

**FOR RENEWABLE ENERGY SOURCE ELIGIBILITY**  
**Pursuant to New Hampshire Admin. Code Puc 2500 Rules**

Pursuant to Puc 202, the signed application shall be filed with the Executive Director and Secretary of the New Hampshire Public Utilities Commission (Commission). To ensure that your submitted application is complete, please read RSA 362-F and N.H. Code Admin. Rules Puc 2500 before filling out this application. It is the burden of the applicant to provide timely, accurate and complete information as part of the application process. Any failure by the applicant to provide information in a timely manner may result in the Commission dismissing this application without prejudice.

- Page 1 of 5

(2)

Scottville NY 14546  
(City) (State) (Zip code)

9. Latitude: 42 59' 23.64"N Longitude: 77 47'40.75"W

10. The name and telephone number of the facility's operator, if different from the owner: Same ☐

Ron Chraston 585-889-9460  
(Name) (Telephone number)

11. The ISO-New England asset identification number, if applicable: \_\_\_\_\_ or N/A: ☒

12. The GIS facility code, if applicable: 32,530 or N/A: ☐

13. A description of the facility, including fuel type, gross nameplate generation capacity, the initial commercial operation date, and the date it began operation, if different.

14. If Class I certification is sought for a generation facility that uses biomass, the applicant shall submit:

- (a) quarterly average NOx emission rates over the past rolling year,
- (b) the most recent average particulate matter emission rates as required by the New Hampshire Department of Environmental Services (NHDES),
- (c) a description of the pollution control equipment or proposed practices for compliance with such requirements,
- (d) proof that a copy of the completed application has been filed with the NHDES, and
- (e) conduct a stack test to verify compliance with the emission standard for particulate matter no later than 12 months prior to the end of the subject calendar quarter except as provided for in RSA 362-F:12, II.
- (f) ☒ N/A: Class I certification is NOT being sought for a generation facility that uses biomass.

15. If Class I certification is sought for the incremental new production of electricity by a generation facility that uses biomass, methane or hydroelectric technologies to produce energy, the applicant shall:

- (a) demonstrate that it has made capital investments after January 1, 2006 with the successful purpose of improving the efficiency or increasing the output of renewable energy from the facility, and
- (b) supply the historical generation baseline as defined in RSA 362-F:2, X.
- (c) ☒ N/A: Class I certification is NOT being sought for the incremental new production of electricity by a generation facility that uses biomass, methane or hydroelectric technologies.

16. If Class I certification is sought for repowered Class III or Class IV sources, the applicant shall:

- (a) demonstrate that it has made new capital investments for the purpose of restoring unusable generation capacity or adding to the existing capacity, in light of the NHDES environmental

permitting requirements or otherwise, and

- (b) provide documentation that eighty percent of its tax basis in the resulting plant and equipment of the eligible generation capacity, including the NHDES permitting requirements for new plants, but exclusive of any tax basis in real property and intangible assets, is derived from the new capital investments.
  - (c) ☒ N/A: Class I certification is NOT being sought for repowered Class III or Class IV sources.
- 17. If Class I certification is sought for formerly nonrenewable energy electric generation facilities, the applicant shall:
  - (a) demonstrate that it has made new capital investments for the purpose of repowering with eligible biomass technologies or methane gas and complies with the certification requirements of Puc 2505.04, if using biomass fuels, and
  - (b) provide documentation that eighty percent of its tax basis in the resulting generation unit, including NHDES permitting requirements for new plants, but exclusive of any tax basis in real property and intangible assets, is derived from the new capital investments.
  - (c) ☒ N/A: Class I certification is NOT being sought for formerly nonrenewable energy electric generation facilities.
- 18. If Class IV certification is sought for an existing small hydroelectric facility, the applicant shall submit proof that:
  - (a) it has installed upstream and downstream diadromous fish passages that have been required and approved under the terms of its license or exemption from the Federal Energy Regulatory Commission, and
  - (b) when required, has documented applicable state water quality certification pursuant to section 401 of the Clean Water Act for hydroelectric projects.
  - (c) ☒ N/A: Class IV certification is NOT being sought for existing small hydroelectric facilities.
- 19. If the source is located in a control area adjacent to the New England control area, the applicant shall submit proof that the energy is delivered within the New England control area and such delivery is verified using the documentation required in Puc 2504.01(a)(2) a. to e.
- 20. All other necessary regulatory approvals, including any reviews, approvals or permits required by the NHDES or the environmental protection agency in the facility's state.
- 21. Proof that the applicant either has an approved interconnection study on file with the commission, is a party to a currently effective interconnection agreement, or is otherwise not required to undertake an interconnection study.
- 22. A description of how the generation facility is connected to the regional power pool of the local electric distribution utility.
- 23. A statement as to whether the facility has been certified under another non-federal jurisdiction's renewable portfolio standard and proof thereof.
- 24. A statement as to whether the facility's output has been verified by ISO-New England.

25. A description of how the facility's output is reported to the GIS if not verified by ISO-New England.
26. An affidavit by the owner attesting to the accuracy of the contents of the application.
27. Such other information as the applicant wishes to provide to assist in classification of the generating facility.

28. This application and all future correspondence should be sent to:

Ms. Debra A. Howland  
Executive Director and Secretary  
State of New Hampshire  
Public Utilities Commission  
21 S. Fruit St, Suite 10  
Concord, NH 03301-2429

29. Preparer's information:

Name: PAUL PABOR

Title: Vice President

Address: (1) 1001 Fannin Street

(2) Suite 4000

(3) Houston,

Houston Texas 77002  
(City) (State) (Zip code)

30. Preparer's signature: Paul Pabor



**WM Renewable Energy, L.L.C.**  
**1001 Fannin, Suite 4000**  
**Houston, TX 77002**

**State of New Hampshire**  
**Public Utilities Commission**  
**Application Form – Additional Support**  
**Monroe-Livingston**

(13) The eligible Class III landfill gas fuel used by WM Renewable Energy, L.L.C. is landfill methane gas with a gross nameplate generation capacity of 2.4 MW with an initial commercial operation date of January 1989.

The following standard operating protocol measures will be taken to ensure that only the eligible landfill methane gas will be used.

Landfill methane gas will be recovered via a series of wells drilled into the landfill. The wells will then be connected by a common pipe system that will collect the methane gas and transport it to a nearby compression facility. At the compression facility, the landfill methane gas will then be de-watered, filtered and pressurized; and transported to the generation unit where no other ineligible Biomass Fuel(s) will be allowed to turn engines or turbines to generate renewable electricity.

- (20) See attached New York State Department of Environmental Conservation Air Quality Permit
- (21) See attached Interconnection Agreement
- (22) Connected via meter import scheduling
- (23) The facility has been certified under the non-federal jurisdiction renewable portfolio standard in the State of Connecticut
- (24) Facility output is verified by ISO-New England via connected utility metering per scheduling from NY ISO to ISO New England
- (25) See attached affidavit

WM Renewable Energy, L.L.C.

) AFFIDAVIT ATTESTING  
) CONTENT APPLICATION  
)  
)  
)  
)  
)  
)

COUNTY OF

Harris

STATE OF

Texas

I, Paul Pabor, do hereby depose and state upon my oath:

1. I hold the position of Vice President for WM Renewable Energy, L.L.C. (Monroe-Livingston) landfill gas-to-energy facility.
2. As an authorized agent of WM Renewable Energy, L.L.C. I have personally examined and I am familiar with the information submitted in this affidavit and all attached related Renewable Energy Source Eligibility Application documents.

The foregoing statements made by me are true and correct.

Name:

Paul Pabor

Date:

12/14/2010

SUBSCRIBED AND SWORN TO BEFORE ME THIS 14 day of December 2010  
pursuant to New Hampshire Admin. Code PUC 2500 Rules.

Name:

Jennifer Hickerson

Date:

12.14.10

Jennifer Hickerson

Notary Public

My commission expires:





**PERMIT**  
**Under the Environmental Conservation Law (ECL)**

**IDENTIFICATION INFORMATION**

Permit Type: Air Title V Facility  
Permit ID: 8-2656-00008/00021  
Mod 0 Effective Date: 08/23/2006 Expiration Date: 08/22/2011  
Mod 1 Effective Date: 07/18/2008 Expiration Date: 08/22/2011

Permit Issued To: WASTE MANAGEMENT OF NEW YORK LLC  
1001 FANNIN STE 4000  
HOUSTON, TX 77002

Contact: DAVID MOREIRA  
WASTE MANAGEMENT OF NEW YORK LLC  
4 LIBERTY LN WEST  
HAMPTON, NH 03842  
(603) 929-5446

Facility: MONROE LIVINGSTON SANITARY LANDFILL  
1241 SOUTH RD  
SCOTTSVILLE, NY 14546

Contact: RONALD CHRASTON  
1241 SOUTH RD  
SCOTTSVILLE, NY 14546  
(585) 889-9460

Description:  
First minor modification to the Title V Air Facility Permit for the Monroe Livingston Sanitary Landfill as follows:

To establish certified Emission Reduction Credits (ERCs) in accordance with 6 NYCRR Part 231 New Source Review in Ozone Transport Regions based on the permanent shutdown, effective January 1, 2001, of Engine #1 at the Monroe Livingston Landfill and Recycling Center located at 1241 South Road in the Town of Wheatland and surrendering the certificate to operate this unit. This modification generates 11 tons per year of nitrogen oxides (NOx) and 3.48 tons per year of volatile organic compounds (VOCs) ERCs for past emission reductions at the facility. All of these ERCs will be available to Monroe-Livingston Landfill to sell or otherwise use in the ozone transport region.

The emission sources at this closed landfill now include 3 internal combustion engines, a skid mounted flare and fugitive emissions from the landfill. The facility is subject to Title V permitting due to the facility's potential to emit carbon monoxide (CO) emissions exceeding the major source threshold of 100 tons per year of a regulated contaminant.



New York State Department of Environmental Conservation  
Facility DEC ID: 8265600008



By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, the General Conditions specified and any Special Conditions included as part of this permit.

Permit Administrator: KIMBERLY A MERCHANT  
6274 EAST AVON-LIMA RD  
AVON, NY 14414-9519

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_



### Notification of Other State Permittee Obligations

**Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification**

The permittee expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the compliance permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in any compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

**Item B: Permittee's Contractors to Comply with Permit**

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

**Item C: Permittee Responsible for Obtaining Other Required Permits**

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

**Item D: No Right to Trespass or Interfere with Riparian Rights**

This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.



## **LIST OF CONDITIONS**

### **DEC GENERAL CONDITIONS**

#### **General Provisions**

Facility Inspection by the Department  
Relationship of this Permit to Other Department Orders and  
Determinations  
Applications for permit renewals, modifications and transfers  
Applications for Permit Renewals and Modifications  
Permit modifications, suspensions or revocations by the Department  
Permit Modifications, Suspensions and Revocations by the Department

#### **Facility Level**

Submission of Applications for Permit Modification or Renewal -REGION  
8 HEADQUARTERS  
Submission of application for permit modification or renewal-REGION 8  
HEADQUARTERS



**DEC GENERAL CONDITIONS**

**\*\*\*\* General Provisions \*\*\*\***

**For the purpose of your Title V permit, the following section contains  
state-only enforceable terms and conditions.**

**GENERAL CONDITIONS - Apply to ALL Authorized Permits.**

**Condition 1: Facility Inspection by the Department**

**Applicable State Requirement: ECL 19-0305**

**Item 1.1:**

The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71-0301 and SAPA 401(3).

**Item 1.2:**

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

**Item 1.3:**

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

**Condition 2: Relationship of this Permit to Other Department Orders and Determinations**

**Applicable State Requirement: ECL 3-0301.2(m)**

**Item 2.1:**

Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

**Condition 1-1: Applications for permit renewals, modifications and transfers**

**Applicable State Requirement: 6NYCRR 621.11**

**Item 1-1.1:**

The permittee must submit a separate written application to the Department for renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing.

**Item 1-1.2:**

The permittee must submit a renewal application at least 180 days before expiration of permits for Title V Facility Permits, or at least 30 days before expiration of permits for State Facility Permits.

**Item 1-1.3:**

Permits are transferrable with the approval of the department unless specifically prohibited by the statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.



**Condition 3: Applications for Permit Renewals and Modifications**  
**Applicable State Requirement: 6NYCRR 621.13**

**Item 3.1:**

The permittee must submit a separate written application to the Department for renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing.

**Item 3.2:**

The permittee must submit a renewal application at least 180 days before expiration of permits for Title V Facility Permits, or at least 30 days before expiration of permits for State Facility Permits.

**Item 3.3:**

Permits are transferrable with the approval of the department unless specifically prohibited by the statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

**Condition 1-2: Permit modifications, suspensions or revocations by the Department**  
**Applicable State Requirement: 6NYCRR 621.13**

**Item 1-2.1:**

The Department reserves the right to modify, suspend, or revoke this permit in accordance with 6NYCRR Part 621. The grounds for modification, suspension or revocation include:

- a) materially false or inaccurate statements in the permit application or supporting papers;
- b) failure by the permittee to comply with any terms or conditions of the permit;
- c) exceeding the scope of the project as described in the permit application;
- d) newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e) noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

**Condition 4: Permit Modifications, Suspensions and Revocations by the Department**  
**Applicable State Requirement: 6NYCRR 621.14**

**Item 4.1:**

The Department reserves the right to modify, suspend, or revoke this permit in accordance with 6NYCRR Part 621. The grounds for modification, suspension or revocation include:

- a) materially false or inaccurate statements in the permit application or supporting papers;
- b) failure by the permittee to comply with any terms or conditions of the permit;
- c) exceeding the scope of the project as described in the permit application;
- d) newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e) noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the



permitted activity.

