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16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE CENTRAL DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA, and)
19 STATE OF CALIFORNIA, on behalf of)
the State of California)
20 Department of Toxic Substances)
Control and the State of)
21 California Hazardous Substance)
Account,)
22 Plaintiffs,)
23 v.)
24 TEXACO INC.,)
25 Defendant.)

Civil No.

CONSENT DECREE

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TABLE OF CONTENTS

CERCLA RD/RA CONSENT DECREE

| | | |
|--------|---|----|
| I. | <u>BACKGROUND</u> | 3 |
| II. | <u>JURISDICTION</u> | 6 |
| III. | <u>PARTIES BOUND</u> | 6 |
| IV. | <u>DEFINITIONS</u> | 7 |
| V. | <u>GENERAL PROVISIONS</u> | 11 |
| VI. | <u>PERFORMANCE OF THE WORK BY TEXACO</u> | 14 |
| VII. | <u>ADDITIONAL RESPONSE ACTIONS</u> | 20 |
| VIII. | <u>EPA PERIODIC REVIEW</u> | 21 |
| IX. | <u>QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS</u> | 23 |
| X. | <u>ACCESS</u> | 25 |
| XI. | <u>REPORTING REQUIREMENTS</u> | 26 |
| XII. | <u>SUBMISSIONS REQUIRING AGENCY APPROVAL</u> | 29 |
| XIII. | <u>PROJECT COORDINATORS</u> | 31 |
| XIV. | <u>ASSURANCE OF ABILITY TO COMPLETE WORK</u> | 32 |
| XV. | <u>CERTIFICATION OF COMPLETION</u> | 33 |
| XVI. | <u>EMERGENCY RESPONSE</u> | 37 |
| XVII. | <u>REIMBURSEMENT OF RESPONSE COSTS</u> | 38 |
| XVIII. | <u>INDEMNIFICATION AND INSURANCE</u> | 41 |
| XIX. | <u>FORCE MAJEURE</u> | 43 |
| XX. | <u>DISPUTE RESOLUTION</u> | 46 |
| XXI. | <u>STIPULATED PENALTIES</u> | 50 |
| XXII. | <u>COVENANTS NOT TO SUE BY PLAINTIFFS</u> | 54 |
| XXIII. | <u>COVENANTS BY TEXACO</u> | 59 |
| XXIV. | <u>EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION</u> | 59 |

| | | |
|---------|---|----|
| XXV. | <u>ACCESS TO INFORMATION</u> | 61 |
| XXVI. | <u>RETENTION OF RECORDS</u> | 62 |
| XXVII. | <u>NOTICES AND SUBMISSIONS</u> | 64 |
| XXVIII. | <u>EFFECTIVE DATE</u> | 65 |
| XXIX. | <u>RETENTION OF JURISDICTION</u> | 65 |
| XXX. | <u>APPENDICES</u> | 66 |
| XXXI. | <u>COMMUNITY RELATIONS</u> | 66 |
| XXXII. | <u>MODIFICATION</u> | 66 |
| XXXIII. | <u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u> | 67 |
| XXXIV. | <u>SIGNATORIES/SERVICE</u> | 68 |

1 Texaco is liable to the State under Section 107 of CERCLA, 42
2 U.S.C. 9607 and under Sections 25187 and 25358.3 of the
3 California Health and Safety Code for: (1) reimbursement of costs
4 that the State has incurred at the Pacific Coast Pipeline Site in
5 Fillmore, California and (2) performance of studies and response
6 work by Texaco at the Site.

7 E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C.
8 § 9622(j)(1), EPA notified the relevant Federal natural resource
9 trustees on May 27, 1992 of negotiations with potentially
10 responsible parties regarding the release of hazardous substances
11 that may have resulted in injury to the natural resources under
12 Federal trusteeship and encouraged the trustee(s) to participate
13 in the negotiation of this Consent Decree.

14 F. By entering into this Consent Decree, Texaco does not
15 admit any liability to the Plaintiffs arising out of the
16 transactions or occurrences alleged in the complaint and does not
17 agree with the allegations in the complaint.

18 G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA
19 placed the Site on the National Priorities List, set forth at 40
20 C.F.R. Part 300, Appendix B, by publication in the Federal
21 Register on October 4, 1989, 54 Fed. Reg. 1015;

22 H. In response to a release or a substantial threat of a
23 release of hazardous substances at or from the Site, Texaco,
24 commenced on January 15, 1989, a Remedial Investigation and
25 Feasibility Study ("RI/FS") for the Site pursuant to an
26 Administrative Order on Consent for Remedial Investigation and
27 Feasibility Study, EPA Docket No. 90-03 and 40 C.F.R. § 300.430.
28

I. Texaco completed a Remedial Investigation ("RI") Report in

1 March 1991, and Texaco completed a Feasibility Study ("FS")
2 Report in February 1992.

3 J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA
4 published notice of the completion of the FS and of the proposed
5 plan for remedial action on February 24, 1992 in a major local
6 newspaper of general circulation. EPA provided an opportunity
7 for written and oral comments from the public on the proposed
8 plan for remedial action. A copy of the transcript of the public
9 meeting is available to the public as part of the administrative
10 record upon which the Regional Administrator based the selection
11 of the response action.

12 K. The decision by EPA on the remedial action to be
13 implemented at the Site is embodied in a final Record of Decision
14 ("ROD"), executed on March 31, 1992, on which the State has given
15 its concurrence. The ROD includes a summary of EPA's responses
16 to public comments received on the proposed remedy. Notice of
17 the final plan was published in accordance with Section 117(b) of
18 CERCLA.

19 L. Based on the information presently available to EPA and
20 the State, EPA and the State believe that the Work will be
21 properly and promptly conducted by Texaco if conducted in
22 accordance with the requirements of this Consent Decree and its
23 appendices.

24 M. Solely for the purposes of Section 113(j) of CERCLA, the
25 Remedial Action selected by the ROD and the Work to be performed
26 by Texaco shall constitute a response action taken or ordered by
27 the President.

