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01/11/02

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)	
)	
Orlando Gasification Site)	Proceeding under Sections 104,
)	122(a) and 122(d)(3) Comprehensive
)	Environmental
)	Response, Compensation
)	and Liability Act of 1980,
)	as amended, 42 U.S.C.
)	§§ 9604 and 9622.
Respondents)	
)	
Atlanta Gas Light Company,)	
Florida Power Corporation, and)	
Peoples Gas System)	EPA Docket # CER-04-2002-3755
)	
)	

04-2002-3755

FLD 984169235

ADMINISTRATIVE ORDER BY CONSENT
FOR EXPANDED SITE INVESTIGATION-PHASE II

I. JURISDICTION

This Administrative Order by Consent ("Consent Order") is entered into by the United States Environmental Protection Agency ("EPA") with Atlanta Gas Light Company, Florida Power Corporation, and Peoples Gas System ("Respondents"), pursuant to the authority vested in the President of the United States by Sections 104, 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9604, 9622(a) 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 EPA Region 4 and further delegated by Regional Delegation 14-14-C through the Director, Waste Management Division, to the Chiefs of the North and South Superfund Remedial and Waste Program Branches.

Respondents agree to undertake all actions required by the terms and conditions of this Consent Order for the conduct and implementation of the Expanded Site Investigation-Phase II ("ESI-2"). The Respondents consent to and will not contest EPA jurisdiction regarding this Order.

II. PARTIES BOUND

This Consent Order shall apply to and be binding upon EPA and the Respondents, their 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 the 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, subcontractors, laboratories, and consultants that 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. Respondents shall condition any such contracts upon satisfactory compliance with this Consent Order. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Consent Order and for ensuring that their subsidiaries, employees, contractors, consultants, subcontractors, and agents comply with this Consent Order.

III. DISCLAIMER

By signing this Consent Order and taking actions under this Order, the Respondents do not necessarily agree with EPA's Findings of Fact and Conclusions of Law. Furthermore, the participation of the Respondents in this Order shall not be considered an admission of liability and is not admissible in evidence against the Respondents in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Consent Order or a judgment relating to it. Respondents retain their rights to assert claims against other potentially responsible parties at the Site. However, the Respondents agree not to contest the validity or terms and conditions of this Order in any action brought by the United States, including EPA, to enforce its terms.

IV. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondents are to investigate groundwater quality within the upper Floridan aquifer in the area of the Site, as defined below.

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

V. FINDINGS OF FACTS

The following constitutes EPA's outline of the facts upon which this Consent Order is based:

A. The Orlando Gasification Site ("Site") is approximately three acres and is located in the 600 block of West Robinson Street, Orlando, Orange County, Florida.

The Site was developed as a manufactured gas plant in 1888 and operated until approximately 1960. Operations on Site consisted of the manufacture of water gas and carbureted water gas. By-products of these processes (coal tar, coke, oils, and condensates) were generated on Site and subsequently stored and/or disposed on Site.

Currently, on the Site property there are several buildings, parking areas, repair and maintenance facilities, and associated structures. The area surrounding the Site is comprised of commercial and residential structures due to its close proximity to the business district of Orlando. The Site is bordered to the north by the S&L Railway and industrial property, to the east by commercial property, to the south by single-unit residential property, to the west by multi-unit residential property, and to the southwest by Callahan Park.

B. The Respondents are all owner/operators of the Site and are as follows: 1) Atlanta Gas Light Company, successor in interest to the South Atlantic Gas Company which owned and operated the Site from approximately 1946 to 1958; 2) Florida Power Corporation, successor in interest to the Florida Public Service Corporation which owned and operated the Site from approximately 1925 to 1945; and 3) Peoples Gas System, since 1979 the owner/operator of the Site.