**\*\*\*\* Facility Level \*\*\*\***

**Condition 5: Submission of Applications for Permit Modification or Renewal -REGION 8  
HEADQUARTERS**

**Applicable State Requirement: 6NYCRR 621.5(a)**

**Item 5.1:**

Submission of applications for permit modification or renewal are to be submitted to:

NYSDEC Regional Permit Administrator  
Region 8 Headquarters  
Division of Environmental Permits  
6274 Avon-Lima Road  
Avon, NY 14414-9519  
(716) 226-2466

**Condition 1-3: Submission of application for permit modification or renewal-REGION 8  
HEADQUARTERS**

**Applicable State Requirement: 6NYCRR 621.6(a)**

**Item 1-3.1:**

Submission of applications for permit modification or renewal are to be submitted to:

NYSDEC Regional Permit Administrator  
Region 8 Headquarters  
Division of Environmental Permits  
6274 Avon-Lima Road  
Avon, NY 14414-9519  
(716) 226-2466



**Permit Under the Environmental Conservation Law (ECL)**

**ARTICLE 19: AIR POLLUTION CONTROL - TITLE V PERMIT**

**IDENTIFICATION INFORMATION**

Permit Issued To: WASTE MANAGEMENT OF NEW YORK LLC  
1001 FANNIN STE 4000  
HOUSTON, TX 77002

Facility: MONROE LIVINGSTON SANITARY LANDFILL  
1241 SOUTH RD  
SCOTTSVILLE, NY 14546

Authorized Activity By Standard Industrial Classification Code:  
4953 - REFUSE SYSTEMS  
5093 - SCRAP AND WASTE MATERIALS

Mod 0 Permit Effective Date: 08/23/2006

Permit Expiration Date: 08/22/2011

Mod 1 Permit Effective Date: 07/18/2008

Permit Expiration Date: 08/22/2011



## LIST OF CONDITIONS

### DEC GENERAL CONDITIONS

#### General Provisions

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Permit modifications, suspensions or revocations by the Department  
Permit Modifications, Suspensions and Revocations by the Department

#### Facility Level

Submission of Applications for Permit Modification or Renewal -REGION 8 HEADQUARTERS  
Submission of application for permit modification or renewal-REGION 8 HEADQUARTERS

### FEDERALLY ENFORCEABLE CONDITIONS

#### Facility Level

- 1 6NYCRR 200.6: Acceptable Ambient Air Quality
  - 2 6NYCRR 201-6.5(a)(7): Fees
  - 3 6NYCRR 201-6.5(c): Recordkeeping and reporting of compliance monitoring
  - 4 6NYCRR 201-6.5(c)(2): Monitoring, Related Recordkeeping, and Reporting Requirements.
  - 5 6NYCRR 201-6.5(c)(3)(ii): Compliance Certification
  - 6 6NYCRR 201-6.5(e): Compliance Certification
  - 7 6NYCRR 202-2.1: Compliance Certification
  - 8 6NYCRR 202-2.5: Recordkeeping requirements
  - 9 6NYCRR 215: Open Fires Prohibited at Industrial and Commercial Sites
  - 10 6NYCRR 200.7: Maintenance of Equipment
  - 11 6NYCRR 201-1.7: Recycling and Salvage
  - 1-1 6NYCRR 201-1.8: Prohibition of Reintroduction of Collected Contaminants to the air
  - 13 6NYCRR 201-3.2(a): Exempt Sources - Proof of Eligibility
  - 14 6NYCRR 201-3.3(a): Trivial Sources - Proof of Eligibility
  - 15 6NYCRR 201-6.5(a)(4): Standard Requirement - Provide Information
  - 16 6NYCRR 201-6.5(a)(8): General Condition - Right to Inspect
  - 17 6NYCRR 201-6.5(d)(5): Standard Requirements - Progress Reports
  - 18 6NYCRR 201-6.5(f)(6): Off Permit Changes
  - 19 6NYCRR 202-1.1: Required Emissions Tests
  - 20 6NYCRR 211.3: Visible Emissions Limited
  - 21 40CFR 68: Accidental release provisions.
  - 22 40CFR 82, Subpart F: Recycling and Emissions Reduction
  - 23 6NYCRR 201-6: Emission Unit Definition
  - 24 6NYCRR 201-6.5(f): Compliance Certification
- #### Emission Unit Level
- 25 6NYCRR 201-6: Emission Point Definition By Emission Unit
  - 26 6NYCRR 201-6: Process Definition By Emission Unit

#### EU=E-U0001,Proc=001

- 27 6NYCRR 227-1.3(a): Compliance Certification





**EU=E-U0001,Proc=001,ES=0ENG1**

1-2 6NYCRR 231-2.6: Compliance Certification

1-3 6NYCRR 231-2.6: Compliance Certification

**EU=E-U0001,Proc=001,ES=FLARE**

28 6NYCRR 212.6(a): Compliance Certification

**STATE ONLY ENFORCEABLE CONDITIONS**

**Facility Level**

29 ECL 19-0301: Contaminant List

30 6NYCRR 201-1.4: Unavoidable noncompliance and violations

31 6NYCRR 211.2: Air pollution prohibited



**FEDERALLY ENFORCEABLE CONDITIONS**

\*\*\*\* Facility Level \*\*\*\*

**NOTIFICATION OF GENERAL PERMITTEE OBLIGATIONS**

The items listed below are not subject to the annual compliance certification requirements under Title V. Permittees may also have other obligations under regulations of general applicability.

**Item A: Emergency Defense - 6NYCRR Part 201-1.5**

An emergency constitutes an affirmative defense to an action brought for noncompliance with emissions limitations or permit conditions for all facilities in New York State.

(a) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An emergency occurred and that the facility owner and/or operator can identify the cause(s) of the emergency;

(2) The equipment at the permitted facility causing the emergency was at the time being properly operated;

(3) During the period of the emergency the facility owner and/or operator took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(4) The facility owner and/or operator notified the Department within two working days after the event occurred. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(b) In any enforcement proceeding, the facility owner and/or operator seeking to establish the occurrence of an emergency has the burden of proof.

(c) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

**Item B: Public Access to Recordkeeping for Title V Facilities - 6NYCRR Part 201-1.10(b)**

The Department will make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report pursuant to Section 503(e) of the Act, except for information entitled to confidential treatment pursuant to 6NYCRR Part 616 - Public Access to records and Section 114(c) of the Act.



- Item C: Timely Application for the Renewal of Title V Permits - 6 NYCRR Part 201-6.3(a)(4)**  
Owners and/or operators of facilities having an issued Title V permit shall submit a complete application at least 180 days, but not more than eighteen months, prior to the date of permit expiration for permit renewal purposes.
- Item D: Certification by a Responsible Official - 6 NYCRR Part 201-6.3(d)(12)**  
Any application, form, report or compliance certification required to be submitted pursuant to the federally enforceable portions of this permit shall contain a certification of truth, accuracy and completeness by a responsible official. This certification shall state that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
- Item E: Requirement to Comply With All Conditions - 6 NYCRR Part 201-6.5(a)(2)**  
The permittee must comply with all conditions of the Title V facility permit. Any permit non-compliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
- Item F: Permit Revocation, Modification, Reopening, Reissuance or Termination, and Associated Information Submission Requirements - 6 NYCRR Part 201-6.5(a)(3)**  
This permit may be modified, revoked, reopened and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.
- Item G: Cessation or Reduction of Permitted Activity Not a Defense - 6 NYCRR Part 201-6.5(a)(5)**  
It shall not be a defense for a permittee in an enforcement action to claim that a cessation or reduction in the permitted activity would have been necessary in order to maintain compliance with the conditions of this permit.
- Item H: Property Rights - 6 NYCRR Part 201-6.5(a)(6)**  
This permit does not convey any property rights of any sort or any exclusive privilege.
- Item I: Severability - 6 NYCRR Part 201-6.5(a)(9)**



If any provisions, parts or conditions of this permit are found to be invalid or are the subject of a challenge, the remainder of this permit shall continue to be valid.

**Item J: Permit Shield - 6 NYCRR Part 201-6.5(g)**

All permittees granted a Title V facility permit shall be covered under the protection of a permit shield, except as provided under 6 NYCRR Subpart 201-6. Compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that such applicable requirements are included and are specifically identified in the permit, or the Department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the major stationary source, and the permit includes the determination or a concise summary thereof. Nothing herein shall preclude the Department from revising or revoking the permit pursuant to 6 NYCRR Part 621 or from exercising its summary abatement authority. Nothing in this permit shall alter or affect the following:

- i. The ability of the Department to seek to bring suit on behalf of the State of New York, or the Administrator to seek to bring suit on behalf of the United States, to immediately restrain any person causing or contributing to pollution presenting an imminent and substantial endangerment to public health, welfare or the environment to stop the emission of air pollutants causing or contributing to such pollution;
- ii. The liability of a permittee of the Title V facility for any violation of applicable requirements prior to or at the time of permit issuance;
- iii. The applicable requirements of Title IV of the Act;
- iv. The ability of the Department or the Administrator to obtain information from the permittee concerning the ability to enter, inspect and monitor the facility.

**Item K: Reopening for Cause - 6 NYCRR Part 201-6.5(i)**

This Title V permit shall be reopened and revised under any of the following circumstances:

- i. If additional applicable requirements under the Act become applicable where this permit's remaining term is three or more years, a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the



effective date of the requirement is later than the date on which this permit is due to expire, unless the original permit or any of its terms and conditions has been extended by the Department pursuant to the provisions of Part 201-6.7 and Part 621.

ii. The Department or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

iii. The Department or the Administrator determines that the Title V permit must be revised or reopened to assure compliance with applicable requirements.

iv. If the permitted facility is an "affected source" subject to the requirements of Title IV of the Act, and additional requirements (including excess emissions requirements) become applicable. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

Proceedings to reopen and issue Title V facility permits shall follow the same procedures as apply to initial permit issuance but shall affect only those parts of the permit for which cause to reopen exists.

Reopenings shall not be initiated before a notice of such intent is provided to the facility by the Department at least thirty days in advance of the date that the permit is to be reopened, except that the Department may provide a shorter time period in the case of an emergency.

**Item L: Permit Exclusion - ECL 19-0305**

The issuance of this permit by the Department and the receipt thereof by the Applicant does not and shall not be construed as barring, diminishing, adjudicating or in any way affecting any legal, administrative or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against the Applicant for violations based on facts and circumstances alleged to have occurred or existed prior to the effective date of this permit, including, but not limited to, any enforcement action authorized pursuant to the provisions of applicable federal law, the Environmental Conservation Law of the State of New York (ECL) and Chapter III of the Official Compilation of the Codes, Rules and Regulations of the State of New York (NYCRR). The issuance of this permit also shall not in any way affect pending or future enforcement actions under the Clean Air Act brought by the United States or any person.



**Item M: Federally Enforceable Requirements - 40 CFR 70.6(b)**

All terms and conditions in this permit required by the Act or any applicable requirement, including any provisions designed to limit a facility's potential to emit, are enforceable by the Administrator and citizens under the Act. The Department has, in this permit, specifically designated any terms and conditions that are not required under the Act or under any of its applicable requirements as being enforceable under only state regulations.

**MANDATORY FEDERALLY ENFORCEABLE PERMIT CONDITIONS  
SUBJECT TO ANNUAL CERTIFICATIONS AT ALL TIMES**

**The following federally enforceable permit conditions are mandatory for all Title V permits and are subject to annual compliance certification requirements at all times.**

**Condition 1: Acceptable Ambient Air Quality  
Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement: 6 NYCRR 200.6**

**Item 1.1:**

Notwithstanding the provisions of 6 NYCRR Chapter III, Subchapter A, no person shall allow or permit any air contamination source to emit air contaminants in quantities which alone or in combination with emissions from other air contamination sources would contravene any applicable ambient air quality standard and/or cause air pollution. In such cases where contravention occurs or may occur, the Commissioner shall specify the degree and/or method of emission control required.

**Condition 2: Fees  
Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement: 6 NYCRR 201-6.5(a)(7)**

**Item 2.1:**

The owner and/or operator of a stationary source shall pay fees to the Department consistent with the fee schedule authorized by ECL 72-0302.

**Condition 3: Recordkeeping and reporting of compliance monitoring  
Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement: 6 NYCRR 201-6.5(c)**

**Item 3.1:**

The following information must be included in any required compliance monitoring records and reports:

- (i) The date, place, and time of sampling or measurements;



(ii) The date(s) analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used including quality assurance and quality control procedures if required;

(v) The results of such analyses including quality assurance data where required; and

(vi) The operating conditions as existing at the time of sampling or measurement.

Any deviation from permit requirements must be clearly identified in all records and reports. Reports must be certified by a responsible official, consistent with Section 201-6.3 of this Part 201.

**Condition 4: Monitoring, Related Recordkeeping, and Reporting Requirements.**

**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement: 6NYCRR 201-6.5(c)(2)**

**Item 4.1:**

Compliance monitoring and recordkeeping shall be conducted according to the terms and conditions contained in this permit and shall follow all quality assurance requirements found in applicable regulations. Records of all monitoring data and support information must be retained for a period of at least 5 years from the date of the monitoring, sampling, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

**Condition 5: Compliance Certification**

**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement: 6NYCRR 201-6.5(c)(3)(ii)**

**Item 5.1:**

The Compliance Certification activity will be performed for the Facility.

**Item 5.2:**

Compliance Certification shall include the following monitoring:

Monitoring Type: RECORD KEEPING/MAINTENANCE PROCEDURES

Monitoring Description:

To meet the requirements of this facility permit with respect to reporting, the permittee must:

Submit reports of any required monitoring at a minimum frequency of every 6 months, based on a calendar year reporting schedule. These reports shall be submitted to the Department within 30 days after the end of a reporting period. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by the responsible official for this facility.



Notify the Department and report permit deviations and incidences of noncompliance stating the probable cause of such deviations, and any corrective actions or preventive measures taken. Where the underlying applicable requirement contains a definition of prompt or otherwise specifies a time frame for reporting deviations, that definition or time frame shall govern. Where the underlying applicable requirement fails to address the time frame for reporting deviations, reports of deviations shall be submitted to the permitting authority based on the following schedule:

(1) For emissions of a hazardous air pollutant (as identified in an applicable regulation) that continue for more than an hour in excess of permit requirements, the report must be made within 24 hours of the occurrence.

(2) For emissions of any regulated air pollutant, excluding those listed in paragraph (1) of this section, that continue for more than two hours in excess of permit requirements, the report must be made within 48 hours.

(3) For all other deviations from permit requirements, the report shall be contained in the 6 month monitoring report required above.

(4) This permit may contain a more stringent reporting requirement than required by paragraphs (1), (2) or (3) above. If more stringent reporting requirements have been placed in this permit or exist in applicable requirements that apply to this facility, the more stringent reporting requirement shall apply.

If above paragraphs (1) or (2) are met, the source must notify the permitting authority by telephone during normal business hours at the Regional Office of jurisdiction for this permit, attention Regional Air Pollution Control Engineer (RAPCE) according to the timetable listed in paragraphs (1) and (2) of this section. For deviations and incidences that must be reported outside of normal business hours, on weekends, or holidays, the DEC Spill Hotline phone number at 1-800-457-7362 shall be used. A written notice, certified by a responsible official consistent with 6 NYCRR Part 201-6.3(d)(12), must be submitted within 10 working days of an occurrence for deviations reported under (1) and (2). All deviations reported under paragraphs (1) and (2) of this section must also be identified in the 6 month monitoring report required above.