28 N. The Parties recognize, and the Court by entering this

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1 Consent Decree finds, that this Consent Decree has been
2 negotiated by the Parties in good faith and implementation of
3 this Consent Decree will expedite the cleanup of the Site and
4 will avoid prolonged and complicated litigation between the
5 Parties, and that this Consent Decree is fair, reasonable, and in
6 the public interest.

7 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

8 II. JURISDICTION

9 1. This Court has jurisdiction over the subject matter of
10 this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C.
11 §§ 9606, 9607, 9613(b) and 6973. This Court also has personal
12 jurisdiction over Texaco. Solely for the purposes of this
13 Consent Decree and the underlying complaint, Texaco waives all
14 objections and defenses that it may have to jurisdiction of the
15 Court or to venue in this District. Texaco shall not challenge
16 the terms of this Consent Decree or this Court's jurisdiction to
17 enter and enforce this Consent Decree.

18 III. PARTIES BOUND

19 2. This Consent Decree applies to and is binding upon the
20 United States and the State and upon Texaco and its successors
21 and assigns. Any change in ownership or corporate status of
22 Texaco including, but not limited to, any transfer of assets or
23 real or personal property shall in no way alter Texaco's
24 responsibilities under this Consent Decree.

25 3. Texaco shall provide a copy of this Consent Decree to each
26 contractor hired to perform the Work (as defined below) required
27 by this Consent Decree and to each person representing Texaco
28 with respect to the Site or the Work and shall condition all

1 contracts entered into hereunder upon performance of the Work in
2 conformity with the terms of this Consent Decree. Texaco or its
3 contractors shall provide written notice of the Consent Decree to
4 all subcontractors hired to perform any portion of the Work
5 required by this Consent Decree. Texaco shall nonetheless be
6 responsible for ensuring that its contractors and subcontractors
7 perform the Work contemplated herein in accordance with this
8 Consent Decree. With regard to the activities undertaken
9 pursuant to this Consent Decree, each contractor and
10 subcontractor shall be deemed to be in a contractual relationship
11 with Texaco within the meaning of Section 107(b)(3) of CERCLA, 42
12 U.S.C. § 9607(b)(3).

13 IV. DEFINITIONS

14 4. Unless otherwise expressly provided herein, terms used in
15 this Consent Decree which are defined in CERCLA or in regulations
16 promulgated under CERCLA shall have the meaning assigned to them
17 in CERCLA or in such regulations. Whenever terms listed below
18 are used in this Consent Decree or in the appendices attached
19 hereto and incorporated hereunder, the following definitions
20 shall apply:

21 "CERCLA" shall mean the Comprehensive Environmental Response,
22 Compensation, and Liability Act of 1980, as amended, 42 U.S.C.
23 §§ 9601 et seq.

24 "Consent Decree" shall mean this Decree and all appendices
25 attached hereto (listed in Section XXX). In the event of
26 conflict between this Decree and any appendix, this Decree shall
27 control.

28 "Day" shall mean a calendar day unless expressly stated to be

1 a working day. "Working day" shall mean a day other than a
2 Saturday, Sunday, or Federal holiday. In computing any period of
3 time under this Consent Decree, where the last day would fall on
4 a Saturday, Sunday, or Federal holiday, the period shall run
5 until the close of business of the next working day.

6 "EPA" shall mean the United States Environmental Protection
7 Agency and any successor departments or agencies of the United
8 States.

9 "Future Response Costs" shall mean all costs, including, but
10 not limited to, direct and indirect costs, that the United States
11 and the State incur in reviewing or developing plans, reports and
12 other items pursuant to this Consent Decree, verifying the Work,
13 or otherwise implementing, overseeing, or enforcing this Consent
14 Decree, including, but not limited to, payroll costs, contractor
15 costs, travel costs, laboratory costs, the costs incurred
16 pursuant to Sections VII, VIII, X (including, but not limited to,
17 attorneys fees and the amount of just compensation), XVI, and
18 Paragraph 83 of Section XXII. Future Response Costs shall also
19 include all costs, including direct and indirect costs, paid by
20 the United States and the State in connection with the Site
21 between June 30, 1992 and the effective date of this Consent
22 Decree except for those costs which Texaco has paid or will pay
23 EPA pursuant to the Administrative Order on Consent for Remedial
24 Investigation and Feasibility Study prior to the effective date
25 of this Consent Decree.

26 "National Contingency Plan" or "NCP" shall mean the National
27 Oil and Hazardous Substances Pollution Contingency Plan
28 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,

1 codified at 40 C.F.R. Part 300, including, but not limited to,
2 any amendments thereto.

3 "Operation and Maintenance" or "O & M" shall mean all
4 activities required to maintain the effectiveness of the Remedial
5 Action as required under the Operation and Maintenance Plan
6 approved or developed by EPA pursuant to this Consent Decree and
7 the Statement of Work (SOW).

8 "Paragraph" shall mean a portion of this Consent Decree
9 identified by an arabic numeral or an upper case letter.

10 "Parties" shall mean the United States, the State of
11 California, and Texaco.

12 "Past Response Costs" shall mean all costs, including, but not
13 limited to, direct and indirect costs and interest, that the
14 United States and the State incurred and paid with regard to the
15 Site prior to June 30, 1992, except for those costs which Texaco
16 has paid or will pay EPA pursuant to the Administrative Order on
17 Consent for Remedial Investigation and Feasibility Study prior to
18 the effective date of the Consent Decree.

19 "Performance Standards" shall mean those cleanup standards,
20 standards of control, and other substantive requirements,
21 criteria or limitations set forth in the ROD and Section III of
22 the SOW.

23 "Plaintiffs" shall mean the United States and the State of
24 California.

25 "Preliminary Design Work Plan Summary" shall mean the summary
26 of the Preliminary Design Work Plan approved by EPA pursuant to
27 the Administrative Order on Consent for Remedial Investigation
28 and Feasibility Study for the Pacific Coast Pipeline Site, U.S.

1 EPA Docket No. 90-03. The Preliminary Design Work Plan Summary
2 is incorporated herein as Appendix C.

3 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42
4 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation
5 and Recovery Act).

