

New York State Department of Environmental Conservation
65 Wolf Road, Albany, New York 12238.

File:
R/ES
Omon



Thomas C. Jording
Commissioner

August 21, 1991

Mr. Dennis P. Harkawik
LeBoef Lamb, Leiby & MacRae
520 Madison Avenue
New York, NY 10022

Re: Accurate Die Casting - Site #7-34-052

Dear Mr. Harkawik:

Enclosed please find a signed and executed copy of the Accurate Die Casting Order on Consent, Index #A7-0258-91-03. Under the terms of this Order ITT Commercial Finance Corp. is to submit a remedial investigation work plan to the Department within 60 days of your receipt of this letter.

Thank you for your cooperation. If you have any questions please call me at 518-457-3296.

Sincerely,

Norman Parrett
Division of Environmental
Enforcement

cc w/attach;

C. Allen
R. Brickwedde
C. Branagh

STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Development and Implementation
of a Remedial Investigation and
Feasibility Study, Pursuant to
Article 27, Title 13, of the
Environmental Conservation Law of
the State of New York (the "ECL") by

Order
on
Consent

ITT COMMERCIAL FINANCE CORP.

INDEX #A7-0258-91-03
SITE # 7-34-052

Respondent.

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 Genessee Street, Fayetteville, New York on December 20, 1988, but has not yet recorded the deed on the property. At the time of the foreclosure the Site was owned by Mr. George J. Slyman and Theresa A. Slyman and had been operated by the former Accurate Die Casting Corporation and others including Precision Die Casting Company; F&R Die Casting Co., Inc.; Aurora Corporation of Illinois; and

Allied Products Corp. Respondent never operated the site for manufacturing or any other purposes and engaged in no disposal of hazardous substances. Respondent's physical activities at the site have been confined to securing the site and commencing response actions under Department direction, as discussed below.

4. During 1989, Respondent retained Stearns & Wheeler, engineering consultants, to conduct an environmental assessment at the Site.

5. Stearns & Wheeler 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.

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

7. 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 738012. The Department has classified the Site as a Classification "2" pursuant to ECL Section 27-1305(4)(b), having found that the site presents a "significant threat to the public health or environment - action required."

8. 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."

9. The Department and Respondent agreed that the goals of the Order on Consent, Index #A7-0223-90-02, 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 or is properly continuing these activities.

10. The Department and Respondent agree that the goal of this Order shall be that Respondent expeditiously undertake a Remedial Investigation/Feasibility Study at the Site.

11. 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, and reserving the right to deny that it is an owner or person responsible under ECL §27-1313(3)(a), agrees to be bound by its terms.

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

1. Within 60 days after the effective date of this Order, Respondent shall submit to the Department a Remedial Investigation Work Plan ("Work Plan").

The Work Plan shall address the components of a Remedial Investigation/Feasibility Study ("RI/FS") as set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq. ("CERCLA"), as amended, the National Contingency Plan ("NCP") then in effect and the USEPA guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions thereto and appropriate technical and administrative guidelines. In addition, the Work Plan shall include:

A. A chronological description of the anticipated RI/FS activities together with an anticipated schedule for the performance of these activities.

B. A Sampling and Analysis Plan which shall include:

1. A quality assurance project plan that describes the quality assurance and quality control protocols necessary to achieve the initial data quality objectives.

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

C. A health and safety plan for the protection of persons at and in the vicinity of the Site during the performance of the Remedial Investigation which shall be prepared in accordance with 29 C.F.R. Section 1910 by a certified health and safety professional.

D. A citizen participation plan which is prepared in a manner consistent with the Department's publication "New York State Inactive Hazardous Waste Site Citizen Participation Plan."

E. A report summarizing all field and analytical data previously generated which is relevant to the undertaking of the Work Plan.

In preparing the RI/FS Work Plan, the Respondent may vary the requirements set forth in this paragraph to reflect the work performed at the Site to date that has been approved by the Department.

II. All analytical testing shall be performed by a laboratory which is determined to be technically acceptable to the Department. All analytical sampling and testing shall be performed by persons who are properly qualified by training

and experience. All analytical and sampling programs shall receive the prior review and approval of the Department's Project Engineer or Geologist and the Department's Quality Assurance/Quality Control (QA/QC) Officer.

III. Within 60 days after receipt of the Work Plan, the Department shall notify Respondent in writing of its approval or disapproval of the Work Plan. If the Department approves the Work Plan, the Respondent shall implement the RI/FS in accordance with it.

