UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Certified Mail No.

Return Receipt Requested

Phil Gennarelli
Chairman
Regent Energy Corporation
One WestChase Center
10777 Westheimer, Suite 1100
Houston, Texas 77077

Regent Energy Corporation
c/o John Ehrman
Registered Agent
11B Vallee de Suerte
Tesuque, New Mexico 87506

Ken Wiley
Regent Energy Corporation.
650 North Sam Houston Parkway East, Suite 500
Houston, Texas 77060

Re: Order OPA-9-2002-0006
Regent Energy Corporation Facilities, Farmington, New Mexico

Dear Mr. Gennarelli:

The United States Environmental Protection Agency ("EPA") hereby issues the enclosed Order, EPA Docket No. 7003-9-2002-0004 (the "Order"), pursuant to EPA's authority under Section 311(c) and (e) of the Clean Water Act, 33 U.S.C. § 1321(c) and (e), and Sections 3013(a) and 7003(a) of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6934(a) and 6973(a). The Order requires Regent Energy, Inc. to investigate and remove oil contamination from the Northeast Hogback and Horseshoe Gallup Units within the Navajo Nation, near Farmington, New Mexico.

Please be advised that, pursuant to Section XXIII of the Order, the Effective Date is fourteen (14) days after the last signature by EPA. Pursuant to Section XXI, you may request a

compliance conference within three (3) days after receipt of this Order. The Order requires work plans to be submitted to EPA within thirty (30) days after the Effective Date. EPA encourages you to contact Pete Reich, at (415) 972-3052, if you have any questions regarding the work required by this Order. Please direct all legal questions to Andrew Helmlinger at (415) 972-3904.

Thank you for your time and cooperation in this matter.

Sincerely,

for Jane Diamond
Acting Superfund Division Director
Environmental Protection Agency, Region 9

encl: Order 7003-9-2002-0004

cc: Navajo Nation Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION
75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:	)	Docket No: OPA-9-2002-0006
	)	
	)	
Regent Energy Corporation	)	Proceeding under Sections 311(c) and (e) of
Horseshoe Gallup and	)	the Clean Water Act, 33 U.S.C. §§ 1321(c)
Northeast Hogback Units,	)	and (e); Sections 3013(a) and 7003(a) of the
San Juan County, New Mexico	)	Resource Conservation and Recovery Act,
	)	as amended, 42 U.S.C. §§ 6934(a) and
RESPONDENT	)	6973(a)
	)	
	)	
	)	
	)	

RCRA SECTION 3013(a), 7003(a) and CWA SECTIONS 311(c) and (e) ORDER REQUIRING RESPONSE, MONITORING, TESTING, ANALYSIS AND REPORTING

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RCRA SECTION 3013(a), 7003(a) and CWA SECTION 311(c) and (e) ORDER REQUIRING RESPONSE, MONITORING, TESTING, ANALYSIS AND REPORTING

I. JURISDICTION

1. This Administrative Order OPA-09-2002-0006 (the "Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") by Sections 311(c) and (e) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1321(c) and (e), and by Sections 3013(a) and 7003(a) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6934(a) and 6973(a). The authority to issue this Order has been delegated to the Regional Administrator of EPA Region 9, and duly redelegated among the regional EPA Directors of the Superfund Division and the Waste Management Division through regional directives R9 1250.29, R9 1250.30, R9 1280.05, and R9 1280.20.

2. This Order is issued to Regent Energy Corporation ("Regent" or "Respondent"), a corporation doing business in San Juan County, New Mexico, within the boundaries of the Navajo Nation. Regent owns and operates oil production facilities located in San Juan County, New Mexico within the Navajo Nation known as the Horseshoe Gallup and Northeast Hogback Units (the "Regent Facilities").

3. This Order is based on the administrative record compiled by EPA and incorporated herein by reference. The record is available for review by the Respondent and the public at EPA's Regional Office at 75 Hawthorne Street, San Francisco, California.

II. PARTIES BOUND

4. The provisions of this Order shall apply to and be binding on Respondent and its officers, directors, employees, agents, contractors, successors, and assigns.

