

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Program for an
Inactive Hazardous Waste Disposal
Site, Under Article 27, Title 13,
and Article 71, Title 27 of the
Environmental Conservation Law
of the State of New York by

ORDER
ON
CONSENT

INDEX #A7-0318-94-10

ITT COMMERCIAL FINANCE CORP.

Respondent.

Site # 7-34-052

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 27, Title 13 of the Environmental Conservation Law of the State of New York ("ECL"), entitled "Inactive Hazardous Waste Disposal Sites."

2. ITT Commercial Finance Corp. ("Respondent"), formerly known as ITT, Industrial Credit Company, is a corporation organized and existing under the laws of the State of Nevada, and is doing business in the State of New York.

3. Respondent foreclosed on the property (the "Site") at 547 East Genesee Street, Fayetteville, New York on December 20, 1988. A map of the Site is attached as Appendix "A".

4. During 1989, Respondent retained Stearns & Wheler, engineering consultants, to conduct an environmental assessment at the Site. Stearns & Wheler completed a preliminary environmental assessment in June of 1989 and found among other things:

- a. Approximately 100 containers of various sizes of waste, abandoned at the Site, some of which contained hazardous substances, and
- b. A trichloroethylene degreaser system inside the Site building that had not been decommissioned.

5. In September 1989, evidence of trichloroethylene contamination of the groundwater at the Site was found by Stearns & Wheler, of which DEC was notified at that time.

6. The Site has been classified by DEC as an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2) and it has been listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 734052. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305(4)(b), having found that the site constitutes a "significant threat to the public health or environment - action required."

7. Pursuant to ECL Section 27-1313(3)(a), whenever the Commissioner of Environmental Conservation (the "Commissioner") "finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the Department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

8. The Department and Respondent agreed that the goals of the Order on Consent, Index #A7-0223-90-02, executed on behalf of the Department on September 20, 1990, was the expeditious development and implementation of an Interim Remedial Measure Program ("IRM Program") for the Site, which program addressed: (1) the testing, identification, removal and disposal of the approximately 100 containers of potentially hazardous waste abandoned and left at the Site; (2) the decommissioning of the trichloroethylene degreaser system and the removal and disposal of all waste generated during the decommissioning process; and (3) the withdrawal pumping (to the extent practicable), removal and disposal of the free product pool of trichloroethylene beneath the groundwater in the vicinity of monitoring well No. 3 (ss) at the Site. The Department agrees that Respondent has satisfactorily completed these activities.

9. The Department and Respondent agreed that the goal of the Order on Consent, Index #A7-0258-91-03, executed on behalf of the Department on August 19, 1991, was that Respondent expeditiously undertake a Remedial Investigation/Feasibility Study at the Site. Order on Consent, Index #A7-0258-91-03 was amended on June 6, 1994 whereby Respondent was authorized to undertake a second IRM Program at the site. The Department agrees that Respondent has completed or is continuing the activities required under Order on Consent, Index #A7-0258-91-03, as amended on June 6, 1994.

10. Following a period of public comment, the Department selected a final remedial alternative for the Site in a Record of Decision ("ROD") dated December 5, 1994. The ROD, attached to this Order as Appendix "B," is incorporated as an enforceable part of this Order.

11. The Department and Respondent agree that the goals of this Order are for Respondent to (i) develop and implement, in accordance with the ROD, an inactive hazardous waste disposal site remedial program ("Remedial Program") for

the Site that shall include design and implementation, and operation, maintenance and monitoring of the selected remedial alternative; and (ii) reimburse the State's reasonable administrative costs pursuant to paragraph VIII.

12. Respondent, having waived its right to a hearing herein as provided by law, except as specifically provided under this Order, and having consented to the issuance and entry of this Order without any admission or denial of liability, agrees to be bound by its terms.

