

Madison County
Sanitary LF
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

IN THE MATTER OF:)	
Madison County Landfill Site)	Proceeding under Section 104
Rocky Ford Road)	and Section 122(d)(3) of the
Madison, Florida)	Comprehensive Environmental
)	Response, Compensation
ITT Thompson Industries, Inc.;)	and Liability Act of 1980,
City of Madison;)	as amended, 42 U.S.C.
Madison County, Florida)	§§ 9604 and 9622
)	
Respondents)	
)	EPA Docket No.: 90-21-C

ADMINISTRATIVE ORDER BY CONSENT
FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY

I. JURISDICTION

This Administrative Order by Consent (Consent Order) is entered into by the United States Environmental Protection Agency (EPA) with ITT Thompson Industries, Inc., the City of Madison, and Madison County, Respondents, pursuant to the authority vested in the President of the United States by Section 104 and Section 122(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. §§ 9604, and 9622(d)(3). This authority was delegated by the President to the Administrator of the EPA by Exec. Order No. 12580, dated January 23, 1987, 52 Fed. Reg. 2923 (Jan. 29, 1987), and was further delegated to the Regional Administrator of Region IV EPA and redelegated to the Director, Waste Management Division.

Solely for the purposes of this Consent Order, Respondents consent to and agree not to contest EPA jurisdiction to issue this Consent Order. Respondents agree to undertake all actions required by the terms and conditions of this Consent Order for the conduct and implementation of the Remedial Investigation and Feasibility Study (RI/FS). Respondents consent to jurisdiction for purposes of entry and enforcement of this Consent Order by EPA, provided however, nothing herein shall be construed as an admission of liability by Respondents for any conditions at the Madison County Landfill Site or under CERCLA, as amended. Neither shall any provision of this Order, or the fact of Respondents' agreement to the terms of this Order, be used against Respondents in any other administrative or judicial proceeding, other than one initiated to enforce the terms of this Order.

II. PARTIES BOUND

This Consent Order shall apply to and be binding upon EPA and the Respondents, their agents, successors, and assigns. Respondents are jointly and severally responsible for carrying out all actions required of them by this Consent Order. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of any Respondents shall alter their responsibilities under this Consent Order.

The Respondents shall provide a copy of this Consent Order to any subsequent owners or successors before ownership rights are transferred. The Respondents shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories, and consultants which are retained to conduct any work performed under this Consent Order, within fourteen (14) days after the effective date of this Consent Order or the date of retaining their services, whichever is later. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Consent Order and for ensuring that their contractors and agents comply with this Consent Order.

III. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondents are: (A) with respect to the Remedial Investigation (RI), to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants from the Site into the environment; and (B) with respect to the Feasibility Study (FS), to develop and evaluate alternatives for the appropriate extent of remedial action to prevent or mitigate the migration or the release or threatened release of hazardous substances, pollutants, or contaminants from the Site.

The activities conducted pursuant to this Consent Order will be consistent with the National Contingency Plan (NCP), 40 C.F.R. Part 300, et seq., and will be subject to the express EPA approvals as set forth below.

IV. FINDINGS OF FACTS

The following constitutes an outline of the facts upon which this Consent Order is based:

A. The Madison County Landfill Site (Site) covers approximately 133 acres, and is located approximately 2.5 miles northeast of the City of Madison, Madison County, Florida, on Rocky Ford Road, in Section 11, Township 1 North, Range 9 East.

B. Respondent, the City of Madison, Florida, (City) a municipal corporation, acquired the Site by Warranty Deed dated May 7, 1971, and operated the Site from approximately June, 1971 to March 31, 1980. The Site was used by the local community for the disposal of domestic, agricultural, and industrial wastes.

C. The Site was permitted as a sanitary landfill for solid waste by the State of Florida in July, 1975.

D. Respondent, Madison County, Florida, (County) purchased the Site from the City, in April, 1980, and owned and operated the Site from the date of purchase through the present.

E. Respondent, ITT Thompson Industries, Inc., (ITT) was a wholly owned subsidiary of ITT Corporation which is a Delaware corporation registered to do business in the State of Florida. ITT owned and operated a plant at 800 Livingston Street, Madison, Florida, that manufactured wheel ornamentation for cars, including wheel covers, wire wheel products and trim-rings. ITT Corporation divested ITT Thompson Industries, Inc. effective March 31, 1990.

F. Beginning at least as early as 1971, part of ITT's manufacturing process included painting wheel covers and periodically cleaning its automated painting equipment in a bath of trichloroethene. ITT periodically removed remnant sludge from this process and placed it in drums. These drums, as well as trash, buffing compounds and certain other industrial wastes were disposed of at the Site.

