

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel

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

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

www.dec.ny.gov

April 22, 2015

SENT VIA CERTIFIED MAIL –
RETURN RECEIPT REQUESTED

Ms. Doreen A. Simmons, Esq.
Hancock Estabrook, LLP
1500 AXA Tower 1
100 Madison St.
Syracuse, NY 13202

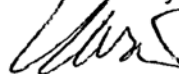
**RE: Order on Consent and Administrative Settlement
Therm, Incorporated
Site: Off-site Former Axiohm Facility
Index No.: R7-0851-15-04
Site No.: C755012A**

Dear Ms. Simmons:

Enclosed to complete your files is the fully executed Order on Consent and Administrative Settlement referencing the Off-site Former Axiohm Facility located at 1000 Hudson Street Extension, Ithaca, New York.

If you have any further questions or concerns relating to this matter, please contact attorney, Margaret Sheen, at 315-426-7435.

Sincerely,



Maria Mastroianni
Legal Assistant
Office of General Counsel
Bureau of Remediation

Enclosure

ec: M. Sheen, Esq., NYSDEC Region 7



Department of
Environmental
Conservation

**NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION**

In the Matter of the
Remedial Program for
Inactive Hazardous Waste Disposal
Site under Article 27, Title 13
of the Environmental Conservation Law
by

Therm, Incorporated,
Respondent: Settling Respondent.

**ORDER ON CONSENT
and
ADMINISTRATIVE
SETTLEMENT**

Index # *R7-0851-15-04*

Site # C755012A

WHEREAS,

1. A. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 3, Title 3 of the ECL.

C. The Commissioner of the New York State Department of Environmental Conservation is the designated Trustee for Natural Resources in accordance with applicable state and federal law.

D. The Department also asserts that it has the authority, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. *See, e.g.*, ECL 3-0301.1.i.

E. This Order on Consent and Administrative Settlement ("Order") is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL § 3-0301, and resolves Respondent's liability to the State as provided at 6 NYCRR § 375-1.5(b)(5).

F. 6 NYCRR 375-2.1 l(c) (1)(ii) authorizes the Department to expend money of the hazardous waste remedial fund provided for at SFL section 97-b to pay for the cleanup or restoration to its original state of any area where contaminants were disposed of or possessed unlawfully contrary to ECL 27-0914. 6 NYCRR 375-2.1 l(c) (1)(iii) authorizes the Department to expend moneys of the hazardous waste remedial fund provided for as SFL section 97-b to pay for site identification, classification, and investigation activities including, but not limited to testing, analyses, and record searches and the Department's related administrative activities.

2. Therm, Incorporated ("Respondent" or "Therm") is a New York Corporation that owns a manufacturing facility that specializes in the manufacturing of turbine components with a principal place of business at Hudson Street Extension, Ithaca, New York (Employer Identification# 15-0468315 "Therm Property").

3. The Therm Property is located in the eastern portion of the Ithaca South Hill neighborhood at 1000 Hudson Street Extension, Ithaca, New York, 14851, in the Town of Ithaca, Tomkins County. The 35 acre Therm facility consists of approximately 23 acres of undeveloped property and 12 acres of parking lots, driveways, and six buildings, the largest of which is the manufacturing building that was originally constructed in 1937. The western side of the Therm property is bordered by Hudson Street, with the remaining portion bordered by residential property. Historical operations at the facility included the use of materials that generated hazardous waste, including perchloroethene (PCE) and Varsol (petroleum based solvent).

4. Previously, Respondent entered into an Interim Order on May 21, 1993 ("1993 Interim Order") in which Therm was required to implement investigative and abatement measures related to a petroleum related release (Spill No. 92-14266/14403). In 1994, Therm entered into an Order which required Therm to develop and implement programs to comprehensively investigate, evaluate and, if necessary, remediate petroleum and hazardous substance contamination at and in the vicinity of its facility ("1994 Order").

5. In 1996, the State of New York commenced an action against Therm in the Federal District Court Northern District of New York, 96-cv-1095 (FJS/GJD), which was settled and dismissed pursuant to a Stipulation and Consent Decree dated September 30, 1998 ("The Court Order", attached to this Order as Exhibit "A").

