that, with respect to the obligations under Paragraph XII such obligations accrued on or prior to the effective date of termination..

C. If the RG&E Multi-Site Order is terminated with respect to one or more of the Sites listed in Table "A" of Paragraph I pursuant to Subparagraphs XVII.A.1 or XVII A.2, Respondent shall ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which existed before any activities under this RG&E Multi-Site Order were commenced. Further, the Department's efforts in obtaining and overseeing compliance with this RG&E Multi-Site Order shall constitute reasonable efforts under law to obtain a voluntary commitment from Respondent for any further activities to be undertaken as part of a remedial program for such Site(s).

D. Notwithstanding Subparagraphs XVII.A.1 and XVII.A.2 of this RG&E Multi-Site Order, this Order shall not automatically terminate with respect to any Site for which:

(1) the Department has determined that no requirements other than those remedial actions already conducted at such Site and/or institutional and engineering controls already

implemented at such Site, if any, are necessary to assure that conditions at such Site are protective of the public health and the environment for the Site's current, intended and reasonably anticipated use,

(2) timely payments of the amounts specified in Paragraph XII of this Order related to such Site continue to be or have been made to the Department,

(3) appropriate notices related to such Site in accordance with Subparagraphs XV.A and XV.B have been given and, if required, the Environmental Easement related to such Site in accordance with Subparagraph XVIII.O remains recorded, and

(4) Respondent and/or Respondent's lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the implementation of the Department-approved SMP for such Site, if any.

E. If the RG&E Multi-Site Order is terminated pursuant to Subparagraph XVII.A.1 or XVII A.2 with respect to a Site, neither this RG&E Multi-Site Order nor its termination shall affect any claim, liability, right or defense of the Department or Respondent with respect to remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA.

XVIII. Miscellaneous

A. Any disagreement which arises regarding the Department's notice of disapproval of a submittal or a proposed Work Plan, disapproval of a final report, or rejection of Respondent's assertion of a Force Majeure Event shall in the first instance be the subject of informal negotiations between the parties. The period for informal negotiations shall not exceed thirty (30) Days from the time Respondent notifies the Department of a disagreement. A meeting or telephone conference can be scheduled if it will promote a resolution of the issues. The Department and Respondent shall consult together in good faith and exercise best efforts to resolve any disagreement without resort to the procedures described in 6 NYCRR 375-1.5(b)(2). In the event that the disagreement is not resolved through informal negotiations at the close of the thirty (30) Day informal negotiation period, a dispute under this RG&E Multi-Site Order is deemed to have arisen. The Department's position shall be considered binding unless Respondent, within thirty (30) Days after the close of the thirty (30) Day informal negotiation period, initiates dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2). Nothing contained in this RG&E Multi-Site Order shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy or any element of such remedy.

B. All activities and submittals required by this RG&E Multi-Site Order with respect to the Sites listed in Table "A" to Paragraph I of this Order shall address both the presence of MGP-Site Contamination on-Site and off-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 RG&E Multi-Site Order. Within thirty (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 and scientific measurements. 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 and scientific measurements. Respondent shall make available to the Department pursuant to its reporting obligations the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this RG&E Multi-Site Order, including a tabular summary of any such results in any report submitted pursuant to this RG&E Multi-Site Order requiring such results, and the Department shall make available to Respondent the results of all sampling and/or tests or other data generated by the Department with respect to this Order.

E. Respondent shall notify the Department at least ten (10) Working Days in advance of any field activities to be conducted pursuant to this RG&E Multi-Site 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. Changes to the Schedule for submission of Work Plans shall be accomplished as set forth in Subparagraph I.C of this RG&E Multi-Site Order.