6 "Record of Decision" or "ROD" shall mean the EPA Record of
7 Decision relating to the Site signed on March 31, 1992, by the
8 Regional Administrator, EPA Region IX, and all attachments
9 thereto.

10 "Remedial Action" shall mean those activities, except for
11 Operation and Maintenance, to be undertaken by Texaco to
12 implement the final plans and specifications submitted by Texaco
13 pursuant to the Preliminary Design Work Plan Summary and the
14 Statement of Work and approved by EPA.

15 "Remedial Action Work Plan" shall mean the document submitted
16 by Texaco pursuant to Paragraph 12.a of this Consent Decree and
17 described more fully in Paragraph 12.b.

18 "Remedial Design" shall mean those activities to be undertaken
19 by Texaco to develop the final plans and specifications for the
20 Remedial Action pursuant to the Preliminary Design Work Plan
21 Summary and the Statement of Work.

22 "Section" shall mean a portion of this Consent Decree
23 identified by a roman numeral.

24 "Site" shall mean the Pacific Coast Pipeline Superfund site,
25 encompassing approximately 20 acres, located at 67 East Telegraph
26 Road in Fillmore, Ventura County, California and depicted
27 generally on the map attached as Appendix D.

28 "State" shall mean the State of California, the California

1 Environmental Protection Agency and the Department of Toxic
2 Substances Control.

3 "Statement of Work" or "SOW" shall mean the statement of work
4 for implementation of the Remedial Design, Remedial Action, and
5 Operation and Maintenance at the Site, as set forth in Appendix B
6 to this Consent Decree and any modifications made in accordance
7 with this Consent Decree.

8 "Supervising Contractor" shall mean the principal contractor
9 retained by Texaco to supervise and direct the implementation of
10 the Work under this Consent Decree.

11 "Texaco" shall mean Texaco, Inc. and its subsidiary, Texaco
12 Refining and Marketing, Inc., for purposes of this Consent
13 Decree.

14 "United States" shall mean the United States of America.

15 "Waste Material" shall mean (1) any "hazardous substance"
16 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any
17 pollutant or contaminant under Section 101(33), 42 U.S.C.
18 § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA,
19 42 U.S.C. § 6903(27); and (4) any "hazardous material" under
20 California Hazardous Waste Control Law Section 25501.

21 "Work" shall mean all activities Texaco is required to perform
22 under this Consent Decree, except those required by Section XXVI
23 (Retention of Records).

24 V. GENERAL PROVISIONS

25 5. Objectives of the Parties

26 The objectives of the Parties in entering into this Consent
27 Decree are to protect public health or welfare or the environment
28 at the Site by the design and implementation of response actions

1 at the Site by Texaco and to reimburse response costs of the
2 Plaintiffs.

3 6. Commitments by Texaco

4 Texaco shall finance and perform the Work in accordance
5 with this Consent Decree and all plans, standards,
6 specifications, and schedules set forth in or developed and
7 approved under Section XII by EPA pursuant to this Consent
8 Decree. Texaco shall also reimburse the United States and the
9 State for Past Response Costs and Future Response Costs as
10 provided in this Consent Decree.

11 7. Compliance With Applicable Law

12 All activities undertaken by Texaco pursuant to this Consent
13 Decree shall be performed in accordance with the requirements of
14 all applicable federal and state laws and regulations. Texaco
15 must comply with all applicable or relevant and appropriate
16 requirements of all federal and state environmental laws as set
17 forth in the ROD and the SOW. The activities conducted pursuant
18 to this Consent Decree, if approved by EPA, shall be considered
19 to be consistent with the NCP.

20 8. Permits

21 a. As provided in Section 121(e) of CERCLA and §300.5 of
22 the NCP, no permit shall be required for any portion of the Work
23 conducted entirely on-site. Where any portion of the Work
24 requires a federal or state permit or approval, Texaco shall
25 submit timely and complete applications and take all other
26 actions necessary to obtain all such permits or approvals.

27 b. Texaco may seek relief under the provisions of
28 Section XIX (Force Majeure) of this Consent Decree for any delay

1 in the performance of the Work resulting from a failure to
2 obtain, or a delay in obtaining, any permit required for the
3 Work.

4 c. This Consent Decree is not, and shall not be
5 construed to be, a permit issued pursuant to any federal or state
6 statute or regulation.

7 9. Notice of Obligations to Successors-in-Title

8 a. Within 30 days after the entry of this Consent
9 Decree, Texaco shall record a certified copy of this Consent
10 Decree with the Recorder's Office, Ventura County, State of
11 California. Thereafter, until EPA issues a certificate of
12 completion for the work pursuant to Paragraph 47 b., each deed,
13 title, or other instrument conveying an interest in the property
14 included in the Site shall contain a notice stating that the
15 property is subject to this Consent Decree and shall reference
16 the recorded location of the Consent Decree and any restrictions
17 applicable to the property under this Consent Decree.

18 b. The obligations of Texaco with respect to the
19 provision of access under Section X (Access) shall be binding
20 upon all persons who subsequently acquire any such interest or
21 portion thereof (hereinafter "Successors-in-Title"). Within 30
22 days after the entry of this Consent Decree, Texaco shall record
23 at the Recorder's Office or other appropriate office where land
24 ownership and transfer records are maintained for the property a
25 notice of obligation to provide access under Section X (Access)
26 and related covenants. Each subsequent instrument conveying an
27 interest to any such property included in the Site shall
28 reference the recorded location of such notice and covenants

1 applicable to the property.

2 c. Texaco and any Successor-in-Title shall, at least 30
3 days prior to the conveyance of any such interest, give written
4 notice of this Consent Decree to the grantee and written notice
5 to EPA and the State of the proposed conveyance, including the
6 name and address of the grantee, and the date on which notice of
7 the Consent Decree was given to the grantee. In the event of any
8 such conveyance, Texaco's obligations under this Consent Decree,
9 including its obligations to provide or secure access pursuant to
10 Section X, shall continue to be met by Texaco. In addition, if
11 the United States and the State approves, the grantee may perform
12 some or all of the Work under this Consent Decree. In no event
13 shall the conveyance of an interest in property that includes, or
14 is a portion of, the Site release or otherwise affect the
15 liability of Texaco to comply with the Consent Decree.