6. In 2009, elevated levels of PCE and TCE were detected in soil vapor along a City of Ithaca sanitary sewer line extending from the Therm Property into the adjacent residential neighborhood ("Sewer Site"). Exhibit B is a map of the Sewer Site showing its general location. Thereafter Therm was notified by the Department that it was being considered as a Potentially Responsible Party ("PRP") for the Sewer Site.

7. Without Therm admitting liability, in November 2011, at the request of the DEC, Therm retained EnviroGroup Limited, to conduct a passive soil vapor survey. The results of this study confirmed the presence of TCE and PCE in soil vapor proximate to two homes located along the sanitary sewer line and confirmed that the sources of these vapors were most likely related to historic releases of PCE and TCE from the sewer line.

8. Soil vapor intrusion (SVI) investigations performed by the Department in residential homes located along the sanitary sewer line confirmed the presence of PCE and TCE in sub-slab soil vapor and basement indoor air and sump water. The Department took remedial actions as deemed appropriate.

9. Pursuant to the legal authorities stated herein, the Department has spent, and anticipates the need to spend additional monies of the hazardous waste remedial fund for the implementation of the Remedial Program, including operation and management of the remedy (OM&M) in or in proximity to the Sewer Site. These expenditures are authorized by and in conformance with relevant and applicable state and federal law.

10. The Department alleges Respondent is liable for the reimbursement of the Department's response costs (including any legally accrued interest and future costs) for the investigation and remediation of hazardous wastes and/or substances existing on the Site, including operation and maintenance of post-remedial activities, in accordance with applicable state and federal law.

11. Therm alleges and asserts that The Court Order precludes the State from further pursuing Therm for any costs incurred by the Department after The Court Order.

12. The State has taken, and will continue to take, response actions at the Sewer Site within the meaning of CERCLA §101(25), 42 U.S.C. §9601(25), to remedy the release and/or threatened release of hazardous substances into the environment, including restoration of the groundwater extraction and treatment system, groundwater monitoring, site management and other potential remedial actions.

DEFINITIONS

13. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations, or amendments thereto. The following terms shall have the following meaning:

A. The Site: The real property described by the Department in Paragraph 6 and encompassing the remedial area in relation to this Order.

B. Covered Contamination: For purposes of this Agreement, "Covered Contamination" shall mean any known release, as that term is defined in 6 NYCRR §375-1.2 (am), on or under the Site or that has or is emanating from the Site of hazardous waste, as that term is defined in 6 NYCRR § 375-1.2(w) which occurred prior to the effective date of this Order.

14. The State has determined that prompt settlement of this case is practicable and in the public interest.

15. In the interest of avoiding prolonged and complicated litigation, and in consideration of the defense of the Respondent, the parties to this Agreement desire to resolve all claims asserted by the State against Respondent.

16. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; and (ii) an acknowledgment that a release or

threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

17. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

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

I. PENALTIES

Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR § 375-2.11 (a)(4). Nothing herein abridges Respondent's right to contest any allegation that it has failed to comply with this Order.

II. SETTLEMENT SUM/ PAYMENT OF STATE COSTS

A. Therm shall pay to the Department the sum of \$180,000 which represents Respondent's settlement for reimbursement for Past Costs as provided at 6 NYCRR § 375-1.5(b)(3) and any future costs. Past and future costs include all Department of Environmental Conservation and all Department of Health personal and non-personal service costs, including costs of subcontractors and any costs recoverable by the Departments related to the Covered Contamination.

B. Payment shall be made within 60 days of Settling Respondents' receipt of executed Consent Order.

C. Payment must be made payable to the Department of Environmental Conservation and sent to:

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

D. If any negotiable instrument submitted to the Department pursuant to this Order is not honored when presented for payment, the payment will be deemed unpaid, and Respondent will be responsible for all charges incurred by the Department with respect to such dishonor in accordance with State Finance Law § 19.