F. Respondent shall use reasonable efforts to obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations as are necessary to perform Respondent's obligations under this RG&E Multi-Site Order. If Respondent is unable, after exhaustion of such reasonable efforts, to obtain any such permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations, the Department will exercise whatever authority is available to it, in its discretion, to assist Respondent to obtain same. In no event will Respondent be determined to be in breach of this RG&E Multi-Site Order if it fails to obtain any such permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations after exhausting reasonable efforts to obtain same. This is in recognition of the fact that, with respect to certain Sites, the Respondent is the current owner of only part of the potential area where MGP Wastes were released, 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 RG&E Multi-Site Order. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Respondent to modify the Work Plan pursuant to 6 NYCRR 375-1.6(d)(3) to reflect changes necessitated by Respondent's inability to obtain such interest. If the Record of Decision for a Site requires institutional controls, in no event shall the Department issue a Release and Covenant Not to Sue for the Site without institutional controls sufficient to ensure that the remedy is protective of public health and the environment.

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 accordance with Freedom of Information Law (FOIL) requirements, information responsive to a FOIL request, about 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, by FOIL request, 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. With respect to each Site listed in Table A of Paragraph I for which the applicability of this RG&E Multi-Site Order has not been terminated pursuant to Paragraph XVII of this RG&E Multi-Site Order, Respondent and its successors and assigns shall be bound by this RG&E Multi-Site 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 with respect to such Site(s) under this RG&E Multi-Site Order. Respondent's officers, directors, employees, servants, and agents shall be obliged to comply with the relevant provisions of this RG&E Multi-Site Order in the performance of their designated duties on behalf of Respondent.

I. Respondent shall provide a copy of this RG&E Multi-Site Order to each contractor hired to perform work required by this RG&E Multi-Site 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 RG&E Multi-Site Order. Respondent or Respondent's contractors shall provide written notice of this RG&E Multi-Site Order to all subcontractors hired to perform any portion of the work required by this RG&E Multi-Site Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work to be done under this RG&E Multi-Site Order in accordance with this RG&E Multi-Site Order.

J. All references to "professional engineer" in this RG&E Multi-Site Order are to an individual licensed and registered to practice professional engineering in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

K. All references to "Days" in this RG&E Multi-Site Order are to calendar days unless otherwise specified. "Working Day" shall mean a day other than a Saturday, Sunday or State holiday. In computing any period of time under this RG&E Multi-Site Order, where the last day would fall on a Saturday, Sunday or State holiday, the period shall run until the close of business of the next Working Day.

L. The Paragraph, Subparagraph and section headings set forth in this RG&E Multi-Site Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this RG&E Multi-Site Order.

M. (1) The terms of this RG&E Multi-Site Order, as duly modified, amended and restated, shall constitute the complete and entire Order between Respondent and the Department concerning the implementation of the Work Plan(s) attached to this Order with respect to the Sites from the effective date of this RG&E Multi-Site Order as set forth in Subparagraph XVIII.N forward, while the Original Multi-Site VCA shall constitute the complete and entire agreement concerning the implementation of the Work Plan(s) attached to the Original Multi-Site VCA with respect to the Sites from the effective date of the Original Multi-Site VCA (on or about April 20, 2003) until the effective date of this RG&E Multi-Site Order as set forth in Subparagraph XVIII.N. No term, condition, understanding, or agreement purporting to modify or vary any term of this RG&E Multi-Site 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 RG&E Multi-Site Order.

(2) If Respondent desires that any provision of this RG&E Multi-Site Order be changed, other than a provision of a Work Plan, other submittal or Schedule, 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 the DER

Project Manager (Site Specific) and Dolores A. Tuohy, Esq. In the event of a conflict between the terms of this RG&E Multi-Site Order and any Work Plan submitted pursuant to this RG&E Multi-Site Order, the terms of this RG&E Multi-Site Order shall control over the terms of the Work Plan(s).

N. The effective date of this RG&E Multi-Site Order shall be the date it is signed by the Commissioner or his designee.

O. Environmental Easement

(1) If the ROD for a Site relies upon one or more institutional and/or engineering controls, Respondent (or the owner of the Site) shall submit to the Department for approval within one hundred eighty (180) days of the commencement of the remedial design an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2). Upon acceptance of Environmental Easement by the State, Respondent shall comply with the requirements of 6 NYCRR 375-1.8(h)(2). Respondent shall provide the Department with a copy of the Environmental Easement, certified by the County Clerk in the county in which the Site is located to be a true and faithful copy, within thirty (30) days of such recording.