16 VI. PERFORMANCE OF THE WORK BY TEXACO

17 10. Selection of Supervising Contractor.

18 a. All aspects of the Work to be performed by Texaco
19 pursuant to Sections VI (Performance of the Work by Texaco), VII
20 (Additional Response Actions), VIII (U.S. EPA Periodic Review),
21 and IX (Quality Assurance, Sampling and Data Analysis) of this
22 Consent Decree shall be under the direction and supervision of
23 the Supervising Contractor, the selection of which shall be
24 subject to disapproval by EPA after a reasonable opportunity for
25 review and comment by the State. Within 10 days after the entry
26 of this Consent Decree, Texaco shall notify EPA and the State in
27 writing of the name, title, and qualifications of any contractor
28 proposed to be the Supervising Contractor. EPA will issue a

1 notice of disapproval or an authorization to proceed. If at any
2 time thereafter, Texaco proposes to change a Supervising
3 Contractor, Texaco shall give such notice to EPA and the State
4 and must obtain an authorization to proceed from EPA, after a
5 reasonable opportunity for review and comment by the State,
6 before the new Supervising Contractor performs, directs, or
7 supervises any Work under this Consent Decree.

8 b. If EPA disapproves a proposed Supervising Contractor,
9 EPA will notify Texaco in writing. Texaco shall submit to EPA
10 and the State a list of contractors, including the qualifications
11 of each contractor, that would be acceptable to Texaco within 30
12 days of receipt of EPA's disapproval of the contractor previously
13 proposed. EPA will provide written notice of the names of any
14 contractor(s) that it disapproves and an authorization to proceed
15 with respect to any of the other contractors. Texaco may select
16 any contractor from that list that is not disapproved and shall
17 notify EPA and the State of the name of the contractor selected
18 within 21 days of EPA's authorization to proceed.

19 c. If EPA fails to provide written notice of its
20 authorization to proceed or disapproval as provided in this
21 Paragraph and this failure prevents Texaco from meeting one or
22 more deadlines in a plan approved by the EPA pursuant to this
23 Consent Decree, Texaco may seek relief under the provisions of
24 Section XIX (Force Majeure) hereof.

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11. Remedial Design.

a. Texaco agreed to perform certain remedial design tasks identified in Section II.A.1 in the SOW, including preparation of the Preliminary Design Work Plan, pursuant to the Administrative Order on Consent ("AOC") for Remedial Design, U.S. EPA Docket No. 90-03, effective November 15, 1989. The approved Preliminary Design Work Plan is summarized in the Preliminary Design Work Plan Summary. Texaco and the United States hereby agree that the requirements of the Preliminary Design Work Plan Summary will become an enforceable part of this Consent Decree on the effective date of this Consent Decree, and that all other requirements of the AOC will be superseded by the requirements of this Consent Decree, as of the effective date of this Consent Decree. The Preliminary Design Work Plan Summary is hereby incorporated into this Consent Decree as Appendix C.

b. The Preliminary Design Work Plan Summary includes a description of the plans and schedules for implementation of pre-design treatability testing and design, including, but not limited to, plans and schedules for the completion of: (1) Draft and Final Phase I Design, (2) Draft and Final Phase II Pre-Design and (3) Draft and Final Phase II Design. As of the effective date of this Consent Decree, Texaco shall implement the tasks of the Preliminary Design Work Plan Summary that it has not implemented theretofore, and complete all design tasks in accordance with the Preliminary Design Work Plan Summary and the SOW.

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1 c. Following the effective date of this Consent Decree,
2 all the design deliverables Texaco is required to submit to EPA
3 pursuant to the SOW shall be reviewed by EPA pursuant to Section
4 XII (Submissions Requiring Agency Approval) and must be submitted
5 by Texaco to the State for review and comment.

6 12. Remedial Action.

7 a. Within 60 days after the approval of the final design
8 submittal, Texaco shall submit to EPA and the State, a draft work
9 plan for the performance of the Remedial Action at the Site
10 ("Draft Remedial Action Work Plan"). The Draft Remedial Action
11 Work Plan shall provide for construction of the remedy, in
12 accordance with the SOW, as set forth in the design plans and
13 specifications in the approved final design submittal. Within 30
14 days after receiving EPA's comments on the Draft Remedial Action
15 Work Plan, Texaco shall submit to EPA for approval, and the State
16 for review, a final Remedial Action Work Plan ("Remedial Action
17 Work Plan"). Upon approval by EPA, the Remedial Action Work Plan
18 shall be incorporated into and become enforceable under this
19 Consent Decree.

20 b. The Remedial Action Work Plan shall contain plans and
21 schedules for implementation of the following remedial action
22 tasks as set forth in the SOW: (1) tentative formulation of the
23 Remedial Action team; (2) method for selection of the contractor;
24 (3) the schedule for developing and submitting other required
25 Remedial Action plans and for completion of the Remedial Action;

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1 (4) revised cost estimates; (5) a Health and Safety Plan which
2 conforms to the applicable Occupational Safety and Health
3 Administration and EPA requirements including, but not limited
4 to, 29 C.F.R. § 1910.120.; (6) methodology for implementation of
5 the Contingency Plan; (7) methodology for implementation of the
6 Construction Quality Assurance Plan; (8) a groundwater monitoring
7 plan; (9) methods for satisfying permitting requirements; (10)
8 methodology for implementation of the Operation and Maintenance
9 Plan; (11) construction quality control plan; and (12) a closeout
10 report documenting procedures and plans for the decontamination
11 of equipment and the disposal of contaminated materials. The
12 Remedial Action Work Plan also shall include a schedule for
13 implementation of all Remedial Action tasks identified in the
14 Final Design submittal.

15 c. Upon approval of the Remedial Action Work Plan by
16 EPA, after a reasonable opportunity for review and comment by the
17 State, Texaco shall implement the activities required under the
18 Remedial Action Work Plan. Texaco shall submit to EPA and the
19 State all plans, submittals, or other deliverables required under
20 the approved Remedial Action Work Plan in accordance with the
21 approved schedule for review and approval pursuant to Section XII
22 (Submissions Requiring Agency Approval). Unless otherwise
23 directed by EPA, Texaco shall not commence physical on-site
24 activities at the Site prior to approval of the Remedial Action
25 Work Plan.

