

Beulah Landfill

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV

9/16/91

#17501

IN THE MATTER OF:)
)
 BEULAH LANDFILL SITE)
 ESCAMBIA COUNTY, FLORIDA)
)
 ESCAMBIA COUNTY, CITY OF)
 PENSACOLA, DEPARTMENT OF)
 THE NAVY, WESTINGHOUSE)
 ELECTRIC CORPORATION,)
 SOUTHERN BELL TELEPHONE)
 AND TELEGRAPH COMPANY,)
 ARMSTRONG WORLD INDUSTRIES,)
 INC., MONSANTO CHEMICAL)
 COMPANY AND NATIONAL LINEN)
 SERVICE INDUSTRIES, INC.)
)
 Respondents.)

Proceeding under Sections 104,
 122(a) and 122(d)(3) of the
 Comprehensive Environmental
 Response, Compensation
 and Liability Act of 1980,
 as amended, 42 U.S.C.
 §§ 9604 and 9622

EPA Docket No. 91-38-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 Escambia County, City of Pensacola, Department of the Navy, Westinghouse Electric Corporation, Southern Bell Telephone & Telegraph Company, Armstrong World Industries, Inc., Monsanto Chemical Company and National Linen Service Industries, Inc. (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 Region IV EPA and redelegated to the Director, Waste Management Division.

The 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). In any action by EPA or the United States to enforce the terms of the Consent Order, Respondents consent to and agree not to contest the authority or jurisdiction of the Regional Administrator to issue or enforce this Consent Order and agree not to contest the validity 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 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 which are retained to conduct any work performed under this Consent Order, within fourteen (14) calendar 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, the 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. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and the Respondents are: (A) with respect to the Remedial Investigation (RI), to determine 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 at or from the Site into the environment; and (B) with respect to the Feasibility Study (FS), to develop and evaluate alternatives for remedial action, if any, to prevent, mitigate or otherwise respond to the migration or the release or threatened release of hazardous substances, pollutants or contaminants from the Site; and (C) to recover response and oversight costs incurred by EPA with respect to this Consent Order.

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 set forth below.

IV. DISCLAIMER

By signing this Consent Order and taking action under this Order, the Respondents do not necessarily agree with EPA's

Findings of Fact and Conclusions of Law. Furthermore, the participation of 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. The Respondents retain their rights to assert claims against other potentially responsible parties at the site. However, the Respondents agree not to contest the validity of this Order or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms.

V. EPA'S FINDINGS OF FACT

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

A. The Beulah Landfill Site (hereafter "the Site") is located in Escambia County, Florida, at the north end of Jamesville Road, approximately eight (8) miles northwest of Pensacola, Florida and 4000 feet north of U.S. Highway 90.

B. The Site is located on an estimated 102 acres, approximately 80 acres of which comprise the landfill itself. The Site is divided roughly in half by Coffee Creek, which runs eastward into Eleven Mile Creek, which in turn flows south along the eastern boundary of the Site and eventually empties into Perdido Bay.

C. The Site was operated by Escambia County as a landfill from 1966 until June 1984. At various times during its active life, it received municipal trash, septic sludges and industrial wastes. The north side of the landfill was used primarily for the disposal of municipal trash, while the south side received industrial wastes, including sludges, as well as municipal trash and septic and wastewater treatment sludges. These wastes were deposited in excavated cells, which varied in depth from 4 feet to 35 feet below the land surface.

D. The past limited analyses of groundwater, surface water, sludge and soil samples taken at various times at the Site indicated the presence of copper, chlordane, chloroform, lead, zinc, benzene, chlorobenzene, pentachlorophenol, anthracene, fluoranthene, naphthalene, pyrene and polychlorinated biphenyls (PCBs).

E. The landfill is underlain by a permeable wedge-shaped hydrogeological unit, containing the sand and gravel aquifer of concern. Distance to groundwater in the vicinity of the Site ranges from 25 to 43 feet. Surface waters receiving runoff from the Site include Coffee Creek and Eleven Mile Creek.

F. The wastes disposed at the Site potentially affect the nearby surface water bodies, Coffee Creek and Eleven Mile Creek, and the shallow groundwater system, the local sand and gravel aquifer.