(2) If the ROD provides for no action other than implementation of one or more institutional controls, Respondent shall cause an Environmental Easement to be recorded under the provisions of Subparagraph XVIII.O.1. If Respondent does not cause such Environmental Easement to be recorded in accordance with 6 NYCRR 375-1.8(h)(2), Respondent will not be entitled to the benefits conferred by the Department's issuance the Release and Covenant Not to Sue.

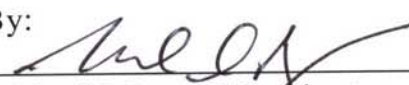
(3) Respondent and/or the owner of a Site may petition the Department to terminate such Environmental Easement recorded pursuant to this Subparagraph XVIII.O.1 when the Site is protective of human health and the environment for residential and/or unrestricted use without reliance upon the institutional and engineering controls set forth in such instrument. The Department will not unreasonably delay, withhold or condition its approval of such petition.

DATED:

JUN 26 2018

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:


Michael J. Ryan, P.E., Director
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent, Rochester Gas and Electric Corporation, hereby consents to the issuing and entering of this RG&E Multi-Site Order on Consent, waives its right to a hearing herein as provided by law, and agrees to be bound by this RG&E Multi-Site Order on Consent.

Rochester Gas and Electric Corporation

By:

Ed J. Mill

Ellen J. Miller, Authorized Signatory

Title: Vice President – Projects

Avangrid Networks, CMP, NYSEG, RG&E, UIL

Date: June 21, 2018

STATE OF MAINE

)

) ss:

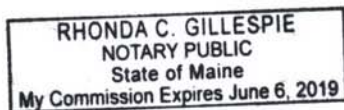
COUNTY OF KENNEBEC

)

On the 21st day of June, in the year 2018 before me, the undersigned, personally appeared Ellen J. Miller, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

R. Londa C. Gillespie

Signature and Office of individual
taking acknowledgment



[Notary Public stamp]

Approval Form For Agreement Requiring Dual Authorization

Attached is an RG&E Multi-Site Order on Consent between Rochester Gas and Electric Corporation ("RG&E"), and the New York State Department of Environmental Conservation (the "Department"). The RG&E Multi-Site Order on Consent sets forth a process whereby RG&E will propose and the Department will approve, and RG&E will implement, Work Plans for remedial activities designed to address in whole or in part environmental contamination at each property comprising the definition of Site in the RG&E Multi-Site Order on Consent.

After your review and concurrence, please sign and date below. Ellen J. Miller has or will execute the RG&E Multi-Site Order on Consent for RG&E.

Control Approval

By: ROBERT P. FITZGERALD, JR

Print Name: [Signature]

Date: June 22, 2018

Kathryn Vaznis

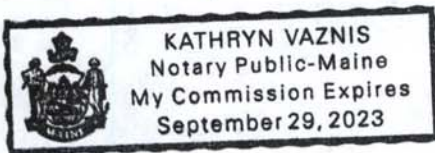


EXHIBIT "A"