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

I. Remedial Design Contents

A. Respondent has submitted a Work Plan dated March 1995, outlining the scope, plans and requirements for the remedial design. The March 1995, Work Plan is hereby approved by the Department and attached to this Order as Appendix "C". Respondent shall submit to the Department, within the time frame set forth in the approved Work Plan, for the Department's review and approval, a remedial design to implement the remedial alternative for the Site selected by the Department in the ROD (the "Remedial Design"). The Remedial Design shall be prepared by and have the signature and seal of a professional engineer who shall certify that the Remedial Design was prepared in accordance with this Order.

B. The Remedial Design shall include the following:

1. A time schedule to implement the Remedial Design;
2. The parameters, conditions, procedures, and protocols to determine the effectiveness of the Remedial Design, including a schedule for periodic sampling of groundwater monitoring wells on-Site and off-Site;
3. A description of operation, maintenance, and monitoring activities to be undertaken after the Department has approved construction of the Remedial Design, including the number of years during which such activities will be performed (where appropriate) a specific description of the criteria to be used to decide when an operation of the remedy may be discontinued.
4. A contingency plan to be implemented if any element of the Remedial Design fails to achieve any of its objectives or otherwise fails to protect human health or the environment;
5. A health and safety plan for the protection of persons at and in the vicinity of the Site during construction and after completion of construction. This

plan shall be prepared in accordance with 29 CFR 1910 by a certified health and safety professional or industrial hygienist; and

6. A citizen participation plan which incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375.

II. Remedial Construction

A. In accordance with the time schedule contained in the approved Remedial Design, Respondent shall commence construction of the Department-approved Remedial Design.

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

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

D. Within 60 days after completion of the construction activities identified in the Department-approved Remedial Design, Respondent shall submit to the Department a detailed post-remedial operation and maintenance plan ("O&M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification that the Remedial Design was implemented and that all construction activities were completed in accordance with the Department-approved Remedial Design and were personally witnessed by him or her or by a person under his or her direct supervision. The O & M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

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

F. After receipt of the "as-built" drawings, final engineering report, and certification, the Department shall notify Respondent, within 45 days of receipt of the O & M Plan, "as-built" drawings, final engineering report and certification, in writing whether the Department is satisfied that all construction activities have been completed in compliance with the Department-approved Remedial Design.

G. If the Department concludes that any element of the Department-approved Remedial Program fails to achieve its objectives or otherwise fails to

protect human health or the environment, the Department shall submit a written determination that action is required pursuant to this Subparagraph and, within 30 days of receipt of such written notification, Respondent shall notify the Department's Director of Hazardous Waste Remediation whether it elects to undertake such additional action. In the event Respondent elects not to undertake such additional action both parties shall retain whatever rights and remedies at law that may be available to them in future proceedings. Upon Respondent's notification of its election to undertake such additional action, such election shall be accompanied by a work plan, including a time schedule for implementation of the work plan, and shall be incorporated into and become an enforceable part of this Order upon the Department's approval of such work plan.

III. Interim Remedial Measures

A. 1. Respondent may propose one or more IRMs for the Site.

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

3. Upon the Department's determination that the proposal is an appropriate IRM and upon the Department's approval of such work plan, the IRM Work Plan shall be incorporated into and become an enforceable part of this Order; and Respondent shall submit to the Department for its review and (as appropriate) approval, in accordance with the schedule contained in the Department-approved IRM Work Plan, detailed documents and specifications prepared, signed, and sealed by professional engineer(s) to implement the Department-approved IRM. Such documents shall include a health and safety plan, contingency plan, and (if the Department requires such) a citizen participation plan that incorporates appropriate activities outlined in the Department's publication, "New York State Inactive Hazardous Waste Citizen Participation Plan," dated August 30, 1988, and any subsequent revisions thereto, and 6 NYCRR Part 375. Respondent shall then carry out such IRM in accordance with the requirements of the approved IRM Work Plan, detailed documents and specifications, and this Order. Respondent shall notify the Department of any significant difficulties that may be encountered in implementing the Department-approved work plan, detailed documents, or specifications and shall not modify any obligation unless first approved by the Department.