G. The Beulah Landfill Site was listed on the National Priorities List, as defined in Section 105 of CERCLA, as amended, 42 U.S.C. § 9605, effective March 23, 1990. 55 Fed. Reg. 6154 (February 21, 1990).

VI. EPA'S 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. Substances found at the Site and described in Section V above are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

E. The presence of the hazardous substances at the Site and the potential migration of the hazardous substances at and from the Site constitute an actual or threatened release within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

VII. DETERMINATIONS

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

A. The actions required by this Consent Order are necessary to protect public health, welfare and the environment; and

B. In accordance with Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), EPA had 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 the Respondents pursuant to this Consent Order shall be under the direction and supervision of a qualified contractor who shall be a qualified professional engineer or geologist with expertise in hazardous site cleanup, the selection of which shall be subject to approval by EPA. Within thirty (30) days after the effective date of this Consent Order, the Respondents shall submit to EPA in writing the name, title, and qualifications of any supervising contractor proposed to be used in carrying out the RI/FS to be performed pursuant to this Consent Order. EPA shall notify the Respondents of its approval or disapproval in writing, within twenty (20) calendar days of its receipt of this submission by the Respondents.

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

If, at any time thereafter, the Respondents propose to change any contractor, the 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. Within sixty (60) calendar days of the effective date of this Consent Order, the 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 a Sampling and Analysis Plan and a

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 including 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 the approved work plan.

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 OSHA regulations and protocols.

B. The 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 fourteen (14) calendar days of the approval of the RI/FS Work Plan by EPA, the Respondents will commence work on Task 1 of the RI/FS Work Plan.

D. The 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 the Respondents during the course of the work; (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 fifteenth day of every month following the effective date of this Consent Order. Submittal to EPA is deemed to occur at the time the report comes into the Agency.

E. 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.

Mr. Tony Best
Remedial Project Manager
EPA - Region IV
Waste Management Division
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:

Ms. Kelsey Helton
Florida Department of Environmental
Regulation
Twin Tower Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Doc

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

Escambia County Solid Waste Dept.
Charles C. Miller, Director
13009 Beulah Road
Cantonment, FL 32533
(904) 968-6628

F. EPA may determine that other tasks, including remedial investigatory work and/or engineering evaluation, are necessary as part of an RI/FS in addition to EPA-approved tasks and deliverables, including reports, which have been completed pursuant to this Consent Order. EPA may require that Respondents perform these tasks in addition to those required by the initially approved work plan, including any approved modifications, if it determines that such additional tasks are necessary for a complete RI/FS. Respondents shall confirm their willingness to perform the additional work in writing to EPA within fourteen (14) days of receipt of the EPA request or Respondents shall indicate that:

- they agree the additional work is necessary, but funding constraints preclude performance of the additional work or
- they disagree that the additional work is necessary.

If Respondents agree that the additional work is necessary and funding constraints do not preclude the performance of the additional work, that additional work shall be completed according to the standards, specifications and schedule set forth or approved by EPA in a written modification to the work plan or written work plan supplement.

If Respondents agree that additional work is necessary, but indicate that funding constraints preclude the performance of additional work, Respondents will provide documentation of those funding constraints to EPA, including evidence of any cost sharing arrangement. If EPA determines that funding is not sufficient, EPA will undertake the additional work and seek response costs for that additional work from Respondents. If the documentation submitted supports the claim concerning funding constraints, stipulated penalties will not accrue.

If Respondents do not agree that additional work is necessary, they will invoke dispute resolution pursuant to XV of this Order. If the dispute is resolved by decision of the EPA Waste

Management Division Director, and if it is determined by the EPA Waste Management Division Director that the additional work is necessary, Respondents will notify EPA of their willingness or unwillingness to perform the additional work within seven (7) days of receipt of notification of the decision of EPA's Waste Management Division Director.

If Respondents agree to perform the work as set forth in that notification by EPA's Waste Management Division Director, stipulated penalties will accrue for that period of time beginning with the initial notification by EPA that additional work is needed. Stipulated penalties shall continue to accrue until Respondents comply with the requirements set forth in the notification of the decision by EPA's Waste Management Division Director.

If Respondents do not agree to perform the work as set forth in the notification by EPA's Waste Management Division Director, a stipulated penalty of \$50,000 will be paid by Respondents. The penalty payment is not to be considered as an element of EPA's response and oversight costs.