The provisions of 6 NYCRR 201-1.4 shall apply if the permittee seeks to have a violation excused unless otherwise limited by regulation. In order to have a violation of a federal regulation (such as a new source performance standard or national emissions standard for hazardous air pollutants) excused, the specific federal regulation must provide for an affirmative defense during start-up, shutdowns, malfunctions or upsets. Notwithstanding any recordkeeping and reporting requirements in 6 NYCRR 201-1.4, reports of any deviations shall not be on a less frequent basis than the reporting periods described in paragraphs (1) and (4) above.

In the case of any condition contained in this permit with a reporting requirement of "Upon request by regulatory agency" the permittee shall include in the semiannual report, a statement for each such condition that the monitoring or recordkeeping was performed as required or requested and a listing of all instances of deviations from these requirements.

In the case of any emission testing performed during the previous six month reporting period, either due to a request by the Department, EPA, or a regulatory requirement, the permittee shall include in the semiannual report a summary of the testing results and shall indicate whether or not the Department or EPA has approved the results.

All semiannual reports shall be submitted to the Administrator (or his or her representative) as well as two copies to the Department (one copy to the regional air pollution control engineer (RAPCE) in the regional office and one copy to the Bureau of Quality Assurance (BQA) in the DEC central office). Mailing addresses for the above referenced persons are contained in the monitoring condition for 6 NYCRR Part 201-6.5(e), contained elsewhere in this permit.

Monitoring Frequency: SEMI-ANNUALLY  
Reporting Requirements: SEMI-ANNUALLY (CALENDAR)  
Reports due 30 days after the reporting period.  
The initial report is due 1/30/2007.  
Subsequent reports are due every 6 calendar month(s).

**Condition 6: Compliance Certification**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement: 6 NYCRR 201-6.5(e)**

**Item 6.1:**

The Compliance Certification activity will be performed for the Facility.



**Item 6.2:**

Compliance Certification shall include the following monitoring:

Monitoring Type: RECORD KEEPING/MAINTENANCE PROCEDURES

Monitoring Description:

Requirements for compliance certifications with terms and conditions contained in this facility permit include the following:

- i. Compliance certifications shall contain:
  - the identification of each term or condition of the permit that is the basis of the certification;
  - the compliance status;
  - whether compliance was continuous or intermittent;
  - the method(s) used for determining the compliance status of the facility, currently and over the reporting period consistent with the monitoring and related recordkeeping and reporting requirements of this permit;
  - such other facts as the Department may require to determine the compliance status of the facility as specified in any special permit terms or conditions;
  - and
  - such additional requirements as may be specified elsewhere in this permit related to compliance certification.
- ii. The responsible official must include in the annual certification report all terms and conditions contained in this permit which are identified as being subject to certification, including emission limitations, standards, or work practices. That is, the provisions labeled herein as "Compliance Certification" are not the only provisions of this permit for which an annual certification is required.
- iii. Compliance certifications shall be submitted annually. Certification reports are due 30 days after the anniversary date of four consecutive calendar quarters. The first report is due 30 days after the calendar quarter that occurs just prior to the permit anniversary date, unless another quarter has been acceptable by the Department.
- iv. All compliance certifications shall be submitted to the Administrator (or his or her representative) as well as two copies to the Department (one copy to the regional air pollution control engineer (RAPCE) in the regional office and one copy to the Bureau of Quality Assurance (BQA) in the DEC central office). Please send annual compliance certifications to Chief of the Stationary Source Compliance Section, the Region 2 EPA representative for the Administrator, at the following address:



USEPA Region 2  
Air Compliance Branch  
290 Broadway  
New York, NY 10007-1866

The address for the RAPCE is as follows:

6274 East Avon-Lima Road  
Avon, NY 14414-9519

The address for the BQA is as follows:

NYSDEC  
Bureau of Quality Assurance  
625 Broadway  
Albany, NY 12233-3258

Monitoring Frequency: ANNUALLY  
Reporting Requirements: ANNUALLY (CALENDAR)  
Reports due 30 days after the reporting period.  
The initial report is due 1/30/2007.  
Subsequent reports are due on the same day each year

**Condition 7: Compliance Certification**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement:6NYCRR 202-2.1**

**Item 7.1:**

The Compliance Certification activity will be performed for the Facility.

**Item 7.2:**

Compliance Certification shall include the following monitoring:

Monitoring Type: RECORD KEEPING/MAINTENANCE PROCEDURES

Monitoring Description:

Emission statements shall be submitted on or before April 15th each year for emissions of the previous calendar year. Statements are to be mailed to: New York State Department of Environmental Conservation, Division of Air Resources, Bureau of Air Quality Planning, 625 Broadway, Albany NY 12233-3251

Monitoring Frequency: ANNUALLY  
Reporting Requirements: ANNUALLY (CALENDAR)  
Reports due by April 15th for previous calendar year

**Condition 8: Recordkeeping requirements**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement:6NYCRR 202-2.5**

**Item 8.1:**



(a) The following records shall be maintained for at least five years:

- (1) a copy of each emission statement submitted to the department; and
- (2) records indicating how the information submitted in the emission statement was determined, including any calculations, data, measurements, and estimates used.

(b) These records shall be made available at the facility to the representatives of the department upon request during normal business hours.

**Condition 9: Open Fires Prohibited at Industrial and Commercial Sites**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement:6NYCRR 215**

**Item 9.1:**

No person shall burn, cause, suffer, allow or permit the burning in an open fire of garbage, refuse, rubbish for salvage, or rubbish generated by industrial or commercial activities.

**MANDATORY FEDERALLY ENFORCEABLE PERMIT CONDITIONS**  
**SUBJECT TO ANNUAL CERTIFICATIONS ONLY IF APPLICABLE**

**The following federally enforceable permit conditions are mandatory for all Title V permits and are subject to annual compliance certification requirements only if effectuated during the reporting period. [NOTE: The corresponding annual compliance certification for those conditions not effectuated during the reporting period shall be specified as "not applicable".]**

**Condition 10: Maintenance of Equipment**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement:6NYCRR 200.7**

**Item 10.1:**

Any person who owns or operates an air contamination source which is equipped with an emission control device shall operate such device and keep it in a satisfactory state of maintenance and repair in accordance with ordinary and necessary practices, standards and procedures, inclusive of manufacturer's specifications, required to operate such device effectively.

**Condition 11: Recycling and Salvage**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement:6NYCRR 201-1.7**

**Item 11.1:**

Where practical, any person who owns or operates an air contamination source shall recycle or salvage air contaminants collected in an air cleaning device according to the requirements of the ECL.

**Condition 1-1: Prohibition of Reintroduction of Collected Contaminants to the air**



**Effective between the dates of 07/18/2008 and 08/22/2011**

**Applicable Federal Requirement:6NYCRR 201-1.8**

**Replaces Condition(s) 12**

**Item 1-1.1:**

No person shall unnecessarily remove, handle or cause to be handled, collected air contaminants from an air cleaning device for recycling, salvage or disposal in a manner that would reintroduce them to the outdoor atmosphere.

**Condition 13: Exempt Sources - Proof of Eligibility**

**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement:6NYCRR 201-3.2(a)**

**Item 13.1:**

The owner and/or operator of an emission source or unit that is eligible to be exempt may be required to certify that it operates within the specific criteria described in this Subpart. The owner or operator of any such emission source must maintain all required records on-site for a period of five years and make them available to representatives of the department upon request. Department representatives must be granted access to any facility which contains emission sources or units subject to this Subpart, during normal operating hours, for the purpose of determining compliance with this and any other State and Federal air pollution control requirements, regulations, or law.

**Condition 14: Trivial Sources - Proof of Eligibility**

**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement:6NYCRR 201-3.3(a)**

**Item 14.1:**

The owner and/or operator of an emission source or unit that is listed as being trivial in this Part may be required to certify that it operates within the specific criteria described in this Subpart. The owner or operator of any such emission source must maintain all required records on-site for a period of five years and make them available to representatives of the department upon request. Department representatives must be granted access to any facility which contains emission sources or units subject to this Subpart, during normal operating hours, for the purpose of determining compliance with this and any other State and Federal air pollution control requirements, regulations, or law.

**Condition 15: Standard Requirement - Provide Information**

**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement:6NYCRR 201-6.5(a)(4)**

**Item 15.1:**

The owner and/or operator shall furnish to the department, within a reasonable time, any information that the department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the administrator along with a claim of confidentiality, if the administrator initiated the request for information or otherwise has need of it.

**Condition 16: General Condition - Right to Inspect**



**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement:6NYCRR 201-6.5(a)(8)**

**Item 16.1:**

The department or an authorized representative shall be allowed upon presentation of credentials and other documents as may be required by law to:

- (i) enter upon the permittee's premises where a facility subject to the permitting requirements of this Subpart is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;
- (ii) have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
- (iii) inspect at reasonable times any emission sources, equipment (including monitoring and air pollution control equipment), practices, and operations regulated or required under the permit; and
- (iv) sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

**Condition 17: Standard Requirements - Progress Reports**

**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement:6NYCRR 201-6.5(d)(5)**

**Item 17.1:**

Progress reports consistent with an applicable schedule of compliance are to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the department. Such progress reports shall contain the following:

- (i) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and
- (ii) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

**Condition 18: Off Permit Changes**

**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement:6NYCRR 201-6.5(f)(6)**

**Item 18.1:**

No permit revision will be required for operating changes that contravene an express permit term, provided that such changes would not violate applicable requirements as defined under this Part or contravene federally enforceable monitoring (including test methods), recordkeeping, reporting, or compliance certification permit terms and conditions. Such changes may be made without requiring a permit revision, if the changes are not modifications under any provision of title I of the act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions) provided that the facility provides the administrator and the department with written notification as required below in advance of the proposed changes within



a minimum of seven days. The facility owner or operator, and the department shall attach each such notice to their copy of the relevant permit.

(i) For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(ii) The permit shield described in section 6 NYCRR 201-6.6 shall not apply to any change made pursuant to this paragraph.

**Condition 19: Required Emissions Tests**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement:6NYCRR 202-1.1**

**Item 19.1:**

For the purpose of ascertaining compliance or non-compliance with any air pollution control code, rule or regulation, the commissioner may require the person who owns such air contamination source to submit an acceptable report of measured emissions within a stated time. Such person shall bear the cost of measurement and preparing the report of measured emissions. Failure of such person to submit a report acceptable to the commissioner within the time stated shall be sufficient reason for the commissioner to suspend or deny a certificate to operate.

**Condition 20: Visible Emissions Limited**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement:6NYCRR 211.3**

**Item 20.1:**

Except as permitted by a specific part of this Subchapter and for open fires for which a restricted burning permit has been issued, no person shall cause or allow any air contamination source to emit any material having an opacity equal to or greater than 20 percent (six minute average) except for one continuous six-minute period per hour of not more than 57 percent opacity.

**Condition 21: Accidental release provisions.**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement:40CFR 68**

**Item 21.1:**

If a chemical is listed in Tables 1,2,3 or 4 of 40 CFR §68.130 is present in a process in quantities greater than the threshold quantity listed in Tables 1,2,3 or 4, the following requirements will apply:

- a) The owner or operator shall comply with the provisions of 40 CFR Part 68 and;
- b) The owner or operator shall submit at the time of permit issuance (if not previously submitted) one of the following, if such quantities are present:
  - 1) A compliance schedule for meeting the requirements of 40 CFR Part 68 by the date provided in 40 CFR §68.10(a) or,



2) A certification statement that the source is in compliance with all requirements of 40 CFR Part 68, including the registration and submission of the Risk Management Plan. Information should be submitted to:

Risk Management Plan Reporting Center  
C/O CSC  
8400 Corporate Dr  
Carrollton, Md. 20785

**Condition 22: Recycling and Emissions Reduction**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement: 40 CFR 82, Subpart F**

**Item 22.1:**

The permittee shall comply with all applicable provisions of 40 CFR Part 82.

**The following conditions are subject to annual compliance certification requirements for Title V permits only.**

**Condition 23: Emission Unit Definition**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement: 6 NYCRR 201-6**

**Item 23.1(From Mod 1):**

The facility is authorized to perform regulated processes under this permit for:

Emission Unit: E-U0001

Emission Unit Description:

This unit designation consists of a municipal solid waste landfill, the associated gas collection system, and corresponding control devices.

Building(s): LANDFILL  
POWERPLANT

**Condition 24: Compliance Certification**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement: 6 NYCRR 201-6.5(f)**

**Item 24.1:**

The Compliance Certification activity will be performed for the Facility.

**Item 24.2:**

Compliance Certification shall include the following monitoring:

Monitoring Type: RECORD KEEPING/MAINTENANCE PROCEDURES





Monitoring Description:

Operational Flexibility Plan

I. Protocol Objective

The objective of this condition is to maximize operational flexibility at the facility by building into the Title V Permit the capability to make certain changes using a protocol. As provided under 6 NYCRR Part 201-6.5(f)(2), changes made under an approved protocol are not subject to the Title V permit modification provisions under 6 NYCRR Part 201-6.7.

II. Protocol

A. Criteria

1. Changes reviewed under this protocol in shall be evaluated in accordance with the following criteria:

a. All underlying federal and state requirements with which the new or changed emission source must comply must exist in the Title V permit. Existing permit conditions may be amended to reference or include the new or changed emission source and any related information, and/or, subject to DEC approval, new conditions proposed, to provide the appropriate monitoring parameters.

b. Any new or changed emission source shall not be part of a source project that results in a significant net emissions increase that exceeds the NSR thresholds identified in 6 NYCRR Part 231-2 or 40 CFR 52.21.

c. The facility shall not use the protocol to make physical changes or changes in the method of operation of existing emission sources that would require a new or modified federally enforceable cap either to avoid major New Source Review requirements or to address and comply with other Clean Air Act requirements such as RACT. Such changes must be addressed via the significant permit modification provisions.