G. From the early 1970's through the late 1970's, ITT paid the City to transport their drums, trash, buffing compounds, and other industrial and solid wastes to the Site for disposal.

H. In the late 1970's, ITT purchased a truck and began transporting its own wastes to the Site.

I. On February 11, 1980, the Florida Department of Environmental Regulation (FDER) granted the City an operating permit for the Site as a sanitary landfill for solid waste that would expire on February 1, 1984.

J. On September 26, 1984, and December 10, 1984, the County collected water samples from groundwater monitoring wells on the Site. Analyses of the samples revealed trichloroethene exceeding three parts per billion. Pursuant to information

provided by a long time superintendent of the Site, two areas were identified as places where ITT buried drums and other waste beginning in 1971.

K. In November, 1984, the County excavated one burial area which found drums containing buffing compounds and other substances. On March 12, 1985, FDER excavated the second identified burial area and found drums and soils containing trichloroethene.

L. Beginning in January, 1985, the Madison County Public Health Unit collected water samples from numerous private residential wells in the vicinity of the Site. Concentrations of trichloroethene and 1,2 dichloroethylene were found in three wells.

M. On July 12, 1985, the County awarded a contract to R. A. Kirkner & Associates, Inc. (Kirkner) for the preparation of a plan for a contamination assessment of the Site. The City, the County and ITT agreed to pay for the contamination assessment.

N. In February, 1986, FDER entered into a Consent Agreement (OGC File No. 85-0767) with the City, the County, and ITT requiring them to investigate ground water near the Site. The consultant they hired, R. A. Kirkner & Associates Inc., in a report dated April, 1986, found that a number of downgradient monitoring wells showed the presence of 1, 2 dichloroethene, 1, 1 dichloroethene, chloroethene, trichloroethene, and methylene chloride.

O. Trichloroethene, 1,1- dichloroethene, 1,2- dichloroethene, and methylene chloride are listed hazardous wastes, designated numbers U228, U078, U079, and U045 respectively, under 40 C.F.R. § 261.24, and listed hazardous substances under 40 C.F.R. § 302.4 (a).

P. The geology of the Site area consists of several hundred feet of unconsolidated and consolidated carbonate as well as clastic terrigenous, sedimentary deposits. The Lake City Limestone is the deepest formation in the area that contains potable water. This is one of four formations of Tertiary Age that comprise the Floridan aquifer in this area. The remaining three formations include the Avon Park Limestone, the Ocala Group, and the Suwannee Limestone. The Suwannee Limestone consists chiefly of limestone, dolomite and dolomitic limestone. Above the Suwannee lies the Hawthorne Formation which consists of clay, sandy clay, interbedded sand and sandy phosphatic limestone, and with increasing depth, grades into a very hard partly dolomitic limestone. Above the Hawthorne, the lithology consists of unconsolidated deposits of sand, phosphatic sand, clayey organic matter, and clayey sand.

Q. There are two primary aquifers present in the Site area. The hydrogeologic system consists of a surficial aquifer and at depths under artesian conditions, the Floridan Aquifer. The Hawthorne Formation generally acts as a confining unit between the two aquifers. However, test drilling at the Site has revealed that a paleokarstic sinkhole may be present directly beneath the Site. Such a sinkhole may breach this confining unit. If the confining clay layers are missing at this location, contaminants from the landfill could migrate directly into the water-producing zone of the Floridan aquifer. If the two aquifers are hydrologically connected, both would be considered as the aquifer of concern. Additional analyses will more accurately delineate the rate and extent of contamination in the aquifer(s) of concern.

R. The Floridan Aquifer is the principal artesian aquifer for potable water in the area. A typical well in the Floridan Aquifer ranges between seventy and two hundred ten feet deep, with water level depths ranging from thirty to one hundred twenty feet below land surface. Large irrigation systems and industrial wells are capable of yielding one thousand to six thousand gallons per minute.

S. The Suwannee River Management District potentiometric maps of the Site area indicate that groundwater flow in the Floridan Aquifer is generally eastward toward the Withlacoochee River. However, the direction of groundwater flow at the Site has not yet been determined.

T. A number of private wells and at least 2 City of Madison wells are within approximately 3 miles of the Site, threatening the drinking water supplies of an estimated 4,400 people.

U. The Madison County Landfill Site was proposed for inclusion on the National Priorities List as defined in Section 105 of CERCLA, 42 U.S.C. § 9605, on June 24, 1988.