If the Department disapproves the Work Plan, the Department shall notify Respondent in writing of the Department's objections. Within 30 days after receipt of notice of disapproval, Respondent shall either revise the Work Plan in accordance with the Department's specific comments or, within 10 days after receipt of notice of disapproval, request to meet with the Department in an attempt to resolve any problems pertaining to the Work Plan. Both the Department and Respondent shall make good faith efforts to meet no later than 15 days after receipt of Respondent's request to meet or, if such a meeting cannot be scheduled, as soon thereafter as possible.

If the Department approves the revised Work Plan, or Respondent and the Department come to an agreement on the Work Plan as a result of the meeting or meetings, Respondent shall timely implement the RI/FS in accordance with the Work Plan. If the Department does not approve the revised Work Plan, or a resolution cannot be reached at the meeting or meetings, then either party may

request that the dispute be settled in accordance with the dispute resolution procedures set forth in Paragraph XXI of this Order.

The approved Work Plan shall be attached as Appendix "A" and incorporated into this Order, and shall be deemed to be consistent with the NCP.

IV. In accordance with the time schedule contained in the approved Work Plan, Respondent shall perform the Remedial Investigation and submit the status reports and other deliverables (as defined in the Work Plan) and a Remedial Investigation Report ("the Report"). During the performance of the Remedial Investigation work on-site, Respondent or Respondent's engineering contractor shall have on-site a full-time representative who is qualified to inspect the work. The Report shall include all data generated and all other information obtained during the Remedial Investigation and shall provide all of the health and environmental assessments and evaluations set forth in CERCLA, the NCP then in effect, and in the guidance documents referenced herein, and identify any additional data that must be collected. The Report shall be prepared and certified by an engineer licensed to practice by the State of New York, who may be an employee of Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law who shall certify that all activities that comprised the Remedial Investigation were performed in full accordance with the approved Work Plan.

V. Within 60 days after receipt of the Report, the Department shall notify Respondent in writing of its approval or disapproval of the Report.

If the Department disapproves the Report, the Department shall notify Respondent in writing of the Department's objections. Within 30 days after receipt of notice of disapproval, Respondent shall either revise the Report in accordance with the Department's specific comments or, within 10 days after receipt of notice of disapproval, request to meet with the Department in an attempt to resolve any problems pertaining to the Report. Both the Department and Respondent shall make good faith efforts to meet no later than 15 days after receipt of Respondent's request to meet or, if such a meeting cannot be scheduled, as soon thereafter as possible.

If the Department does not approve the revised Report, or a resolution cannot be reached at the meeting or meetings, then either party may request that the dispute be settled in accordance with the dispute resolution procedures set forth in Paragraph XXI of this Order.

The approved Report shall be attached as Appendix "B" and incorporated into this Order.

VI. The Department reserves the right to require Respondent, subject to the provisions set forth in Paragraph XXI, to generate additional data with respect to the Site if the Department determines, as a result of reviewing data previously generated or as a result of reviewing any other data or facts, that further investigation is necessary to prevent any significant threats to the environment or human health caused by hazardous substances located at or migrating from the site.

VII. Within 90 days after receipt of the Department's approval of the Report, Respondent shall submit a Feasibility Study evaluating on-Site and off-Site remedial actions to eliminate, to the maximum extent practicable, all health and environmental hazards and potential hazards attributable to the Site. In evaluating whether an alternative is practicable consideration will be given to the following factors:

(i) Compliance with New York State Standards, Criteria and Guidelines; (ii) Protection of human health and the environment; (iii) Short-term effectiveness; (iv) Long-term effectiveness and permanence; (v) Reduction of toxicity, mobility and volume; (vi) Implementability; and (vii) Cost. The Feasibility Study shall be prepared and certified by an engineer licensed to practice by the State of New York, and approved by the Department, who may be an employee of Respondent, or an individual or member of a firm which is authorized to offer engineering services in accordance with Article 145 of the New York State Education Law.

The Feasibility Study shall be performed in a manner that is consistent with CERCLA, the NCP then in effect, the USEPA draft guidance document entitled "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," dated October 1988, and any subsequent revisions thereto, and appropriate technical and administrative guidelines.

VIII. Within 60 days after receipt of the Feasibility Study, the Department shall notify Respondent in writing of its approval or disapproval of the Feasibility Study.

If the Department disapproves the Feasibility Study, the Department shall notify Respondent in writing of the Department's objections. Within 30 days after

receipt of notice of disapproval, or such other time period agreed upon by the parties, Respondent shall either revise the Feasibility Study in accordance with the Department's specific comments and submit a revised Feasibility Study or, within 15 days of receipt of the notice of disapproval, request that the Department meet with Respondent in an attempt to resolve any problems pertaining to the Feasibility Study. Both the Department and Respondent shall make good faith efforts to meet no later than 15 days after receipt of Respondent's request to meet or, if such a meeting cannot be scheduled, as soon thereafter as possible.