B. Notification Requirements for Changes Reviewed under Protocol

1. The facility shall notify the Department in writing of the proposed change.

2. Notifications made in accordance with this protocol will include the following documentation:

a. Identification of the Title V permit emission unit,



process(es), emission sources, and emission points affected by the proposed change with applicable revisions to the Emission Unit structure;

b. Description of the proposed change, including operating parameters;

c. Identification and description of emissions control technology;

d. Documentation of the project's or emission source's compliance with respect to all state and/or federally applicable requirements, including the following steps:

i. Calculate the emission rate potential and maximum projected actual annual emission rates for all contaminants affected by the change.

ii. Submit documentation of major NSR program non-applicability for NYSDEC review and approval.

iii. Identify and evaluate the applicability of all regulations likely to be triggered by the new or changed emission source.

iv. Propose any operating and record keeping procedures necessary to ensure compliance.

e. Any other relevant information used for the evaluation of the proposed project or emission source under the Protocol.

#### C. Review and Approval of Changes

1. The Department shall respond to the permittee in writing with a determination within 15 days of receipt of the notification from the permittee.

2. The Department may require a permit modification, in order to impose new applicable requirements or additional permit conditions if it determines that changes proposed pursuant to notification do not meet the criteria under III.A or that the change may have a significant air quality impact or be otherwise potentially significant under SEQRA (6NYCRR Part 617).

3. The Department may require that the permittee not undertake the proposed change until it completes a more detailed review of the proposed change, which may include potential air quality impacts and/or applicable



requirements. The Department's determination shall include a listing of information required for further review, if necessary.

D. Additional Compliance Obligations for Changes Made Under this Protocol

1. Upon commencement of the change, the facility shall comply with all applicable requirements and permit conditions, including any amended or proposed in accordance with III.A.1.a above.

2. The facility shall provide with the semi-annual monitoring report, a summary of the changes made in accordance with this protocol and a statement of the compliance status of each. Changes reported should include all those made during the corresponding period and any earlier changes that have not yet been incorporated into the permit.

Monitoring Frequency: AS REQUIRED - SEE PERMIT MONITORING DESCRIPTION

Reporting Requirements: SEMI-ANNUALLY (CALENDAR)

Reports due 30 days after the reporting period.

The initial report is due 1/30/2007.

Subsequent reports are due every 6 calendar month(s).

\*\*\*\* Emission Unit Level \*\*\*\*

**Condition 25: Emission Point Definition By Emission Unit**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement: 6NYCRR 201-6**

**Item 25.1(From Mod 1):**

The following emission points are included in this permit for the cited Emission Unit:

Emission Unit: E-U0001

Emission Point: EP002

Height (ft.): 21

Diameter (in.): 10

Building: POWERPLANT

Emission Point: EP003

Height (ft.): 21

Diameter (in.): 10

Building: POWERPLANT

Emission Point: EP004

Height (ft.): 21

Diameter (in.): 10

Building: POWERPLANT



Emission Point: EP005

Height (ft.): 40

Diameter (in.): 96

**Condition 26: Process Definition By Emission Unit**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement: 6 NYCRR 201-6**

**Item 26.1(From Mod 1):**

This permit authorizes the following regulated processes for the cited Emission Unit:

Emission Unit: E-U0001

Process: 001

Source Classification Code: 5-01-004-21

Process Description:

Control of landfill gas from the use of internal  
combustion engines and a flare.

Emission Source/Control: 0ENG1 - Combustion      Removal Date: 01/01/2001  
Design Capacity: 1,138 horsepower (mechanical)

Emission Source/Control: 0ENG2 - Combustion  
Design Capacity: 1,138 horsepower (mechanical)

Emission Source/Control: 0ENG3 - Combustion  
Design Capacity: 1,138 horsepower (mechanical)

Emission Source/Control: 0ENG4 - Combustion  
Design Capacity: 1,138 horsepower (mechanical)

Emission Source/Control: FLARE - Control  
Control Type: FLARING

**Item 26.2(From Mod 1):**

This permit authorizes the following regulated processes for the cited Emission Unit:

Emission Unit: E-U0001

Process: 002

Source Classification Code: 5-01-004-02

Process Description:

Fugitive emissions resulting from the closed landfill and  
the ongoing gas collection system. The collection system  
is 85% efficient with a 15% loss of emissions as fugitive.

Emission Source/Control: LANDF - Process

**Condition 27: Compliance Certification**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement: 6 NYCRR 227-1.3(a)**

**Item 27.1:**

The Compliance Certification activity will be performed for:



Emission Unit: E-U0001

Process: 001

**Item 27.2:**

Compliance Certification shall include the following monitoring:

Monitoring Type: MONITORING OF PROCESS OR CONTROL  
DEVICE PARAMETERS AS SURROGATE

Monitoring Description:

No person shall operate a stationary combustion installation which exhibits greater than 20 percent opacity (six minute average), except for one six-minute period per hour of not more than 27 percent opacity. The facility will perform a visual observation of each exhaust of each internal combustion engine on a daily basis during business days (this excludes holidays and weekends). If any opacity is noted, corrective action will be taken immediately or a Method 9 will be performed within 2 business days. The facility shall keep records of daily observations and any corrective action performed in a format acceptable to the Department.

Parameter Monitored: OPACITY

Upper Permit Limit: 20 percent

Reference Test Method: EPA Method 9

Monitoring Frequency: AS REQUIRED - SEE PERMIT MONITORING  
DESCRIPTION

Averaging Method: 6 MINUTE AVERAGE

Reporting Requirements: SEMI-ANNUALLY (CALENDAR)

Reports due 30 days after the reporting period.

The initial report is due 1/30/2007.

Subsequent reports are due every 6 calendar month(s).

**Condition 1-2: Compliance Certification**

Effective between the dates of 07/18/2008 and 08/22/2011

Applicable Federal Requirement: 6NYCRR 231-2.6

**Item 1-2.1:**

The Compliance Certification activity will be performed for:

Emission Unit: E-U0001

Process: 001

Emission Source: 0ENG1

Regulated Contaminant(s):

CAS No: 0NY210-00-0 OXIDES OF NITROGEN

**Item 1-2.2:**

Compliance Certification shall include the following monitoring:

Monitoring Type: WORK PRACTICE INVOLVING SPECIFIC  
OPERATIONS

Monitoring Description:



The facility has established 11 tpy of oxides of nitrogen emission reduction credits by shutting down Engine #1 (emission source 0ENG1) at the above referenced emission unit (EU0001). Engine #1 is prohibited from operating at this facility.

Work Practice Type: PARAMETER OF PROCESS MATERIAL  
Process Material: LANDFILL GAS  
Parameter Monitored: OXIDES OF NITROGEN  
Upper Permit Limit: 0 tons per year  
Monitoring Frequency: SEMI-ANNUALLY  
Averaging Method: MAXIMUM - NOT TO EXCEED STATED VALUE -  
SEE MONITORING DESCRIPTION  
Reporting Requirements: SEMI-ANNUALLY (CALENDAR)  
Reports due 30 days after the reporting period.  
The initial report is due 1/30/2009.  
Subsequent reports are due every 6 calendar month(s).

**Condition 1-3: Compliance Certification**  
**Effective between the dates of 07/18/2008 and 08/22/2011**

**Applicable Federal Requirement: 6 NYCRR 231-2.6**

**Item 1-3.1:**

The Compliance Certification activity will be performed for:

Emission Unit: E-U0001

Process: 001

Emission Source: 0ENG1

Regulated Contaminant(s):

CAS No: 0NY998-00-0 VOC

**Item 1-3.2:**

Compliance Certification shall include the following monitoring:

Monitoring Type: WORK PRACTICE INVOLVING SPECIFIC  
OPERATIONS

Monitoring Description:

The facility has established 3.48 tpy of VOC emission reduction credits by shutting down Engine #1 (emission source 0ENG1) at the above referenced emission unit (EU0001). Engine #1 is prohibited from operating at this facility.

Work Practice Type: PARAMETER OF PROCESS MATERIAL  
Process Material: LANDFILL GAS  
Parameter Monitored: VOC  
Upper Permit Limit: 0 tons per year  
Monitoring Frequency: SEMI-ANNUALLY  
Averaging Method: MAXIMUM - NOT TO EXCEED STATED VALUE -  
SEE MONITORING DESCRIPTION  
Reporting Requirements: SEMI-ANNUALLY (CALENDAR)  
Reports due 30 days after the reporting period.



The initial report is due 1/30/2009.

Subsequent reports are due every 6 calendar month(s).

**Condition 28: Compliance Certification**

**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable Federal Requirement: 6NYCRR 212.6(a)**

**Item 28.1:**

The Compliance Certification activity will be performed for:

Emission Unit: E-U0001

Process: 001

Emission Source: FLARE

**Item 28.2:**

Compliance Certification shall include the following monitoring:

Monitoring Type: RECORD KEEPING/MAINTENANCE PROCEDURES

Monitoring Description:

No person shall cause or allow emissions having an average opacity during any six consecutive minutes of 20 percent or greater from any process emission source, except only the emission of uncombined water. The Department reserves the right to perform or require the performance of a Method 9 opacity evaluation at any time during facility operation.

The permittee will conduct observations of visible emissions from the emission unit, process, etc. to which this condition applies at the monitoring frequency stated below while the process is in operation. The permittee will immediately investigate any instance where there is cause to believe that visible emissions above those that are normal and in compliance are occurring or have occurred from a process source.

If visible emissions above those that are normal (this may be zero percent opacity for many or all emission sources) and in compliance with section 212.6(a) are detected, the permittee shall determine the cause, make the necessary correction, and verify that the excess visible emissions problem has been corrected.

If visible emissions above those that are normal and in compliance continue to be present after corrections are made, the permittee will immediately notify The Department and conduct a Method 9 assessment within 24 hours to determine the degree of opacity.

Records of these observations, investigations and corrective actions will be kept on-site in a format acceptable to the Department and the semiannual progress report and annual compliance certifications required of



all permittees subject to Title V must include a summary  
of these instances.

Reference Test Method: EPA Method 9

Monitoring Frequency: DAILY

Averaging Method: 6 MINUTE AVERAGE

Reporting Requirements: SEMI-ANNUALLY (CALENDAR)

Reports due 30 days after the reporting period.

The initial report is due 1/30/2007.

Subsequent reports are due every 6 calendar month(s).





**STATE ONLY ENFORCEABLE CONDITIONS**

**\*\*\*\* Facility Level \*\*\*\***

**NOTIFICATION OF GENERAL PERMITTEE OBLIGATIONS**

This section contains terms and conditions which are not federally enforceable. Permittees may also have other obligations under regulations of general applicability

**Item A: General Provisions for State Enforceable Permit Terms and Condition - 6 NYCRR Part 201-5**

Any person who owns and/or operates stationary sources shall operate and maintain all emission units and any required emission control devices in compliance with all applicable Parts of this Chapter and existing laws, and shall operate the facility in accordance with all criteria, emission limits, terms, conditions, and standards in this permit. Failure of such person to properly operate and maintain the effectiveness of such emission units and emission control devices may be sufficient reason for the Department to revoke or deny a permit.

The owner or operator of the permitted facility must maintain all required records on-site for a period of five years and make them available to representatives of the Department upon request. Department representatives must be granted access to any facility regulated by this Subpart, during normal operating hours, for the purpose of determining compliance with this and any other state and federal air pollution control requirements, regulations or law.

**STATE ONLY APPLICABLE REQUIREMENTS**

The following conditions are state applicable requirements and are not subject to compliance certification requirements unless otherwise noted or required under 6 NYCRR Part 201.

**Condition 29: Contaminant List**

Effective between the dates of 08/23/2006 and 08/22/2011

Applicable State Requirement:ECL 19-0301

**Item 29.1:**

Emissions of the following contaminants are subject to contaminant specific requirements in this permit(emission limits, control requirements or compliance monitoring conditions).

CAS No: 0NY210-00-0

Name: OXIDES OF NITROGEN

CAS No: 0NY998-00-0



Name: VOC

**Condition 30: Unavoidable noncompliance and violations**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable State Requirement: 6NYCRR 201-1.4**

**Item 30.1:**

At the discretion of the commissioner a violation of any applicable emission standard for necessary scheduled equipment maintenance, start-up/shutdown conditions and malfunctions or upsets may be excused if such violations are unavoidable. The following actions and recordkeeping and reporting requirements must be adhered to in such circumstances.

(a) The facility owner and/or operator shall compile and maintain records of all equipment maintenance or start-up/shutdown activities when they can be expected to result in an exceedance of any applicable emission standard, and shall submit a report of such activities to the commissioner's representative when requested to do so in writing or when so required by a condition of a permit issued for the corresponding air contamination source except where conditions elsewhere in this permit which contain more stringent reporting and notification provisions for an applicable requirement, in which case they supercede those stated here. Such reports shall describe why the violation was unavoidable and shall include the time, frequency and duration of the maintenance and/or start-up/shutdown activities and the identification of air contaminants, and the estimated emission rates. If a facility owner and/or operator is subject to continuous stack monitoring and quarterly reporting requirements, he need not submit reports for equipment maintenance or start-up/shutdown for the facility to the commissioner's representative.

(b) In the event that emissions of air contaminants in excess of any emission standard in 6 NYCRR Chapter III Subchapter A occur due to a malfunction, the facility owner and/or operator shall report such malfunction by telephone to the commissioner's representative as soon as possible during normal working hours, but in any event not later than two working days after becoming aware that the malfunction occurred. Within 30 days thereafter, when requested in writing by the commissioner's representative, the facility owner and/or operator shall submit a written report to the commissioner's representative describing the malfunction, the corrective action taken, identification of air contaminants, and an estimate of the emission rates. These reporting requirements are superceded by conditions elsewhere in this permit which contain reporting and notification provisions for applicable requirements more stringent than those above.

(c) The Department may also require the owner and/or operator to include in reports described under (a) and (b) above an estimate of the maximum ground level concentration of each air contaminant emitted and the effect of such emissions depending on the deviation of the malfunction and the air contaminants emitted.

(d) In the event of maintenance, start-up/shutdown or malfunction conditions which result in emissions exceeding any applicable emission standard, the facility owner and/or operator shall take appropriate action to prevent emissions which will result in contravention of any applicable ambient air quality standard. Reasonably available control technology, as determined by the commissioner, shall be applied during any maintenance, start-up/shutdown or malfunction condition subject to this paragraph.

(e) In order to have a violation of a federal regulation (such as a new source performance standard or national emissions standard for hazardous air pollutants) excused, the specific federal regulation must



provide for an affirmative defense during start-up, shutdowns, malfunctions or upsets.