5. No change in ownership, corporate, or partnership status relating to the Regent Facilities described in this Order will in any way alter the status or responsibility of Respondent under this Order. Any conveyance by Respondent of title, easement, or other interest in the Regent Facilities described herein, or a portion of such interest, shall not affect Respondent's obligations under this Order. Respondent shall be responsible and liable for any failure to carry out all activities required of Respondent by this Order, irrespective of its use of employees, agents, contractors, or consultants to perform any such tasks.

6. Respondent shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Order within seven (7) calendar days of the Effective Date of this Order, or on the date of such retention, whichever is later, and Respondent shall condition all such contracts

on compliance with the terms of this Order.

7. Any documents transferring ownership or operation of the Regent Facilities from Respondent to a successor-in-interest shall include written notice of this Order. In addition, Respondent shall, no less than thirty (30) days prior to transfer of ownership or operation of the Regent Facilities, provide written notice of this Order to its successor-in-interest, and written notice of said transfer of ownership or operation to EPA.

III. FINDINGS OF FACT

8. The Regent Facilities are large oil production operations producing and storing crude oil and other petroleum materials on the Horseshoe Gallup and Northeast Hogback Units in San Juan County, New Mexico, within the Navajo Nation. Respondent operates the Regent Facilities. The Regent Facilities are approximately within one-quarter mile of tributaries of Eagle Nest Arroyo, and tributaries of the San Juan River, which are waters of the Navajo Nation and the United States.

9. In February, March and April, 2002, Navajo Nation Environmental Protection Agency ("NNEPA") staff inspected several oil spills from the Regent Facilities' buried and aboveground flowlines, oil production equipment, and storage tanks, and identified threats and impacts from oil discharges into Eagle Nest Arroyo, and tributaries of the San Juan River.

10. On May 6th, 2002, EPA conducted a Spill Prevention Control and Countermeasure ("SPCC") inspection with NNEPA staff at the Regent Facilities. EPA identified inadequate secondary containment and response planning at the Regent Facilities. EPA observed crude petroleum waste in and around the Regent Facilities.

11. On May 22, 2002, EPA returned to the Regent Facilities with NNEPA staff to investigate oil spill impacts to the Eagle Nest Arroyo, and associated tributaries of the San Juan River. EPA and NNEPA continued to observe oil impacts from crude petroleum discharges in these areas and their adjoining shorelines. The crude petroleum contains greater than .5 mg/l benzene.

12. Respondent has not undertaken response actions to abate the threat and impact from the discharges. The threat of petroleum wastes in these areas will increase during storm events, additionally increasing during the rainy season.

IV. DETERMINATIONS AND CONCLUSIONS OF LAW

13. The Regent Facilities are each respectively a "facility or site" within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), and a "facility" within the meaning of Section 311(e)(1) of CWA, 33 U.S.C. § 1321(e)(1).

14. Respondent is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C.

§ 6903(15), and as defined in Section 311(a)(7) of CWA, 33 U.S.C. § 1321(a)(7).

15. Respondent is the "owner or operator" of the Regent Facilities within the meaning of Sections 3013(a) and 7003(a) of RCRA, 42 U.S.C. §§ 6934(a) and 6973(a), and as defined in Section 311(a)(6) of CWA, 33 U.S.C. § 1321(a)(6).

16. Section 1004(27) of RCRA, 42 U.S.C. § 6905(27), defines the term "solid waste" to mean "any garbage, refuse . . . and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations . . . ." The discarded petroleum material on the ground and entering Eagle Nest Arroyo and other unnamed tributaries from the Regent Facilities is a "solid waste," as defined in Section 1004(27) of RCRA.

17. The discharged petroleum material in and around the Regent Facilities is a "hazardous waste" as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), which defines the term "hazardous waste" to mean:

> a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may-
>
> > (A) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or
> >
> > (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

18. Section 1004(3) of RCRA, 42 U.S.C. § 6903(3), defines the term "disposal" to mean "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters." The spilled petroleum material in and around the Regent Facilities and in the Eagle Nest Arroyo, and tributaries of the San Juan River was the result of "disposal," as defined in Section 1004(3) of RCRA 42 U.S.C. § 6903(3).