Upon notification by Respondents of their unwillingness to perform the additional work as set forth in the notification by EPA's Waste Management Division Director, EPA will undertake the additional work called for by the decision of the EPA Waste Management Division Director. EPA will seek all related response and oversight costs from Respondents.

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, the Respondents shall, within thirty (30) days, cure the deficiencies and resubmit the plan, report, or other item for

approval. Notwithstanding the notice of disapproval, the Respondents shall proceed to take any action required by any nondeficient portion of the submission not dependent upon the resubmitted portion of the submission.

C. In the event of approval or modification of the submittal by EPA, the 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, Respondents shall be deemed to be in violation of this Consent Order and 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 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. Respondents reserve and retain any and all rights and defenses they may have in response to such an action.

Upon approval of the workplan, Respondents will have seven (7) days within which to notify EPA of their willingness to implement the workplan. If Respondents are willing to implement the workplan, stipulated penalties will accrue beginning with EPA's notification of disapproval of the resubmission and ending with the approval of the workplan.

If Respondents do not agree to implement the approved workplan, Respondents shall terminate their performance of any further work pursuant to this Order. Upon notification of Respondents' unwillingness to implement the workplan, a stipulated penalty of \$50,000 will be paid by Respondents. The penalty payment is not to be considered as an element of EPA's response and oversight costs.

Upon notification by Respondents of their unwillingness to implement the workplan, EPA will undertake all further actions called for by this Order. EPA will seek all related response costs from Respondents.

E. Neither failure of EPA to expressly approve or disapprove of the Respondents' deliverables within a specified time period, nor the absence of comments, shall be construed as

approval by EPA. The 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 RI/FS. In addition to the discussion of the technical aspects of the RI/FS, 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 RI/FS work conducted pursuant to this Consent Order. In the event of any inconsistency between this Consent Order and any required deliverable submitted by Respondent, the inconsistency will be resolved in favor of this Consent Order.

X. DESIGNATED PROJECT COORDINATORS

A. On or before five (5) days after the effective date of this Consent Order, EPA and the Respondents will each designate a Project Coordinator and an Alternate Project Coordinator. The "Project Coordinator" for EPA will be the Remedial Project Manager (RPM) or the On-Scene Coordinator (OSC) 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 the 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 the Respondents each have the right to change their respective Project Coordinators. 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 OSC by the National Contingency Plan, 40 C.F.R. Part 300.120 et seq., 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 work and make inquiries in the absence of EPA, but is not authorized to modify the work plan.

XI. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

A. The 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 Environmental Compliance Branch Standard Operating Procedures and Quality Assurance Manual (U.S. EPA Region IV, Environmental Services Division, February 1, 1991), and subsequent amendments to such guidelines, if such amendments are in effect at the time a specific task is performed. Prior to the commencement of any monitoring project under this Consent Order, the 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 in any proceeding under Section XIV of this Order, although Respondents retain the right to object to the weight of such evidence. The Respondents, through contracts with laboratories utilized by Respondents, shall assure that EPA personnel or authorized representatives, are allowed access to any such laboratory at all reasonable times.

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

C. At the request of EPA, the Respondents shall allow split or duplicate samples to be taken by EPA, and/or their authorized representative, of any samples collected by the Respondents pursuant to the implementation of this Consent Order. The 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.

D. The Respondents shall ensure that the laboratory utilized by the 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 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.

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, the EPA and its authorized representatives and agents 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 the 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 the Respondents' compliance with this Consent Order.

Nothing herein shall be interpreted as limiting or affecting the Respondents' rights to preserve the confidentiality of attorney work product or attorney-client communications.

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 the Respondents, Respondents shall secure from such persons access for the Respondents, as well as for EPA and authorized representatives or agents of EPA, as necessary to effectuate this Consent Order. Copies of such access agreements will be provided to EPA prior to the Respondents' initiation of field activities. If access is not obtained within thirty (30) days of the effective date of this Consent Order, the Respondents shall promptly notify the EPA. The United States may thereafter assist the Respondents in obtaining access. The Respondents shall, in accordance with Section XVII herein, reimburse EPA for all costs and attorneys fees incurred by the United States in obtaining access for the Respondents.