26 13. The Work performed by Texaco pursuant to this Consent
27 Decree shall include the obligation to achieve the Performance
28 Standards. The methodology for determining attainment of the

1 Performance Standards is set forth in Section III of the SOW.
2 EPA's calculation of the methodology for determining attainment
3 of the Performance Standards shall be binding upon Texaco subject
4 only to the right to seek administrative review as set forth in
5 Paragraphs 62, 63 and 64 a. and b.

6 14. Texaco acknowledges and agrees that nothing in this
7 Consent Decree, the SOW, or the Remedial Design or Remedial
8 Action Work Plans constitutes a warranty or representation of any
9 kind by Plaintiffs that compliance with the work requirements set
10 forth in the SOW and the Work Plans will achieve the Performance
11 Standards. Texaco's compliance with the work requirements shall
12 not foreclose Plaintiffs from seeking compliance with all terms
13 and conditions of this Consent Decree, including, but not limited
14 to, the applicable Performance Standards.

15 15. Texaco shall, prior to any off-Site shipment of Waste
16 Material resulting from the Work being conducted pursuant to this
17 Decree to an out-of-state waste management facility, provide
18 written notification to the appropriate state environmental
19 official in the receiving facility's state and to the EPA Project
20 Coordinator of such shipment of Waste Material. However, this
21 notification requirement shall not apply to any off-Site
22 shipments when the total volume of all such shipments will not
23 exceed 10 cubic yards.

24 a. Texaco shall include in the written notification the
25 following information, where available: (1) the name and location
26 of the facility to which the Waste Material are to be shipped;
27 (2) the type and quantity of the Waste Material to be shipped;
28 (3) the expected schedule for the shipment of the Waste Material;

1 and (4) the method of transportation. Texaco shall notify the
2 state in which the planned receiving facility is located of major
3 changes in the shipment plan, such as a decision to ship the
4 Waste Material to another facility within the same state, or to a
5 facility in another state.

6 b. The identity of the receiving facility and state will
7 be determined by Texaco following the award of the contract for
8 Remedial Action construction. Texaco shall provide the
9 information required by Paragraph 15.a as soon as practicable
10 after the award of the contract and before the Waste Material is
11 actually shipped.

12 VII. ADDITIONAL RESPONSE ACTIONS

13 16. In the event that EPA determines or Texaco proposes that
14 additional response actions are necessary to meet the Performance
15 Standards or to carry out the remedy selected in the ROD,
16 notification of such additional response actions shall be
17 provided to the Project Coordinator.

18 17. Within 30 days of receipt of notice from EPA or Texaco
19 pursuant to Paragraph 16 that additional response actions are
20 necessary (or such longer time as may be specified by EPA),
21 Texaco shall submit for approval by EPA, after reasonable
22 opportunity for review and comment by the State, a work plan for
23 the additional response actions. The plan shall conform to the
24 applicable requirements of Paragraphs 11 and 12. Upon approval
25 of the plan pursuant to Section XII (Submissions Requiring Agency
26 Approval), Texaco shall implement the plan for additional
27 response actions in accordance with the schedule contained
28 therein.

1 18. Any additional response actions that Texaco proposes are
2 necessary to meet the Performance Standards or to carry out the
3 remedy selected in the ROD shall be subject to approval by EPA,
4 after reasonable opportunity for review and comment by the State,
5 and, if authorized by EPA, shall be completed by Texaco in
6 accordance with plans, specifications, and schedules approved or
7 established by EPA pursuant to Section XII (Submissions Requiring
8 Agency Approval).

9 19. Texaco may invoke the procedures set forth in Section XX
10 (Dispute Resolution) to dispute EPA's determination that
11 additional response actions are necessary to meet the Performance
12 Standards or to carry out the remedy selected in the ROD. Such a
13 dispute shall be resolved pursuant to Paragraphs 61-66 of this
14 Consent Decree.

15 VIII. EPA PERIODIC REVIEW

16 20. Texaco shall conduct any studies and investigations as
17 requested by EPA in order to permit EPA to conduct reviews at
18 least every five years as required by Section 121(c) of CERCLA,
19 any applicable regulations and EPA guidance regarding five-year
20 reviews (OSWER Directive 9355.7-02 entitled "Structure and
21 Components of Five-Year Reviews" and any modifications thereto,
22 hereinafter "EPA Five-Year Review Guidance"). For those five
23 year reviews conducted pursuant to policy as described in EPA's
24 Five-Year Review Guidance, Texaco's obligation under this
25 paragraph shall terminate when EPA issues a certificate of
26 completion of the Work pursuant to paragraph 47 b.

27 21. If required by Sections 113(k)(2) or 117 of CERCLA,
28 Texaco and the public will be provided with an opportunity to

1 comment on any further response actions proposed by EPA as a
2 result of the review conducted pursuant to EPA Five-Year Review
3 Guidance or Section 121(c) of CERCLA and to submit written
4 comments for the record during the public comment period. After
5 the period for submission of written comments is closed, the
6 Regional Administrator, EPA Region IX, or his/her delegate will
7 determine in writing whether further response actions are
8 appropriate.

9 22. If the Regional Administrator, EPA Region IX, or his/her
10 delegate (after providing the State with a reasonable opportunity
11 for review and comment) determines that information received, in
12 whole or in part, during the review conducted pursuant to Section
13 121(c) of CERCLA or EPA Five-Year Review Guidance, indicates that
14 the Remedial Action is not protective of human health and the
15 environment, Texaco shall undertake any further response actions
16 EPA has determined are appropriate, unless their liability for
17 such further response actions is barred by the Covenant Not to
18 Sue set forth in Section XXII. Texaco shall submit a plan for
19 such work to EPA for approval in accordance with the procedures
20 set forth in Section VI (Performance of the Work by Texaco) and
21 shall implement the plan approved by EPA. Texaco may invoke the
22 procedures set forth in Section XX (Dispute Resolution) to
23 dispute (1) EPA's determination that the remedial action is not
24 protective of human health and the environment, (2) EPA's
25 selection of the further response actions ordered as arbitrary
26 and capricious or otherwise not in accordance with law, or (3)
27 EPA's determination that Texaco's liability for the further
28 response actions requested is reserved in Paragraphs 79, 80, or

1 82 or otherwise not barred by the Covenant Not to Sue set forth
2 in Section XXII.