E. Payments not received within the time periods specified in Subparagraph II.C. above will be a violation of this Order, subjecting the Respondent to penalties pursuant to Subparagraph I.A. In addition, failure to make timely payments will subject Respondent to interest calculated from the date payment was due and/or late payment charges and collection fees in accordance with State Finance Law § 18.

III. RELEASE AND COVENANT NOT TO SUE

A. In consideration of Respondent's payment of the Settlement hereunder, the State further releases any and all claims against Respondent asserted herein, including any and all claims of whatever description for any and all civil liability under federal and State statutory or common law for (1) past or future costs arising out of or relating to the actual or alleged releases or threats of releases of known contamination and hazardous substances at or from the Site or (2) past or future expenditures of any kind or nature associated with or arising from any of the claims asserted or which could have been asserted herein with respect to the Site. This release and covenant not to sue shall take effect with respect to Respondent upon Respondent's full payment of the Settlement Sum.

B. In consideration of this release provided by the State, Respondent covenants not to sue and agrees not to assert any claims or causes of action whatsoever which may exist now or in the future against the State or its agencies related to the Site.

C. Based on current information and prior investigation conducted by Therm and the State pertaining to the Sewer Site remediation and the Spill #92-14266/14403 remediation, the State is not aware of, nor has any information showing that further investigation or remediation is necessary at the Therm Property.

D. The Department hereby reserves all of its respective rights concerning, and such release and covenant not to sue shall not extend to any further investigation or remedial action the Department deems necessary:

- due to off-Site migration of petroleum (as that term is defined in Navigation Law §172(15)).
- due to environmental conditions or information related to the Site which was unknown at the time this Order was issued and which indicate that this Order cannot be implemented with sufficient protection of human health and the environment;
- due to Settling Respondent's failure to implement the Order to the Department's satisfaction; or
- due to fraud committed by Settling Respondent in entering into or implementing the Order.

E. Additionally, the Department hereby reserves all of its respective rights concerning, and any such release and covenant not to sue shall not extend to the Respondent who causes or allows a release or a threat of release at the Site of any hazardous waste (as that term is defined at 6 NYCRR § 375-1.2(w)) or petroleum (as that term is defined in Navigation Law § 172(15)), other than Covered Contamination; nor to any Settling Respondent who is otherwise responsible under law for the remediation of the Covered Contamination independent of any obligation that party may have respecting same resulting solely from the execution of this Order on Consent and Administrative Settlement. .

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department or the Trustee, the one seeking the benefit of this release and covenant not to sue shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to the Covered Contamination.

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

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

This release and covenant not to sue shall be null and void, *ab initio*, in the event of fraud relating to the execution or implementation of this Order or in the event of the Settling Respondent's failure to materially comply with any provision of this Order.

F. Nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or

demands whatsoever that: (i) Respondent may have against anyone other than the Department, including but not limited to rights of contribution under § 113(t)(B)(3) of CERCLA, 42 U.S.C. § 9613(f)(B)(3); and (ii) the Department may have against anyone other than the Settling Respondent and its directors, officers, employees, agents, and servants that were not responsible under law for the development and implementation of a Remedial Program at the Sewer Site prior to the effective date of this Order, and their respective secured creditors.

G. Notwithstanding anything herein to the contrary, nothing herein shall be construed as reducing, diminishing, or in any way affecting the Settling Respondent's rights, protections and previous releases by the Department under prior Orders and Agreements between Settling Respondent and the Department, including the Interim Order dated 1993, the Order and Agreement dated 1994, and the Court Order.

H. The benefits of the Release and Covenant Not to Sue set forth in Paragraph III shall survive termination of this Order pursuant to Paragraph VII.

IV. RESERVATION OF RIGHTS

A. Except as provided at 6 NYCRR § 375-1.9 and § 375-2.9, nothing contained in this Order will be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights or authorities, including, but not limited to, the right to require performance of further investigations and/or response action(s), to recover natural resource damages, and/or to exercise any summary abatement powers with respect to any person, including Respondent.

B. Respondent specifically reserves all rights and defenses under applicable law and The Court Order respecting any Departmental assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process.

C. The existence of this Order or Respondent's compliance with it will not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and will not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which will inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights provided under the Comprehensive Environmental Response, Compensation, and Liability Act "CERCLA").