V. CONCLUSIONS OF LAW

A. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. The Respondents are persons as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

C. The Respondents are responsible parties under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

D. Contaminants found at the Site as described in Section IV above are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

E. The hazardous substances described have been released into the environment and its potential migration pathways constitute both an actual release and threatened release within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

VI. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set out above, EPA has determined that:

A. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

B. The actions required by this Consent Order are necessary to protect the public health and/or welfare and/or the environment.

C. In accordance with Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), EPA has determined that the work to be performed pursuant to this Consent Order, if performed according to the terms of this Order, will be done properly and promptly by the Respondents. EPA has also determined that the Respondents are qualified to conduct such work.

VII. WORK TO BE PERFORMED

All aspects of the Work to be performed by Respondents pursuant to this Consent Order shall be under the direction and supervision of a qualified contractor. Respondents have entered into an agreement with IT Corporation to carry out the RI/FS to be performed pursuant to this Consent Order. EPA has approved the selection of IT Corporation for that purpose. Respondents shall advise EPA of the name, title, and qualifications of the contractor proposed to be used in carrying out the risk assessment portion of the RI/FS. EPA shall notify the Respondents of its approval or disapproval in writing, within twenty (20) calendar days of its receipt of such submission by the Respondents.

If, at any time thereafter, Respondents propose to change any contractor, Respondents shall give such notice to EPA and shall obtain approval from EPA before the new contractor performs any work under this Consent Order.

If EPA disapproves of the selection of any contractor, Respondents shall submit a list of contractors to EPA within fifteen (15) days of receipt of EPA's disapproval of the contractor previously selected. EPA shall, within twenty (20) calendar days of receipt of the list, provide written notice of the names of the contractor that it approves. The Respondents may at their election select any one from that list. Respondents shall notify EPA of the name of the contractor selected within fifteen (15) calendar days of EPA's notice of the approved contractor.

Based on the foregoing, it is hereby AGREED TO AND ORDERED that the following work will be performed:

A. Within forty-five (45) calendar days of the effective date of this Consent Order, Respondents shall submit to EPA a plan for a complete Remedial Investigation and Feasibility Study (RI/FS Work Plan). The RI/FS Work Plan shall be developed and submitted in conjunction with the Sampling and Analysis Plan and the Health and Safety Plan, although each plan may be delivered under separate cover. These plans shall be developed in accordance with the National Contingency Plan and the attached Scope of Work (SOW) (Attachment 1) which is hereby made a part of this Consent Order as if fully set forth herein. The RI/FS Work Plan shall include a comprehensive description of the work to be performed, the medias to be investigated (i.e., air, groundwater, surface water, surface and subsurface soils and sediments, etc.), the methodologies to be utilized, and the rationale for the selection of each methodology. A comprehensive schedule for completion of each major activity required by this Consent Order and the submission of each deliverable listed in the RI/FS Scope of Work shall also be included. Such schedule shall reflect submittal of the Draft Feasibility Study within 400 calendar days of the effective date of this Consent Order.

The Sampling and Analysis Plan (SAP) shall include procedures to ensure that sample collection and analytical activities are conducted in accordance with technically acceptable protocols and that the data generated will meet the Data Quality Objectives (DQOs) established. The SAP provides a mechanism for planning field activities and consists of a Field Sampling and Analysis Plan (FSAP) and a Quality Assurance Project Plan (QAPP).

The FSAP shall define in detail the sampling and data-gathering methods that shall be used on the project. It shall include sample objectives, sample location (horizontal and vertical) and frequency, sampling equipment and procedures, and sample

handling and analysis. The QAPP shall describe the project objectives and organization, functional activities, and quality assurance and quality control (QA/QC) protocols that shall be used to achieve the desired DQOs.

A Health and Safety Plan shall be prepared in conformance with the Respondents' health and safety program, and in compliance with OSHA regulations and protocols.

B. Respondents will implement the RI/FS Work Plan approved by EPA. The EPA approved RI/FS Work Plan and any EPA approved amendments thereto will be attached to and incorporated in this Consent Order as Attachment 2. The RI/FS will be conducted in accordance with the schedule contained in the RI/FS Work Plan as approved by EPA.

C. Within seven (7) calendar days of the approval of the RI/FS Work Plan by EPA, Respondents will commence work on Task 1 of the RI/FS Work Plan.