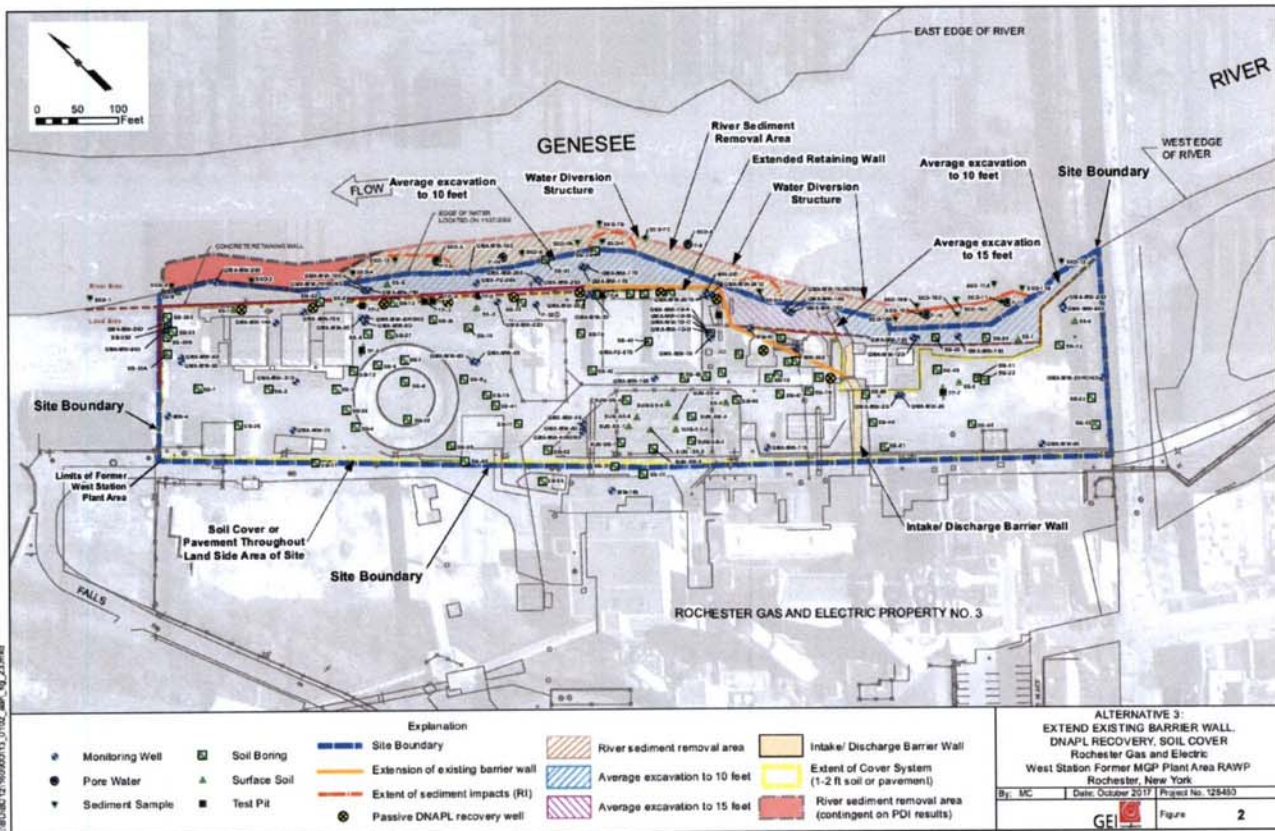
Maps of Sites and

Table of Associated Zoning, Tax Parcel, Use and Anticipated Use Descriptions

Real Property or Properties Comprising the "Site"	Current Zoning	Tax Parcel Number	Does Zoning allow Commercial Use?	Does Zoning allow Industrial Use?	Current Use	Does RG&E Own the Site?	Anticipated Use
West Station, City of Rochester	Central City District-Riverfront (CCD-R)	106.70-1-8.6	yes Zoning Code §§120-62.A, 120-67	yes Zoning §§120-62.A, 120-67	Vacant Former Power Plant	Yes	Commercial / Industrial
East Station, City of Rochester	M-1 Industrial (M-1)	106.53-1-10	yes Zoning Code §120-81.A	yes Zoning Code §§120-81.A	Vacant with adjacent RG&E lab facility	Yes	Commercial / Industrial
Operations Center, Town of Pavilion	Industrial District (I)	16.00-1-112	yes, but limited Zoning Code §850	yes Zoning Code §850	Vacant	Yes	Commercial / Industrial