3 IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

4 23. Texaco shall use quality assurance, quality control, and
5 chain of custody procedures for all treatability, design,
6 compliance and monitoring samples in accordance with EPA's
7 "Interim Guidelines and Specifications For Preparing Quality
8 Assurance Project Plans," December 1980, (QAMS-005/80); "Data
9 Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC
10 Policies and Procedures Manual," May 1978, revised November 1984,
11 (EPA 330/9-78-001-R); and subsequent amendments to such
12 guidelines upon notification by EPA to Texaco of such amendment.
13 Amended guidelines shall apply only to procedures conducted after
14 such notification. Prior to the commencement of any monitoring
15 project under this Consent Decree, Texaco shall submit to EPA for
16 approval, after a reasonable opportunity for review and comment
17 by the State, a Quality Assurance Project Plan ("QAPP") to EPA
18 and the State that is consistent with the SOW, the NCP and
19 applicable guidance documents. If relevant to the proceeding,
20 the Parties agree that validated sampling data generated in
21 accordance with the QAPP(s) and reviewed and approved by EPA
22 shall be admissible as evidence, without objection, in any
23 proceeding under this Decree. Texaco shall ensure that EPA and
24 State personnel and their authorized representatives are allowed
25 access at reasonable times to all laboratories utilized by Texaco
26 in implementing this Consent Decree. In addition, Texaco shall
27 ensure that such laboratories shall analyze all samples submitted
28 by EPA pursuant to the QAPP for quality assurance monitoring.

1 Texaco shall ensure that the laboratories it utilizes for the
2 analysis of samples taken pursuant to this Decree perform all
3 analyses according to accepted EPA methods. Accepted EPA methods
4 consist of those methods which are documented in the "Contract
5 Lab Program Statement of Work for Inorganic Analysis" and the
6 "Contract Lab Program Statement of Work for Organic Analysis,"
7 dated February 1988, and any amendments made thereto during the
8 course of the implementation of this Decree. Texaco shall ensure
9 that all laboratories they use for analysis of samples taken
10 pursuant to this Consent Decree participate in an EPA or EPA-
11 equivalent QA/QC program.

12 24. Upon request, Texaco shall allow split or duplicate
13 samples to be taken by EPA and the State or their authorized
14 representatives. Texaco shall notify EPA and the State not less
15 than 28 days in advance of any sample collection activity unless
16 shorter notice is agreed to by EPA. In addition, EPA and the
17 State shall have the right to take any additional samples that
18 EPA or the State deem necessary. Upon request, EPA and the State
19 shall allow Texaco to take split or duplicate samples of any
20 samples it takes as part of the Plaintiffs' oversight of Texaco's
21 implementation of the Work.

22 25. Texaco shall submit to EPA and the State 2 copies each of
23 the results of all sampling and/or tests or other data obtained
24 or generated by or on behalf of Texaco with respect to the Site
25 and/or the implementation of this Consent Decree unless EPA
26 agrees otherwise.

27 26. Notwithstanding any provision of this Consent Decree, the
28 United States and the State hereby retains all of its information

1 gathering and inspection authorities and rights, including
2 enforcement actions related thereto, under CERCLA, RCRA and any
3 other applicable statutes or regulations.

4 X. ACCESS

5 27. Commencing upon the date of lodging of this Consent
6 Decree, Texaco agrees to provide the United States, the State,
7 and their representatives, including EPA and its contractors,
8 access at all reasonable times to the Site and any other property
9 to which access is required for the implementation of this
10 Consent Decree, to the extent access to the property is
11 controlled by Texaco, for the purposes of conducting any activity
12 related to this Consent Decree including, but not limited to:

- 13 a. Monitoring the Work;
- 14 b. Verifying any data or information submitted to the
15 United States;
- 16 c. Conducting investigations relating to contamination
17 at or near the Site;
- 18 d. Obtaining samples;
- 19 e. Assessing the need for, planning, or implementing
20 additional response actions at or near the Site;
- 21 f. Inspecting and copying records, operating logs,
22 contracts, or other documents maintained or generated by Texaco
23 or its agents, consistent with Section XXV; and
- 24 g. Assessing Texaco's compliance with this Consent
25 Decree.

26 28. To the extent that the Site or any other property to
27 which access is required for the implementation of this Consent
28 Decree is owned or controlled by persons other than Texaco,

1 Texaco shall use best efforts to secure from such persons access
2 for Texaco, as well as for the United States and the State and
3 their representatives, including, but not limited to, their
4 contractors, as necessary to effectuate this Consent Decree. For
5 purposes of this Paragraph "best efforts" includes the payment of
6 reasonable sums of money in consideration of access. If any
7 access required to complete the Work is not obtained within 45
8 days of the date of lodging of this Consent Decree, or within 45
9 days of the date EPA notifies Texaco in writing that additional
10 access beyond that previously secured is necessary, Texaco shall
11 promptly notify the United States, and shall include in that
12 notification a summary of the steps Texaco has taken to attempt
13 to obtain access. The United States or the State may, as it
14 deems appropriate, assist Texaco in obtaining access. Texaco
15 shall reimburse the United States or the State, in accordance
16 with the procedures in Section XVII (Reimbursement of Response
17 Costs), for all costs incurred by the United States in obtaining
18 access.

19 29. Notwithstanding any provision of this Consent Decree, the
20 United States and the State retain all of their access
21 authorities and rights, including enforcement authorities related
22 thereto, under CERCLA, RCRA and any other applicable statute or
23 regulations.