V. INDEMNIFICATION

Respondent must indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless as provided by 6 NYCRR § 375-2.5(a)(3)(i).

VI. COMMUNICATIONS

A. All written communications required by this Order must be transmitted by United States Postal Service, by private courier service, by hand delivery or, if acceptable by the Department, by email with receipt confirmed by the other party as follows:

1. Communication from Respondent must be sent to:

Karen Cahill, Project Manager
NYSDEC Region 7
615 Erie Boulevard West
Syracuse, New York 13204-2400
Karen.Cahill@dec.ny.gov

with copies to:

Steve Karpinski
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1787
Albany, NY
Steven.karpinski@doh.ny.gov

Margaret A. Sheen, Esq.
NYSDEC Region 7
615 Erie Boulevard West
Syracuse, New York 13204-2400
Margaret.Sheen@dec.ny.gov

2. Communication made from the Department must be sent to:

Robert R. Sprole, III, Esq.
President & CEO
Therm. Incorporated
1000 Hudson Street Extension
PO Box 220
Ithaca, New York 14851
Rrsprole3@therm.com

with copies to:

Doreen A. Simmons, Esq.
Hancock Estabrook, LLP
1500 AXA Tower I, 100 Madison Street
Syracuse, New York 13202
dsimmons@hancocklaw.com

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

C. Each party must notify the other within ninety (90) Days after any change in the addresses in this Paragraph or in Paragraph IV.

VII. TERMINATION

Should the release and covenant not to sue set forth in Subparagraph VII.A herein become null and void, *ab initio*, in the event of fraud in the execution or implementation of this Order, or in the event of Settling Respondent's failure to materially comply with any provision of this Order then neither this Order nor its termination shall affect any liability of Settling Respondent for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined in CERCLA.

A. This Order will terminate upon the Department's written determination that Respondent has completed the requirements of this Consent Order by payment of the Settlement Sum delineated in Paragraph IV, in which event the termination will be effective on the 5th Day after the date of the Department's written determination.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs III, IV, and V will survive the termination of this Order and any violation of such surviving Paragraphs will be a violation of this Order, the ECL, and 6 NYCRR § 375-2.11(a)(4), subjecting Respondent to penalties as provided under Paragraph I so long as such obligations accrued on or prior to the Termination Date.

VIII. MISCELLANEOUS

A. Respondent agrees to comply with and be bound by the applicable provisions of 6 NYCRR Subparts § 375-1 and § 375-2; the provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Order to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Order.

B. The paragraph headings set forth in this Order are included for convenience of reference only and will be disregarded in the construction and interpretation of any provisions of this Order.

C. Respondent's obligations under this Order represent payment of the settlement sum as relates to the State's claims for or reimbursement of response costs, and will not be deemed to constitute any type of fine or penalty.

D. 1. The terms of this Order constitute the complete and entire agreement between the Department and Respondent concerning the implementation of the activities required by this Order. No term, condition, understanding, or agreement purporting to modify or vary any term of this Order will be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by any representative of the Department will be construed as relieving Respondent of the obligation to obtain such formal approvals as may be required by this Order. Respondent consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Order.

2. Except as set forth herein, if Respondent desires that any provision of this Order be changed, Respondent must make timely written application to the Commissioner with copies to the parties listed in Subparagraph VI.

E. If Respondent is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Order are joint and several and the insolvency or failure of any general partner to implement any obligations under this Order will not affect the obligations of the remaining partner(s) under this Order.

F. Respondent will be entitled to receive contribution protection and/or to seek contribution to the extent authorized by 6 NYCRR § 375-1.5(b)(5).

G. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder will have the meaning assigned to them under said statute or regulations.

H. Respondent and Respondent's successors and assigns will be bound by this Order. Any change in ownership or corporate status of Respondent will in no way alter Respondent's responsibilities under this Order.

I. This Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which will be deemed to have the status of an executed original.

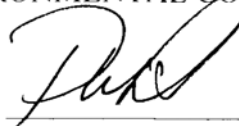
J. The effective date of this Order is the 10th Day after it is signed by the Commissioner or the Commissioner's designee.