19. Section 311(a)(2) of CWA, 33 U.S.C. § 1321(a)(2), defines the term "discharge" to include, but not be limited to, "any spilling, leaking, pumping, pouring, emitting, emptying or dumping . . . ." The petroleum material in, around and from the Regent Facilities and in the tributaries of the San Juan River was the result of a "discharge," as defined in Section 311(a)(2) of CWA 42 U.S.C. § 1321(a)(2).

20. The Eagle Nest Arroyo, the unnamed tributaries of the San Juan River, and the San Juan River are "navigable waters," as defined by 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

21. The spilled petroleum material in, around and from the Regent Facilities and in the tributaries of the San Juan River is an "oil," as defined in Section 311(a)(1) of CWA, 33 U.S.C. § 1321(a)(1). The spilled petroleum material in and around the Regent Facilities and in the Eagle Nest Arroyo, and tributaries of the San Juan River has caused or could cause a film or sheen, and caused a sludge or emulsion, and therefore exceeds the level that "may be harmful" for the purpose Section 311(b)(3) of CWA, 33 U.S.C. § 1321(b)(3), as defined by Section 311(b)(4) of CWA, 33 U.S.C. § 1321(b)(4) and 40 C.F.R. § 110.3. The discharge therefore is an actual or threatened discharge of oil in violation of Section 311(b)(3) of CWA, 33 U.S.C. § 1321(b)(3).

22. Based on the foregoing Findings of Fact, and pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), EPA has hereby determined that the Regent Facilities, owned and operated by Respondent, are facilities at which hazardous wastes are present and at which hazardous wastes have been generated, treated, stored and disposed, and that there may be a substantial hazard to human health or the environment due to the presence of hazardous wastes and constituents and potential releases of hazardous wastes and constituents from the Regent Facilities.

23. Based on the foregoing Findings of Fact, and pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), EPA has hereby determined that Respondent's past or present handling, storage, treatment, transportation or disposal of solid or hazardous waste at the Regent Facilities may present an imminent and substantial endangerment to health or the environment.

24. Based on the foregoing Findings of Fact, and pursuant to Sections 311(c) and (e) of CWA, 33 U.S.C. § 1321(c) and (e), EPA has hereby determined that there may be an imminent and substantial threat to the public health or welfare of the United States because of an actual or threatened discharge of oil from the Regent Facilities into the navigable waters of the United States or adjoining shorelines in such quantities as may be harmful. EPA also has determined that the actions required by this Order are necessary to ensure the removal, mitigation or prevention of a substantial threat of the discharge of oil or a hazardous substance into navigable waters, adjoining shorelines or such discharges that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.

25. EPA has further determined that Respondent, as owner and operator of the Regent Facilities, is the party responsible for conducting the actions ordered herein, which are necessary to ascertain and abate the source, nature and extent of the hazard to human health or the environment.

V. ORDER

26. Based on the Findings of Fact and Determinations and Conclusions of Law, and pursuant to Sections 311(c) and (e) of CWA, 33 U.S.C. §§ 1321(c) and (e), and Sections 3013(a) and 7003(a) of RCRA, 42 U.S.C. §§ 6934(a) and 6973(a), Respondent is hereby ordered to immediately commence the removal of all oil contaminated soil from each impacted drainage wash, tributary, and adjoining shoreline, and to submit within thirty (30) days of the Effective

Date of this Order three (3) copies of a written proposal to EPA, subject to review as set forth in Section VIII, for carrying out the activities listed below. Respondent is hereby ordered to implement such proposal once approved, or modified and approved, by EPA. Such written proposal shall be specific and shall include, but is not limited to, the following:

A. A soil sampling and analysis work plan, which shall provide for weekly progress reports, to collect and analyze representative soil samples to determine the nature and extent of any soil contamination in, around and from the Regent Facilities. The samples shall include near surface soils and extend to the full depth or extent of contamination. The work plan shall include the number, location and depth of samples, the parameters of the analyses, and quality assurance measures.

B. A work plan for the removal of spilled oil and hazardous waste from tank battery, oil sumps, and oil production sites (i.e. wells), and for the removal, mitigation and/or prevention of such additional oil from entering waters of the United States.