24 XI. REPORTING REQUIREMENTS

25 30. In addition to any other requirement of this Consent
26 Decree, Texaco shall submit to EPA and the State two copies of
27 written quarterly progress reports that: (a) describe the actions
28 which have been taken toward achieving compliance with this

1 Consent Decree during the previous quarter; (b) include a summary
2 of all results of sampling and tests and all other data received
3 or generated by Texaco or its contractors or agents in the
4 previous month; (c) identify all work plans, plans and other
5 deliverables required by this Consent Decree completed and
6 submitted during the previous quarter; (d) describe all actions,
7 including, but not limited to, data collection and implementation
8 of work plans, which are scheduled for the next quarter and
9 provide other information relating to the progress of
10 construction; and (e) identify possible delays and problems in
11 the upcoming quarter and a description of efforts made to
12 mitigate those delays or anticipated delays. Texaco shall submit
13 these progress reports to EPA and the State by the twentieth day
14 following the end of each quarter until EPA notifies Texaco
15 pursuant to Paragraph 47.b of Section XV (Certification of
16 Completion). The first quarterly progress report must be
17 submitted 90 days following the lodging of this Consent Decree.
18 If requested by EPA or the State, Texaco shall also provide
19 briefings for EPA and the State to discuss the progress of the
20 Work.

21 31. Texaco shall notify EPA of any change in the schedule
22 described in the quarterly progress report for the performance of
23 any activity, including, but not limited to, data collection and
24 implementation of work plans, no later than seven days prior to
25 the performance of the activity.

26 32. Upon the occurrence of any event during performance of
27 the Work that Texaco is required to report pursuant to Section
28 103 of CERCLA or Section 304 of the Emergency Planning and

1 Community Right-to-know Act (EPCRA), Texaco shall within 24 hours
2 of the on-set of such event orally notify the EPA Project
3 Coordinator or the Alternate EPA Project Coordinator (in the
4 event of the unavailability of the EPA Project Coordinator), or,
5 in the event that neither the EPA Project Coordinator or
6 Alternate EPA Project Coordinator is available, the Emergency
7 Response Section, Region IX, United States Environmental
8 Protection Agency. These reporting requirements are in addition
9 to the reporting required by CERCLA Section 103 or EPCRA Section
10 304.

11 33. Within 20 days of the onset of such an event, Texaco
12 shall furnish to Plaintiffs a written report, signed by Texaco's
13 Project Coordinator, setting forth the events which occurred and
14 the measures taken, and to be taken, in response thereto. Within
15 30 days of the conclusion of such an event, Texaco shall submit a
16 report setting forth all actions taken in response thereto.

17 34. Texaco shall submit two copies of all plans, reports,
18 and data required by the SOW, the Remedial Design Work Plan, the
19 Remedial Action Work Plan, or any other approved plans to EPA in
20 accordance with the schedules set forth in such plans. Texaco
21 shall simultaneously submit two copies of all such plans, reports
22 and data to the State.

23 35. All reports and other documents submitted by Texaco to
24 EPA (other than the monthly progress reports referred to above)
25 which purport to document Texaco's compliance with the terms of
26 this Consent Decree shall be signed by an authorized
27 representative of Texaco.
28

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

1
2 36. After review of any plan, report or other item which is
3 required to be submitted for approval pursuant to this Consent
4 Decree, EPA, after reasonable opportunity for review and comment
5 by the State, shall: (a) approve, in whole or in part, the
6 submission; (b) approve the submission upon specified conditions;
7 (c) modify the submission to cure the deficiencies; (d)
8 disapprove, in whole or in part, the submission, directing that
9 Texaco modify the submission; or (e) any combination of the
10 above.

11 37. In the event of approval, approval upon conditions, or
12 modification by EPA due to a non-material defect, pursuant to
13 Paragraphs 36(a), (b), or (c), Texaco shall proceed to take any
14 action required by the plan, report, or other item, as approved
15 or modified by EPA subject only to its right to invoke the
16 Dispute Resolution procedures set forth in Section XX (Dispute
17 Resolution) with respect to the modifications or conditions made
18 by EPA. In the event that EPA modifies the submission to cure
19 the deficiencies pursuant to Paragraph 36(c) and the submission
20 has a material defect, EPA retains its right to seek stipulated
21 penalties, as provided in Section XXI.

22 38. a. Upon receipt of a notice of disapproval pursuant to
23 Paragraph 36(d) or a notice of EPA's intent to modify the
24 submission pursuant to Paragraph 36(c) due to a material defect,
25 Texaco shall, within 14 days, the time specified in Paragraphs 11
26 or 12, if applicable, or such other longer time period as
27 specified by EPA in such notice, correct the deficiencies and
28 resubmit the plan, report, or other item for approval. Any

1 stipulated penalties applicable to the submission, as provided in
2 Section XXI, shall accrue during the 14-day period or otherwise
3 specified period but shall not be payable unless the resubmission
4 is disapproved or modified due to a material defect as provided
5 in Paragraph 40.

6 b. Notwithstanding the receipt of a notice of disapproval
7 pursuant to Paragraph 36(d) or a notice of EPA's intent to modify
8 due to a material defect pursuant to Paragraph 36(c), Texaco
9 shall proceed, at the direction of EPA, to take any action
10 required by any non-deficient portion of the submission.
11 Implementation of any non-deficient portion of a submission shall
12 not relieve Texaco of any liability for stipulated penalties
13 under Section XXI (Stipulated Penalties).

14 39. In the event that a resubmitted plan, report or other
15 item, or portion thereof, is disapproved by EPA, EPA may again
16 require Texaco to correct the deficiencies, in accordance with
17 the preceding Paragraphs. EPA also retains the right to amend or
18 develop the plan, report or other item. Texaco shall implement
19 any such plan, report, or item as amended or developed by EPA,
20 subject only to their right to invoke the procedures set forth in
21 Section XX (Dispute Resolution).

22 40. If upon resubmission, a plan, report, or item is
23 disapproved or modified by EPA due to a material defect, Texaco
24 shall be deemed to have failed to submit such plan, report, or
25 item timely and adequately unless Texaco invokes the dispute
26 resolution procedures set forth in Section XX (Dispute
27 Resolution) and EPA's action is overturned pursuant to that
28 Section. The provisions of Section XX (Dispute Resolution) and

1 Section XXI (Stipulated Penalties) shall govern the
2 implementation of the Work and accrual and payment of any
3 stipulated penalties during Dispute Resolution. If EPA's
4 disapproval or modification is upheld, stipulated penalties shall
5 accrue for such violation from the date on which the initial
6 submission was originally required, as provided in Section XXI.