D. Respondents shall submit to EPA written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Order during the previous month; (2) include all results of sampling and tests and all other data received by Respondents during the course of the work since the preceeding report; (3) include all plans and procedures completed under the Work Plan during the previous month; (4) describe all actions, data, and plans which are scheduled for the next month, and provide other information relating to the progress of the work as deemed necessary by EPA; and (5) include information regarding percentage of completion, unresolved delays, encountered or anticipated, that may affect the future schedule for implementation of the Scope of Work and/or RI/FS Work Plans, and a description of efforts made to mitigate those delays or anticipated delays. These progress reports are to be submitted to EPA by the fifth day of every month following the effective date of this Consent Order.

E. Deliverables, including reports, plans or other correspondence to be submitted pursuant to this Consent Order, shall be sent by certified mail return receipt requested, express mail or overnight delivery to the following addresses or to such other addresses as the EPA hereafter may designate in writing.

Tamara Brown
Remedial Project Manager
EPA - Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

The number of copies to be submitted to EPA for each deliverable is identified in the RI/FS Scope of Work.

For informational purposes documents (two copies) shall be sent to:

Florida Department of Environmental Regulation
2600 Blair Stone Road
Twin Towers Office Building
Tallahassee, Florida 32399-2400

Documents to be submitted to the Respondents' Project Coordinator should be sent to:

Mark Hampton
IT Corporation
3012 U.S. Highway 301 North
Suite 1000
Tampa, FL 33619

and to:

Thomas M. DeRose, Esquire
Steering Committee Coordinator
Hopping Boyd Green & Sams
123 South Calhoun Street
Post Office Box 6526
Tallahassee, FL 32314

F. EPA may determine that other tasks, including remedial investigatory work and/or engineering evaluation, are necessary as part of a RI/FS in addition to EPA-approved tasks and deliverables, including reports, which have been completed pursuant to this Consent Order. Should EPA determine that such additional tasks are necessary, EPA shall notify Respondents. Upon written agreement of the parties hereto, this Consent Order may be modified as necessary to address such further investigation or study. Should Respondents not agree to the inclusion of these tasks, EPA retains the right to perform additional work as authorized by CERCLA and seek to recover its costs against any person, including Respondents. Respondents shall not be subject to stipulated penalties under this Consent Order for failure to perform tasks not included in the RI/FS Work Plan.

VIII. SUBMISSIONS REQUIRING AGENCY APPROVAL

A. Upon receipt of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Order, EPA shall either: (1) approve the submission; or (2) disapprove the submission, notifying Respondents of

deficiencies. If such submission is disapproved, EPA shall either (1) modify the submission to cure the deficiencies; or (2) direct the Respondents to modify the submission to cure deficiencies.

B. Upon receipt of a notice of disapproval and notification directing modification of the submission, Respondents shall, within thirty (30) days, or such longer time as EPA may specify, cure the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, Respondents shall proceed to take any action required by any nondeficient portion of the submission.

C. In the event of approval or modification of the submittal by EPA, Respondents shall proceed to take any action required by the plan, report, or other item, as approved or modified.

D. If, upon resubmission, the plan, report, or item is not approved, EPA may modify the resubmission to cure the deficiencies, direct the Respondents to modify the resubmission to cure the deficiencies, or deem the Respondents to be in violation of this Consent Order. If EPA so determines and so informs Respondents in writing, stipulated penalties shall begin to accrue, from the date EPA deems the Respondents to be in violation under this paragraph, pursuant to Section XVI of this Consent Order. EPA retains the right to require the amendment of the document, to perform additional studies, to conduct a complete RI/FS pursuant to its authority under CERCLA, and to take any other action, including, but not limited to, enforcement action to recover its costs pursuant to its authority under CERCLA.

E. Neither failure of EPA to expressly approve or disapprove of Respondents' deliverables within a specified time period, nor the absence of comments, shall be construed as approval by EPA. Respondents are responsible for preparing and submitting deliverables acceptable to EPA.

F. In the event of any inconsistency between this Consent Order and any document submitted by the Respondents pursuant to this Consent Order, all inconsistencies shall be construed in a manner consistent with the terms of this Consent Order and to implement the provisions of this Consent Order.

IX. DESIGNATED PROJECT COORDINATORS

A. On or before the effective date of this Consent Order, EPA and Respondents will each designate a Project Coordinator. The "Project Coordinator" for EPA will be the Remedial Project

Manager or the On-Scene Coordinator responsible for this Site. Each Project Coordinator will be responsible for overseeing the implementation of this Consent Order. The EPA Project Coordinator will be EPA's designated representative at the Site. To the maximum extent possible, communications between Respondents and EPA, including all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, will be directed through the Project Coordinators.

B. EPA and Respondents each have the right to change their respective Project Coordinator. Such a change will be accomplished by notifying the other party in writing at least five (5) calendar days prior to the change.