C. A work plan for corrective actions to bring the Regent Facilities into full compliance with the Spill Prevention Control and Countermeasure regulations.

27. Within fifteen (15) days of the Effective Date of this Order, Respondent shall submit to EPA a written summary of work done prior to this Order regarding the discharge of oil into the Eagle Nest Arroyo, and tributaries of the San Juan River, any response effort to address the discharge of oil into the Eagle Nest Arroyo and tributaries of the San Juan River, including but not limited to, any such work performed after February 2002. This summary shall include, but not be limited to, maintenance programs and procedures, all analysis and data obtained from the sampling of soils, and all maps and diagrams developed in the course of such sampling, which should identify the specific location and methodology for all sampling.

28. On completion of the work conducted pursuant to the work plans, and any additional work required pursuant to Section VI, Respondent shall submit to EPA a final report within forty-five (45) days of work completion to remove any oil, hazardous wastes or hazardous constituents identified at or as having been released from the Regent Facilities. The final report also shall summarize all other actions taken to comply with this Order.

29. The written proposal and all reports or documents required to be submitted under this Order shall be mailed to the following EPA representative(s):

Steve Calanog
U.S. Environmental Protection Agency
Region 9, SFD-9-2
75 Hawthorne Street
San Francisco, CA 94105

30. Any variance from the approved terms and schedules in the approved work plans, or any monitoring, testing, analysis, reporting or removal conducted by Respondent without an approved work plan may be determined to be unsatisfactory by EPA, and subject Respondent to the potential consequences identified in Section XXII.

VI. ADDITIONAL WORK

31. In addition to the work performed under the work plans described above, EPA may determine that additional monitoring, testing, analysis, reporting or removal is necessary to ascertain the nature and extent of or abate any hazard to human health and the environment, which may exist because of the presence or release of solid wastes, hazardous wastes or hazardous constituents, including oil, at or from the Regent Facilities. If EPA determines that such additional work is necessary, EPA will notify Respondent in writing and specify the basis for its determination that additional work is necessary. Within fifteen (15) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If required by EPA, Respondent shall submit for EPA approval a work plan for the additional work. EPA will specify the scope of such work plan. Such work plan shall be submitted by Respondent within thirty (30) days of receipt of EPA's determination that additional work is necessary, or according to an alternative schedule established by EPA. On approval by EPA, Respondent shall implement such work plan.

VII. MINIMUM QUALIFICATIONS FOR PERSONNEL

32. All work performed by the Respondent pursuant to this Order shall be under the direction and supervision of an individual who has demonstrated expertise in hazardous waste site investigation. Before any work is performed, Respondent shall submit to EPA, in writing, the name, title, and qualifications of the supervisory personnel and of any contractors or subcontractors to be used in carrying out the terms of this Order. Additionally, the Respondent shall ensure that when a license is required, only licensed individuals shall be used to perform any work required by this Order. The qualifications of the persons, contractors, and subcontractors undertaking the work for Respondent shall be subject to EPA review and approval.

33. If EPA disapproves of any individual's or contractor's technical or work experience qualifications, EPA shall notify the Respondent in writing. Respondent shall, within five (5) working days of Respondent's receipt of EPA's written disapproval, notify EPA of the identity and qualifications of the replacement(s). Should EPA disapprove of the proposed replacement(s), Respondent shall be deemed to have failed to comply with the Order.

VIII. SUBMISSIONS/EPA REVIEW

34. EPA will review all work plans, draft and final reports, and any other documents required to be submitted under this Order ("submissions"). EPA may: (a) approve the submission; (b)

approve the submission with modifications; (c) disapprove the submission and direct Respondent to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission and assume responsibility for performing all or any part of the work. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in (a) or (b) of this paragraph.

35. Prior to approval in writing, or approval with modifications in writing, no work plan, report, or other submission shall be construed as approved and final. Oral advice, suggestions, or comments given by EPA representatives will not constitute approval, nor shall any oral approval or oral assurance of approval be considered as binding.