**Condition 31: Air pollution prohibited**  
**Effective between the dates of 08/23/2006 and 08/22/2011**

**Applicable State Requirement: 6NYCRR 211.2**

**Item 31.1:**

No person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. Notwithstanding the existence of specific air quality standards or emission limits, this prohibition applies, but is not limited to, any particulate, fume, gas, mist, odor, smoke, vapor, pollen, toxic or deleterious emission, either alone or in combination with others.

New York State Department of Environmental Conservation

Permit ID: 8-2656-00008/00021

Facility DEC ID: 8265600008





**WM Renewable Energy, L.L.C.**  
**1001 Fannin, Suite 4000**  
**Houston, TX 77002**

**State of New Hampshire**  
**Public Utilities Commission**  
**Application Form – Additional Support**  
**Monroe-Livingston**

(13) The eligible Class III landfill gas fuel used by WM Renewable Energy, L.L.C. is landfill methane gas with a gross nameplate generation capacity of 2.4 MW with an initial commercial operation date of January 1989.

The following standard operating protocol measures will be taken to ensure that only the eligible landfill methane gas will be used.

Landfill methane gas will be recovered via a series of wells drilled into the landfill. The wells will then be connected by a common pipe system that will collect the methane gas and transport it to a nearby compression facility. At the compression facility, the landfill methane gas will then be de-watered, filtered and pressurized; and transported to the generation unit where no other ineligible Biomass Fuel(s) will be allowed to turn engines or turbines to generate renewable electricity.

(20) See attached New York State Department of Environmental Conservation Air Quality Permit

(21) See attached Interconnection Agreement

(22) Connected via meter import scheduling

(23) The facility has been certified under the non-federal jurisdiction renewable portfolio standard in the State of Connecticut

(24) Facility output is verified by ISO-New England via connected utility metering per scheduling from NY ISO to ISO New England

(25) See attached affidavit

EXECUTION COPY

INTERCONNECTION AGREEMENT

BETWEEN

NIAGARA MOHAWK POWER CORPORATION

AND

BIO-ENERGY PARTNERS, AN ILLINOIS GENERAL PARTNERSHIP

Date: July 29, 1999

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This INTERCONNECTION AGREEMENT (hereinafter referred to as the "AGREEMENT") is made as of July 27, 1999, between NIAGARA MOHAWK POWER CORPORATION (hereinafter referred to as "NIAGARA MOHAWK") and BIO-ENERGY PARTNERS, an Illinois General Partnership, (hereinafter referred to as the "PRODUCER").

WHEREAS, PRODUCER'S ability to deliver and sell ELECTRICITY to NIAGARA MOHAWK and/or other purchasers from the PRODUCTION FACILITY is contingent on the PRODUCTION FACILITY remaining interconnected to the TRANSMISSION SYSTEM through the INTERCONNECTION FACILITY.

NOW THEREFORE, in consideration of the mutual obligations and undertakings set forth herein, the parties to this AGREEMENT covenant and agree as follows:

## **ARTICLE I DEFINITIONS**

The terms listed below shall have the following meanings when used in this INTERCONNECTION AGREEMENT.

- 1.1 This AGREEMENT shall become effective as of the date first above written (the "EFFECTIVE DATE").
- 1.2 "INTERCONNECTION POINT" is the point at which the PRODUCTION FACILITY is connected to the INTERCONNECTION FACILITY as indicated on a one-line diagram included as part of Exhibit A.
- 1.3 "DELIVERY POINT" is the point at which the INTERCONNECTION FACILITY is connected to the TRANSMISSION SYSTEM as indicated on a one-line diagram included as part of Exhibit A.
- 1.4 "ELECTRICITY" shall mean electric capacity and/or energy produced by the PRODUCTION FACILITY.
- 1.5 "FERC" shall mean the Federal Energy Regulatory Commission or successor organization.
- 1.6 "GOOD UTILITY PRACTICE" shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility



Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region and consistently adhered to by the NIAGARA MOHAWK. GOOD UTILITY PRACTICE shall include, but not be limited to North American Electric Reliability Council ("NERC") Criteria & Guidelines, Northeast Power Coordinating Council ("NPCC") Criteria & Guidelines, New York State Reliability Council ("NYSRC") if any, and New York Power Pool ("NYPP") criteria, rules and standards, as they may be amended from time to time including the rules, guidelines and criteria of any successor organization to the foregoing entities.

- 1.7 "HAZARDOUS SUBSTANCE(S)" shall mean those substances, materials, products or wastes which are classified as hazardous or toxic under any applicable federal, state or local law, or any regulations promulgated thereunder, effective the date of execution of this AGREEMENT, and the presence of which requires redemption, removal or cleanup under this AGREEMENT.
- 1.8 "INTERCONNECTION FACILITY" shall include all those facilities and NIAGARA MOHAWK PROPERTIES on which such facilities are located between the INTERCONNECTION POINT and the DELIVERY POINT, necessary to effect the transfer of ELECTRICITY, produced at the PRODUCTION FACILITY into NIAGARA MOHAWK'S TRANSMISSION SYSTEM, including those facilities identified in more particularity in Exhibit A to this AGREEMENT.
- 1.9 "NIAGARA MOHAWK PROPERTIES" shall mean those parcels of real property and/or easements that NIAGARA MOHAWK uses for its transmission facilities upon which portions of the INTERCONNECTION FACILITY have been constructed, which parcels of real property and/or easements and facilities are described in more particularity in Exhibit A hereto.
- 1.10 "PRODUCTION FACILITY" shall mean PRODUCER'S ELECTRICITY generating facility with a maximum output of 3.48 MW located in the Town of Scottsville, County of Monroe, New York.
- 1.11 "TRANSMISSION SYSTEM" shall mean NIAGARA MOHAWK'S TRANSMISSION SYSTEM, including any modifications subsequent to the date of this AGREEMENT.
- 1.12 "ELECTRIC SYSTEM BULLETIN No. 756" shall mean NIAGARA MOHAWK'S Electric System Bulletin 756, dated December, 1997, and all subsequent revisions, as it may be amended from time to time.
- 1.13 "INDEPENDENT SYSTEM OPERATOR" ("ISO") shall mean an organization formed in accordance with FERC order (s) to administer the operation of the transmission

system, provide equal access to the transmission system of New York State, and to maintain system reliability.

- 1.14 "ISLANDING" shall mean the separation of PRODUCER'S generation from NIAGARA MOHAWK'S electric system while continuing to serve NIAGARA MOHAWK'S isolated load.
- 1.15 "INTERCONNECTION STUDIES" shall mean the necessary studies in the event it becomes necessary to modify the INTERCONNECTION FACILITY or to construct new or additional facilities, NIAGARA MOHAWK shall perform those studies that, in the judgement of NIAGARA MOHAWK, are necessary to determine (a) an appropriate INTERCONNECTION POINT (b) the equipment and facilities necessary and desirable for the construction and operation of new or additional or modified facilities (c) the interconnection voltage (d) the estimated costs of facilities and/or the costs for NIAGARA MOHAWK'S design, review, assistance and inspection of facilities to be designed and constructed by PRODUCER (e) the costs of any new reinforcements to or additions of new facilities to NIAGARA MOHAWK'S TRANSMISSION SYSTEM required or recommended to be made in order for NIAGARA MOHAWK to interconnect with PRODUCER'S PRODUCTION FACILITY.

**ARTICLE II**  
**AGREEMENT TO INTERCONNECT**  
**DESCRIPTION OF INTERCONNECTION FACILITY**

- 2.1 NIAGARA MOHAWK and PRODUCER agree to remain interconnected in accordance with the terms agreed to herein.
- 2.2 NIAGARA MOHAWK and PRODUCER shall be interconnected by means of the INTERCONNECTION FACILITY, which NIAGARA MOHAWK shall operate, own and maintain, at the PRODUCER's expense.
- 2.3 The PRODUCTION FACILITY shall include all facilities and equipment on the PRODUCER's side of the INTERCONNECTION POINT as indicated on Exhibit A. PRODUCER agrees that the installation of the electrical equipment and the operation of the PRODUCTION FACILITY must meet or exceed the requirements of NIAGARA MOHAWK'S ELECTRIC SYSTEM BULLETIN No. 756.
- 2.3.1 If PRODUCER relies on NIAGARA MOHAWK'S system protection equipment and practices for protection of PRODUCTION FACILITY equipment, PRODUCER agrees to indemnify, defend, and save NIAGARA MOHAWK, its agents and employees, harmless from, and against any loss, damage, liability (civil or criminal), cost, suit, charge, expense (including reasonable attorneys fees)

or cause of action, whether conditionally certain or otherwise, arising from any damage to the PRODUCTION FACILITY resulting from such reliance.

- 2.3.2 NIAGARA MOHAWK reserves the right to operate the first means of disconnect on the PRODUCER'S side of the INTERCONNECTION POINT.
- 2.3.3 NIAGARA MOHAWK reserves the right, and PRODUCER will maintain at no cost to NIAGARA MOHAWK, the ability to transmit power to NIAGARA MOHAWK'S existing customers or new customers whose electric services are supplied directly off the PRODUCTION FACILITY'S bus without first going through the INTERCONNECTION FACILITY.
- 2.3.4 Upon implementation of an ISO and at NIAGARA MOHAWK'S sole discretion, the requirements, rules and regulations of the ISO may govern or supercede requirements of ELECTRIC SYSTEM BULLETIN No. 756.
- 2.4 PRODUCER recognizes that neither this AGREEMENT nor the PRODUCER'S financial support of the INTERCONNECTION FACILITIES confers upon it any right to transmit electricity over NIAGARA MOHAWK'S TRANSMISSION SYSTEM other than through the INTERCONNECTION FACILITIES.
- 2.5 NIAGARA MOHAWK shall operate and maintain the INTERCONNECTION FACILITIES in accordance with GOOD UTILITY PRACTICE and to have them available for the transmission of electricity. NIAGARA MOHAWK shall consult with PRODUCER regarding the timing of scheduled maintenance of the INTERCONNECTION FACILITY, which might reasonably be expected to affect PRODUCER'S PRODUCTION FACILITY. NIAGARA MOHAWK shall, to the extent practicable, schedule any maintenance to coincide with PRODUCER'S scheduled outage. NIAGARA MOHAWK does not, however, guarantee or warrant uninterrupted availability of the INTERCONNECTION FACILITIES or TRANSMISSION SYSTEM. Curtailment of deliveries over the INTERCONNECTION FACILITIES or TRANSMISSION SYSTEM shall be governed by the transmission agreement or agreements between NIAGARA MOHAWK and the PRODUCER.
- 2.6 PRODUCER hereby grants NIAGARA MOHAWK all necessary rights of way, easements, and licenses as NIAGARA MOHAWK may require to install, operate, maintain, replace and remove NIAGARA MOHAWK'S facilities, including adequate and continuing rights of access to PRODUCER'S property for any purpose reasonably related to this AGREEMENT. PRODUCER hereby agrees to execute such grants, deeds, licenses, instruments or other documents as NIAGARA MOHAWK may require to enable it to record such rights of way, easements and licenses.

**ARTICLE III**  
**REPRESENTATIONS AND WARRANTIES OF PARTIES**

- 3.1 PRODUCER is a General Partnership duly organized and validly existing under the laws of the State of Illinois. PRODUCER is qualified to do business under the laws of the State of New York, is in good standing under the laws of the State of New York, has the power and authority to own its properties, to carry on its business as now being conducted, and to enter into this AGREEMENT and the transactions contemplated herein and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this AGREEMENT, and is duly authorized to execute and deliver "this AGREEMENT" and consummate the transactions contemplated herein.
- 3.2 PRODUCER is not prohibited from entering into this AGREEMENT and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this AGREEMENT. The execution and delivery of this AGREEMENT, the consummation of the transactions contemplated herein and the fulfillment of and compliance with the provisions of this AGREEMENT will not conflict with or constitute a breach of or a default under any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the agreement of limited partnership of PRODUCER or any contractual limitation, corporate restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which PRODUCER is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing. This AGREEMENT is the legal, valid and binding obligation of PRODUCER enforceable in accordance with its terms, except as limited by applicable reorganization, insolvency, liquidation, readjustment of debt, moratorium, or other similar laws affecting the enforcement of rights of creditors generally as such laws may be applied in the event of a reorganization, insolvency, liquidation, readjustment of debt or other similar proceeding of or moratorium applicable to PRODUCER and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law.)
- 3.3 NIAGARA MOHAWK is a corporation duly organized, validly existing and qualified to do business under the laws of the State of New York, is in good standing under its certificate of incorporation and the laws of the State of New York, has the corporate authority to own its properties, to carry on its business as now being conducted, and to enter into this AGREEMENT and the transactions contemplated herein and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this AGREEMENT, and is duly authorized to execute and deliver this AGREEMENT and consummate the transactions contemplated herein.

- 3.4 NIAGARA MOHAWK is not prohibited from entering into this AGREEMENT and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this AGREEMENT pending review and acceptance of the terms of this AGREEMENT by the FERC or successor organization. The execution and delivery of this AGREEMENT and upon its acceptance for filing by the FERC, the consummation of the transactions contemplated herein and the fulfillment of and compliance with the provisions of this AGREEMENT will not conflict with or constitute a breach of or a default under any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the certificate of incorporation or bylaws of NIAGARA MOHAWK or any contractual limitation, corporate restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which NIAGARA MOHAWK is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing. This AGREEMENT is the legal, valid and binding obligation of NIAGARA MOHAWK upon its acceptance for filing by the FERC becomes enforceable in accordance with its terms, except as limited by later order of the FERC, applicable reorganization, insolvency, liquidation, readjustment of debt, moratorium, or other similar laws affecting the enforcement of rights of creditors generally as such laws may be applied in the event of a reorganization, insolvency, liquidation, readjustment of debt or other similar proceeding of or moratorium applicable to PRODUCER and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

#### **ARTICLE IV MODIFICATION TO THE INTERCONNECTION FACILITY**

- 4.1 NIAGARA MOHAWK shall retain the discretion to determine whether, when, and in what manner replacements or upgrades to the INTERCONNECTION FACILITIES shall be installed. NIAGARA MOHAWK shall exercise that discretion in accordance with GOOD UTILITY PRACTICE. Any such replacements or upgrades that are installed shall be deemed to be INTERCONNECTION FACILITIES for purposes of this AGREEMENT.
- 4.2 NIAGARA MOHAWK shall notify the PRODUCER if it determines that a replacement or upgrade to any portion of the INTERCONNECTION FACILITIES is necessary or advisable. NIAGARA MOHAWK shall include in such notification the appropriate reasons for such replacement or upgrade. The actual cost of designing, permitting, installing and operating the replacement or upgrade shall be included in the charges calculated in accordance with Article VIII. PRODUCER shall also be responsible for all costs related to the PRODUCTION FACILITY, if any, caused by said replacement and/or

upgrade. PRODUCER may at its option terminate this AGREEMENT, upon no less than thirty (30) days written notice to NIAGARA MOHAWK in accordance with Article X.