C. The EPA designated Project Coordinator will have the authority provided by the National Contingency Plan, 40 C.F.R. Part 300, as amended. This includes the authority to halt, conduct, or direct any work required by this Consent Order, or any response actions or portions thereof when he or she determines that conditions may present an immediate risk to public health or welfare or the environment.

D. The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of work.

E. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the RI/FS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). The oversight assistant may observe and make inquiries in the absence of EPA, but is not authorized to modify the work plan.

X. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

A. Respondents shall use quality assurance, quality control, and chain of custody procedures in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAMS-005/80) and the "EPA Region IV Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual (U.S. EPA Region IV, Environmental Services Division, April 1, 1986), and subsequent amendments to such guidelines if the amendments are in effect at the time a specific task is performed. Prior to the commencement of any monitoring project under this Consent Order, Respondents shall submit for review, modification and/or approval by EPA, a Quality Assurance Project Plan ("QAPP") that is consistent with applicable guidelines. Sampling data generated consistent with the QAPP(s) shall be admissible as evidence, without objection, except as to weight, in any

proceeding under Section XVII of this Order. Respondents shall assure that EPA personnel or authorized representatives are allowed access to any laboratory utilized by Respondents in implementing this Consent Order.

B. Respondents shall make available to EPA the results of all sampling and/or tests or other data generated by Respondents with respect to the implementation of this Consent Order and shall submit these results in monthly progress reports as described in Section VII.D. of this Consent Order.

C. At the request of EPA, Respondents shall allow split or duplicate samples to be taken by EPA, and/or their authorized representative, of any samples collected by Respondents pursuant to the implementation of this Consent Order. Respondents shall notify EPA not less than fourteen (14) days in advance of any sample collection activity. In addition, EPA shall have the right to collect any additional samples that EPA deems necessary under this Consent Order.

D. Respondents shall ensure that the laboratory utilized by Respondents for analyses participates in an EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QAMS-005/80. In addition, EPA may require submittal of data packages equivalent to those generated in the EPA Contract Laboratory Program (CLP) and may require laboratory analysis of performance samples (blank and/or spike samples) in sufficient number to determine the capabilities of the laboratory.

E. Notwithstanding any provision of this Consent Order, the EPA hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA, and any other applicable statute or regulation.

XI. ACCESS

A. From the date of execution of this Consent Order until EPA provides written notice of satisfaction of the terms of the Order, the United States and its representatives, including EPA and its contractors, shall have access at all times to the Site and any property to which access is required for the implementation of this Consent Order, to the extent access to the property is controlled by or available to Respondents, for the purposes of conducting any activity authorized by or related to this Consent Order, including, but not limited to:

1. Monitoring the RI/FS work or any other activities taking place on the property;

2. Verifying any data or information submitted to the United States;

3. Conducting investigations relating to contamination at or near the Site;

4. Obtaining samples;

5. Evaluating the need for or planning and implementing additional remedial or response actions at or near the Site; and

6. Inspecting and copying records, operating logs, contracts, or other documents required to assess Respondents compliance with this Consent Order.

B. To the extent that the Site or any other area where work is to be performed under this Consent Order is owned or controlled by persons other than Respondents, Respondents shall secure from such persons access for Respondents, as well as for EPA and authorized representatives or agents of EPA, as necessary to effectuate this Consent Order. If access is not obtained within thirty (30) days of the effective date of this Consent Order, Respondents shall promptly notify the EPA. The United States may thereafter assist Respondents in obtaining access. Respondents shall, in accordance with Section XVII herein, reimburse the United States for all costs incurred by it in obtaining access, including but not limited to, attorneys' fees and the amount of just compensation and costs incurred by the United States in obtaining access.

C. Notwithstanding any provision of this Consent Order, the EPA retains all of its access authorities and rights under CERCLA, RCRA and any other applicable statute or regulation.

XII. CONFIDENTIALITY OF SUBMISSIONS

A. Respondents may assert a confidentiality claim, if appropriate, covering part or all of the information requested by this Consent Order pursuant to 40 C.F.R. § 2.203(b). Such an assertion will be adequately substantiated when the assertion is made. Analytical data will not be claimed as confidential by Respondents. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to Respondents.

B. Respondents waive any objection to the admissibility into evidence (without waiving any objection as to weight) of the results of any analyses of sampling conducted by or for them at the Site or of other data gathered pursuant to this Consent Order that has been verified by the quality assurance/quality control procedures established pursuant to Section X.