DATED:

APR 20 2015

JOE MARTENS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By:



Robert W. Schick, P.E. Director
Division of Environmental Remediation

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.

[Respondent's Name]

By: [Signature]

Title: President

Date: 4/8/15

STATE OF NEW YORK)

) SS:

COUNTY OF Cortland)

On the 8 day of April, in the year 2015, before me, the undersigned, personally appeared Robert R. Spivey, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]

Signature and Office of individual taking acknowledgment

JOANNE FINLAY
Notary Public, State of New York
No. 01FI6190415
Qualified in Cortland County
Commission Expires July 28, 2016

EXHIBIT "A"

The Court Order

(See attached)

COPIES SENT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

by

THE STATE OF NEW YORK,

Plaintiff,

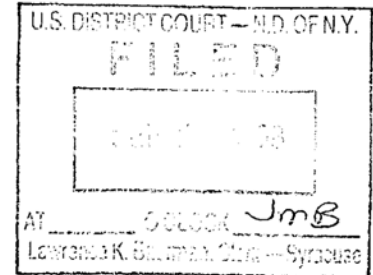
date

-against-

THERM, INCORPORATED,

Defendant.

STIPULATION AND
CONSENT DECREE
96-CV-1095 (FJS/GJD)



WHEREAS, Therm, Incorporated ("Therm") is a corporation duly organized under the laws of the State of New York (the "State") and owns and operates a jet engine component manufacturing facility on Hudson Street Extension in Ithaca, New York; and

WHEREAS, on or about March 30, 1993, a release of approximately 700 gallons of Varsol, a petroleum-based solvent occurred at its facility; and

WHEREAS, the New York State Department of Environmental Conservation ("DEC") was notified of the Varsol release and designated such release Spill No. 92-14266/14403; and

WHEREAS, the Varsol release resulted in petroleum and hazardous substance contamination of the environment in and around the facility; and

WHEREAS, the DEC undertook certain emergency response activities in and around the facility, including an investigation and remediation of contamination caused by the Varsol release; and

WHEREAS, on May 21, 1993 Therm agreed to an Interim Order ("1993 Interim Order")

with the State which required Therm to implement certain investigative and abatement measures relating to the Varsol release; and

WHEREAS, on August 15, 1994, Therm agreed to an Order and Agreement ("1994 Order") with the State which provided for Therm to develop and implement programs to comprehensively investigate, evaluate and, if necessary, remediate petroleum and hazardous substance contamination at and in the vicinity of its facility, including an environmental compliance audit, best management practices and an emergency response plan; and

WHEREAS, Therm has fully complied with the terms of the 1993 Interim Order and 1994 Order; and

WHEREAS, the State has incurred \$633,305.47 in costs associated with its investigation and remediation of Spill No. 92-14266/14403, and interest on those costs, as of October 1, 1998 totals \$289,915.55; and

WHEREAS, on July 3, 1996, the State filed a complaint in the Northern District of New York seeking to recover its costs and the imposition of penalties pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, the Oil Pollution Act, the New York Navigation Law, Articles 17 and 19 of the New York Environmental Conservation Law and the New York common law of public nuisance and restitution in connection with Therm's release of Varsol and other alleged unauthorized discharges; and

WHEREAS, the State filed its Amended Complaint on August 27, 1997; and

WHEREAS, Therm filed its Answer and Amended Answer to the State's Complaint and Amended Complaint; and

WHEREAS, the State and Therm (collectively referred to as the "Parties") agree, and this

Court finds, that this Stipulation and Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and extensive litigation between the Parties, and that this stipulation and consent decree is fair, reasonable, and in the public interest.

