Pac Coast Pipeline
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1738-00157

90-03

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

In the matter of: PACIFIC COAST PIPELINES SITE, Fillmore, CA TEXACO INC. 10 Universal City Plaza Universal City, CA 91608-1097 RESPONDENT Proceeding Under Sections 104 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9604 and 9622), as amended by the Superfund Amendments and Reauthorization Act of 1986.	U.S. EPA Docket No. 90-03

ADMINISTRATIVE CONSENT ORDER

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I. AUTHORITY

A. This Consent Order is entered into pursuant to the authority vested in the President of the United States by Sections 104 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as amended by the Superfund Amendments and Reauthorization Act of 1986) ("CERCLA"), 42 U.S.C. §§ 104 and 122. The President delegated this authority to the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Executive Order 12580, 52 Fed. Reg. 2923, and it was further delegated to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by EPA Delegation Nos. 14-8-A and 14-14-C. This authority has been redelegated to the Director, Hazardous Waste Management Division, EPA, Region 9.

B. Texaco Inc ("Respondent"), a Delaware corporation, consents to and agrees not to contest EPA's jurisdiction to enter into and enforce this Consent Order. Respondent's consent does not constitute any admission of liability or violation of law.

II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and Respondent are:

A. To conduct the Remedial Investigation ("RI") described in the Remedial Investigation and Feasibility Study Work Plan ("RI/FS Work Plan"), a copy of which is attached as Attachment A and by this reference made a part of this Consent Order, in order to determine fully the nature and extent of contamination and the potential for harm to the public health or welfare or the en-

vironment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Respondent's facility at 67 East Telegraph Road, Fillmore, California (the "Site" or the "Respondent's facility"), as defined in Section III(A) below. The RI/FS Work Plan specifies work to be performed during the RI, including, among other things, sediment and water sampling, soil core boring and sampling, monitoring well placement, ground water sampling, pumping and aquifer tests. It also includes a list of reports, documents, and other deliverables that Respondent will provide for EPA review, comment and/or approval.

B. To conduct the Feasibility Study ("FS") described in the RI/FS Work Plan for evaluating remedial action alternatives to prevent and eliminate the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site.

C. To undertake all actions described above in accordance with the provisions of CERCLA and the National Contingency Plan ("NCP"), 40 C.F.R. Part 300 et seq., as amended.

III. FINDINGS OF FACT

A. The Site is located at 67 East Telegraph Road adjacent to the eastern boundary of the City of Fillmore, California. This Site served as the location of a Texas Co. oil refinery, owned and operated from the early 1920s up until 1953 by a predecessor of Respondent. Respondent is a corporate successor to Texas Co. During this time, the waste stream of the refinery generated certain wastes which were stored in an open lagoon and

various pits on the approximately 20 acre Site. The Site is also located at the foot of the Topa Topa Mountains of the Transverse Range. South of the facility is the Santa Clara River. Pole Creek forms the western boundary of the site and converges with the Santa Clara river. The Sespe Wildlife area is roughly 4 miles to the northwest of the site. The Fillmore Fish Hatchery is approximately 1.5 miles south east of the site along the Santa Clara River.

B. Onsite hydrogeologic conditions include alluvium of the Recent Pleistocene Age (RP) and the San Pedro Formation (SPF). The RP alluvium is up to 250 feet thick and is composed of gravel, sand and some clay. This alluvium is difficult to differentiate from the underlying SPF which is approximately 4,000 feet thick and consists of gravel, sand and clay.

C. Groundwater occurs in the SPF and in the overlying alluvium and is essentially unconfined. Depth to groundwater varies with seasonal fluctuations but is generally found between 20 and 60 feet below ground surface throughout the basin. Depth to groundwater in the upper aquifer onsite is approximately 85 feet. Deeper groundwater aquifers within a three mile radius of the site are used for domestic, agricultural, and industrial purposes. The City of Fillmore is served by two city wells and a reserve well, all within a three mile radius of the site. Municipal wells serve approximately 10,000 residents and 4,000 acres of agriculture. Finally, surface water from the site feeds into Pole Creek, a tributary of the Santa Clara River which serves as spawning waters for the endangered Steelhead trout.

There is no current water quality data for the municipal wells or the surface waters of Pole Creek.