36. On receipt of a notice of disapproval pursuant to paragraph 34 above, or a request for a modification, Respondent shall, within fifteen (15) days, or such longer time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the work plan, report, schedule, or other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

37. Within ten (10) days following EPA approval, or approval with modifications of a work plan, Respondent shall implement the approved document.

38. All work plans, reports, or other submissions required by this Order are, on approval or approval with modifications by EPA, incorporated into this Order. Any noncompliance with such EPA-approved work plans, reports, specifications, schedules, and attachments shall constitute noncompliance with this Order. Verbal advice or approvals given by EPA representatives shall not relieve Respondent of its obligation to obtain any formal, written approvals required by this Order.

39. In all instances in which this Order requires written submissions to be submitted to EPA, each submission must be signed by a "responsible official" with authority to bind the Respondent to the commitment or statement contained in each respective submission. Examples of a responsible official include the Respondent's president, vice president, secretary, or any other person authorized by the Respondent as stated above.

40. In all instances in which this Order requires written submissions to EPA, each submission must be accompanied by the following certification by a responsible official:

> I certify that the information contained in and accompanying this submission is true, accurate, and complete. As to those identified portions of this submission for which I cannot personally verify the truth and accuracy, I certify as the facility official having supervisory responsibility for the person who, acting upon my direct instructions, made the verification, that this information is true, accurate, and complete.

The certification pursuant to this paragraph shall be followed by the name, title and signature of the responsible official.

IX. QUALITY ASSURANCE/QUALITY CONTROL

41. Respondent shall follow EPA guidance for sampling and analysis. Respondent shall develop a Quality Assurance Project Plan (QAPP) for all sampling and analysis conducted pursuant to this Order. Work plans shall contain quality assurance/quality control (QA/QC) and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the QA/QC and chain of custody procedures in approved work plans must be approved by EPA prior to implementation, must be documented (including reasons for the deviations), and must be reported in the applicable report.

42. The contact person(s), name(s), addresses, and telephone numbers of the analytical laboratories Respondent proposes to use must be specified in the applicable work plan(s).

43. All work plans required under this Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).

44. Respondent shall monitor to ensure that high quality data is obtained by its consultant or contract laboratories. Respondent shall ensure that laboratories used by Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846 Third Edition as amended by Update One, July 1992), or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall specify and submit all such protocols for EPA approval in the work plan. EPA may reject any data that does not meet the requirements of the approved work plan or EPA analytical methods and may require resampling and additional analysis.

45. Respondent shall ensure that laboratories it uses for analyses participate in a QA/QC program equivalent to that which is followed by EPA. EPA may conduct a performance and QA/QC audit of the laboratories chosen by Respondent before, during, or after sample analyses. On request by EPA, Respondent shall have its laboratory perform analyses of samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, resampling and additional analysis may be required.

46. Respondent shall notify EPA's Project Coordinator, as identified in Section X, at least forty-eight (48) hours prior to commencement of any field work pursuant to this Order or any work plan approved in accordance with this Order.

X. PROJECT COORDINATOR

47. EPA hereby designates as its Project Coordinator:

Steve Calanog
U.S. Environmental Protection Agency
Region 9, SFD-9-2
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3075

48. Within ten (10) calendar days of Respondent's receipt of this Order, Respondent shall designate a Project Coordinator and submit the designated Project Coordinator's name, address, and telephone number in writing to EPA. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within seven (7) days following EPA's disapproval.

49. Each Project Coordinator shall, on behalf of the party that designated the Project Coordinator, oversee the implementation of this Order and function as the principal project contact. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

50. Respondent shall provide EPA with a written notice of any change in its Project Coordinator. Such notice shall be provided at least seven (7) calendar days prior to the change in Project Coordinator.

XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

51. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split or duplicate samples of all samples collected by Respondent pursuant to this Order.

52. On request, Respondent shall submit to EPA the results of all sampling or tests or other data generated by, or on behalf of, the Respondent in implementing the requirements of this Order.

XII. ON-SITE AND OFF-SITE ACCESS

53. Respondent shall provide access at all reasonable times to the Regent Facilities and to all records and documentation relating to conditions at the Regent Facilities and the activities conducted pursuant to this Order to EPA and its employees, contractors, agents, consultants, and representatives. These individuals shall be permitted to move freely at the Regent Facilities in order to conduct activities that EPA determines to be necessary.

