

New York State Department of Environmental Conservation  
Division of Environmental Enforcement  
Central Field Unit  
1150 Westcott Road  
Schenectady, New York 12306

TELEPHONE: (518) 357-2044  
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Langdon Marsh  
Acting Commissioner

*File  
R1/B3  
omw*

June 9, 1994

Mr. Robert J. Alessi  
LeBoeuf, Lamb, Greene & MacRae  
One Commerce Plaza  
Suite 2020  
99 Washington Avenue  
Albany, New York 12210-2820

Re: ITT: Former Accurate Diecasting facility

Dear Mr. Alessi:

Enclosed is a copy of the signed and executed IRM Order on Consent for the above referenced Site. It was signed on behalf of the Department by Ann Hill DeBarbieri on June 6, 1994.

If you have any questions concerning this Order or the Feasibility Study please call me at 357-2044.

Sincerely,

Norman Parratt  
Division of Environmental  
Enforcement

cc: R. Manna (R7)  
C. Branagh (R7)  
A. English  
V. Nattanmai



STATE OF NEW YORK:  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Implementation of  
an Interim Remedial Measure at an Inactive  
Hazardous Waste Disposal Site by:

**ITT COMMERCIAL FINANCE CORP.,  
Respondent.**

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Amendment to  
Order on Consent  
Index # A7-0258-91-03  
Site #7-34-052

WHEREAS:

1. The New York State Department of Environmental Conservation ("Department") is responsible for the 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.

4. Respondent entered into a Net Lease agreement dated March 8, 1993 with OBG Technical Services whereby OBG Technical Services leased the Site.

5. 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.

6. 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.

7. The Department and Respondent agree that the goal of this Amendment to Order on Consent #A7-0258-91-03 is that Respondent shall develop and implement an interim remedial measure ("IRM") at the Site.

8. Respondent has requested that the Department and Respondent enter into this IRM Amendment to Order on Consent #A7-0258-91-03 prior to Respondent's submittal to the Department of an approvable Feasibility Study for the above referenced inactive hazardous waste disposal site. The Department has agreed to issue this IRM Amendment to Order on Consent #A7-0258-91-03 based upon Respondent's assertions that Respondent will use its best efforts and take all reasonable steps to comply with the schedule for the submittal of an approvable Feasibility Study.

9. Respondent, having waived its right to a hearing herein, to which it is entitled before the Commissioner issues an Order pursuant to ECL 27-1313.4, and having consented to the issuance and entry of this Amendment to Order on Consent #A7-0258-91-03, without any admission or denial of liability, agrees to be bound by the terms hereof.

NOW, THEREFORE, having considered this matter and being duly advised, it is ORDERED that:

I. Except where specifically modified or amended herein, the terms, conditions and obligations contained in, and rights reserved under, Order on Consent #A7-0258-91-03 shall remain unchanged and in full force and effect.

II. Paragraph VIII is hereby amended and modified to read as follows:

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 submit a revised Feasibility Study to the Department. If the Department disapproves the revised Feasibility Study, the Department shall notify Respondent in writing of the Department's objections. Within 30 days after receipt of a second 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 second 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 final scheduled submittal date for an approvable Feasibility Study is the 45th day after the Department has reviewed, disapproved and submitted comments to Respondent, concerning the Feasibility Study, for the second time. The approved Feasibility Study shall be attached as Appendix "C" and incorporated into this order.

III. The last sentence of the first paragraph of Paragraph IX is hereby amended and modified to read as follows:

IX. ...

The final invoice from the Department shall be submitted within 90 days after the later of the following dates: the date of the approval of the Feasibility Study; the date of resolution of any dispute concerning the Feasibility Study pursuant to Paragraph XXI; the date the Department notifies Respondent that it is satisfied with the quality and completeness of the IRM as being protective of human health and the environment, or; the date of resolution of any dispute concerning the Department's determination of the quality and completeness of the IRM as being protective of human health and the environment pursuant to Paragraph XXI.

IV. The first clause in Paragraph XXI is hereby amended and modified to read as follows:

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, XX, XXV and XXVI such matters shall be settled in accordance with the following procedures:

V. The Order on Consent #A7-0258-91-03 is hereby amended and modified to include new Paragraphs XXV and XXVI, which read as follows:

XXV. The Department hereby approves Respondent's detailed work plan describing the methods and procedures to be implemented in performing an interim remedial measure ("IRM") at the Site ("Approved IRM Work Plan"). Within 30 days of the effective date of this Amendment to Order on Consent #A7-0258-91-03, Respondent shall begin implementation of the Approved IRM Work Plan in accordance with the terms and schedule contained in the Approved IRM Work Plan. Within 60 days after completion of the construction phase of the IRM Respondent shall submit a final engineering report, as built drawings, and a certification that the construction activities were completed in accordance with the Approved IRM Work Plan, by an engineer licensed to practice by the State of New York. The Department reserves the right to require a clarification, modification, and/or amplification and expansion of the report by Respondent if the Department determines, as a result of reviewing data generated by the Approved IRM Work Plan and report, or as a result of reviewing any other data or facts, that further information is required. After receipt of the final engineering report and certification, the

Department shall notify Respondent in writing whether it is satisfied with the quality and completeness of the IRM as being protective of human health and the environment.

XXVI. If the Department determines that Respondent has failed to use its best efforts or take all reasonable steps to submit an approvable Feasibility Study in compliance with the schedule contained in Paragraph VIII of the Order, as revised pursuant to this IRM Amendment to Order on Consent #A7-0258-91-03, the Department may, in addition to any other enforcement actions to which it is legally entitled to take, seek penalties from Respondent for failure to comply with the terms and conditions of the attached IRM Amendment to Order on Consent. It is acknowledged by Respondent that any such violation, if determined by the Department to be due to Respondent's lack of best efforts or failure to take all reasonable steps, will be considered by the Department to be a significant violation. Respondent further acknowledges that it has stated to the Department that the submittal of an approvable Feasibility Study in compliance with the schedule is a high priority matter and that it



waives its right to claim any delay due to lack of best efforts or the failure to take all reasonable steps on the part of Respondent or Respondent's contractors or consultants should be considered insignificant.

VI. The effective date of this Amendment to Order on Consent #A7-0258-91-03 shall be the date it is signed by the Commissioner or his designated representative.

DATED: *June 6*, 1994  
Albany, New York

Langdon Marsh  
Acting Commissioner of Environmental  
Conservation  
by  
Ann DeBarbieri  
Deputy Commissioner  
New York State Department of  
Environmental Conservation

*Ann Hil DeBarbieri*

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Amendment to Order on Consent #A7-0258-91-03 and agrees to be bound by the provisions, terms and conditions contained in this Amendment to Order on Consent #A7-0258-91-03.

ITT COMMERCIAL FINANCE CORP.

By: Robert Mann  
Title: Sr. Vice President  
Date: 5-20-94

STATE OF Missouri )  
COUNTY OF St Louis ) s.s.:

On this 20<sup>th</sup> day of May, 1994, before me personally came Robert Mann to me known, who being duly sworn, did depose and say that he resides in St Louis County MO; that he is the Sr Vice President of the ITT Commercial Finance corporation, the corporation described herein and that he executed the foregoing instrument on behalf of said corporation, that he represents that he has the authorization to bind the corporation to this Order and that he has signed his name hereto.

CYNTHIA J. WOODEN  
NOTARY PUBLIC STATE OF MISSOURI  
COUNTY OF ST. CHARLES  
MY COMMISSION EXPIRES OCT. 28, 1996

Cynthia J. Wooden  
Notary Public