D. Hazardous substances were found in soils on site in 1982. Some of these substances included lead and arsenic. Additional substances were later discovered in the groundwater on-site: benzene, ethylbenzene, toluene, phenols and naphthalene. Texaco conducted a site investigation and remediation activities including, but not limited to, a removal of approximately 38,000 tons of contaminated soil to a Class I RCRA facility. Data collected following the excavation and removal of soils reveals additional contamination at the bottom of the main waste pit area. Soils samples detected benzene (610ppb, SB-10-5'), ethylbenzene down to 15 feet below the main waste pit area (18,000ppb, SB-1-2') and napthalene. Recent groundwater data reveals benzene (.7ppm, MW-17, 11/26/88), ethylbenzene (.4ppm, p-2, 11/16/88) and toluene (.11ppm, MW-17, 11/16/88).

E. On June 24, 1988 (Fed. Register 23988), the site was proposed for inclusion on the Environmental Protection Agency's National Priorities List (NPL) as defined in Section 105 of CERCLA (42 U.S.C §9605). Respondent sent objections to the inclusion proposal and does not agree the Site is appropriate for listing on the NPL.

F. The above findings of fact are made by EPA and Respondent does not agree with or stipulate to any of the above findings.

IV. CONCLUSIONS OF LAW

A. The Site is a "facility" as defined in Section 101 (9)

of CERCLA, 42 U.S.C. § 9601 (9).

B. Respondent is a "person" as defined in Section 101 (21) of CERCLA, 42 U.S.C. § 9601 (21).

C. There are chemicals and their constituents at the Site which are "hazardous substances" as defined in Section 101 (14) of CERCLA, 42 U.S.C. § 9601(14).

D. The past, present, and potential migration of hazardous substances from the Site constitutes an actual or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

E. Respondent is a potentially responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

F. The above conclusions of law are made by EPA and Respondent does not agree with or stipulate to any of the above conclusions.

V. DETERMINATIONS

A. EPA has determined that the actions required by this Consent Order are necessary to protect the public health, welfare and the environment.

B. The above determination is made by EPA, and Respondent does not agree with or stipulate to any of the above determinations.

VI. WORK TO BE PERFORMED

It is recognized that the Respondent has already performed substantial remedial work on the Site. All response work remaining to be conducted at the site shall be performed pursuant to this Consent Order under the direction and supervision of a

qualified professional engineer or a certified geologist with expertise in hazardous waste site investigation. Within 30 days prior to initiation of site work, Respondent shall notify EPA in writing of the name, title, and qualifications of such engineer or geologist and of any contractors and/or subcontractors to be used in carrying out the terms of this Consent Order. The qualifications of the persons undertaking the work for Respondent shall be subject to EPA's review, for verification that such persons meet the minimum technical background and experience. If EPA, in writing, disapproves of the technical qualifications of any persons(s), Respondent shall notify EPA within 30 days of the written notice, of the identity and qualifications of the replacement(s). If EPA subsequently disapproves of the replacement(s), EPA reserves its right under CERCLA and the NCP to conduct a complete RI/FS, and to seek reimbursement for costs from Respondent.

It is hereby AGREED TO AND ORDERED that the following work shall be performed by Respondent:

A. Respondent shall perform the tasks and submit reports contained in the RI/FS Work Plan (Attachment A). All such work shall be conducted in accordance with Attachment A, CERCLA, the NCP, and EPA guidance. EPA will perform the Endangerment Assessment ("EA") portion of the FS pursuant to EPA Guidance. EPA will coordinate with Respondent to integrate the EA into the FS. Deliverables to be submitted by Respondent according to the schedule contained in the RI/FS Work Plan are listed below. This list includes the type of review that EPA will conduct (either

"Review and Comment" or "Review and Approve"). EPA review, comment or approval may include review and comment by the California Department of Health Services and the Regional Water Quality Control Board. Each deliverable should include any items listed with it, as well as items described in the RI/FS Work Plan. These specifics are meant as a framework for each deliverable's content. Open discussions between Respondent and EPA will be necessary to assure that deliverables contain sufficient detail. Any reports, plans, specifications, schedules, and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Unless EPA grants an extension or makes modifications, any non-compliance with such EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Consent Order and will subject Respondent to stipulated penalties in accordance with Section XII of this Consent Order. For the purposes of this Consent Order, "day" means calendar day unless otherwise specified in this Consent Order.

1. Deliverables:

a) <u>Monthly Status Reports</u>

EPA Review and Comment

(1) A description of progress made during the reporting period.