IT IS HEREBY STIPULATED, ORDERED AND DECREED as follows:

1. This Court has jurisdiction over the subject matter of, and the Parties to, this action pursuant to 42 U.S.C. § 9613(b) and 33 U.S.C. § 2717(b).
2. The Parties, having consented to the issuance and entry of this Stipulation and Consent Decree, agree to be bound by the terms of this Stipulation and Consent Decree and agree not to contest its validity in any subsequent proceeding to implement or enforce its terms.
3. This Stipulation and Consent Decree shall apply to, and be binding upon, the Parties and their successors and assigns. Each signatory to this Stipulation and Consent Decree represents that he or she is fully authorized to enter into this Stipulation and Consent Decree and to legally bind the party represented by him or her to its terms and conditions.
4. Neither the terms contained in this Stipulation and Consent Decree, nor the actions undertaken by the Parties pursuant to this Stipulation and Consent Decree shall constitute an admission or acknowledgment of fault with respect to allegations contained in the Amended Complaint and Amended Answer.
5. Beginning on October 1, 1998, Therm will pay to the State five hundred and fifty thousand dollars (\$550,000.00), plus interest, at a rate of five percent (5%) per annum, in periodic installments set forth in the payment schedule ("Payment Schedule") attached hereto as Exhibit A.
6. Each payment made under the Payment Schedule shall be by certified check payable to the "Comptroller, State of New York," and shall be delivered in person or by certified mail to the

New York State Department of Law, Oil Spill Unit, Civil Recoveries Bureau, The Capitol, Albany, New York 12224-0341, Attention: Lois Fredericksen. Therm shall continue to make such payments to the State until the total amount of payments due under the Payment Schedule and all applicable late charges are paid in full.

7. Except with respect to payments made pursuant to paragraph 11, no payment made pursuant to this Stipulation and Consent Decree shall be construed as payment of a fine, penalty or sanction.

8. Payments received within seven (7) days of the payment due date under the Payment Schedule will be deemed timely made. For any payment received after the seven (7) day grace period, a late charge of two hundred and fifty dollars (\$250) per day will be assessed for each day past the payment due date.

9. In the event the State does not receive payment from Therm within ten (10) days of the payment due date, the State shall provide Therm with a notice to cure, which shall include the amount overdue, plus applicable late charges.

10. Therm shall notify the State at least thirty (30) days prior to any filing for bankruptcy protection pursuant to 11 U.S.C. §§ 101 et seq.

11. In the event Therm defaults under this Stipulation and Consent Decree, the full amount of the State's costs for Spill No. 92-14266/14403, plus interest thereon at the rate of nine percent (9%) per annum, calculated from the date each cost is incurred, less any payments made by Therm under this Stipulation and Consent Decree, shall become immediately due and payable as a penalty pursuant to New York Navigation Law § 192. In such event, the State may, without further notice to Therm, enter judgment for the total amount due pursuant to New York Civil

Practice Law and Rules § 3215(i) and Uniform District Court Act § 1402.

12. A default under this Stipulation and Consent Decree shall be defined to include any of the following: Therm's failure to make full payment of any amount overdue, plus applicable late charges, within thirty (30) days of the payment due date under the Payment Schedule; service of Therm's thirty (30) day notice of bankruptcy pursuant to paragraph 10; Therm's filing for bankruptcy protection.

13. All references to "days" in this Stipulation and Consent Decree refer to calendar days.

14. Nothing contained in this Stipulation and Consent Decree shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the State's rights, including, without limitation, the following:

- a. The State's right to bring any action or proceeding against anyone other than Therm.
- b. The State's right to enforce the provisions of this Stipulation and Consent Decree against Therm and/or Therm's successors and assigns in the event Therm fails to comply with any term of this Stipulation and Consent Decree.
- c. The State's right to exercise summary abatement or public nuisance powers, to enter and/or inspect the facility in accordance with applicable law.
- d. The State's rights with respect to matters not addressed in the Amended Complaint or claims arising out of facts or conditions not known to the State.
- e. The State's rights to seek indemnification from Therm for third party-claims asserted against the State for, or arising out of, any discharge of petroleum or hazardous substance at or around the facility, including, without limitation, Spill No. 92-14266/14403.

15. Nothing in this Stipulation and Consent Decree shall affect the Parties' rights and obligations under the 1993 Interim Order and 1994 Order.

16. The Parties covenant not to commence or undertake any judicial action or administrative proceeding for matters addressed in the Amended Complaint and Amended Answer, except as provided in paragraph 14.