4. During implementation of all construction activities identified in the Department-approved IRM Work Plan, Respondent shall have on-Site a full-time representative who is qualified to supervise the work done.

5. Within the schedule contained in the Department-approved IRM

Work Plan, Respondent shall submit to the Department a final engineering report prepared by professional engineer(s) that includes a certification by that individual that all activities that comprised the Department-approved IRM were completed in accordance with the Department-approved IRM Work Plan and this Order.

a. If the performance of the Department-approved IRM encompassed construction activities, the final engineering report also shall include a detailed post-remedial operation and maintenance plan ("IRM O&M Plan"); "as-built" drawings and a final engineering report (each including all changes made to the Remedial Design during construction); and a certification by a professional engineer that the IRM was implemented and all construction activities were completed in accordance with the Department-approved detailed documents and specifications for the IRM and all such activities were personally witnessed by him or her or by persons under his or her direct supervision. The IRM O&M Plan, "as built" drawings, final engineering report, and certification must be prepared, signed, and sealed by a professional engineer.

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

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

IV. Progress Reports

Respondent shall submit to the parties identified in Subparagraph XII.B in the numbers specified therein copies of written monthly progress reports that:

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

B. include all results of sampling and tests and all other data received or generated by Respondent or Respondent's contractors or agents in the previous month, including quality assurance/quality control information, whether conducted pursuant to this Order or conducted independently by Respondent;

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

D. describe all actions, including, but not limited to, data collection and implementation of work plans, that are scheduled for the next month and provide

other information relating to the progress at the Site;

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

F. include any modifications to any work plans that Respondent has proposed to the Department or that the Department has approved; and

G. describe all activities undertaken in support of the Citizen Participation Plan during the previous month and those to be undertaken in the next month. Respondent shall submit these progress reports to the Department by the tenth day of every month following the effective date of this Order.

Respondent also shall allow the Department to attend, and shall provide the Department five days, unless unforeseen exigent circumstances require less, advance notice of any of the following: prebid meetings, preconstruction meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

V. Review of Submittals

A. (1) The Department shall review each of the submittals Respondent makes pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done in accordance with this Order. The Department shall notify Respondent in writing of its approval or disapproval of the submittal, except for the Health and Safety Plan and the monthly progress reports. The Department's approval shall constitute acknowledgment that the submittal fulfills the conditions and requirements for the development of that submittal that are contained in this Order. The provisions of any Department-approved submittals which require any action or are the basis for any action on the part of Respondent shall be incorporated into and become an enforceable part of this Order.

(2) (a) If the Department disapproves a submittal, it shall so notify Respondent in writing and shall specify the reasons for its disapproval. Within 30 days, or such longer period of time as may be agreed to in writing by the Department, after receiving written notice that Respondent's submittal has been disapproved, Respondent shall make a revised submittal to the Department that addresses all of the Department's stated reasons for disapproving the first submittal.

(b) After receipt of the revised submittal, the Department shall notify Respondent in writing of its approval or disapproval. If the Department disapproves the revised submittal, based on issues previously identified as inadequate or added/deleted by Respondent after the original submittal,

Respondent shall be in violation of this Order, unless Respondent, within ten (10) business days of receipt of notification of disapproval or such longer time period as may be agreed to in writing by the Department, invokes the dispute resolution mechanism set forth below. If Respondent does not invoke the dispute mechanism within 10 business days of receipt of the Department's written disapproval of the revised submittal the Department may take any action or pursue whatever rights it has pursuant to any provision of statutory or common law. The Department's approval of a revised submittal shall constitute acknowledgment that the revised submittal fulfills the conditions and requirements for the development of that revised submittal that are contained in this Order. The provisions of any Department-approved revised submittals which require any action or are the basis for any action on the part of Respondent shall be incorporated into and become an enforceable part of this Order.