54. To the extent that activities required by this Order, or by any approved work plans prepared pursuant hereto, must be done on property not owned or controlled by Respondent,

Respondent will use its best efforts to obtain site access agreements in a timely manner from the present owners of such property. Best efforts, as used in this paragraph, shall include the payment of reasonable compensation in consideration of granting access. Respondent shall ensure that EPA's Project Coordinator has a copy of any access agreements.

55. Nothing in this Order limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including RCRA, CWA and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").

XIII. RECORD PRESERVATION

56. Respondent shall retain, during the pendency of this Order and for a minimum of five (5) years after its termination, a copy of all data, records, and documents now in its possession or control, or in the possession or control of its contractors, subcontractors, representatives, or which come into the possession or control of the Respondent, its contractors, subcontractors, or representatives, which relate in any way to this Order. Respondent shall notify EPA, in writing, at least ninety (90) days in advance of the destruction of any such records, and shall provide EPA with the opportunity to take possession of any such records. Such written notification shall reference the caption, docket number and date of issuance of this Order and shall be addressed as follows unless EPA provides notice to Respondent stating otherwise:

Peter Reich
U.S. Environmental Protection Agency
Region 9 (SFD-9-2)
75 Hawthorne Street
San Francisco, California 94105

Additionally, Respondent shall provide data, records and documents retained under this section at any time before the expiration of the five (5) year period at the written request of EPA.

XIV. INFORMATION SUBMITTED TO EPA

57. Any information that Respondent is required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

58. Respondent may assert a business confidentiality claim in the manner described in 40 C.F.R. § 2.203(b) covering all or part of any information submitted to EPA pursuant to this Order. EPA may request substantiation of an assertion of business confidentiality by requesting comment on the points identified in 40 CFR § 2.204(e)(4). Information submitted for which Respondent has asserted a claim of confidentiality as specified above shall be disclosed by EPA only to the extent and manner permitted by 40 C.F.R. Part 2, Subpart B. If no such confidentiality claim accompanies the information when it is submitted to EPA, the information may be made available to the public by EPA without further notice to the Respondent.

Respondent shall not assert any confidentiality claim with respect to any physical, sampling, monitoring, or analytical data.

XV. RESERVATION OF RIGHTS

59. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Order, and to order that Respondent perform additional tasks.

60. EPA expressly reserves all of its statutory and regulatory powers, authorities, rights, remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Order, including, without limitation, the right to commence a civil action against Respondent seeking an order requiring compliance with this Order or the assessment of penalties under Sections 3013(e) and 7003(b) of RCRA, 42 U.S.C. §§ 6934(e) and 6973(b), and Section 311(b) of the CWA, 33 U.S.C. §1321(b). This Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, defenses, powers or authorities, civil or criminal, which EPA has under RCRA, CERCLA, CWA, the Safe Drinking Water Act (SDWA), the Clean Air Act (CAA), or any other statutory, regulatory, or common law enforcement authority of the United States.

XVI. OTHER APPLICABLE LAWS

61. All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable federal, state, tribal and local laws, regulations, permits, and ordinances.

62. Compliance by Respondent with the terms of this Order shall not relieve Respondent of its obligations to comply with RCRA, the CWA or any other applicable federal, state, tribal or local laws, regulations, permits, and ordinances.

63. This Order is not and shall not be interpreted to be a permit, or as a ruling or a determination of any issue related to a permit under federal, state tribal or local law. This Order shall not in any way affect Respondent's obligation, if any, to secure such a permit, nor shall this Order be interpreted in any way to affect or waive any of the conditions or requirements that may be imposed by such permit, nor of Respondent's right to appeal any conditions of such permit. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XVII. OTHER CLAIMS

64. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense 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 solid wastes, hazardous wastes, hazardous constituents, hazardous substances, pollutants, or contaminants found at, taken to, or migrating from the Regent Facilities.

65. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts of omissions of Respondent or its agents, contractors, subcontractors or other representatives.