17. Upon Therm's performance of its obligations under this Stipulation and Consent Decree, including full payment of the total amount due under the Payment Schedule, plus all applicable late charges, the Parties shall exchange mutual releases from liability for all matters addressed in the Amended Complaint and Amended Answer.

18. The terms of this Stipulation and Consent Decree shall constitute the complete and entire agreement between the Parties concerning matters addressed in the Amended Complaint and Amended Answer. No term, condition, understanding or agreement purporting to modify or vary any term of this Stipulation and Consent Decree shall be binding unless made in writing and subscribed by the Parties.

19. All payments, notices or communications made pursuant to this Stipulation and Consent Decree shall be in writing, and directed as follows:

a. Communications from Therm to the State:

i. Lisa S. Kwong, Asst. Attorney General, Environmental Protection Bureau, New York State Department of Law, The Capitol, Albany, New York 12224-0341.

ii. Anne Hohenstein, Counsel, New York Environmental Protection and Spill Compensation Fund, Office of the Comptroller, Alfred E. Smith Building, Albany, New York 12236.

iii. Lois Fredericksen, Legal Assistant, Oil Spill Unit, Civil Recoveries Bureau, New York State Department of Law, The Capitol, Albany, New York, 12224-0341.

b. Communications from the State to Therm:

i. Richard Grossman, Grossman Kinney Dwyer & Harrigan, P.C.,
Two Clinton Square, The Atrium, Suite 215, Syracuse, New York 13202.

c. All checks and correspondence relating to this Stipulation and Consent Decree shall be referenced by "Spill No. 92-14266/14403 and PIN 925886."

20. This Court shall retain jurisdiction to enforce, and/or resolve disputes arising under, this Stipulation and Consent Decree, subject to the Parties' rights of appeal.

21. This Stipulation and Consent Decree shall become effective and binding upon the Parties upon its entry by the Clerk of this Court.

DATE: 9/16/ 1998

DENNIS C. VACCO
New York State Attorney General

By: 

LISA S. KWONG,
Assistant Attorney General
Bar Roll No. 506306

Attorney for Plaintiff, State of New York

DATE: September 28, 1998

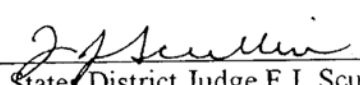
GROSSMAN KINNEY DWYER & HARRIGAN, P.C.

By: 

RICHARD GROSSMAN, ESQ.
Bar Roll No. 101875

Attorney for Defendant, Therm Incorporated

SO ORDERED:


United States District Judge F.J. Scullin

DATE: 9/29/98

EXHIBIT A

Payment Schedule

<u>Payment Date</u>	<u>Payment Amount</u>
October 1, 1998	0.00
October 1, 1999	25,000.00
October 1, 2000	25,000.00
October 1, 2001	5,887.96
November 1, 2001	5,887.96
December 1, 2001	5,887.96
January 1, 2002	5,887.96
February 1, 2002	5,887.96
March 1, 2002	5,887.96
April 1, 2002	5,887.96
May 1, 2002	5,887.96
June 1, 2002	5,887.96
July 1, 2002	5,887.96
August 1, 2002	5,887.96
September 1, 2002	5,887.96
October 1, 2002	5,887.96
November 1, 2002	5,887.96
December 1, 2002	5,887.96
January 1, 2003	5,887.96
February 1, 2003	5,887.96
March 1, 2003	5,887.96
April 1, 2003	5,887.96
May 1, 2003	5,887.96
June 1, 2003	5,887.96
July 1, 2003	5,887.96
August 1, 2003	5,887.96
September 1, 2003	5,887.96
October 1, 2003	5,887.96
November 1, 2003	5,887.96
December 1, 2003	5,887.96
January 1, 2004	5,887.96
February 1, 2004	5,887.96
March 1, 2004	5,887.96
April 1, 2004	5,887.96
May 1, 2004	5,887.96
June 1, 2004	5,887.96
July 1, 2004	5,887.96

EXHIBIT "B"

Sewer Site Figure

(See attached)