B. If the Department disapproves a revised submittal, the written notification shall set forth the basis of the Department's objections. Respondent may seek to discuss with the Department its disapproval of Respondent's submittal but such discussions shall not extend the time period Respondent is allowed to invoke the dispute resolution mechanism set forth below, unless an agreement in writing by the Department specifically extends such time period. Respondent may challenge any computational errors or costs not associated with the Site as itemized pursuant to Paragraph VIII. To invoke the dispute resolution mechanism set forth below, Respondent shall, within 10 business days following receipt of the Department's written notice of disapproval, or within 30 days after receipt of an itemized invoice from the Department pursuant to Paragraph VIII, serve a statement on the Department in accordance with the following procedures:

Respondent shall serve on the Department's Director of Hazardous Waste Remediation ("the Director") a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and supporting documentation (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position, including supporting documentation no later than ten business (10) days after receipt of Respondent's Statement of Position. In the event that these 10-day time periods for exchange of Statements of Position may cause a delay in the work being performed under this Order, the time periods may be shortened upon and in accordance with notice by the Department and as agreed to by the Respondent.

The Director shall review the Statements of Position of the Respondent and Department, respectively, and may request the Respondent to respond in writing, in accordance with a schedule reasonably determined by the Director, to the Statement of Position of the Department or request Respondent and the Department to appear before him or her for negotiation, mediation or oral argument. Unless the dispute is earlier resolved by negotiation or mediation, the Director shall decide the dispute in writing and shall set forth the reasons for his or her decision.

The decision of the Director shall be final and binding upon Respondent and the Department, respectively, unless the Respondent seeks judicial review.

The decision of the Director may be judicially reviewed by Respondent in a proceeding commenced under Article 78 of the Civil Practice Laws and Rules within 30 days after Respondent's receipt of such decision.

C. The Department may request Respondent to modify and/or amplify and expand a submittal if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work, beyond the work set forth in the approved Work Plans, is necessary. Within 30 days of receipt of the Department's written determination that Respondent should modify and/or amplify and expand a submittal pursuant to this Subparagraph, Respondent shall notify the Department's Director of Hazardous Waste Remediation ("the Director") whether it elects to modify and/or amplify and expand the submittal. In the event Respondent elects not to modify and/or amplify and expand the submittal, this Subparagraph V. C shall become null and void and both parties shall retain whatever rights and remedies at law that may be available to them in future proceedings. Upon Respondent's notification of its election to modify and/or amplify and expand the submittal, such election shall be incorporated into and become an enforceable part thereof.

VI. Penalties

A. The failure of the Respondent to comply with any term of this Order shall be a violation of this Order and the ECL.

B. Respondent shall not suffer any penalty under this Order, or be subject to any proceeding or action, if it cannot comply with any requirements hereof because of an act of war, riot or an unforeseeable event arising from causes over which Respondent has no control or which the exercise of ordinary human prudence could not have prevented. Respondent shall immediately notify the Department in writing when it obtains knowledge of any such condition and request an appropriate extension or modification of this Order. Any such request shall not be unreasonably denied by the Department.

VII. Entry upon Site

Respondent hereby consents, upon reasonable notice, to the entry upon the Site or areas in the vicinity of the Site which may be under the control of Respondent by any duly designated employee, consultant, contractor, or agent of the Department or any State agency for purposes of inspection, sampling, and testing and to ensure Respondent's compliance with this Order. Any such designated employee, consultant, contractor, or agent of the Department or any State agency entering upon the Site shall have appropriate OSHA certification.

During Remedial Construction, Respondent shall provide the Department with a suitable location(s) at the Site, including access to a telephone, and shall permit the Department full access to all data and records (other than the privileged mental impressions, conclusions, opinions or legal theories of Respondent's counsel) relating to matters addressed by this Order and job meetings, provided that respondent shall be given priority with regard to use of original documents for litigation purposes.