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

XIII. CONFIDENTIALITY OF SUBMISSIONS

A. The Respondents may assert a confidentiality claim 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 evidencing conditions at or around the site will not be claimed as confidential by the 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 the Respondents.

B. The 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 the 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, the Respondents will notify EPA within ninety (90) calendar days prior to the destruction of any such documents. Upon request by EPA, the Respondents will make available to EPA such records or copies of any such records, except those protected from disclosure by the attorney-client, work product and other privileges or immunities. Additionally, if EPA requests that documents be preserved for a longer period of time, the Respondents will comply with that request.

XV. DISPUTE RESOLUTION

Any disputes arising under this Consent Order, excluding the Baseline Risk Assessment, 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. The Respondents' written objections shall define the dispute, state the basis of the 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 the 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 the Respondents. The Division Director's determination is EPA's final decision. If the 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.

The Respondents are not relieved of their obligations to perform and conduct any work required by this Consent Order while a matter is pending in dispute resolution. If Respondents consider a dispute and its resolution to have made it impossible to meet a deadline set forth in or established pursuant to the

Order, and if those circumstances are not covered by the provisions in this paragraph, EPA will consider requests for an extension in that deadline.

XVI. FORCE MAJEURE

A. "Force Majeure" is defined for the purposes of the Consent Order as an event arising from causes beyond the control of the Respondents and of any entity controlled by the 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, increased costs or expenses of the Work to be performed under this Consent Order, the financial difficulty of the Respondents to perform such tasks, the failure of one or more of the Respondents to satisfy their obligation under this Consent Order, acts or omissions not otherwise force majeure attributable to the Respondents' contractors or representatives, and the failure of the Respondents or the Respondents' contractors or representatives to make complete and timely application for any required approval or permit. For the purpose of this paragraph, a delay in performance by the Respondents which is caused by EPA's delay in responding to a timely, complete submission, when such performance cannot proceed absent prior EPA approval, shall be considered a delay that is beyond the control of Respondents.

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, the Respondents shall notify the EPA Project Coordinator orally of the circumstances within seventy-two (72) hours of when the Respondents first knew or should have known that the event might cause delay. If the EPA Project Coordinator is unavailable, the Respondents shall notify the designated alternate or the Director of the Waste Management Division, EPA Region IV. Within seven (7) calendar days after the Respondents first became aware of such circumstances, the 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 disclosing any facts that may support the conclusion that the event may cause or

contributes to an endangerment to public health, welfare or the environment. The 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 the 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 XXIV, 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 the Respondent 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, the 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 the Respondents complied with the requirements of paragraph B of this Section. Should the Respondents carry this burden, the delay at issue shall be deemed not to be a violation by the Respondents of the affected obligation of the Consent Order.

XVII. STIPULATED PENALTIES

Unless excused under the provisions of Sections XV or XVI, 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 the 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 draft and final RI/FS Work Plan and Sampling and Analysis Plan;
2. Submittal and, if necessary, modification of the draft and final RI Report;
3. Submittal and, if necessary, modification of the draft and final PS Report; and
4. Payment of oversight costs as provided in Section XVII;

The 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 3rd day	\$250
4th through 7th day	\$500
8th through 14th day	\$1,000
15th through 44th day	\$2,000
45th day and beyond	\$3,000

B. If the Respondents fail to submit a monthly progress report by its due date, the Respondents shall be liable to EPA for stipulated penalties in the amount of \$500 per violation for each day during which the Respondents fail to submit and, if necessary, modify monthly reports.

C. The Respondents shall be liable to EPA for stipulated penalties in the amount of \$500 per violation for each day during which the 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.

Excepting penalties assessed pursuant to C, all stipulated penalties begin to accrue on the day the violation occurs or on the day following the 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 assessed pursuant to C begin to accrue on the date of notification of the violation by EPA. Stipulated penalties shall continue to accrue until the Respondents' violation ends or until the 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 the 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. The 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 IV
Superfund Accounting
P. O. Box 100142
Atlanta, Georgia 30384
ATTENTION: (Collection Officer for Superfund)

The 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 the Respondents do not prevail upon resolution, all penalties shall be due to EPA within 30 days of resolution of the dispute. If the Respondents prevails 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 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 RESPONSE COSTS

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

At the end of each fiscal year, EPA will submit to the 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, costs of performing the Baseline Risk Assessment, the costs of redoing any of the Respondents tasks, and any assessed interest.