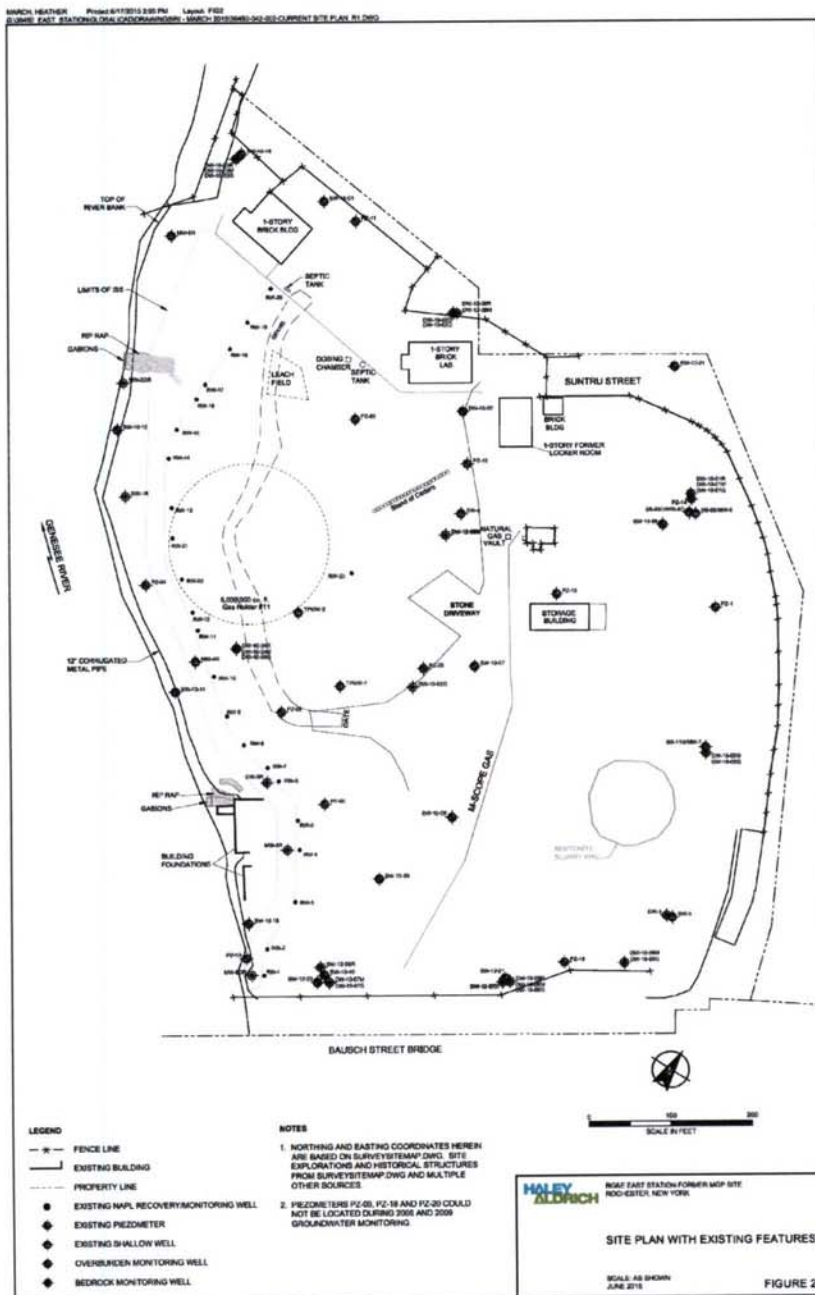
West Station MGP Site

PROPERTY	SBL #	TAX MAP	OTHER MAPS	METES & BOUNDS	ABSTRACT or DEED	ZONING or CURRENT USE
West Station (Rochester) RG&E Prop #2	106.70-1-8.6	Y	N	See Abstract	Abstract	Commercial/Industrial