(2) A summary of items submitted to EPA under the Consent Order during the reporting period.

(3) A list of samples submitted to chemical laboratories, including those for which analyses have been returned, and those for which analyses have not been returned during the reporting period.

(4) Results of all sampling and/or tests or other technical data generated by Respondent or on Respondent's behalf during the previous month.

(5) A description of work planned for the next two

months with schedules included.

(6) A description of all problems encountered, solutions developed and implemented for those problems, and problems anticipated within the next two months.

b) <u>Site Background Summary Report</u>

Draft: EPA Review and Comment
Final: EPA Review and Approve

c) <u>Health and Safety Plan</u>

EPA Review and Comment

d) <u>Sampling and Analysis Plan ("SAP")</u>

Draft: EPA Review and Comment
Final: EPA Review and Approve

e) <u>Hydrogeologic Investigation Report</u>

Draft: EPA Review and Comment
Final: EPA Review and Approve

f) <u>Subsurface Soil Investigation Report</u>

Draft: EPA Review and Comment
Final: EPA Review and Approve

g) <u>Soil Gas Investigation Report</u>

Draft: EPA Review and Comment
Final: EPA Review and Approve

h) <u>Surface Water and Stream Sediment Report</u>

Draft: EPA Review and Comment
Final: EPA Review and Approve

i) <u>Surface Soil Report</u>

Draft: EPA Review and Comment
Final: EPA Review and Approve

j. <u>Air Investigation Report</u>

Draft: EPA Review and Comment
Final: EPA Review and Approve

k) <u>Technical Memorandum: Completion of Field Support Activities</u>

Draft: EPA Review and Comment
Final: EPA Review and Approve

l) Treatability Studies

Draft: EPA Review and Comment
Final: EPA Review and Approve

m) Remedial Investigation Report

Draft: EPA Review and Comment
Final: EPA Review and Approve

n) Development & Screening of Remedial Technologies Report

Draft: EPA Review and Comment

o) Detailed Analysis of Remedial Alternatives Report

Draft: EPA Review and Comment

p) Feasibility Study Report

Draft: EPA Review and Comment
Final: EPA Review and Approve

This work shall be consistent with all applicable requirements of CERCLA and the NCP and shall be conducted in accordance with EPA RI/FS guidances ("Guidance for Conducting Remedial Investigations Feasibility Studies Under CERCLA," October, 1988) and any EPA updates or revisions to those guidances, and with the standards, specifications, and schedule contained in the approved RI/FS Work Plan. The RI/FS Work Plan is not subject to Dispute Resolution (Section XI) procedures.

B. EPA shall, as indicated above, review, comment upon, and approve or disapprove each report, document or other deliverable. Within the time period scheduled for review of Respondent's submittals, EPA shall notify Respondent in writing of EPA's approval, disapproval or if additional review time is required. In the event of any disapproval, EPA shall specify the reasons for such disapproval and recommended modifications.

1. Within 30 days, or more if needed, of receipt of

Respondent's draft submittals pursuant to subparagraphs A.1.(b), (d), (e), (f), (g), (h), (i), (j), (k), (l), (n), and (o), EPA shall submit to Respondent its comments. Respondent shall submit its final deliverable incorporating EPA's comments within 30 days of receiving EPA's comments.

2. Within 45 days, or more if needed, of receipt of Respondent's draft submittals pursuant to subparagraphs A.1.(m) and (p), EPA shall submit to Respondent its comments. Respondent shall submit its final deliverables incorporating EPA's comments within 45 days of receiving EPA's comments.

3. Respondent may begin Dispute Resolution (Section XI) procedures, if appropriate, after it receives EPA's approval or disapproval of the amended deliverable.

4. Respondent's deadlines will be extended for an amount equal to any extra time needed by EPA beyond the time specified above to review and comment on the above deliverables.

C. In the event of unanticipated or changed circumstances at the Site, Respondent shall notify the EPA Project Coordinator by telephone within 24 hours of the discovery of the unanticipated or changed circumstances.

D. EPA may determine that additional RI/FS tasks, including, but not limited to, remedial investigatory work, engineering evaluation, interim response measures or tasks added in response to public comment are necessary as part of the RI/FS. Respondent agrees to implement any additional tasks which EPA determines are necessary as part of the RI/FS, including the Endangerment Assessment. The additional work shall be completed in accordance

with the standards, specifications, requirements, and schedules determined or approved by EPA.