EPA's certified Agency Financial Management System Summary data (SPUR Reports) and any other necessary documents, including personnel timesheets and travel vouchers, contractor invoices, timesheets, vouchers and monthly summaries describing specific work activities performed, 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. The 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 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.

The Respondents agree to limit any disputes concerning costs to accounting errors and the inclusion of costs outside the scope of this Consent Order. The Respondents shall identify any contested costs and the basis of its objection. All undisputed costs shall be remitted by the Respondents in accordance with the schedule set out above. Disputed costs shall be paid by the Respondents into an escrow account while the dispute is pending. The Respondents bear the burden of establishing an EPA accounting error or that such costs were not necessary to comply with the Consent Order or were otherwise inconsistent with the National Contingency Plan.

EPA reserves the right to bring an action against the 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. The Respondents reserve all rights they may have to oppose and defend against such claims and actions and to assert any and all claims they may have against EPA and/or any person or government agency. The Respondents reserve any rights they may have to bring any action otherwise available against any person as defined in Section 101(21) of CERCLA.

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 (excluding prior payment of stipulated penalties), and punitive damages for any violation of law or this Consent Order. The Respondents reserve all rights they may have to oppose and defend against such claims and actions and to assert any and all claims they may have against EPA and/or any person or government agency.

Except as otherwise provided herein, EPA and the Respondents expressly reserve all rights and defenses that they may have, including EPA's right both to disapprove of work performed by the Respondents and to require that the Respondents perform

tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order. In the event that the 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 the Respondents thereafter for such costs which are incurred by the United States and the Respondents reserve all rights to contest or defend against such claims or actions. The Respondents reserve all rights they may have to oppose and defend against such claims and actions and to assert any and all claims they may have against EPA and/or any person or government agency.

Following satisfaction of the requirements of this Consent Order, the Respondents shall have resolved their liability to EPA for the performance of the RI/FS 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.

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 the 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. The Respondents reserve all rights they may have to oppose and defend against such claims and actions and to assert any and all claims they may have against EPA and/or any person or government agency.

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, the 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.

The 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. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

The 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 the 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 the Respondents at or relating to the Site.

XXIII. 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 and EPA's Proposed Plan 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 the Respondents of the remedial action alternative selected for the Site.

XXIV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

In consideration of the communications between the Respondents and EPA prior to the issuance of this Consent Order concerning its terms, the 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 the 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 Respondent 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 the Respondents will be construed as relieving the Respondents of their obligation to obtain such formal approval of EPA as may be required by this Consent Order.

XXV. 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.

XXVI. TERMINATION AND SATISFACTION

This Consent Order shall terminate when the Respondents demonstrate in writing and certify to the satisfaction of EPA

that all activities required under this Consent Order, including any additional work, payment of past costs, 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 the Respondents' obligation to comply with Sections XIV, XVIII, and XIX of this Consent Order.

The certification shall be signed by a responsible official representing Escambia County. That official shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete."

IT IS SO AGREED:

BY: Escambia County Date

BY: City of Pensacola Date

BY: Department of the Navy Date

BY: Westinghouse Electric Corporation Date

BY: Southern Bell Telephone and Telegraph Company Date

BY: National Linen Service Industries, Inc. Date

BY: *HA B...*, Group Vice-Pres. September 5, 1991
Armstrong World Industries, Inc. Date

that all activities required under this Consent Order, including any additional work, payment of past costs, 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 the Respondents' obligation to comply with Sections XIV, XVIII, and XIX of this Consent Order.

The certification shall be signed by a responsible official representing Escambia County. That official shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete."

ATTEST: Joe A. Flowers, Comptroller

IT IS SO AGREED:

Marilyn Thompson
Deputy Clerk

- BY: *James Paulock* 9/5/91
Escambia County Chairman of the Board of County Commissioners Date
- BY: _____
City of Pensacola Date
- BY: _____
Department of the Navy Date
- BY: _____
Westinghouse Electric Corporation Date
- BY: _____
Southern Bell Telephone and Telegraph Company Date
- BY: _____
National Linen Service Industries, Inc. Date

that all activities required under this Consent Order, including any additional work, payment of past costs, 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 the Respondents' obligation to comply with Sections XIV, XVIII, and XIX of this Consent Order.