C. Previous investigations of the Site are as follows: 1) in October 1988, the U.S. Geological Survey in cooperation with the Florida Department of Environmental Regulation performed a Site Investigation; 2) in June 1990, the NUS Corporation, on behalf of EPA, conducted a Phase II Screening Site Inspection; 3) in February 1992, Dynamac Corporation, on behalf of EPA, performed a Site Inspection Prioritization of the Site; and 4) in March 1995, Black & Veatch, on behalf of EPA, performed an Expanded Site Inspection ("ESI") to identify and characterize contaminants that may be present in the environment as a result of past operational activities conducted at the Site.

D. During the performance of the ESI, surface soil, subsurface soil, and groundwater samples, from the surficial aquifer, were collected and subsequently analyzed. Inorganic analytes were detected at elevated levels in all surface soil samples, in some subsurface soil samples, and in the surficial aquifer. Inorganic analytes detected at elevated levels include arsenic, barium, calcium, chromium, copper, iron, lead, magnesium, manganese, mercury, nickel, selenium, vanadium, zinc, and cyanide. Elevated levels of extractable organic constituents were detected in all surface soil samples, in some subsurface soil samples, and in two wells in the surficial aquifer. Extractable organic constituents detected at elevated levels in the soil include 2-

methylnaphthalene, acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(b and/or k)fluoranthene, benzo (ghi)perylene, benzo(a)pyrene, carbazole, chrysene, dibenzofuran, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene, naphthlene, phenanthrene, and pyrene. An extractable organic constituent, 2-methylnaphthalene, was detected at elevated levels in the surficial aquifer. Elevated levels of purgeable organic constituents were detected in some surface soil samples, in one subsurface soil sample, and in two wells in the surficial aquifer. Purgeable organic constituents detected in surface soil samples include ethyl benzene, methyl ethyl ketone, toluene, and xylenes and in subsurface soil include ethyl benzene and total xylenes. Purgeable organic constituents detected in the surficial aquifer include benzene, ethyl benzene, toluene and xylenes. Elevated levels of pesticides were detected in some soil samples. Pesticides detected at elevated levels include alpha-chlordane and endosulphan. The pesticide alpha-chlordane was detected in one subsurface soil sample.

E. The City of Orlando owns several drainage wells in the vicinity of the Site. These wells are drilled into the Upper Floridan and were first drilled in Orlando in 1904. The purpose of the drainage wells are to alleviate flooding in southeastern Orlando by using the wells for land drainage and wastewater disposal. By the mid-1940s, approximately 200 drainage wells were in place.

F. Previous investigations at the Site and well records indicate that an Upper Floridan aquifer drainage well may have been located on the Site. A drainage well inventory, generated by the Florida Department of Air and Water Pollution Control (currently the Florida Department of Environmental Protection) and dated 1970, lists issued permit 110 for a drainage well at 558 Robinson Street. Permit 110 was issued in 1941 to drill a 12 inch diameter well to a depth of 250' to dispose of condensate water.

G. Based on the elevated concentrations of organic and inorganic contaminants in soil and the surficial aquifer, the drainage wells draining directly to the Floridan aquifer, the potential presence of a drainage well on Site, and the proximity of city supply wells, the impact to the Floridan aquifer is of major concern at the Site.

VI. 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 V above are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), or constitute a pollutant or contaminant that may present an imminent and substantial danger to the public health or welfare under Section 104(a)(1) of CERCLA, 42 U.S.C. 9604(a)(1).

E. The hazardous substances described above 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).

VII. DETERMINATIONS

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

A. The Site warrants further expanded investigation to attempt to determine if an actual and/or threatened release of hazardous substances has or could occur from the Site which would 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 attempt to determine whether the public health and/or welfare and/or the environment is threatened.

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.

VIII. 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 Jacques Whitford Company, Inc.

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

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

A. Respondents have submitted and EPA has approved an ESI-2 Work Plan, which is attached to this Consent Order as Attachment "A". The ESI-2 Work Plan, the schedule, set forth therein and any subsequent modifications shall be fully enforceable under this Consent Order. Respondents shall notify EPA at least two weeks prior to performing any on-site work pursuant to the EPA approved ESI-2 Work Plan.