E. Documents, including progress and technical reports, approvals, disapprovals, and other correspondence to be submitted pursuant to this Consent Order, shall be sent to the following addressees or to such other addresses as the parties hereafter may designate in writing, and shall be deemed submitted on the date received by EPA or Respondent.

1) Documents to be submitted to EPA shall be sent to:

Mr. Michael M. Montgomery
Remedial Project Manager (T-4-2)
Hazardous Waste Management Division
U.S. EPA, Region 9
215 Fremont Street
San Francisco, CA 94105

Copies shall be sent to:

Terry L. Foreman
CH2M Hill
2510 Red Hill, Suite A
Santa Ana, CA 92705

Joseph Crisologo
L.A. Dept. of Health Services
1405 N. San Fernando, Suite 300
Burbank, Ca 91504

Jim Ross
Groundwater Section
L.A. Regional Water Quality Control Board
101 Centre Plaza Drive
Monterey Park, CA 91754-2156

2) Documents to be submitted to Respondent shall be sent to:

Mr. Gordon A. Turl
Manager, Environmental Programs
Research & Environmental Affairs Department
Texaco Inc
10 Universal City Plaza
Universal City, CA 91608-1097

VII. DESIGNATED PROJECT COORDINATORS

A. EPA hereby designates the following person as Project Coordinator who shall have the authorities, duties, and responsibilities vested in the Remedial Project Manager by the National Contingency Plan:

Mr. Michael M. Montgomery
Remedial Project Manager (T-4-2)
Hazardous Waste Management Division
U.S. EPA, Region 9
215 Fremont Street
San Francisco, CA 94105

Respondent hereby designates the following person as its Project Coordinator who shall be responsible for overseeing the implementation of this Consent Order:

Mr. Gordon A. Turl
Manager, Environmental Programs
Research & Environmental Affairs Department
Texaco Inc
10 Universal City Plaza
Universal City, CA 91608-1097

The EPA Project Coordinator will be EPA's designated representative at the Site. To the maximum extent possible, all oral communications between Respondent and EPA concerning the activities performed pursuant to this Order shall be directed through the Project Coordinators. All documents, including progress and technical reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be delivered in accordance with paragraph VI(E) above.

B. EPA and Respondent may change their respective Project Coordinators. Such a change shall be accomplished by notifying

the other party in writing at least one week prior to the change.

C. Consistent with the provisions of this Consent Order, the EPA Project Coordinator shall also have the authority vested in the On-Scene-Coordinator ("OSC") by the NCP, unless EPA designates a separate individual as OSC, who shall then have such authority. This includes, but is not limited to, the authority to halt, modify, conduct, or direct any tasks required by this Consent Order and/or under take any response actions (or portions of the response action) when conditions present or may present a threat to public health or welfare or the environment as set forth in the NCP.

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

VIII. SITE ACCESS

A. To the extent that Respondent requires access to land other than land it owns, Respondent will use its best efforts to obtain access agreements from the present owners or lessees within 60 days of the effective date of this Consent Order. Such agreements shall provide reasonable access for EPA, its contractors and oversight officials, the state and its contractors, and Respondent or its authorized representatives. In the event that Respondent is not able to obtain site access to property owned or controlled by persons or entities other than Respondent, Respondent shall notify EPA promptly regarding both the lack of, and efforts to obtain, such access. Nothing in this Consent Order shall be deemed a limit upon EPA's authority under federal law to gain access to the Site.

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B. No conveyance of title, easement, or other interest in the property comprising the Site shall be consummated without a provision permitting the continuous implementation of the provisions of this Consent Order.

C. Respondent shall permit EPA, or its authorized representatives, to have reasonable access at all times to the Site to monitor any activity conducted pursuant to the RI/FS Work Plan or conduct such tests or investigations as EPA deems necessary. Nothing in this Consent Order shall be deemed a limit upon EPA's authority under federal law to gain access to the Site.

IX. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

A. Respondent shall provide EPA with the results and Quality Assurance/Quality Control (QA/QC) documentation of all sampling and/or tests or other technical data generated by Respondent or on Respondent's behalf with regard to soil, ground water, surface water, or air contamination by hazardous substances, pollutants, or contamination at the Site. Details and documentation of all sampling and analysis data collection completed during the previous month shall be presented in a monthly report.