- 4.3 If PRODUCER plans any additions, modifications or replacements to the PRODUCTION FACILITY that materially alter the PRODUCTION FACILITY, PRODUCER shall give NIAGARA MOHAWK not less than one (1) year prior written notice thereof accompanied by appropriate plans, specifications, information and operating instructions impacting NIAGARA MOHAWK'S electric operations, of any such addition, modification or replacement. All such additions, modifications or replacements shall meet NIAGARA MOHAWK'S ELECTRIC SYSTEM BULLETIN No. 756, NERC, NPCC, NYPP, NYSRC, or its respective successors, the standards of GOOD UTILITY PRACTICE and shall be subject to the approval of NIAGARA MOHAWK, which approval shall not unreasonably be withheld.
- 4.4 PRODUCER shall be responsible for the costs of any modifications to the INTERCONNECTION FACILITIES that arise from changes to the PRODUCTION FACILITY in accordance with this AGREEMENT.
- 4.5 If, during the term of this AGREEMENT, NIAGARA MOHAWK determines that it is necessary to relocate, rearrange, abandon, or retire its TRANSMISSION SYSTEM, so that a change is required to any portion of the INTERCONNECTION FACILITY, NIAGARA MOHAWK shall put forth its best efforts to give the PRODUCER no less than one (1) year's written notice of such relocation or rearrangement and shall use all reasonable efforts to defer such relocation or rearrangement until the INTERCONNECTION FACILITY can be reconfigured so that service may continue without interruption.
- 4.6 If NIAGARA MOHAWK is required or ordered by governmental authority to relocate, rearrange, abandon, or retire its TRANSMISSION SYSTEM requiring modification to the INTERCONNECTION FACILITY, NIAGARA MOHAWK shall promptly so notify PRODUCER.
- 4.7 If relocation, rearrangement, abandonment, or retirement is required (as referred to in paragraphs 4.5 and 4.6), NIAGARA MOHAWK shall perform or have performed, at PRODUCER'S reasonable expense, the studies necessary to identify modifications to the INTERCONNECTION FACILITY and shall inform the PRODUCER of its estimate of the costs of the construction of the modified INTERCONNECTION FACILITY, and PRODUCER shall at its option either (i) reimburse NIAGARA MOHAWK for the reasonable costs of the construction of such modification in accordance with Article VIII of this AGREEMENT; (ii) construct, at its own expense, a new INTERCONNECTION FACILITY subject to the terms of this AGREEMENT; or (iii) terminate this AGREEMENT, upon no less than thirty (30) days written notice to NIAGARA MOHAWK.

- 4.8 If the relocation, rearrangement, abandonment, or retirement is ordered or required by governmental authority, NIAGARA MOHAWK shall endeavor to obtain compensation on behalf of PRODUCER from such governmental authority for its mutually agreed upon share of the costs of such relocation or rearrangement, but in no event shall NIAGARA MOHAWK be responsible on its own account for reimbursing PRODUCER for any costs associated with such relocation or rearrangement.
- 4.9 If the PRODUCER elects to construct, at its own expense, a new section of the INTERCONNECTION FACILITY subject to the terms of this AGREEMENT, then the PRODUCER shall assign all rights, title and interest in such new section of the INTERCONNECTION FACILITY to NIAGARA MOHAWK upon completion of construction and shall execute all necessary documents to effectuate transfer of ownership thereof to NIAGARA MOHAWK. PRODUCER shall obtain any necessary permits, authorizations and rights-of-way for the new section of the INTERCONNECTION FACILITY, in accordance with this AGREEMENT, the costs thereof to be borne by the PRODUCER. Regardless of whether NIAGARA MOHAWK or the PRODUCER constructs a new section of the INTERCONNECTION FACILITY, NIAGARA MOHAWK shall own, operate and maintain, at PRODUCER's expense, any such new section as part of the INTERCONNECTION FACILITY, and PRODUCER shall reimburse NIAGARA MOHAWK for all costs of operating and maintenance expenses for any new section of the INTERCONNECTION FACILITY in accordance with Article VIII.
- 4.10 PRODUCER acknowledges and agrees that NIAGARA MOHAWK, at its own expense, reserves the right and ability to deliver ELECTRICITY to all customers. If, during the term of this AGREEMENT, NIAGARA MOHAWK determines that it is necessary to relocate or rearrange the INTERCONNECTION POINT, in order to permit NIAGARA MOHAWK access or to deliver electricity to its existing customers or new customers, so that a change is required to a section of the INTERCONNECTION FACILITY, NIAGARA MOHAWK shall put forth its best efforts to give the PRODUCER no less than one (1) year's written notice of such relocation or rearrangement and shall use all reasonable efforts to defer such relocation or rearrangement until the INTERCONNECTION FACILITY can be reconfigured so that service to PRODUCER may continue without interruption.

## **ARTICLE V POWER DELIVERIES**

### **5.1. METERING**

- 5.1.1 NIAGARA MOHAWK shall, at PRODUCER'S expense, provide, own, and maintain compatible metering equipment. PRODUCER shall provide suitable space within its facilities for installation of the metering equipment.
- 5.1.2 PRODUCER shall be responsible for providing all necessary communication equipment and transmission mediums, such as telephone lines and any necessary protection for such communication equipment and shall furthermore be responsible for all communication required by NIAGARA MOHAWK or NYPP or its successor. PRODUCER shall be responsible for any and all costs involved in the relocation of communication circuits and transmission mediums that may be required from time to time.
- 5.1.3 All metering equipment installed pursuant to this AGREEMENT and associated with the PRODUCTION FACILITY may be routinely tested by NIAGARA MOHAWK, in accordance with applicable NIAGARA MOHAWK, NYPP, NERC and GOOD UTILITY PRACTICE.
- 5.1.4 If, at any time, any metering equipment is found to be inaccurate by more than the limits defined in 16 NYCRR Part 92 as may be amended from time to time, NIAGARA MOHAWK shall cause such metering equipment to be made accurate or replaced at PRODUCER'S expense. Meter readings for the period of inaccuracy shall be adjusted so far as the same can be reasonably ascertained; provided, however, no adjustment prior to the beginning of the preceding month shall be made except by agreement of the parties. Each party shall comply with any reasonable request of the other concerning the sealing of meters, the presence of a representative of the other party when the seals are broken and the tests are made, and other matters affecting the accuracy of the measurement of ELECTRICITY delivered from the PRODUCTION FACILITY. If either party believes that there has been a meter failure or stoppage, it shall immediately notify the other.
- 5.1.5 PRODUCER shall be responsible for purchasing and installing software, hardware and/or other technology that may be required to reasonably read billing meters.

## 5.2 **LOSSES**

- 5.2.1 If the metering equipment and the DELIVERY POINT are not at the same location, the metering equipment shall record delivery of electricity in a manner that accounts for losses occurring between the metering point and the DELIVERY POINT. If the metering equipment does not have the capability of accounting for said losses, then either party may install metering equipment to account for said losses or the meter readings shall be multiplied by an appropriate factor to account



for said losses between the metering point and the DELIVERY POINT. The metering point, DELIVERY POINT, associated equipment and distance between the metering point and the DELIVERY POINT shall be specified in Exhibit A. Under the present metering configuration, this paragraph shall not apply.

### **5.3. REACTIVE POWER SUPPORT**

- 5.3.1. PRODUCER is required to provide reactive capability to regulate and maintain system voltage at the DELIVERY POINT in conformance with ELECTRIC SYSTEM BULLETIN No. 756. NIAGARA MOHAWK or NYPP or its successor shall establish a scheduled range of voltages or reactive power deliveries to be maintained by the generator.

### **5.4 OPERATING FREQUENCY**

- 5.4.1 PRODUCER is responsible for the proper coordination of any applied under/over frequency generator tripping as per 756, Appendix C, Section II, A, 2.7. If the PRODUCTION FACILITY elects to employ under frequency generator tripping protection, then the under frequency relay set point MUST be on or below the under frequency curve referred to in 756, Appendix C, Section IV, A., 3.0, Exhibit C-1. Similarly, if the PRODUCTION FACILITY elects to employ over frequency generator tripping protection, then the over frequency relay set point MUST be on or above the over frequency curve referred to in 756, Appendix C, Section IV, A., 3.0, Exhibit C-1. If the PRODUCTION FACILITY decides that, after consultation with NIAGARA MOHAWK, it cannot meet the under frequency tripping set point limitation referred to in Exhibit C-1, then PRODUCER shall agree to fund the cost incurred by NIAGARA MOHAWK to install and maintain compensatory load shedding equipment required by the NYSRC. If the PRODUCER decides that it cannot meet the over frequency tripping set point limitation referred to in Exhibit C-1, PRODUCER shall consult with NIAGARA MOHAWK and NIAGARA MOHAWK will notify PRODUCER of any consequences associated with that decision.

### **5.5 OPERATING VOLTAGE**

- 5.5.1 PRODUCER is expected to adhere to the operating voltage performance referred to in 756 Appendix C, Section II, B, 2.2 and 756 Appendix C, Section IV, B. PRODUCER is responsible for the proper coordination of any applied under/over voltage generator tripping as per 756, Appendix C, Section II, A, 2.7. If the PRODUCER elects to employ over voltage or under voltage protection, then the over voltage and under voltage relay settings shall be reviewed and approved by NIAGARA MOHAWK.

## 5.6 ISLANDING

- 5.6.1 With reference to 756, Appendix C, Section II, A, 2.4, NIAGARA MOHAWK reserves the right to require, allow or prevent the ISLANDING of PRODUCER'S generation depending upon the prevailing NIAGARA MOHAWK electrical system operational needs at the time to the extent that PRODUCER'S PRODUCTION FACILITY was capable of same just prior to the date of this AGREEMENT.

## 5.7 PROTECTIVE DEVICE

- 5.7.1 PRODUCER shall cooperate with NIAGARA MOHAWK on protective device settings and verification in accordance with 756, Appendix B, Section II, C and 756, Appendix C, Section V, B.

## ARTICLE VI INSURANCE PROVISIONS

- 6.1 Upon the EFFECTIVE DATE of this AGREEMENT, the PRODUCER shall provide and maintain at its own expense, insurance policies, intended to be primary, issued by reputable insurance companies reasonably acceptable to NIAGARA MOHAWK, which meet or exceed the requirements listed herein:
- 6.1.1 Workers Compensation and Employers Liability Insurance as required by the State of New York. Coverage shall include the U.S. Longshoremen's, and Harbor Workers Compensation Act and the Jones Act;
- 6.1.2 Comprehensive General Liability (Including Contractual Liability), covering all operations to be performed under this AGREEMENT, with minimum limits of:
- (i) Bodily Injury - \$1,000,000/\$1,000,000  
Property Damage - \$1,000,000/\$1,000,000  
OR
  - (ii) Combined Single Limit - \$1,000,000  
OR
  - (iii) Bodily Injury and Property Damage per Occurrence - \$1,000,000  
General Aggregate & Product Aggregate - \$2,000,000 each
- 6.1.3 Umbrella Liability, coverage with a minimum limit of \$ 4,000,000.

- 6.2 NIAGARA MOHAWK shall be included as an additional insured for all coverages in order to provide NIAGARA MOHAWK protection from liability arising out of PRODUCER activities at the INTERCONNECTION FACILITY.
- 6.3 Up until the time NIAGARA MOHAWK takes title and possession of the INTERCONNECTION FACILITY, PRODUCER agrees to insure or cause to be insured, on its own side of the DELIVERY POINT against loss or damage of the kinds usually insured against by operators similarly situated, by means of policies issued by reputable insurance companies acceptable to NIAGARA MOHAWK with uniform standard coverage endorsement limited only as may be provided in the standard form of extended coverage endorsement at that time in New York, in amounts that are not less than the full insurable value of the INTERCONNECTION FACILITY and with such deductible provision as are customarily included by operators similarly situated. The term "full insurable value", as used herein, shall mean the actual replacement value. Alternatively, PRODUCER may insure or cause to be insured such property under a blanket insurance policy or policies which cover not only such property, but other properties in the amount required by the previous sentence.
- 6.4 In the event that PRODUCER uses subcontractors in connection with this AGREEMENT, PRODUCER shall require all subcontractors provide the same insurance coverages as indicated in paragraph 6.1.1, 6.1.2 and 6.1.3.
- 6.5 Upon the EFFECTIVE DATE of this AGREEMENT, PRODUCER shall promptly provide NIAGARA MOHAWK with the (i) original Owners Protective Liability policy and (ii) Certificate(s) of Insurance for all other coverages required herein at the following address:

To: Niagara Mohawk Power Corporation  
Attn: Risk Management, Bldg. A-1  
300 Erie Boulevard West  
Syracuse, NY 13202

Such certificates, and any renewals or extensions thereof, shall provide that at least thirty (30) days prior written notice shall be given to NIAGARA MOHAWK in the event of any cancellation or diminution of coverage and shall outline the amount of deductibles or self-insured retentions which shall be for the account of PRODUCER. Such deductibles or self-insured retentions shall not exceed \$100,000 unless agreed to by NIAGARA MOHAWK'S Risk Management Department.

- 6.6 If any insurance coverage is not secured, maintained or is canceled before the completion of all services provided under this AGREEMENT, and PRODUCER fails immediately to procure such insurance as specified, NIAGARA MOHAWK has the right to procure such insurance and to deduct the cost thereof from any sum due the PRODUCER under this

AGREEMENT. PRODUCER shall furnish NIAGARA MOHAWK'S Risk Management Department with copies of any accident report(s) sent to PRODUCER insurance carriers covering accidents occurring in connection with or as a result of the performance of the work under this AGREEMENT.

- 6.7 These requirements are in addition to any which may be required elsewhere in the AGREEMENT. PRODUCER shall comply with any governmental and/or site specific insurance requirements even if not stated herein.
- 6.8 PRODUCER shall notify NIAGARA MOHAWK'S Risk Management Department in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.
- 6.9 PRODUCER represents that it has full policy limits available and shall notify NIAGARA MOHAWK'S Risk Management Department in writing when coverages required herein have been reduced as a result of claim payments, expenses, or both.
- 6.10 Nothing contained in these insurance requirements is to be construed as limiting the extent of the PRODUCER'S responsibility for payment of damages, or limiting, diminishing, or waiving contractor's obligation to indemnify, defend and save harmless NIAGARA MOHAWK in accordance with this AGREEMENT.