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

B. Respondents shall commence the work outlined in the ESI-2 Work Plan within fifteen (15) calendar days of the Effective Date of this Consent Order and shall otherwise implement the ESI-2 Work Plan in accordance with the schedule set forth therein.

C. The Respondents shall conduct the ESI-2 to effectuate the purposes set forth in Section IV of this Consent Order. Respondents shall produce an ESI-2 Report that is in accordance with the ESI-2 Work Plan.

D. EPA's Science and Ecosystem Support Division ("SESD") will oversee the field event(s). Respondent shall follow SESD's specific directions in the field, should there be any deviations from the Environmental Investigations Standard Operating Procedures and Quality Assurance Manual. SESD may also collect split samples for any or all samples taken.

E. By the fifth working day of each month, Respondents shall submit to EPA written progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Order; (2) include all results of sampling and tests and all other data received by Respondents during the reporting period; (3) include all plans and procedures completed under the ESI-2 Work Plan during the reporting period; (4) describe all actions, data, and plans which are scheduled for completion, 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 ESI-2 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 working day of each month and Respondent shall submit these reports electronically as well as by mail.

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

Mindy M. Carreras
Remedial Project Manager
EPA - Region 4
Waste Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-3104

The number of copies to be submitted to EPA for each deliverable is four copies.

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

Kerry A. MacPherson
Project Technical Specialist
Environmental Remediation
410 S. Wilmington Street
PEB 8A
Raleigh, NC 27601

IX. SUBMISSIONS REQUIRING AGENCY APPROVAL

A. EPA reserves the right to comment on, modify and direct changes for all deliverables. 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) notify the Respondents that EPA will modify the submission to cure the deficiencies; or (2) direct the Respondents to modify the submission to cure the deficiencies.

B. Upon receipt of a notice of disapproval and notification directing modification of the submission, Respondents shall, within thirty (30) days, 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 as required to complete the ESI-2 Work Plan.

D. If, upon resubmission, the plan, report, or item is not approved, Respondents shall be deemed to be in violation of this Consent Order and, unless excused under the provisions of Section XV or XVI, stipulated penalties shall begin to accrue pursuant to Section XVII of this Consent Order. EPA retains the right to seek stipulated or statutory penalties, to require the amendment of the document, to perform additional studies, to conduct a complete ESI-2 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. Respondents shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct and completion of the ESI-2. In addition to the discussion of the technical aspects of the ESI-2, topics will include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

G. The provisions of this Consent Order shall govern all proceedings regarding the ESI-2 Work Plan conducted pursuant to this Consent Order. In the event of any inconsistency between this Consent Order and any required deliverable submitted by Respondents, the inconsistency will be resolved in favor of this Consent Order.

X. DESIGNATED PROJECT COORDINATORS

A. The "Project Coordinator" for EPA will be the Remedial Project Manager ("RPM") responsible for this Site. The "Project Coordinator" for the Respondents has been designated and is listed in Section VIII. F. of this Order. 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 vested in an RPM or On-Scene Coordinator ("OSC") 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 ESI-2, as required by Section 104(a) of CERCLA, 42 U.S.C. 9604(a). The oversight assistant may observe work and make inquiries in the absence of EPA, but is not authorized to modify the ESI-2 Work Plan.

XI. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

A. Respondents shall use quality assurance, quality control, and chain of custody procedures in accordance with EPA's "Guidance for Quality Assurance Project Plans," EPA

QA/G-5, EPA/600/R-98/018, February 1998 and EPA Region 4's "Analytical Support Branch Operations and Quality Control Manual" (1997) and subsequent amendments to such guidelines. 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, in any proceeding under Section XV of this Consent 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. Respondent must validate data according to EPA's Contract Lab Program National Functional Guidelines at: www.epa.gov/oerrpage/superfund/programs/clp/guidance.htm.