B. At the request of EPA, Respondent shall provide split or duplicate samples to EPA and/or its authorized representatives of any samples collected by Respondent as part of the RI/FS Work Plan. Respondent shall notify EPA of any planned sample collection activity in the preceding monthly report. At the request of Respondent, EPA shall make available to Respondent the analytical results from the testing of split or duplicate samples.

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C. Respondent shall use quality assurance, quality control, and chain of custody procedures described in the "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, EPA-330/9-78-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans, " December 1980, QAMS-005/80, and any EPA updates or revisions to these guidances, while conducting all sample collection and analysis activities required by the Consent Order. Respondent shall consult with EPA in planning for and prior to, all sampling and analysis as detailed in the RI/FS Work Plan. To provide quality assurance and maintain quality control, Respondent shall:

1. Use a laboratory which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

2. Ensure that EPA personnel and /or EPA authorized representatives are allowed reasonable access to the laboratory and personnel utilized by Respondent for analysis.

3. Ensure that the laboratory used by Respondent for analysis, performs according to a method or methods deemed satisfactory to EPA and submits all protocols to be used for analysis to EPA at least 10 days before beginning analysis.

D. Respondent shall permit EPA and/or its authorized representative to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, that in any way concern soil, ground water, surface water or air contamination at the site. Nothing in this Consent Order shall be interpreted as limiting EPA's inspection authority under federal law.

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E. Respondent 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). Analytical data and data covered by Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by Respondent and shall be provided to EPA by Respondent. 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 Respondent.

F. All data, factual information, and documents submitted by Respondent to EPA pursuant to this Consent Order shall be subject to public inspection.

X. RECORD PRESERVATION

Respondent agrees that it shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after the final Record of Decision for the Site has been signed, a central depository of the records and documents required to be prepared under the RI/FS Work Plan. Respondent shall acquire and retain copies of all documents that relate to hazardous substance contamination at the Site and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this six year period, Respondent shall notify EPA at least 30 days before the documents are scheduled to be destroyed. If EPA requests that the documents should be saved, Respondent shall, at no cost to EPA, provide EPA with the documents or copies of the documents.

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XI. DISPUTE RESOLUTION

If Respondent objects to any EPA decision pusuant to this Consent Order, Respondent shall notify EPA in writing of its objections within fourteen (14) calendar days of receipt of the decision. EPA and Respondent will then have an additional fourteen (14) calendar days from receipt by EPA of the notification of objection to reach agreement. At the end of the fourteen (14) day discussion period, EPA shall provide a written statement of its decision to Respondent. Respondent shall then implement EPA's decision. Use of the dispute resolution provision will not relieve Respondent's duty to complete the other tasks in a timely manner in accordance with the schedule. This dispute resolution provision or EPA's decision pursuant to this provision does not grant or imply jurisdiction to any court to review EPA's decisions pursuant to this Consent Order. Respondent reserves any rights it may have to seek judicial review.

XII. STIPULATED PENALTIES

A. Except with respect to any extensions allowed by EPA in writing, or excused by the provisions of Section XIII (Force Majeure), for each day in which Respondent fails to submit a report or document, or in which Respondent otherwise fails to achieve the requirements of this Order, Respondent agrees to pay the sum set forth below as stipulated penalties. These penalties shall accrue commencing upon the earliest of the following occurrences: Respondent's receipt of the written determination of disapproval of a final deliverable, as specified in Section VI; the failure of Respondent to meet the schedule specified or modified

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by EPA in the RI/FS Work Plan (Attachment A); or Respondent's receipt of written notice from EPA that a violation of this Consent Order has occurred. Dispute Resolution shall not stay the accrual of these stipulated penalties.

B. Stipulated penalties shall accrue according to the following schedule:

1. For each day that Respondent fails to submit an adequate or timely Monthly Status Report or deliverable to be submitted pursuant to Section VI, paragraph A.1.(b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (n), or (o), Respondent shall pay the following:

Days 1-7	$ 500/day
Days 8-14	$1,000/day
Days 15-30	$2,000/day
After 30 days	$5,000/day

2. For each day that Respondent fails to submit adequate or timely deliverables pursuant to Section VI, paragraph A.1.(m), Remedial Investigation Report, or (p), Feasibility Study Report, and for each day of any failure to achieve the other requirements of this Consent OrderRespondent shall pay:

Days 1-7	$ 5,000/day
Days 8-14	$10,000/day
Days 15-30	$15,000/day
After 30 days	$25,000/day

C. Respondent's payment of stipulated penalties shall be due upon demand by the Director, Hazardous Waste Management Divi-

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sion, U.S. EPA, Region 9, by certified check made payable to the United States Treasury and addressed to:

U.S. Environmental Protection Agency
Region 9, Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

Respondent shall send a cover letter with any check and the letter shall identify the Site by name and make reference to this Consent Order. Respondent shall send simultaneously to the EPA Project Coordinator a notification of any penalty paid, including a photocopy of the check.

D. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of Respondent's failure to comply with this Consent Order; provided, however that EPA shall not seek monetary damages for violations of this Consent Order for which Respondent has paid stipulated penalties pursuant to this Section. EPA will notify Respondent of its determination to pursue other remedies or sanctions.

XIII. FORCE MAJEURE

A. If any event occurs which causes delay in the achievement of the requirements of this Consent Order, Respondent shall have the burden of proving that the delay was caused by circumstances beyond the reasonable control of Respondent, its contractors, and agents and that cannot be overcome by their due diligence. Economic hardship and increased costs of performance shall not be considered events beyond the control of Respondent, their contractors, and agents and shall not trigger the force

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majeure clause. In the event of a force majeure, the time for performance of the activity delayed by the force majeure shall be extended for the time period of the delay attributable to the force majeure. The time for performance of any activity dependent on the delayed activity shall be similarly extended, except to the extent that the dependent activity can be implemented in a shorter time. EPA shall determine whether subsequent requirements are to be delayed and the time period granted for any delay. Respondent shall adopt all reasonable measures to avoid or minimize any delay caused by a force majeure.

B. When an event occurs or has occurred that may delay or prevent the performance of any obligation under this Consent Order, which Respondent believes is due to force majeure, Respondent shall notify by telephone the EPA Project Coordinator, or, in his/her absence, the Director of the Hazardous Waste Management Division of EPA, Region 9, within 48 hours of the commencement of such event. Oral notification shall be followed by written notification, made within seven business days of the telephone notification. The written notification shall fully describe: the reasons for the delay; the reasons the delay is beyond the reasonable control of Respondent, its contractors, and agents; the anticipated duration of the delay; actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and any aspects of the event which may cause or contribute to an endangerment to public health, welfare, or the environment.

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C. Failure of Respondent to comply with the force majeure notice requirements will be deemed an automatic forfeiture of its right to request a delay.

D. If EPA and Respondent cannot agree that any delay in compliance with the requirements of this Consent Order has been or will be caused by the circumstances beyond the reasonable control of Respondent, its contractors, and agents, or on the duration of any delay necessitated by a force majeure event, the dispute shall be resolved according to the dispute resolution provisions in Section XI. Respondent shall have the burden of proving by clear and convincing evidence: that the delay was caused by circumstances beyond the reasonable control of Respondent, its contractors, and agents; that reasonable measures were taken to avoid or minimize delay; and the necessity of the duration of the delay.

XIV. RESERVATION OF RIGHTS AND RELEASE

A. Notwithstanding compliance with the terms of this Consent Order, including the completion of an EPA approved Remedial Investigation and Feasibility Study, Respondent is not released from liability, if any, for any actions outside the scope of this Consent Order taken by EPA respecting the Site. EPA reserves the right to take any enforcement action pursuant to CERCLA and/or any other legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages for any violation of law or this Consent Order. EPA and Respondent expressly reserve all rights and defenses that they may have, including EPA's right both to disapprove of work performed by Respondent

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and to request that Respondent perform tasks in addition to those detailed in the RI/FS Work Plan, as provided in this Consent Order, and including Respondent's legal and equitable defenses it may have. EPA reserves the right to undertake removal actions and/or remedial actions at any time. EPA reserves the right to seek reimbursement from Respondent for such costs incurred by the United States. Respondent reserves its right to rely on the definition of hazardous substance as set forth in CERCLA § 101(14) as a defense to any liability outside the scope of this Consent Order.