## **ARTICLE VII COMPLIANCE WITH LAWS**

- 7.1 Both parties agrees to comply in all material respects with all applicable federal, state and local laws, ordinances, rules, regulations, permits, licenses, approvals, certificates, and requirements thereunder in connection with all its activities performed pursuant to this AGREEMENT, including, but not limited to all design, environmental, regulatory, engineering, construction, and property acquisition activities.
- 7.2 Both parties agree to indemnify, defend, and save the other party, its agents and employees, harmless from, and against any loss, damage, liability (civil or criminal), cost, suit, charge, expense (including reasonable attorneys fees) or cause of action, whether conditionally certain or otherwise, arising from violations of the other party of said laws, ordinances, rules, regulations, permits, licenses, approvals, certificates and requirements thereunder. Both parties agree to bear fully all-civil and criminal penalties that may arise from its activities or from its violations of or its failure to comply with the aforementioned laws and requirements, whether such penalties are assessed against PRODUCER or NIAGARA MOHAWK.
- 7.3 If either party, without any responsibility to investigate, observes that any requirement specified in this AGREEMENT is at variance with any governing laws, ordinances, rules,

regulations, permits, licenses, approvals, certificates and requirements thereunder, then the observing party shall promptly notify the other party in writing before incurring any further liability, expense or obligation. The parties shall in good faith attempt to reform this AGREEMENT to comply with the aforementioned laws, ordinances, rules, regulations, permits, approvals, or certificates. If the parties are unable to do so, either party may terminate this AGREEMENT

## **ARTICLE VIII COST PAYMENTS**

- 8.1 NIAGARA MOHAWK shall invoice PRODUCER at the start of each calendar quarter in an amount equal to NIAGARA MOHAWK'S estimate for that quarter's costs and expenses for which NIAGARA MOHAWK is to be reimbursed under this AGREEMENT (excluding the charges referenced in paragraph 8.2.6, 8.2.6.1 and 8.2.6.2), adjusted for the previous quarter's differential, if any, between NIAGARA MOHAWK'S estimated and actual costs.
- 8.2 PRODUCER shall reimburse NIAGARA MOHAWK for all of the following costs incurred by NIAGARA MOHAWK with respect to the INTERCONNECTION FACILITY and Interconnection upgrade facilities:
  - 8.2.1 All NIAGARA MOHAWK costs and expenses associated with the acquisition, ownership, operation, administration, inspection, design review, engineering, surveying, project management and coordination, testing of electrical equipment and installation of EMS-RTU and metering equipment, construction, financing, maintenance, environmental and regulatory permitting and licensing of, taxes and transfer of title and interest to, the INTERCONNECTION FACILITY, and any modified facility.
  - 8.2.2 All NIAGARA MOHAWK costs and expenses in connection with INTERCONNECTION STUDIES related to this INTERCONNECTION FACILITY.
  - 8.2.3 All NIAGARA MOHAWK costs and expenses of acquiring, owning, designing, engineering, constructing, financing, taxes, environmental permitting, and licensing, or any new or modified facilities.
  - 8.2.4 All legal fees, costs, liabilities, judgments against NIAGARA MOHAWK arising out of its exercise of eminent domain powers.
  - 8.2.5 Any capital costs associated with modification performed in accordance with this AGREEMENT.

8.2.6 The PRODUCER shall reimburse NIAGARA MOHAWK for any and all costs or expenses that are incurred by NIAGARA MOHAWK pursuant to this AGREEMENT for the operation, maintenance and repair of the INTERCONNECTION FACILITY.

8.2.6.1 If requested by NIAGARA MOHAWK, such reimbursement shall be made sufficiently in advance of NIAGARA MOHAWK incurring the aforementioned costs or expense based on NIAGARA MOHAWK's good faith estimate of such costs or expense that may be paid promptly by NIAGARA MOHAWK when due.

8.2.6.2 Operation, maintenance and repair costs and expenses shall include all actual costs and expenses associated with operation, inspection, engineering and legal services, contract administration, rights-of-way acquisition, administrative and general, working capital (including material adders, overhead charges, and transportation charges), and allowed earnings and/or rates of return approved by a regulatory body having jurisdiction, including but not be limited to, the following:

(i) Power Delivery

Inspections: Monthly substation inspections by a traveling operator to inspect substation equipment for physical indications of potential problems. The inspection includes the documentation of equipment status, gage indications and equipment loading. Includes substation security inspections to prevent unauthorized entry.

Switching: Periodic switching to remove or install electrical equipment in service for scheduled work activities or during emergency conditions for equipment restoration activities.

Disconnects: Maintenance activities associated with disconnects based on work request generated by a traveling operator or as part of equipment maintenance requirements.

Breakers: Preventive and corrective maintenance conducted on high voltage circuit breakers based on field observations, problems or per established maintenance procedures intervals.

Relay PM: Preventive and corrective maintenance conducted on relay related problems or per established relay maintenance procedure intervals.

(ii) Regional Control Center

EMS Switching: Administrative and support functions in the corrective and preventive maintenance activities of circuits and equipment conducted by Power Delivery and T&D departments. Work activities include emergency switching and restoration requirements,

sequence of switching instructions, directing switching activities, mark-up procedures, and associated documentation.

(iii) Forestry

Stations: Includes substation yard herbicide program.

ROW Maintenance: Includes the ROW maintenance program associated with substation and transmission circuits.

(iv) Transmission and Delivery

Operation and Maintenance: Corrective and maintenance of transmission, sub-transmission and distribution circuits. Operation and maintenance activities include patrols, maintenance and repair activities of facilities per established electric operating procedures.

8.2.7 Any and all federal, state or local taxes levied or assessed against NIAGARA MOHAWK, with respect to the INTERCONNECTION FACILITY, or payments made to NIAGARA MOHAWK by PRODUCER for services provided by NIAGARA MOHAWK under this AGREEMENT including, but not limited to, the following: transfer tax, property tax, federal income tax, New York State taxes. If any form of tax, other than income or excess profits tax, under any present or future federal, state or other law different from or in addition to the taxes for which participation in or payment by PRODUCER is provided herein or elsewhere in this AGREEMENT, should be levied or assessed against or incurred by NIAGARA MOHAWK with respect to any property, property right, commodity, service, or other matter involved in, growing out of or accruing from NIAGARA MOHAWK'S performance under this AGREEMENT, which different or additional tax would not be required to be paid by NIAGARA MOHAWK in the absence of this AGREEMENT and, with respect to such different or additional tax, no obligation of PRODUCER to participate or pay would have attached under the provisions of this AGREEMENT elsewhere than in this paragraph, then in such event PRODUCER shall fully reimburse NIAGARA MOHAWK for the full amount of such different or additional tax paid by NIAGARA MOHAWK.

8.2.8 Increased Income Tax to NIAGARA MOHAWK Arising from PRODUCER'S Payment or Reimbursement of Tax Under the Proceeding Provisions.

PRODUCER shall fully reimburse NIAGARA MOHAWK for any net actual federal income tax or New York State tax ("Tax"), if any, arising out of any payment or reimbursement of any tax by PRODUCER under this Article. The amount reimbursed to NIAGARA MOHAWK under this paragraph shall consist of (1) the initial amount of net actual Tax arising under this paragraph (the "First Amount"); (2) the net actual Tax on the First Amount (the "Second Amount"); (3) the net actual Tax on the Second Amount (the "Third Amount"); and (4) the net

actual Tax on the Third Amount and on each succeeding amount until the final amount is less than one dollar.

- 8.2.9 NIAGARA MOHAWK agrees to cooperate with PRODUCER in attempting to minimize NIAGARA MOHAWK'S costs under this Article, provided PRODUCER reimburses NIAGARA MOHAWK for all costs incurred by NIAGARA MOHAWK in connection with such cooperation, including reasonable attorneys fees as a result hereof.
- 8.3 PRODUCER agrees to pay all invoices within thirty (30) days from date of receipt of the invoice. If any invoice remains unpaid thirty (30) days from the receipt date, NIAGARA MOHAWK shall apply to the unpaid balance, and PRODUCER shall pay, a finance charge at the rate of one and one-half percent (1.5%) per month, but in no event more than the maximum allowed by law.
- 8.4 In the event that NIAGARA MOHAWK is the purchaser of power from the PRODUCTION FACILITY, any outstanding invoices which the PRODUCER has not paid to NIAGARA MOHAWK shall be deducted from the payments due PRODUCER by NIAGARA MOHAWK.

#### **ARTICLE IX NOTICES**

- 9.1 All notices required or permitted under this AGREEMENT shall be in writing and shall be personally delivered or sent by certified or registered first class mail, postage prepaid, telex, facsimile transmission, or overnight express mail or courier service addressed as follows:

**To BIO-ENERGY PARTNERS:**

MANAGER-CORPORATE LANDFILL  
GAS PROGRAM  
WASTE MANAGEMENT  
2410 Paces Ferry Road  
Suite 400  
Atlanta, GA 30339  
Attn: Mr. Jerry Leone

**To NIAGARA MOHAWK POWER  
CORPORATION:**

MANAGER-TRANSMISSION  
& DELIVERY SERVICES  
NIAGARA MOHAWK POWER  
CORPORATION  
300 Erie Boulevard West  
Syracuse, NY 13202

- 9.2 Either party may change its address for notices by notice to the other in the manner provided above.



- 9.3 Notwithstanding paragraph 9.1, any notice hereunder, with respect to a system emergency or other occurrence requiring prompt attention, may be made by telephone provided that such notice is confirmed in writing promptly thereafter.
- 9.4 These representatives as noted in paragraph 9.1 or their designees shall be authorized to act on behalf of the parties, and their instructions, requests, and decisions will be binding upon the parties as to all matters pertaining to this AGREEMENT and the performance of the parties hereunder. Only these representatives shall have the authority to commit funds or make binding obligations on behalf of the parties. These representatives shall be responsible for tracking work, costs, schedules and all other matters related to this AGREEMENT, and to the performance of any third parties.

## **ARTICLE X TERM AND TERMINATION**

- 10.1 This AGREEMENT shall become effective as of the date first above written (the "EFFECTIVE DATE"), subject to its approval or acceptance for filing by the FERC, and shall continue in effect for ten (10) years.
- 10.2 This AGREEMENT shall not merge with or be terminated or superseded by any future agreement between the parties that does not specifically so provide.
- 10.3 NIAGARA MOHAWK shall have the right to terminate the AGREEMENT in the event PRODUCER abandons the PRODUCTION FACILITY; becomes insolvent; or assigns or sublets this AGREEMENT in a manner inconsistent with this AGREEMENT, or is violating any of the material conditions, terms, obligations, or covenants of this AGREEMENT. Before instituting proceedings before FERC to terminate the AGREEMENT, NIAGARA MOHAWK must give PRODUCER written notice of the reasons for termination. If the default or breach is due to lack of payment, within a period of thirty (30) days of such notice PRODUCER cures the default or breach cited by NIAGARA MOHAWK in such notice, to the reasonable satisfaction of NIAGARA MOHAWK, and shall have complied with the provisions of this AGREEMENT, such notice shall become null and void and of no effect. If the default or breach is due to any other reason, within a period of sixty (60) days of such notice PRODUCER cures the default or breach cited by NIAGARA MOHAWK in such notice, to the reasonable satisfaction of NIAGARA MOHAWK, and shall have complied with the provisions of this AGREEMENT, such notice shall become null and void and of no effect. For reasonable cause shown by PRODUCER, NIAGARA MOHAWK may agree to extend cure period.
- 10.4 PRODUCER shall the right to terminate this AGREEMENT in accordance with this Article upon sixty (60) days prior written notice to NIAGARA MOHAWK.

- 10.5 In the event of a billing dispute between NIAGARA MOHAWK and the PRODUCER, NIAGARA MOHAWK will not apply to remove the INTERCONNECTION FACILITIES from service or to terminate transmission service thereon as long as the PRODUCER: (i) continues to make all payments not in dispute and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the PRODUCER fails to meet these two requirements, then a default shall be deemed to exist, to which the procedures set forth in this section for the removal of the INTERCONNECTION FACILITIES from service shall apply.
- 10.6 Termination of this AGREEMENT shall not relieve PRODUCER of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and NIAGARA MOHAWK may take whatever judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder. The rights specified herein are not exclusive and shall be in addition to all other remedies available to NIAGARA MOHAWK, either at law or in equity, for default or breach of any provision of this AGREEMENT.
- 10.7 PRODUCER shall be liable to NIAGARA MOHAWK for all costs, expenses, liabilities and obligations, including reasonable attorneys' fees, incurred by NIAGARA MOHAWK that result from or relate to the termination of this AGREEMENT.
- 10.8 In the event of termination of this AGREEMENT in accordance with Article X, NIAGARA MOHAWK will physically disconnect the PRODUCTION FACILITY from the TRANSMISSION SYSTEM and at NIAGARA MOHAWK'S sole determination remove any or all of NIAGARA MOHAWK'S INTERCONNECTION FACILITY equipment.

## **ARTICLE XI FORCE MAJEURE**

- 11.1 Neither party shall be considered to be in default or breach hereunder, and shall be excused from performance hereunder, if and to the extent that it shall be delayed in or prevented from performing or carrying out any provisions of this AGREEMENT by reason of storm, flood, lightning strikes, earthquake, fire, ice, snow, epidemic, war, invasion, riot, civil disturbance, sabotage, explosion, insurrection, military or usurped power, strikes, stoppage of labor, labor dispute, failure of contractors or supplies of material, action of any court or governmental authority, or any civil or military authority de facto or de jure, change in law, act of God or the public enemy, or any other cause beyond either party's control, including, without limitation, disconnection, limited operation of NIAGARA MOHAWK'S electric system, unscheduled repairs or maintenance, fuel or energy shortages and equipment breakdown caused by a force majeure event. A party's year 2000 computer compliance failure shall not constitute force majeure.

- 11.2 The party claiming force majeure shall use due diligence to resume performance or the provision of service hereunder as soon as practicable.
- 11.3 Neither party shall be liable to the other party for or on account of any loss, damage, injury or expense, including, but not limited to, special, indirect and consequential damages, resulting from or arising out of such delay or inability to perform.