C. Respondents shall make available to EPA the results of all sampling, tests and/or other validated data (including raw data following validation) 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 VIII. E. of this Consent Order.

D. Respondents shall allow split or duplicate samples to be taken by EPA, and/or their authorized representative, of all 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.

E. Respondents shall ensure that the laboratory utilized by Respondents for analyses participates in a EPA quality assurance/quality control program equivalent to that which is followed by EPA and which is consistent with EPA document QA/G-5. 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.

F. 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.

XII. ACCESS

A. From the date of execution of this Consent Order until EPA provides written notice of satisfaction of the terms of the Order, EPA and its authorized representatives and agents shall have access at all reasonable 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 limited to:

1. Monitoring the ESI-2 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 endeavor to 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 which includes the payment of reasonable sums of money in consideration of access. Copies of such access agreements will be provided to EPA prior to Respondents' initiation of field activities. If access is not obtained within fourteen (14) 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 XVIII 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.

Provided, however, that nothing in this paragraph shall obligate Respondents to pay any sums of money to other potentially responsible parties for the purpose of obtaining access to property they own that is located within the Site.

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 regulations.

XIII. 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. In any proceeding to enforce this AOC, 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 XI.

XIV. 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 make available to EPA such records or copies of any such records. Additionally, if EPA requests that documents be preserved for a longer period of time, Respondents will comply with that request.

XV. 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. Respondents' written objections shall define the dispute, state the basis of Respondents' objections, and be sent certified mail, return receipt requested. EPA and the Respondents then have an additional fourteen (14) calendar days to reach agreement. If agreement cannot be reached within 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. The Division Director's determination is EPA's final decision. If Respondents do not agree to perform or do not actually 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. Except as otherwise provided herein, this dispute resolution provision shall not limit the Respondents' right to contest any cause of action brought by EPA in Federal Court to enforce its decision.

Respondents are not relieved of its obligations to perform and conduct any work required by this Consent Order while a matter is pending in dispute resolution.

XVI. 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 its contractors and subcontractors, which could not have been overcome by due diligence and 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 the Respondents to satisfy its 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 Division, EPA Region 4. Within seven (7) calendar 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 XXVI, 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 XV 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.

XVII. STIPULATED PENALTIES

Unless excused under the provisions of Sections XV or XVI, 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. for failure to timely submit the analytical data, the draft ESI-2 Report, the final ESI-2 Report (including a cover letter that specifically addresses all EPA Comments), and any other documents and/or records specifically requested by EPA as required under this Consent Order;
2. for failure to timely submit any modifications requested by EPA or its representatives on the analytical data, the draft ESI-2 Report, the final ESI-2 Report (including a cover letter that specifically addresses all EPA Comments), and any other documents and/or records specifically requested by EPA under this Consent Order; and
3. for failure to timely submit payment of response and oversight costs as provided for in Section XVIII.

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>
Day 1-7	\$ 500.00
Day 8-14	\$1,000.00
Day15-30	\$2,000.00
Beyond 30	\$3,000.00

B. Respondents shall be liable to EPA for stipulated penalties in the amount of \$500.00 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. Respondents shall pay a handling charge of one percent to be assessed at the end of each 31 day period, and a six percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due. The check and transmitted letter shall identify the Name of the Site, the Site identification number and the title of this Order. A copy of the transmittal letter should be sent simultaneously to the EPA Project Coordinator.

Payment shall be made to:

U. S. Environmental Protection Agency
Region 4
Superfund Accounting
P. O. Box 100142
Atlanta, Georgia 30384
ATTENTION: (Collection Officer for Superfund)

Respondents may dispute EPA's right to the stated amount of penalties by invoking the Dispute Resolution procedures under Section XV of this Order. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondents do not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If Respondents prevail upon resolution, no penalties shall be paid.

In the event that EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

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.

XVIII. REIMBURSEMENT OF OVERSIGHT AND FUTURE RESPONSE 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 future response costs, including oversight costs, incurred by the U.S. Government with respect to the implementation of the ESI-2 at this Site.