VIII. Payment of State Costs

Within 30 days after receipt of an annual itemized invoice from the Department, Respondent shall pay to the Department a sum of money which shall represent reimbursement for the State's reasonable expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs (consistent with the conditions set forth in Paragraph XIII-D.), and contractor costs incurred by the State of New York for work related to the Site prior to the effective date of this Order that have not been paid or resolved pursuant to Orders on Consent, Index #A7-0258-91-03 and Index #A7-0223-90-02, as well as for reviewing and revising submittals made pursuant to this Order, overseeing activities conducted pursuant to this Order, collecting and analyzing samples, and administrative costs associated with this Order. Such payment shall be made by certified check payable to the Department of Environmental Conservation. Payment shall be sent to the Bureau of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., 50 Wolf Road, Albany, NY 12233-7010. Itemization of the costs shall include an accounting of personal services indicating the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. This information shall be documented by reports of Direct Personal Service. Approved agency fringe benefit and indirect cost rates shall be applied. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports.

IX. Department Reservation of Rights

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

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

C. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of Respondent's defenses

against any claims, proceedings or actions.

X. Indemnification

Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent, its successors or assigns. Respondent does not assume liability for the negligent or intentionally tortious acts of the Department, the State of New York or their representatives or employees.

XI. Public Notice

If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site, Respondent shall, not fewer than 60 days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order.

XII. Communications

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

Communication from Respondent shall be sent to:

1. Andrew English, Section Chief, Division of Hazardous Waste Remediation, Room 212, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233-7010.

2. Director, Bureau of Environmental Exposure Investigation, New York State Department of Health, 2 University Place, Albany, New York 12203.

3. New York State Department of Health, 677 South Salina Street, Syracuse, New York 13202, Attention: Ron Heerkens.

4. Division of Environmental Enforcement, Central Field Unit, New York State Department of Environmental Conservation, 1150 North Westcott, Schenectady, New York 12306, Attention: Project Attorney, Accurate Die Site

5. New York State Department of Environmental Conservation, Region 7, 615 Erie Boulevard West, Syracuse, New York 13204, Attention: Tom

Male, Regional Engineer.

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

1. Four copies (one unbound) to Andrew English, Section Chief, Division of Hazardous Waste Remediation.
2. Two copies to the Director, Bureau of Environmental Exposure Investigation.
3. One copy to Tom Male, Regional Engineer, Region 7
4. One copy to the Central Field Unit: Project Attorney, Accurate Die Site

C. Within 60 days after the Department's approval of the Remedial Design, Respondent shall submit to the Department one microfilm copy (16 millimeter roll film M type cartridge) of the Department-approved Remedial Design. Within 60 days after its approval of the submittals described in subparagraph II. D of this Order, Respondent shall submit one microfilm copy (16 millimeter roll film M type cartridge) of such Department-approved submittals, as well as all other Department-approved submittals. Such submissions shall be made to Andrew English, Section Chief, Division of Hazardous Waste Remediation.

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

1. ~~Robert M. Mann, Director~~
~~Portfolio Control Credit~~
ITT Capital Finance
645 Maryville Centre Drive
St. Louis, MO 63141-5832

cc
Joseph W. Stauber *gws*
Director - Credit Management

2. Robert J. Alessi, Esq.
LeBoef, Lamb, Greene & MacRae, L.L.P.
One Commerce Plaza - Suite 2020
99 Washington Avenue
Albany, New York 12210

letter

2/3/03

new contact + cc's

See letter

10/24/02

*See email
from
Sue Bitt*

*Stellen Roland
John F. Suthman
no cc's*

3. Terry L. Brown, P.E.
President
O'Brien & Gere Technical Services, Inc.
5000 Brittonfield Parkway
P.O. Box 5240
Syracuse, New York 13220

4. David S. Towers, P.E.
O'Brien & Gere Engineers, Inc.
5000 Brittonfield Parkway
P.O. Box 4873
Syracuse, New York 13221

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

XIII. Miscellaneous

A. All activities and submittals required by this Order shall address all areas of contamination as defined in the approved work plan in Appendix "C".