66. Neither the United States nor EPA shall be deemed a party to any contract involving Respondent and relating to activities at the Regent Facilities or be liable for any claim or cause of action arising from, or on account of, any act or omission of Respondent, its officers, employees, contractors, receivers, trustees, agents or assigns, in carrying out the activities required by this Order.

XVIII. SUBSEQUENT MODIFICATION OF ORDER

67. This Order may only be modified by written amendment signed by the undersigned EPA Region 9 Director of the Waste Management Division and Director of the Superfund Division. Modifications in any schedule adopted pursuant to this Order may be made in writing by EPA.

68. No informal advice, guidance, suggestions, or comments by EPA shall be construed to modify the requirements of this Order. Routine communications exchanged verbally, in person, by telephone or by electronic mail between the parties to facilitate the orderly conduct of work contemplated by this Order shall not alter or waive any rights or obligations of the parties under this Order.

XIX. SEVERABILITY

69. If any provision or authority of this Order, or the application of this Order to any party or circumstances, is held by any judicial or administrative authority to be invalid, the application of such provisions to other Parties or circumstances and the remainder of the Order shall not be affected thereby and shall remain in full force.

XX. TERMINATION AND SATISFACTION

70. Respondent may seek termination of this Order by submitting to EPA a written document that indicates Respondent's compliance with all requirements of this Order, and the associated dates of approval correspondence from EPA. The provisions of this Order shall be deemed satisfied on Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement for Record Preservation and Reservation of Rights" ("Acknowledgment"). The Acknowledgment shall specify that Respondent has demonstrated to the satisfaction of EPA that the terms of this Order, including any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed.

71. The provisions of this Order shall be deemed satisfied on Respondent's receipt of written notice from EPA that Respondent has demonstrated to the satisfaction of EPA that the terms of the Order, including any additional tasks determined by EPA to be required pursuant to this Order, have been satisfactorily completed. Such notice shall not be unreasonably withheld. This notice shall not, however, terminate Respondent's obligations to comply with any continuing obligations hereunder, including, but not limited to, Section XIII (Record Preservation), Section XV (Reservation of Rights), Section XVI (Other Applicable Laws), and Section XVII (Other Claims).

XXI. COMPLIANCE CONFERENCE AND CONFERENCE REGARDING PROPOSAL

A. COMPLIANCE CONFERENCE

72. Within three (3) days after receipt of this Order, Respondent may request a compliance conference regarding the provisions of this Order. EPA shall deem a failure to request a compliance conference as a waiver of the opportunity to confer prior to the Effective Date. If Respondent desires a compliance conference, the Respondent shall contact Andrew Helmlinger, EPA Attorney Advisor, at the address stated in Paragraph 74.

73. If requested, the compliance conference shall occur prior to the Effective Date provided in Paragraph 82, unless the date for the Effective Date and conference is extended by mutual agreement of the Parties, at EPA's Regional Office at 75 Hawthorne Street, San Francisco, California. The compliance conference shall be with the Section Chief of the Response, Planning and Assessment Branch in the EPA Region 9 Superfund Division, or whomever the Section Chief may designate.

74. At any compliance conference held pursuant to this Section, the Respondent may appear in person, or be represented by an attorney or other representative. The purpose and scope of any such conference held pursuant to this Order shall be limited to issues involving the actions required by this Order and the extent to which Respondent intends to comply with this Order. If a compliance conference is held, Respondent may present any evidence, arguments or comments regarding this Order, its applicability, any factual determinations on which the Order is based, the appropriateness of any action that the Respondent is ordered to take, or any other relevant and material issue. Any such evidence, arguments or comments should be reduced to writing and submitted to EPA within three (3) days following the conference. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and EPA will make no official record of the conference. If Respondent does not request a compliance conference, any evidence, arguments or comments may be submitted in writing within three (3) days following the Effective Date of this Order. Any such writing should be directed to the following address:

Andrew Helmlinger
Environmental Protection Agency
75 Hawthorne Street, ORC-3
San Francisco, CA 94105
(415) 972-3904

B. CONFERENCE REGARDING PROPOSAL

75. In accordance with Section 3013(c) of RCRA, 42 U.S.C. § 6934(c), Respondent or its representative may confer in person or by telephone with EPA regarding the Respondent's proposal required under Section V of this Order. The opportunity to confer with EPA may be pursued by the Respondent either before or after the proposal is due, but not later than sixty (60) days after the issuance of this Order.