Following the issuance of this Consent Order, EPA shall submit to the Respondents on a periodic basis an accounting of all future response costs, including oversight costs, incurred by the U.S. Government with respect to this ESI-2. Future response costs may include, but are not limited to, costs incurred by the U.S. Government in overseeing Respondents' implementation of the requirements of this Order and activities performed by the government as part of the ESI-2, including any costs incurred while obtaining access. Costs shall include all direct and indirect costs, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, cooperative agreement costs, compliance monitoring, including the collection and analysis of split samples, inspection of ESI-2 activities, Site visits, discussions regarding disputes that may arise as a result of this Consent Order, review and approval or disapproval of reports, and costs of redoing any of Respondents' tasks. To the extent practicable, EPA will conduct oversight management consistent with the Agency's May 17, 2000 "Interim Guidance on Implementing the Superfund Administrative Reform on PRP Oversight," a copy of which is included as Attachment 3.

EPA's Agency Financial Management Systems summary data (SCORPIOS Reports or its equivalent), 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 thirty (30) calendar days of receipt of each accounting, remit a certified or cashiers 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
Region 4
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, the inclusion of costs outside the scope of this Consent Order, or claims that a cost item is inconsistent with the NCP. 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, the inclusion of costs outside the scope of this Consent Order, and that a cost is inconsistent with the NCP.

EPA reserves the right to bring an action against the Respondents pursuant to Section 107 of CERCLA to enforce the response and oversight cost reimbursement requirements of this Consent Order and to collect stipulated penalties assessed pursuant to Section XVII of this Consent Order.

XIX. 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 regarding 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. EPA reserves its right to seek reimbursement for all costs it has already incurred and will incur prior to the effective date of this Consent Order with respect to this Site.

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 ESI-2 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 ESI-2 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.

Following satisfaction of the requirements of this Consent Order, Respondents shall have resolved their liability to EPA for the performance of the ESI-2 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, remedial investigation/feasibility study ("RI/FS"), remedial design/remedial action ("RD/RA"), or activities arising pursuant to Section 121(c) of CERCLA.

XX. 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 113(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.

XXI. 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.

XXII. NOTICE OF COMPLETION

At the conclusion of the ESI-2, Respondents shall submit to EPA validated data and information within 125 days of EPA's approval of the final work plan. When EPA determines that the ESI-2 has been fully conducted in accordance with this Consent Order, with the exception of any continuing obligations required by this Consent Order, EPA will provide notice to the Respondents. If EPA determines that the ESI-2 has not been completed in accordance with this Consent Order, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies. Deficiencies may include additional field work, which EPA determines is necessary as part of the ESI-2 and which are in addition to the tasks detailed in the ESI-2 Work Plan. The additional work shall be completed in accordance with the standards, specifications, and schedule determined or approved by EPA. Respondents shall implement the work necessary to correct such deficiencies and shall submit a modified ESI-2 Report in accordance with the EPA notice. The purpose of any additional work shall be to evaluate the possible presence of manufactured gas plant-related impacts within the surficial and Upper Floridan aquifers and to evaluate the natural setting of the Site to determine basic geologic and hydrogeologic parameters.

XXIII. COVENANT NOT TO SUE

Except as otherwise specifically provided in this Consent Order, upon issuance of the EPA notice referred to in Section XXII, Notice of Completion, EPA covenants not to sue Respondents for judicial imposition of damages or civil penalties or to take administrative action against Respondents for any failure to perform the work agreed to in this Consent Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Consent Order, in consideration and upon Respondents' payment of the future response costs specified in Section XVIII, Reimbursement Of Oversight and Future Response Costs, EPA covenants not to sue or to take administrative action against Respondents under Section 107(a) of CERCLA for recovery of future response costs incurred by the United States in connection with the work required to be performed by Respondents under this Consent Order. This Covenant not to sue shall take effect upon the receipt of EPA of the payments required by Section XVIII, Reimbursement Of Oversight and Future Response Costs.