XIII. RECORD PRESERVATION

EPA and Respondents agree that each will preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in their possession or in the possession of their divisions, employees, agents, accountants, contractors, or attorneys which relate in any way to the Site, despite any document retention policy to the contrary. After this six year period, Respondents will notify EPA within ninety (90) calendar days prior to the destruction of any such documents. Upon request by EPA, Respondents will provide to EPA such records or copies of any such records.

XIV. DISPUTE RESOLUTION

Any disputes arising under this Consent Order shall be resolved as follows: If the Respondents object to any EPA notice of disapproval or decision made pursuant to this Consent Order, the Respondents shall notify EPA's Project Coordinator in writing of their objections within 14 calendar days after receipt of the decision. EPA and the Respondents then have an additional fourteen (14) calendar days to reach agreement. If agreement cannot be reached within this fourteen (14) calendar day period, the EPA Waste Management Division Director shall provide a written statement of the decision and the reasons supporting that decision to Respondents. If Respondents do not agree to perform the task in dispute as determined by EPA's Division Director, EPA reserves the right to conduct the work itself, to seek reimbursement from the Respondents, and/or to seek other appropriate relief.

If EPA so determines and notifies Respondents in writing, Respondents are not relieved of their obligations to perform any work required by this Consent Order while a matter is pending in dispute resolution.

XV. FORCE MAJEURE

A. "Force Majeure" is defined for the purposes of the Consent Order as an event arising from causes entirely beyond the control of Respondents and of any entity controlled by Respondents including their contractors and subcontractors, which could not have been overcome by due diligence which delays or prevents the performance of any obligation under this Consent Order. Examples of events which may constitute force majeure events include extraordinary weather events, natural disasters, and national emergencies. Examples of events that are not force majeure events include, but are not limited to, normal inclement weather, increased costs or expenses of the Work to be performed under this Consent Order, the financial difficulty of Respondents to perform such tasks, the failure of one or more of Respondents to satisfy their obligation under this Consent Order, acts or omissions not otherwise force majeure attributable to Respondents' contractors or representatives, and the failure of Respondents or Respondents' contractors or representatives to make complete and timely application for any required approval or permit.

B. When circumstances occur which may delay or prevent the completion of any phase of the Work Plan or access to the Site or to any property on which part of the Work Plan is to be performed, whether or not caused by a force majeure event, Respondents shall notify the EPA Project Coordinator orally of the circumstances within forty-eight (48) hours of when Respondents first knew or should have known that the event might cause delay. If the EPA Project Coordinator is unavailable, Respondents shall notify the designated alternate or the Director of the Waste Management Division, EPA Region IV. Within five (5) working days after Respondents first became aware of such circumstances, Respondents shall supply to EPA in writing: (1) the reasons for the delay; (2) the anticipated duration of the delay; (3) all actions taken or to be taken to prevent or minimize the delay; (4) a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and (5) a statement as to whether, in the opinion of the Respondents, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Respondents shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of force majeure.

C. If EPA agrees that a delay is or was caused by a force majeure event, the time for performance of the obligations under this Consent Order that are directly affected by the force

majeure event shall be extended by agreement of the parties, pursuant to Section XXIII, for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not necessarily justify an extension of time for performance of any subsequent obligation.

D. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Respondents on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in Section XIV of the Consent Order. In any such proceedings, to qualify for a force majeure defense, Respondents shall have the burden of proof that the delay or anticipated delay was or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of paragraph B of this Section. Should Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of the Consent Order and the time for performance of the obligations directly affected shall be extended as provided in paragraph C.

XVI. STIPULATED PENALTIES

Unless excused under the provisions of Sections XIV or XV, upon the happening of those events described hereinafter, the Respondents shall pay into the Hazardous Substance Superfund administered by EPA, the sums set forth below as stipulated penalties.

Stipulated penalties shall accrue as follows:

A. For each day during which Respondents fail to perform, in accordance with the schedules contained in this Consent Order and in the various plans and reports required under this Consent Order incorporated by reference herein, any of the following activities:

1. submittal and, if necessary, modification of the RI/FS Work Plan, and supporting documents;
2. submittal and, if necessary, modification of the draft and final Baseline Risk Assessment;

3. submittal and, if necessary, modification of the draft and final RI Report;

4. submittal and, if necessary, modification of the draft and final Treatability Study Work Plan, Sampling and Analysis Plan, and Treatability Study Evaluation Report; and

5. submittal and, if necessary, modification of the draft and final FS Report.