## **ARTICLE XII RELATIONSHIP OF THE PARTIES**

- 12.1 Nothing contained in this AGREEMENT shall be construed or deemed to cause, create, constitute, give effect to, or otherwise recognize PRODUCER and NIAGARA MOHAWK to be partners, joint venturers, employer and employee, principal agent, or any other business association, with respect to any matter.
- 12.2 Except as expressly provided in Article III or unless otherwise agreed to in writing signed by both parties, neither party shall have any authority to create or assume in the other party's name or on its behalf any obligation, express or implied or to act or purport to act as the other party's agent or legal empowered representative for any purpose whatsoever.
- 12.3 Neither party shall be liable to any third party in any way for any engagement, obligation, commitment, contract, representation or for any negligent act or omission to act of the other party, except as expressly provided for herein.
- 12.4 The rights and obligations of the parties shall be limited to those expressly set forth herein.

## **ARTICLE XIII THIRD PARTY BENEFICIARY/ASSIGNMENT**

- 13.1 No person or party shall have any rights or interests, direct or indirect, in this AGREEMENT or the services or facilities to be provided hereunder, or both, except the parties, their successors, and authorized assigns.
- 13.2 The parties specifically disclaim any intent to create any rights in any person or party as a third-party beneficiary to this AGREEMENT or to the services or facilities to be provided hereunder, or both.
- 13.3 PRODUCER may assign or collaterally assign this AGREEMENT to lenders, or any financial institution participating in financing PRODUCER's INTERCONNECTION FACILITY or property acquisition, or to any partnerships created to operate

PRODUCER's facilities, or to any other parties upon prior written notification to NIAGARA MOHAWK.

- 13.4 PRODUCER agrees to reimburse NIAGARA MOHAWK for costs and expenses (including reasonable fees and expenses of NIAGARA MOHAWK'S counsel) incurred in connection with NIAGARA MOHAWK'S review, execution and delivery of instruments, agreements or documents necessary in connection with the PRODUCER'S assignment, transfer, sale or other disposition of this AGREEMENT or any interest in the INTERCONNECTION FACILITY.
- 13.5 Any assignment in violation of Article XIII shall be considered null and void from its inception.
- 13.6 Any NIAGARA MOHAWK authorized assignment shall not relieve PRODUCER of the responsibility of full compliance with the requirements of this AGREEMENT, provided, however, that assignment by PRODUCER to either general partner of PRODUCER or to an entity controlled by, controlling or under common control with either partner shall relieve the other partner of all responsibility here under, subject to section 13.7.
- 13.7 PRODUCER shall not make any assignment unless and until its successor in interest has agreed to undertake the obligations accepted by PRODUCER herein, and has provided written assurances to NIAGARA MOHAWK of continued performance and protection against liability upon assignment.
- 13.8 Assignment contrary to the provisions of this AGREEMENT shall make PRODUCER the indemnitor of NIAGARA MOHAWK and its successors, against any liabilities and costs, including attorneys fees as to which PRODUCER'S transferee fails to indemnify, defend, and hold harmless NIAGARA MOHAWK, its agents, employees and its successors, from and against any loss, damage, liability (civil or criminal), cost, suit, charge, expense (including reasonable attorneys fees) or cause of action, whether unconditionally certain or otherwise, incurred by NIAGARA MOHAWK as a result of said assignment or as a result of any dispute between PRODUCER and its transferees, or between any subsequent transferees, that arises from or relates to any assignment by PRODUCER.
- 13.9 This AGREEMENT shall bind and inure to the benefit of the parties to this AGREEMENT, their successors and permitted assigns.

**ARTICLE XIV  
APPROVAL**

- 14.1 NIAGARA MOHAWK shall file this AGREEMENT with the appropriate regulatory authorities. If such regulatory body substantially modifies the terms and conditions of this AGREEMENT, either party shall have the right to unilaterally terminate this AGREEMENT.
- 14.2 This AGREEMENT is entered into subject to authorization by, or requirements of regulatory authorities having jurisdiction in respect to this AGREEMENT.
- 14.3 Nothing contained in this AGREEMENT shall be construed as affecting in any way the right of NIAGARA MOHAWK to unilaterally make application to the FERC for a change in rates, terms and conditions under Section 205 of the Federal Power Act and pursuant to the Commission's rules and regulations.

**ARTICLE XV  
WAIVER**

- 15.1 No provision of this AGREEMENT may be waived except by mutual agreement of the parties as expressed in writing and signed by both parties.
- 15.2 Any waiver that is not in writing and signed by both parties shall be null and void from its inception.
- 15.3 No express waiver in any specific instance as provided in a required writing shall be construed as a waiver of future instances unless specifically so provided in the required writing.
- 15.4 No express waiver of any specific default shall be deemed a waiver of any other default whether or not similar to the default waived, or a continuing waiver of any other right or default by a party.
- 15.5 The failure of either party to insist in any one or more instances upon the strict performance of any of the provisions of this AGREEMENT, or to exercise any right herein, shall not be construed as a waiver or relinquishment for the future of such strict performance of such provision or the exercise of such right.

**ARTICLE XVI  
AMENDMENT AND MODIFICATION**

- 16.1 This AGREEMENT may be amended or modified only if the amendment or modification is in writing and executed by both parties. Any amendment or modification that is not in writing and signed by both parties shall be null and void from its inception.
- 16.2 No express amendment or modification in any specific instance as provided herein shall be construed as an amendment or modification of future instances, unless specifically so provided in the required writing.
- 16.3 Nothing in this AGREEMENT shall be construed as affecting in any way the ability of the PRODUCER to exercise its rights under the Federal Power Act and pursuant to FERC's rules and regulations promulgated thereunder.

**ARTICLE XVII  
GOVERNING LAW**

- 17.1 This AGREEMENT and the rights and obligations of the parties to this AGREEMENT shall be governed by and construed in accordance with the laws of the State of New York.
- 17.2 PRODUCER and NIAGARA MOHAWK agree to submit to the jurisdiction of the courts in the State of New York for the purposes of interpretation and enforcement of this AGREEMENT.
- 17.3 PRODUCER and NIAGARA MOHAWK may waive personal service by manual delivery and agree that service of process on PRODUCER and NIAGARA MOHAWK in any action concerning or arising out of this AGREEMENT may be made by registered or certified mail, return receipt requested, delivered to PRODUCER and NIAGARA MOHAWK at its address set forth in the preamble hereto.

**ARTICLE XVIII  
DISPUTE RESOLUTION**

- 18.1 Any claim or dispute, which either Party may have against the other, arising out of the AGREEMENT shall be submitted in writing to the other Party not later than sixty (60) days after the circumstances which gave rise to the claim or dispute have taken place. The submission of any claim or dispute shall include a concise statement of the question or issue in dispute, together with relevant facts and documentation to fully support the claim.
- 18.2 If any such claim or dispute arises, the parties shall use their best efforts to resolve the claim or dispute, initially through good faith negotiations or upon the failure of such

negotiations, through Alternative Dispute Resolution (“ADR”) techniques in accordance with the Model Procedure for Mediation of Business Disputes as published by the Center for Public Resources; however, either Party may terminate its participation in ADR during any stage of ADR and proceed under paragraph 18.3.

- 18.3 If any claim or dispute arising hereunder is not resolved pursuant to paragraph 18.2, either Party may, upon giving the other Party at least ten (10) days prior written notice, initiate litigation to submit such claim or dispute for decision by a court of competent jurisdiction.
- 18.4 Nothing in this Article XVIII shall restrict the rights of any party to file a complaint with FERC under relevant provisions of the Federal Power Act.

#### **ARTICLE XIX SEVERABILITY**

- 19.1 If any term of this AGREEMENT, or the interpretation or application of any term or provision to any prior circumstance, is held to be unenforceable, illegal, or invalid by any governmental agency or court of competent jurisdiction, the remainder of this AGREEMENT, or the interpretation or application of all other terms or provisions to persons or circumstances other than those that are unenforceable, illegal, or invalid, shall not be affected thereby and each term and provision shall be valid and be enforced to the fullest extent permitted by law.

#### **ARTICLE XX HEADINGS**

- 20.1 The headings in this AGREEMENT are included herein for convenience of reference only and shall not constitute a part of this AGREEMENT for any other purpose, or limit or be used as an aid in construing the provisions of this AGREEMENT.

#### **ARTICLE XXI INTEGRATION/MERGER/SURVIVABILITY**

- 21.1 This AGREEMENT sets forth the entire understanding and agreement of the parties as to the subject matter of this AGREEMENT and merges and supersedes all prior agreements, commitments, representations, writings and discussions between the parties with respect to the INTERCONNECTION FACILITY.
- 21.2 The obligations of the PRODUCER shall survive the completion, termination, or abandonment of this AGREEMENT and of the PRODUCER’S facilities and work.

**ARTICLE XXII  
COMPLIANCE WITH THE NERC**

- 22.1 Both parties agree to comply with any existing or future criteria, guides, and procedures established by the NERC or any successor organization to ensure the continued reliability of North America's interconnected bulk electric systems.

**ARTICLE XXIII  
COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(Signature page to follow)



IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

BIO-ENERGY PARTNERS

NIAGARA MOHAWK POWER CORPORATION

By: Charles E. Williams

By: [Signature]

Title: VP

Title: Vice President, Electric Assets Delivery

Date: 7-30-99

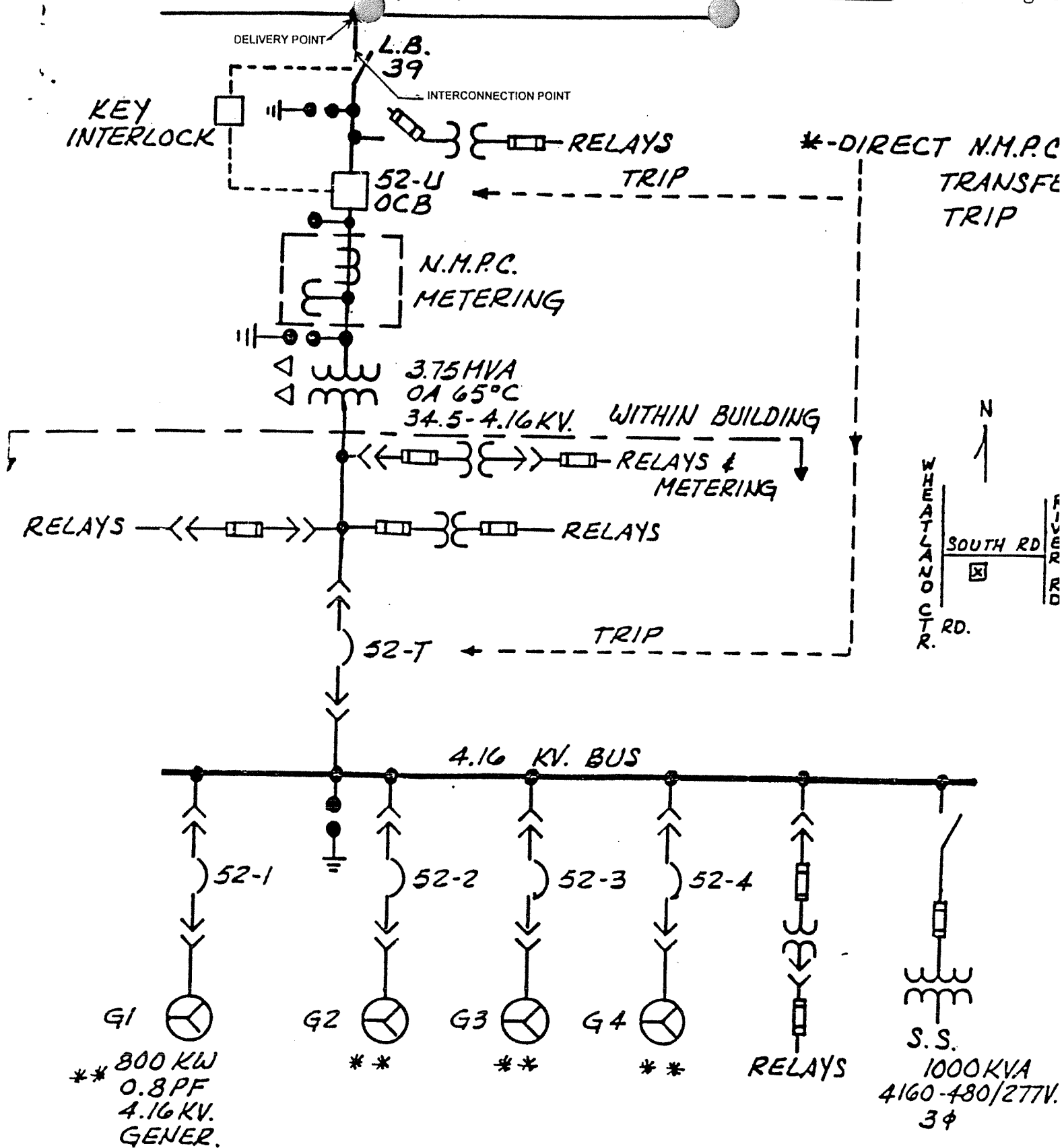
Date: 8/5/99

PRODUCER shall continue to own and maintain its interconnection with NIAGARA MOHAWK's TRANSMISSION SYSTEM, including the generator output leads, the generator step-up transformer and associated equipment up to and including the substation take-off structure and disconnect switch No. 39, excluding NIAGARA MOHAWK's metering equipment.

The INTERCONNECTION FACILITY shall consist of NIAGARA MOHAWK's 0.77 mile 34.5 kV transmission line from the jaw side of disconnect switch No. 39 to NIAGARA MOHAWK's interconnection to the Caledonia - Golah No. 213 line.

DELIVERY POINT shall be the interconnection to the Caledonia - Golah No. 213 line.

INTERCONNECTION POINT shall be at the jaw side of disconnect switch No. 39.



NOTE: BOTH R 206 AT CALEDONIA  
& R131 AT GOLAH MUST BE  
OPEN TO INITIATE TRIP

NIAGARA MOHAWK POWER CORPORATION  
BUFFALO, N. Y.

GENESEE REGION  
WASTE MANAGEMENT INC. (I.R.P.)  
MONROE-LIVINGSTON COUNTIES LANDFILL

|   |       |    |                       |     |     |     |     |      |       |
|---|-------|----|-----------------------|-----|-----|-----|-----|------|-------|
| 2 | 12/88 | JB | ADD RELAYS & METERING | 114 | DR. | TR. | CK. | DATE | SCALE |
|---|-------|----|-----------------------|-----|-----|-----|-----|------|-------|