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Consent Order. These covenants not to sue extend only to the Respondents and do not extend to any other person.

XXIV. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondents for matters addressed in this Consent Order, the Parties hereto agree that the Respondents are entitled to protection from contribution actions or claims to the extent provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §9613(f)(2) and 9622(h)(4). Nothing in this Consent Order precludes the United States or the Respondents from asserting any claims, causes of action, or demands against any persons not party to this Consent Order for indemnification, contribution, or cost recovery.

XXV. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondents agree to indemnify and save and hold harmless the United States, its agencies, departments, officials, agents, employees, contractors, or representative, 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 Government or any agency or authorized representative thereof shall not be held to be a party to any contract involving Respondents at or relating to the Site.

XXVI. 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. EPA Project Coordinators do not have the authority to sign amendments to the Consent Order.

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 Respondents to the provisions included in the "Force Majeure" and "Stipulated Penalties" sections (Sections XVI and XVII) 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.

XXVII. NOTICE TO THE STATE

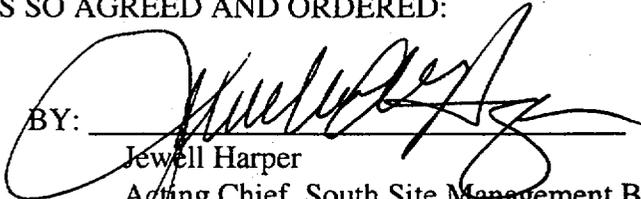
EPA has notified the State of Florida regarding the requirements of this Consent Order.

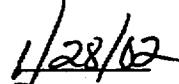
XXVIII. TERMINATION AND SATISFACTION

This Consent Order shall terminate when the Respondents demonstrate in writing and certifies to the satisfaction of EPA that all activities required under this Consent Order, including any additional work, payment of response and oversight costs, and any stipulated penalties demanded by EPA, have been performed and EPA has approved the certification. This notice shall not, however, terminate Respondents' obligation to comply with Sections XIV, and XVIII, and XIX of this Consent Order.

The certification shall be signed by a responsible official representing each Respondent. The representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Consent Order, a responsible official is a corporate official who is in charge of a principal business function.

IT IS SO AGREED AND ORDERED:

BY: 
Jewell Harper
Acting Chief, South Site Management Branch
Waste Division
Region 4
U.S. Environmental Protection Agency


Date

IT IS SO AGREED AND THE UNDERSIGNED PARTY enters into this Administrative Order by Consent in the matter of the Orlando Gasification Site located in the 600 block of West Robinson Street, Orlando, Orange County, Florida.

FOR: Florida Power Corporation
(Name of Party)

BY: E. Michael Williams
(Name of Representative authorized to sign for party)
E. Michael Williams

1/17/02
Date

TITLE: Sr. Vice President

ADDRESS: 100 Central Avenue

St. Petersburg, Florida 33701

IT IS SO AGREED AND THE UNDERSIGNED PARTY enters into this Administrative Order by Consent in the matter of the Orlando Gasification Site located in the 600 block of West Robinson Street, Orlando, Orange County, Florida.

FOR: Atlanta Gas Light Company
(Name of Party)

BY: *Paul R. Shantz*
(Name of Representative authorized to sign for party)

1-14-02
Date

~~TITLE~~ General Counsel and Senior Vice President

~~ADDRESS~~ 817 W. Peachtree Street, 10th Floor
Atlanta, GA 30308

IT IS SO AGREED AND THE UNDERSIGNED PARTY enters into this Administrative Order by Consent in the matter of the Orlando Gasification Site located in the 600 block of West Robinson Street, Orlando, Orange County, Florida.

FOR: Peoples Gas System
(Name of Party)

BY: MJ Pennington
(Name of Representative authorized to sign for party)

1/17/02
Date

TITLE: VP - Operations

ADDRESS: PO Box 2562
Tampa, FL 33601