76. The scheduling of a conference with EPA does not relieve Respondent of the obligation to submit the written proposal required under Section V of this Order within thirty (30) days of the date of issuance of this Order, or to implement the proposal once approved, or approved with modifications, by EPA.

77. At the conference regarding the proposal, Respondent may appear in person or by attorney or other representative.

78. Any request for a conference regarding the proposal and other questions regarding this Order should be directed to J. Andrew Helmlinger at the address provided in Paragraph 74. If Respondent fails to request a conference within the time periods specified in this Section, or fails to agree on a date to schedule such conference within the time periods specified in this Section, Respondent shall be deemed to have waived the opportunity under Section 3013(c) of RCRA to confer with EPA regarding the Respondent's proposal.

XXII. NOTICE OF INTENT TO COMPLY

79. Respondent shall provide written notice to EPA of Respondent's irrevocable intent to comply with this Order within three (3) after the Effective Date. EPA shall deem a failure to respond or a failure to agree to comply with this Order as a refusal to comply with this Order.

XXIII. POTENTIAL CONSEQUENCES OF FAILURE TO COMPLY

80. If EPA determines that Respondent is not able to conduct the activities required by this Order in a satisfactory manner, or if actions carried out by Respondent are deemed unsatisfactory, then EPA or its representatives may conduct such response, monitoring, testing and analysis deemed reasonable by EPA to address an actual or threatened discharge of oil into waters of the United States or adjoining shorelines, to address an imminent and substantial endangerment to health or the environment, to ascertain the source, nature and extent of the

hazard at the property or facility of Respondent, or to authorize the State or any other person to conduct such actions. Respondent may then be ordered to reimburse EPA or its representatives, or the State or other person authorized by EPA, for the costs of such activity pursuant to Section 3013(d) of RCRA, 42 U.S.C. § 6934(d), or Section 1002 of the Oil Pollution Act, 33 U.S.C. § 2702(a).

81. In the event Respondent fails or refuses to comply with the terms and provisions of this Order, EPA may commence a civil action in accordance with Sections 3013(e) and 7003(b) of RCRA, 42 U.S.C. §§ 6934(e) and 6973(b), and/or Section 311(b) of CWA, 33 U.S.C. § 1321(b), to require compliance with such Order and to assess a civil penalty for such failure or refusal.

XXIV. EFFECTIVE DATE

82. This Order shall be effective fourteen (14) days after the date on which it is last signed by the Director of the Waste Management Division or the Director of the Superfund Division.

XXV. NOTICE TO AFFECTED STATE

83. By copy of this Order, EPA has provided notice to the Navajo Nation, and the state of New Mexico.

IT IS SO ORDERED
BY U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 9

By: _____ for
Jeff Scott, Director
Waste Management Division
U.S. Environmental Protection Agency
Region 9

AUG 19 2002
Date

By: Nancy Lindsay
for
Jane Diamond, Director (Acting)
Superfund Division
U.S. Environmental Protection Agency
Region 9

AUG 19 2002
Date

IN THE MATTER OF: Regent Energy Corporation
DOCKET NO: OPA-09-2002-0006

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing ORDER REQUIRING RESPONSE, MONITORING, TESTING, ANALYSIS AND REPORTING was filed with the Regional Hearing Clerk, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105, and that a true copy of the same was sent by Certified Mail, Return Receipt Requested to:

Phil Gennarelli
Chairman
Regent Energy Corporation
One WestChase Center
10777 Westheimer, Suite 1100
Houston, Texas 77077

Regent Energy Corporation
c/o John Ehrman
Registered Agent
11B Vallee de Suerte
Tesuque, New Mexico 87506

Ken Wiley
Regent Energy Corporation.
650 North Sam Houston Parkway East, Suite 500
Houston, Texas 77060

8/14/02
Date

Lynna Campbell
[Name]