The certification shall be signed by a responsible official representing Escambia County. That official shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete."

IT IS SO AGREED:

BY: _____ Date
Escambia County

BY: _____ Date
City of Pensacola

BY: _____ Date
Department of the Navy

BY: B.R. Melby 9-5-91
Westinghouse Electric Corporation Date

BY: _____ Date
Southern Bell Telephone and
Telegraph Company

BY: _____ Date
National Linen Service Industries, Inc.

that all activities required under this Consent Order, including any additional work, payment of past costs, 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 the Respondents' obligation to comply with Sections XIV, XVIII, and XIX of this Consent Order.

The certification shall be signed by a responsible official representing Escambia County. That official shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete."

IT IS SO AGREED:

BY: Manson W. Tolson 9.5.91
(Respondent) Southern Bell Telephone and Date
(Title) Telegraph Company - Attorney

IT IS SO AGREED AND ORDERED:

BY: _____ Date
Donald J. Guinyard, Acting Director
Waste Management Division
Region IV
U.S. Environmental Protection Agency

09/05/91

16:06

803 743 0563

SOUTH NAVFAC

KILPATRICK&CODY

002



DEPARTMENT OF THE NAVY

SOUTHERN DIVISION

NAVAL FACILITIES ENGINEERING COMMAND

2155 EAGLE DR. P. O. BOX 10068

CHARLESTON, S. C. 29411-0068

PLEASE ADDRESS REPLY TO THE
COMMANDING OFFICER, NOT TO
THE SIGNER OF THIS LETTER.
REFER TO:

5090/11

Code 18211

Mr. Charlie Miller
Director
Escambia County Solid Waste Management
13009 Beulah Road
Cantonment, Florida 32533

Dear Mr Miller:

The Environmental Protection Agency has notified this Command that the Department of the Navy is to be one of many Potentially Responsible Parties (PRP) for the Beulah Landfill Site.

As agreed during the telephone conference call on September 4, 1991 with the other PRP members, we are recommending through our chain-of-command that the Department of the Navy participate according to its liability and responsibility as a Potentially Responsible Party (PRP) to the clean-up efforts at the Beulah Landfill Site.

We have reviewed the Administrative Consent Order (ACO) and the RI/FS Statement of Work for this site, and we are consulting with our counsel on the Department of the Navy's procedure for signing agreements of this nature and committing funds to such efforts. Based on this, we intent to negotiate with the Escambia County, and the United States Environmental Protection Agency.

Please contact Ms. Suzanne O. Sanborn at (803) 743-0574 or Mr. Charlie Black at (803) 743-0353, if you should have any questions.

Sincerely,

C. C. Kieven, CDR
Head of Facilities
Management Department

Copy to:

NAS Pensacola (Mr. Mark Lewis Code 09C)

NO (OP-45)

NAVFACENGCOM (Code 18/09CB3)

EPA Region IV (Mr. Tony Best)

Kilpatrick & Cody Law Office (Ms. Ann Marie Stack)

that all activities required under this Consent Order, including any additional work, payment of past costs, 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 the Respondents' obligation to comply with Sections XIV, XVIII, and XIX of this Consent Order.

The certification shall be signed by a responsible official representing Escambia County. That official shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete."

ATTEST: Joe A. Flowers, Comptroller


Marilyn Lingray
Deputy Clerk

IT IS SO AGREED:

BY: <u><i>Jane Paulock</i></u>	<u>9/5/91</u>
Escambia County	Date
Chairman of the Board of County Commissioners	
BY: _____	_____
City of Pensacola	Date
BY: _____	_____
Department of the Navy	Date
BY: _____	_____
Westinghouse Electric Corporation	Date
BY: _____	_____
Southern Bell Telephone and Telegraph Company	Date
BY: _____	_____
National Linen Service Industries, Inc.	Date

IT IS SO AGREED AND ORDERED:

BY:


Donald J. Guinyard, Acting Director
Waste Management Division
Region IV
U.S. Environmental Protection Agency

SEP 16 1991

Date