If, within 45 days following the Department's notice of disapproval, the parties cannot resolve their differences, either party may request that the dispute be settled in accordance with the dispute resolution procedures set forth in Paragraph XXI of this Order.

The approved Feasibility Study shall be attached as Appendix "C" and incorporated into this Order.

IX. Within 30 days after receipt of an invoice from the Department Respondent shall reimburse the Department for the Department's expenses including, but not limited to, direct labor, overhead, travel, analytical costs and contractor costs incurred by the State of New York for reviewing submittals made pursuant to, and after the effective date of, this Order, overseeing activities conducted pursuant to this Order, and collecting and analyzing samples. Such payment shall be by check payable to the Hazardous Waste Remedial Fund established under Section 97-b of the State Finance Law. Payment shall be sent to Jack McKeon, Director, Bureau

of Program Management, Division of Hazardous Waste Remediation, N.Y.S.D.E.C., Room 208, 50 Wolf Road, Albany, New York 12233-7010. The final invoice from the Department shall be submitted within 60 days of the date of the approval of the Feasibility Study or resolution of any dispute concerning the Feasibility Study pursuant to Paragraph XXI.

The Department shall itemize costs incurred. The itemization of labor costs shall include the time period during which the labor cost was incurred, the name of the person who performed the labor, and the time expended.

Respondent shall have the right to object to any disputed costs invoiced by the Department. Respondent must submit objections to any disputed costs in the itemized invoice in writing within 30 days of receipt of the itemized invoice from the Department. If requested in the submitted objections Respondent shall have the opportunity to meet with the Director of the Division of Hazardous Waste Remediation to discuss the disputed costs. The Director shall have the authority to modify or withdraw any disputed costs. Respondent may object only to costs that are improper due to: (1) clerical errors; (2) are not reasonably related to the Department's activities concerning this Site; or (3) are unreasonable or unnecessary costs incurred by the Department where it would be arbitrary and capricious to require Respondent to pay for such unreasonable or unnecessary costs. If Respondent continues to dispute any costs after meeting with the Director of the Division of Hazardous Waste Remediation Respondent may seek resolution of the dispute pursuant to the procedures set forth in Paragraph XXI of this Order.

X. The Department shall have the right to obtain split samples, duplicate samples, or both, of all substances and materials sampled by Respondent. The results of analyses of such samples shall be supplied to Respondent.

XI. Respondent shall provide notice to the Department of 5 working days prior to the initial commencement of field activities to be conducted pursuant to this Order.

XII. Respondent shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary in order to perform Respondent's obligations under this Order. If these mechanisms are denied by others, then, subject to the Department's approval, the Work Plan will be modified.

XIII. Respondent shall, upon reasonable notice, permit any duly designated, properly trained, employee, consultant, contractor or agent of the Department or any State agency to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondent for purposes of inspection, sampling and testing and to assure Respondent's compliance with this Order.

XIV. 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 God, war, riot or any Department action or inaction where Respondent is not a cause for such delay. 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 and said request shall not be unreasonably denied by the Department.

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

XVI. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

a. the Department's right to bring any action or proceeding against anyone other than Respondent, its directors, officers, employees, servants, agents, successors and assigns;

b. the Department's right to enforce this Order against Respondent, its successors and assigns in the event that Respondent shall fail to satisfy any of the terms hereof;

c. the Department's right to bring any action or proceeding to which the Department may be entitled in connection with, relating to, or arising out of the presence of hazardous wastes at the Site, or the release or migration of hazardous waste from the Site, including but not limited to claims for natural resources damages; and

d. any of Respondent's defenses against any such claims, proceedings or actions.

XVII. This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

XVIII. 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 actions by Respondent in the course of the fulfillment or attempted fulfillment of this Order by Respondent, its successors or assigns. Respondents do not assume liability for the negligent or intentionally tortious acts of the Department, the State of New York or their representatives or employees.

XIX. The effective date of this Order shall be the date it is signed by the Commissioner or his designee, and written notice thereof is given to Respondent as herein provided.

XX. If Respondent desires that any provision of this Order be changed, it shall make timely written application to the Commissioner, setting forth reasonable grounds for the relief sought.