Respondents shall be liable to EPA for stipulated penalties in the following amounts:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 7th day	\$500
8th through 14th day	\$1,000
15th through 44th day	\$2,000
45th day and beyond	\$3,000

B. If Respondents fail to submit a monthly progress report within five (5) days after its due date, Respondents shall be liable to EPA for stipulated penalties in the amount of \$500 per violation for each additional day up to 25 days, during which Respondents fail to submit and, if necessary, modify monthly reports, and for each additional day thereafter the amount of \$1,000 per violation.

C. Respondents shall be liable to EPA for stipulated penalties in the amount of \$500 per violation for each day during which Respondents fail to comply with all other requirements of this Consent Order including, but not limited to, any implementation schedule, payment requirement, notification requirement or completion deadline.

All stipulated penalties begin to accrue on the day the violation occurs or on the day following Respondents' failure to comply with any schedule or deadline or the terms, conditions, or requirements contained in this Consent Order and/or Work Plan. Stipulated penalties shall continue to accrue until Respondents' violation ends or until Respondents comply with the particular schedule or deadline.

Payment of stipulated penalties shall be due and owing within fifteen (15) days from the receipt of a written notice from EPA notifying Respondents that penalties have been assessed. Interest shall accrue on any unpaid amounts, beginning at the end of the fifteen day period, at the rate established by the Department of Treasury under 31 U.S.C. § 3717.

Payment shall be made to:

U. S. Environmental Protection Agency
Region IV
Superfund Accounting
P. O. Box 100142
Atlanta, Georgia 30344
Attn: (Collection Officer for Superfund)

A copy of the transmittal letter should be sent simultaneously to the EPA Project Coordinator.

Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Order.

The stipulated penalties set forth in this Section do not preclude EPA from electing to pursue any other remedies or sanctions which may be available to EPA by reason of the Respondents' failure to comply with any of the requirements of this Consent Order. Such remedies and sanctions may include a suit for statutory penalties up to the amount authorized by law, a federally-funded response action, and a suit for reimbursement of costs incurred by the United States and/or a suit to collect penalties or oversight costs incurred under the terms of this Consent Order.

XVII. OVERSIGHT AND REIMBURSEMENT OF COSTS

In accordance with Section 104(a)(1) of CERCLA, as amended, 42 U.S.C. § 9604(a)(1), Respondents agree to reimburse the Hazardous Substance Superfund for all response and oversight costs incurred by EPA or its authorized representatives in oversight of Respondents' performance of work under the Consent Order. Any disputes as to the amount or validity of response or oversight costs are subject to the provisions of Section XIV of this Consent Order.

At the end of each fiscal year, EPA will submit to Respondents an accounting of all response and oversight costs incurred by the U.S. Government with respect to this Consent Order. Oversight costs shall include all direct and indirect costs of EPA's oversight arrangement for the RI/FS, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities, site visits, interpretation of Consent Order provisions, discussions

regarding disputes that may arise as a result of this Consent Order, review and approval or disapproval of reports, the costs of redoing any of Respondents tasks, and any assessed interest.

EPA's certified Agency Financial Management System Summary data (SPUR Reports) and any other necessary documents, shall serve as the basis for payment demands.

Failure to submit an accounting in one fiscal year does not prevent EPA from submitting an accounting for that year in a subsequent fiscal year. Respondents shall, within forty five (45) calendar days of receipt of that accounting, remit a check for the amount of those costs made payable to the Hazardous Substance Superfund. Interest shall begin to accrue on the unpaid balance from that date. Checks should specifically reference the identity of the Site and should be sent to:

U. S. Environmental Protection Agency IV
Region IV
Superfund Accounting
P. O. Box 100142
Atlanta, Georgia 30384
ATTENTION: Collection Officer for Superfund

A copy of the transmittal letter should be sent simultaneously to the EPA Project Coordinator.

Respondents agree to limit any disputes concerning costs to accounting errors and the inclusion of costs outside the scope of this Consent Order. Respondents shall identify any contested costs and the basis of its objection. All undisputed costs shall be remitted by Respondents in accordance with the schedule set out above. Disputed costs shall be paid by Respondents into an escrow account while the dispute is pending. Respondents bear the burden of establishing an EPA accounting error and the inclusion of costs outside the scope of this Consent Order.

EPA reserves the right to bring an action against the Respondents pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by Respondents as well as any other past and future costs incurred by the United States in connection with response activities conducted pursuant to CERCLA at this Site.

XVIII. RESERVATION OF RIGHTS

Notwithstanding compliance with the terms of this Consent Order, the Respondents are not released from liability, if any, for any actions beyond the terms of this Consent Order taken by EPA respecting this Site. EPA reserves the right to take any enforcement action pursuant to CERCLA or any other available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order.