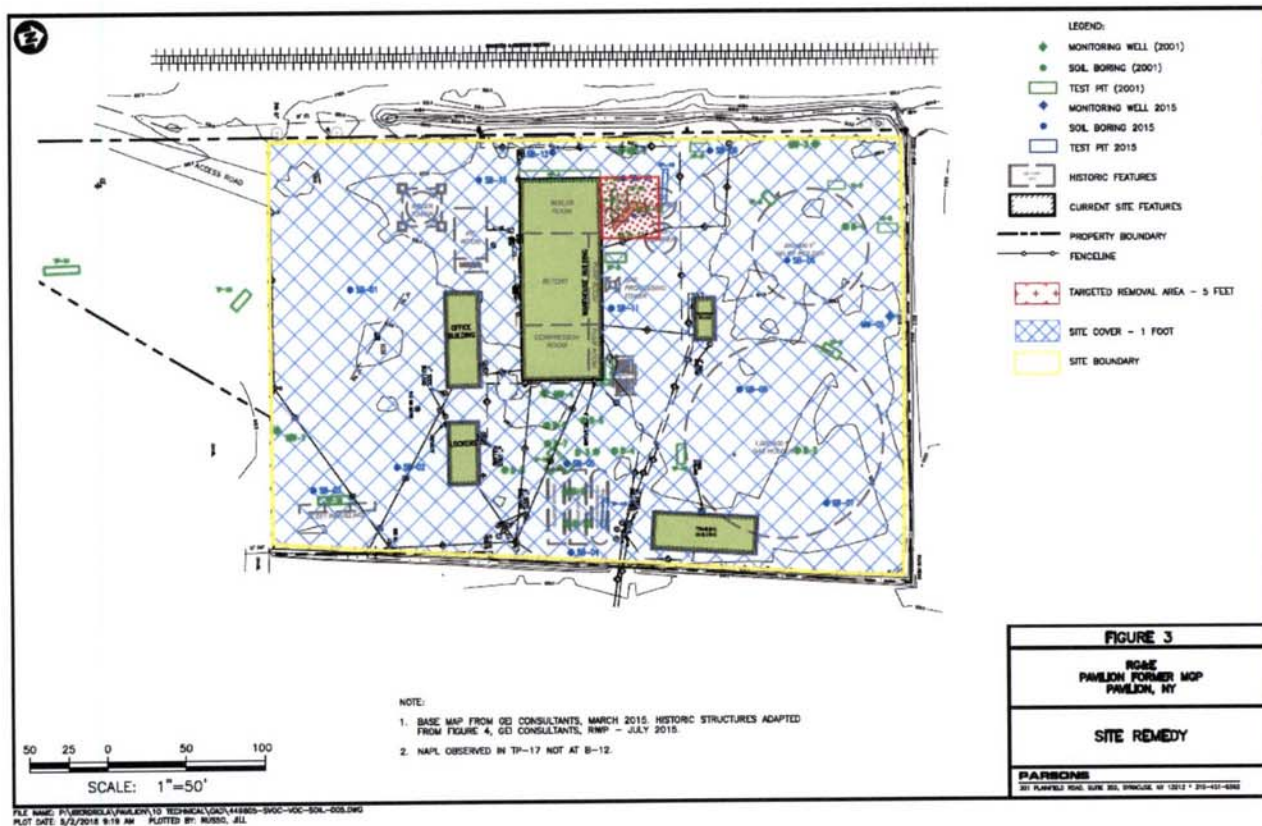
East Station MGP Site

PROPERTY	SBL #	TAX MAP	OTHER MAPS	METES & BOUNDS	ABSTRACT or DEED	ZONING or CURRENT USE
East Station (Rochester) RG&E Prop. #34	106.53-1-10	Y	N	See Abstract	Abstract	Commercial/ Industrial



Pavilion MGP Site

PROPERTY	SBL #	TAX MAP	OTHER MAPS	METES & BOUNDS	ABSTRACT or DEED	ZONING or CURRENT USE
Operations Center #1252 (Pavillion)	16.00-1-112	Y	Y	See Deeds	Deeds	Commercial/Industrial/Manufacturing



Rochester Gas and Electric Corporation
Conceptual Target MGP Project Schedule*
2018 Forward (Rev June 2018)

[illegible]

EXHIBIT "C"

Form for Release and Covenant Not to Sue

Unless otherwise specified in this letter, all terms used in this letter shall have the meaning assigned to them under the terms of the Multi-Site Order on Consent entered into between the New York State Department of Environmental Conservation (the "Department") and Rochester Gas and Electric Corporation ("Respondent"), Index No.CO 8-20180517-48 (the "Order").