B. In consideration of the Respondent's agreement to undertake the obligations described herein, upon the effective date of this Consent Order, EPA hereby covenants not to sue the Respondents for work conducted satisfactorily pursuant to this Consent Order. If no further actions are required under this Consent Order, Respondent is released from any further work requirements hereunder, and is subject only to the obligation to preserve records and pay any accrued costs or stipulated penalties. This release shall not apply either to conditions unknown on the date EPA provides the Respondent notice that requirements of this Consent Order are satisfied and have been completed or to unanticipated occurrences at the Site.

XV. REIMBURSEMENT OF RESPONSE AND OVERSIGHT COSTS

Within 180 days of the effective date of this Consent Order, EPA will submit to Respondent an accounting of all response and oversight costs, including indirect costs, incurred by EPA associated with this Site to the effective date of the Consent Or-

der. In addition, no more often than annually, EPA shall submit to Respondent an accounting of all response and oversight costs incurred by the U.S. Government with respect to this Consent Order. EPA's Agency Financial Management System summary data (SPUR Reports) shall serve as the basis for payment demands. Respondent shall, within fifty (50) calendar days of receipt of each accounting, remit a check for the amount of those costs made payable to the Hazardous Substance Response Trust Fund. Checks should specifically reference the identity of the Site and be addressed to:

U.S. Environmental Protection Agency
Region 9, Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

A copy of the transmittal letter shall be sent simultaneously to the EPA Project Coordinator. EPA reserves the right to bring an action against Respondent pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by Respondent as well as any other unreimbursed past and future costs incurred by the United States in connection with response activities conducted pursuant to CERCLA at this Site.

XVI. OTHER CLAIMS

A. This Consent Order does not release Respondent from any other claim, cause of action or demand in law or equity, outside the scope of this Consent Order.

B. In entering into this Consent Order, Respondent waives any right to seek reimbursement or present any claim under Sec-

tions 106, 111, or 112 of CERCLA, 42 U.S.C. §§ 9606, 9611, or 9612, for any work performed pursuant to this Consent Order and any modifications thereto.

C. Each party shall bear its own attorneys fees and costs with respect to all matters associated with this Consent Order.

XVII. OTHER APPLICABLE LAWS

Respondent shall undertake all actions required by this Consent Order 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.

XVIII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

Respondent agrees to indemnify and hold the United States Government, its agencies, departments, agents, contractors, and employees, harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondent, its officers, employees, receivers, trustees, agents, or assigns, in carrying out the activities pursuant to this Consent Order. EPA is not a party in any contract involving the Respondent at the Site.

XIX. COMMUNITY RELATIONS/PUBLIC COMMENT

EPA will implement a Community Relations Program in accordance with Agency policies, guidance documents, and public comment policy. Respondent shall participate in the community relations activities when deemed appropriate by EPA. Respondent reserves the right to publicly respond to any oral or written statements by EPA.

XX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

A. This Order is effective on the date signed by EPA.

B. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specification, schedules, and any other writing submitted by Respondent will be construed as relieving Respondent of its obligation to obtain such formal approval as may be required by this Consent Order. The attached Work Plan will be subject to public comment following the signing of the Order. EPA may make changes to the Work Plan based on the public comment.

C. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA approved reports, plans, specifications, schedules, and attachments shall be considered a failure to achieve the requirements of this Consent Order and may subject the Respondent to the penalties set forth in Section XII.

XXI. PARTIES BOUND

This Consent Order shall apply to and be binding upon Respondent and EPA, their agents, successors, and assignees. No change in ownership or corporate or partnership status will alter Respondent's obligations under this Consent Order. The signatories to this Consent Decree certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. Respondent shall provide a copy of this Consent Order to all contractors, sub-contractors, laboratories, and con-

due to the quality of the original."

sultants retained to conduct any portion of the work performed pursuant to this Consent Order within 14 calendar days of the effective date of this Consent Order or date of such retention. Respondent shall provide a copy of this Consent Order to any subsequent owner(s) or successor(s) before ownership rights are transferred.

XXII. NOTICE TO THE STATE

EPA is notifying the State of California pursuant to the requirements of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), by providing the State a copy of this Consent Order and the Work Plan.

XXIII. TERMINATION AND SATISFACTION

The provisions of the Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that all of the terms of this Consent Order, including any additional tasks which EPA has determined to be necessary, have been completed.

IT IS SO AGREED AND ORDERED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: 11-15-89
Jeff Zelikson, Director
Hazardous Waste Management Division
Region 9

TEXACO INC

By: _____ Date: 10/13/89
Name: R. R. Dickinson
Title: Vice President - Technology