XXI. If after conferring in good faith, there is still a dispute between Respondent and the Department concerning matters related to Paragraphs II, III, IV, V, VI, VIII, IX, XII and XX such matters shall be settled in accordance with the following procedures:

Either party, upon written notice to the other, may request the Commissioner of Environmental Conservation to appoint an Administrative Law Judge ("ALJ"). Upon receipt of such request the Commissioner shall appoint an ALJ who shall convene a hearing to settle the dispute. If the ALJ deems it necessary to convene an evidentiary hearing, the taking of evidence shall be concluded as soon as practicable after receipt of the written request to appoint an ALJ. If the ALJ deems it unnecessary to convene an evidentiary hearing, he shall, as soon as practicable after receipt of the notice of request to appoint an ALJ,

nevertheless convene a conference at which the issues may be presented and a record made.

In all proceedings hereunder:

1. The parties shall be Respondent and the Department.
2. The burden of going forward shall be on the Respondent.
3. The ALJ shall have all powers conferred by 6 NYCRR §622.12.
4. All proceedings conducted pursuant to this Paragraph shall be stenographically recorded. The Respondent shall arrange, at its expense, for an expedited stenographic transcript to be made within three working days after conclusion of the proceeding, and for the original and two copies of the transcript to be delivered to the ALJ.
5. The ALJ shall prepare, as soon as practicable after receipt of the transcript of the proceeding, a written summary of the documentation and testimony received during the proceeding and a recommended decision. The summary and recommendation shall be hand-delivered to the Department's representative and sent by certified mail, return receipt requested, and another copy by express mail, to Respondent.
6. The ALJ's recommended decision shall become the final determination of the Commissioner unless, within fifteen working days from receipt of the recommended decision, either Respondent or the Department objects in writing. Any objections shall be submitted in writing to the ALJ with a copy by express mail, telecopier or hand-delivered to the other party, which shall serve and file its

response, if any, within ten working days of receipt of the objection by express mail, telecopier or hand-delivery. Upon receipt of the objections and any response, the ALJ shall refer the matter to the Commissioner for final determination.

7. The final determination of the Commissioner shall be made as soon as practicable after receipt of the referral by the ALJ.

8. With respect to the final determination of the Commissioner, Respondent shall have those rights granted pursuant to Article 78 of the Civil Practice Law and Rules (CPLR) of New York, provided however that the period for petitioning thereunder shall be limited to one month.

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

A. Communication from Respondent to the Department shall be made as follows:

1. Division of Hazardous Waste Remediation, Room 212, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, Attention: Michael J. O'Toole, Jr., P.E., Director.

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

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

4. Division of Environmental Enforcement, Albany Field Unit, Room 415, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, Attention, Norman Parratt, Esq.

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

B. Communication to be made from the Department to the Respondent shall be made as follows:

1. Dennis P. Harkawick, Esq., LeBoef, Lamb, Leiby and MacRae, 520 Madison Avenue, New York, New York 10022.

2. Alan C. Witte, Vice President, ITT Diversified Financial Corporation, 11885 Lackland Road, Suite 600, St. Louis, Missouri 63146-4270.

3. Robert Mann, Vice President, ITT Diversified Financial Corporation, 11885 Lackland Road, Suite 600, St. Louis, Missouri 63146-4270.

4. David W. Stoner, Stearns & Wheeler, One Remington Park Drive, Cazenovia, New York 13035.

C. The Department and Respondent respectively reserve the right to designate other or different addresses on notice to the other.

XXIII. The terms of this Order shall be deemed to bind Respondent, its successors and assigns. Nothing herein shall be construed to bind any other entity.

XXIV. The terms hereof shall constitute the complete and entire Order between Respondent and the Department concerning the IRM Program for the Site. No

terms, conditions, understandings or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestions or comments by the Department regarding reports, proposals, plans, specifications, schedules or any other submittals by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

DATED: Albany, New York
August 19, 1990

THOMAS C. JORLING
Commissioner
New York State Department of
Environmental Conservation

BY:



Edward O. Sullivan
Deputy Commissioner

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained in this Order.

By: [Signature]

Title: Vice President

Date: July 26, 1991

STATE OF MISSOURI)
) s.s.:
COUNTY OF ST. LOUIS)

On this 26th day of July, 1991, before me personally came Alan C. [Signature], to me known, who being duly sworn, did depose and say that he resides in St. Louis County, MO; that he is the Vice President of 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 with the authority of the Board of Directors of said corporation, and that he signed his name thereto by like order.

CYNTHIA J. WOODEN
NOTARY PUBLIC STATE OF MISSOURI
COUNTY OF ST. CHARLES
MY COMMISSION EXPIRES OCT. 28, 1992
[Signature]
Notary Public