The Department is pleased to report that the Department is satisfied that the Order's Work Plan(s) relative to the [insert name of site] Site, identified as site number [insert number of site], located at [insert address of site], [insert reference to Tax Map Identification Number, and reference and attach a map, metes and bounds description, and/or other appropriate identifying information] (hereinafter, the "Site") has been successfully implemented.

The Department, therefore, hereby releases and covenants not to sue, and shall forbear from bringing any action, proceeding, or suit, and from referring to the Attorney General any claim for recovery of costs incurred by the Department, against Respondent and Respondent's lessees and sublessees, grantees, successors and assigns, and their respective secured creditors, for the further investigation and remediation of the Site, based upon the release or threatened release of MGP-Site Contamination, provided that (a) timely payments of the amounts specified in Paragraph XII of the Order continue to be or have been made to the Department, (b) appropriate institutional controls were created and remain recorded in accordance with Paragraph XVIII.O of the Order, and (c) Respondent and/or its lessees, sublessees, successors, or assigns comply with the requirements of the Site Management Plan, if any. Nonetheless, the Department hereby reserves all of its rights concerning, and such release and covenant not to sue shall not extend to, natural resource damages or to any further investigation or remedial action the Department deems necessary due to:

- migration off-Site of MGP-Site Contaminants resulting in impacts that are not inconsequential to environmental resources, to human health, or to other biota and to off-Site migration of petroleum;
- a finding by the Department that a change in an environmental standard, factor, or criteria upon which a remedial work plan was based renders the remedial program implemented at the Site no longer protective of public health or the environment for the Site's current, intended and reasonably anticipated use, and Respondent is not in good faith negotiating, and/or following its approval by the Department, implementing a work plan to achieve conditions at the Site which are protective of public health or the environment for the Site's current, intended and reasonably anticipated use;
- a change in the Site's use subsequent to the Department's issuance of this Release and Covenant Not to Sue to a more restrictive land use as described in the hierarchy set forth at 6 NYCRR 375-1.8(g)(3), unless additional remediation is undertaken which shall meet the standard for protection of the public health and environment applicable to such use per 6 NYCRR Part 375;

- Respondent's failure to implement the Order at such Site to the Department's satisfaction; or
- fraud committed by Respondent in entering into or implementing this Order.

Additionally, the Department hereby reserves all of its rights concerning and any such release and covenant not to sue shall not extend to Respondent nor to any of Respondent's lessees, sublessees, successors, or assigns who cause or allow a release or threat of release at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than MGP-Site Contamination; or cause or allow the use of the Site to change from the current use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to any of Respondent's lessees, sublessees, successors, or assigns who are otherwise responsible under law for the remediation of the MGP-Site Contamination independent of any obligation that party may have respecting same resulting solely from the Order's execution.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release and covenant not to sue shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to MGP-Site Contamination and is not subject to the qualifiers and reopeners set forth herein.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance:

- if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this letter shall be construed or deemed to preclude the State of New York from recovering such claim;
- except as provided in this letter and the Order, nothing contained in this letter or the Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, the right to recover natural resources damages) with respect to any party, including Respondent;
- nothing contained in this letter shall prejudice any rights of the Department to take any investigatory or remedial action it deems necessary if Respondent fails to comply with the Order or if contamination other than MGP-Site Contamination is encountered at the Site;
- nothing contained in this letter shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers; and
- nothing contained in this letter shall be construed to affect the Department's right to terminate the Order under the terms of the Order at any time during its implementation if

Respondent fails to comply substantially with the Order's terms and conditions.

In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

DATED: _____

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:

Director, Division of Environmental Remediation