B. Respondent shall retain professional consultants, contractors, laboratories, quality assurance/quality control personnel, and third party data validators acceptable to the Department to perform the technical, engineering, and analytical obligations required by this Order. The experience, capabilities, and qualifications of the firms or individuals selected by Respondent shall be submitted to the Department within 30 days after the effective date of this Order. The Department's approval of these firms or individuals shall be obtained before the start of any activities for which Respondent and such firms or individuals will be responsible. The responsibility for the performance of the professionals retained by Respondent shall rest solely with Respondent. The Department hereby approves the retention of OB&G and related companies.

C. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent, and the Department also shall have the right to take its own samples. The Department may take, subject to cost recovery from Respondent in Paragraph VII, split or duplicate samples, including analysis, of up to approximately ten (10) to twenty-five (25) percent of the total number of Respondent's samples under this Order, unless circumstances are discovered which reasonably lead the Department to increase the percentage of samples taken by the Department. Respondent shall make available to the Department the results of all sampling and/or tests or other data generated by Respondent with respect to implementation of this Order and shall

9/30/02
See letter

removed

3 new cc's

Al Farrell
Steven Roland
G. Swenson

submit these results in the progress reports required by this Order. The Department shall offer a split or duplicate sample to Respondent for any samples the Department takes as well as make available to Respondent the results of any sampling, including any split or duplicate sampling, generated by the Department within a reasonable period of time after receipt by the Department of the results of such sampling analysis.

D. Respondent shall give reasonable notice to the Department in advance of any field activities to be conducted pursuant to this Order.

E. Respondent shall use best efforts, (not including court action for off-site access) to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Respondent's obligations under this Order.

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

G. Respondent shall provide a copy of this Order to each contractor hired to perform work required by this Order and to each person representing Respondent with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order. Respondent or Respondent's contractors shall provide written notice of this Order to all subcontractors hired to perform any portion of the work required by this Order. Respondent shall nonetheless be responsible for ensuring that Respondent's contractors and subcontractors perform the work in satisfaction of the requirements of this Order.

H. All references to "professional engineer" in this Order are to an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If the individual is a member of a firm, that firm must be authorized to offer professional services in New York State in accordance with Article 145 of the New York State Education Law.

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

J. The section headings set forth in this Order are included for

convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

K. 1. The terms of this Order shall constitute the complete and entire Order between Respondent and the Department concerning the Site. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Order.

2. If Respondent desires that any provision of this Order be changed, Respondent shall make timely written application, signed by Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Department's Project Attorney: Accurate Die Site and to Andrew English, Section Chief.

3. Upon satisfaction of the terms of this Order, including operation and maintenance obligations, the Department shall dispatch a letter to Respondent in which satisfaction of all terms of this Order is stated. The letter shall be dispatched to Respondent within a reasonable time after such satisfaction occurs.

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

DATED: 4/26/95 New York
1995

Michael D. Zagata
Commissioner
New York State Department
of Environmental Conservation

By: Michael J. O'Toole, Jr.
Michael J. O'Toole, Jr.

CONSENT BY RESPONDENT

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

By: Joseph W. Stauber

Title: Director - Credit Management

Date: 4/19/95

STATE OF MISSOURI)

COUNTY OF ST. LOUIS) s.s.:

On this 19th day of April, 1995, before me personally came JOSEPH W. STAUBER, to me known, who being duly sworn, did depose and say that he resides in ST. LOUIS COUNTY, MISSOURI; that he is the DIRECTOR OF CREDIT MANAGEMENT of LIT COMMERCIAL FINANCE CORP., the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Rita J. Moore
Notary Public

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