Except as otherwise provided herein, EPA and Respondents expressly reserve all rights and defenses that they may have, including EPA's right both to disapprove of work performed by Respondents and to require that Respondents perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that Respondents decline to perform any additional or modified tasks, EPA will have the right to undertake any RI/FS work. In addition, EPA reserves the right to undertake removal actions and/or remedial actions at any time. In either event, EPA reserves the right to seek reimbursement from Respondents thereafter for such costs which are incurred by the United States and Respondents reserve all rights to contest or defend against such claims or actions. Respondents also specifically reserve their right to argue the weight of any sampling data (referred to in Section X Paragraph A. and Section XII Paragraph B of this Order) admitted into evidence in any proceeding to enforce the terms of this Order.

Following satisfaction of the requirements of this Consent Order, Respondents shall have resolved its liability to EPA for the performance of the RI/FS for the operable unit that is the subject of this Order. The Respondents are not released from liability, if any, for any actions taken beyond the terms of this Order regarding removals, other operable units, remedial design/remedial action (RD/RA), or activities arising pursuant to section 121(c) of CERCLA.

XIX. OTHER CLAIMS

Nothing in this Consent Order constitutes a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

EPA reserves the right to bring an action against the Respondents pursuant to Section 107 of CERCLA for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by Respondents, as well as any other past and future costs incurred by the United States in connection with response activities conducted pursuant to CERCLA at this Site.

This Consent Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

In entering into this Consent Order, Respondents waive any right to seek reimbursement under Section 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2), for any past costs associated with this Site, or any costs incurred in complying with this Order.

Respondents shall bear their own costs and attorney fees.

XX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order will be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations unless an exemption from such requirements is specifically provided in this Consent Order, or made a part of this Consent Order by being incorporated herein at some later date.

XXI. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondents agree to indemnify and save and hold harmless the United States, their officials, agents, employees, contractors, or representatives, from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, their officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Consent Order. The United States is not a party in any contract involving Respondents at or relating to the Site.

XXII. PUBLIC COMMENT

Upon submittal to EPA of the Feasibility Study Final Report, EPA will make both the Remedial Investigation Final Report and the Feasibility Study Final Report available to the public for review and comment for, at a minimum, a thirty (30) day period, pursuant to EPA's Community Relations Plan and the NCP. Following the public review and comment period, EPA will notify Respondents of the remedial action alternative selected for the Site.

XXIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

In consideration of the communications between Respondents and EPA prior to the issuance of this Consent Order concerning its terms, Respondents agree that there is no need for a settlement conference prior to the effective date of this Consent Order. Therefore, the effective date of this Consent Order will be the date on which it is signed by EPA. This Consent Order may be amended by mutual agreement of EPA and Respondents. Such amendments will be in writing and will have, as the effective date, that date on which such amendments are signed by EPA.

Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any noncompliance with such EPA approved reports, plans, specifications, schedules, and attachments will be considered a failure to achieve the requirements of this Consent Order and will subject the Respondent to the provisions included in the "Force Majeure" and "Stipulated Penalties" sections (Sections XV and XVI) of this Consent Order. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondents will be construed as relieving Respondents of their obligation to obtain such formal approval of EPA as may be required by this Consent Order.

XXIV. NOTICE TO THE STATE

EPA has notified the State of Florida regarding the requirements of this Consent Order.

Upon completion of the RI/FS, pursuant to the requirements of Section 104(c)(2) of CERCLA, 42 U.S.C. § 9604(c)(2), EPA will notify the State of Florida before determining the appropriate remedial action to be taken at the Site.

XXV. TERMINATION

The provisions of this Consent Order will be deemed satisfied upon Respondents' receipt of written notice from EPA that Respondents have demonstrated, to the satisfaction of EPA, that all of the terms of this Consent Order, including any additional tasks which EPA has determined to be necessary, and which have been incorporated herein by amendment as specified in Section XXIII, have been completed. This notice shall not, however, terminate Respondents obligation to comply with Sections XIII, XVII, and XVIII of this Consent Order.

IT IS SO AGREED:

Bernard J. Stewart

ITT Corporation
On behalf of ITT Thompson
Industries
as Successor in Interest
Respondent

June 4, 1990
Date

IT IS SO AGREED:

Marjelle L. James
Madison County, Florida
Respondent

June 6, 1990
Date

IT IS SO AGREED:

Lucy A. Prode
City of Madison
Respondent

June 5, 1990
Date

IT IS SO AGREED AND ORDERED:

Patrick M. Tobin

Patrick M. Tobin
Director, Waste Management Division
Region IV
U.S. Environmental Protection Agency

June 11, 1990

Date