7 41. All plans, reports, and other items required to be
8 submitted to EPA under this Consent Decree shall, upon approval
9 or modification by EPA, be enforceable under this Consent Decree.
10 In the event EPA approves or modifies a portion of a plan,
11 report, or other item required to be submitted to EPA under this
12 Consent Decree, the approved or modified portion shall be
13 enforceable under this Consent Decree.

14 XIII. PROJECT COORDINATORS

15 42. Within 20 days of entry of this Consent Decree, Texaco,
16 the State and EPA will notify each other, in writing, of the
17 name, address and telephone number of their respective designated
18 Project Coordinators and Alternate Project Coordinators. If a
19 Project Coordinator or Alternate Project Coordinator initially
20 designated is changed, the identity of the successor will be
21 given to the other parties at least 5 working days before the
22 changes occur, unless impracticable, but in no event later than
23 the actual day the change is made. Texaco's Project Coordinator
24 shall be subject to disapproval by EPA and shall have the
25 technical expertise sufficient to adequately oversee all aspects
26 of the Work. Texaco's Project Coordinator shall not be an
27 attorney for Texaco in this matter. He or she may assign other
28 representatives, including other contractors, to serve as a Site

1 representative for oversight of performance of daily operations
2 during remedial activities.

3 43. Plaintiffs may designate other representatives,
4 including, but not limited to, EPA and State employees, and
5 federal and State contractors and consultants, to observe and
6 monitor the progress of any activity undertaken pursuant to this
7 Consent Decree. EPA's Project Coordinator and Alternate Project
8 Coordinator shall have the authority lawfully vested in a
9 Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC)
10 by the National Contingency Plan, 40 C.F.R. Part 300. In
11 addition, EPA's Project Coordinator or Alternate Project
12 Coordinator shall have authority, consistent with the National
13 Contingency Plan, to halt any Work required by this Consent
14 Decree and to take any necessary response action when s/he
15 determines that conditions at the Site constitute an emergency
16 situation or may present an immediate threat to public health or
17 welfare or the environment due to release or threatened release
18 of Waste Material.

19 XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

20 44. Within 45 days of entry of this Consent Decree, Texaco
21 shall establish and maintain financial security in the amount of
22 \$4 million in one of the following forms:

- 23 (a) A surety bond guaranteeing performance of the Work;
24 (b) One or more irrevocable letters of credit equalling
25 the total estimated cost of the Work;

26 /

27 /

28 /

1 (c) A trust fund;

2 (d) A guarantee to perform the Work by one or more parent
3 corporations or subsidiaries, or by one or more unrelated
4 corporations that have a substantial business relationship with
5 Texaco; or

6 (e) A demonstration that Texaco satisfies the
7 requirements of 40 C.F.R. Part 264.143(f).

8 45. If Texaco seeks to demonstrate the ability to complete
9 the Work through a guarantee by a third party pursuant to
10 Paragraph 44(d) of this Consent Decree, Texaco shall demonstrate
11 that the guarantor satisfies the requirements of 40 C.F.R. Part
12 264.143(f). If Texaco seeks to demonstrate its ability to
13 complete the Work by means of the financial test or the corporate
14 guarantee pursuant to Paragraph 44(d) or (e), it shall resubmit
15 sworn statements conveying the information required by 40 C.F.R.
16 Part 264.143(f) annually, on the anniversary of the effective
17 date of this Consent Decree. In the event that EPA, after a
18 reasonable opportunity for review and comment by the State,
19 determines at any time that the financial assurances provided
20 pursuant to this Section are inadequate, Texaco shall, within 30
21 days of receipt of notice of EPA's determination, obtain and
22 present to EPA for approval one of the other forms of financial
23 assurance listed in Paragraph 43 of this Consent Decree.
24 Texaco's inability to demonstrate financial ability to complete
25 the Work shall not excuse performance of any activities required
26 under this Consent Decree.

27 XV. CERTIFICATION OF COMPLETION

28 46. Completion of the Remedial Action

1 a. Within 90 days after Texaco concludes that the
2 Remedial Action has been fully performed and the Performance
3 Standards have been attained, Texaco shall schedule and conduct a
4 pre-certification inspection to be attended by Texaco, and EPA
5 and the State. If, after the pre-certification inspection,
6 Texaco still believes that the Remedial Action has been fully
7 performed and the Performance Standards have been attained, it
8 shall submit a written report requesting certification to EPA for
9 approval, with a copy to the State, pursuant to Section XII
10 (Submissions Requiring Agency Approval) within 30 days of the
11 inspection. In the report, a registered professional engineer
12 and Texaco's Project Coordinator shall state that the Remedial
13 Action has been completed in full satisfaction of the
14 requirements of this Consent Decree. The written report shall
15 include as-built drawings signed and stamped by a professional
16 engineer. The report shall contain the following statement,
17 signed by a responsible corporate official of Texaco or Texaco's
18 Project Coordinator:

19 "To the best of my knowledge, after thorough investigation,
20 I certify that the information contained in or accompanying
21 this submission is true, accurate and complete. I am aware
22 that there are significant penalties for submitting false
information, including the possibility of fine and
imprisonment for knowing violations."

23 If, after completion of the pre-certification inspection and
24 receipt and review of the written report, EPA, after reasonable
25 opportunity to review and comment by the State, determines that
26 the Remedial Action or any portion thereof has not been completed
27 in accordance with this Consent Decree or that the Performance
28 Standards have not been achieved, EPA will notify Texaco in

1 writing of the activities that must be undertaken to complete the
2 Remedial Action and achieve the Performance Standards. EPA will
3 set forth in the notice a schedule for performance of such
4 activities consistent with the Consent Decree and the SOW or
5 require Texaco to submit a schedule to EPA for approval pursuant
6 to Section XII (Submissions Requiring Agency Approval). Texaco
7 shall perform all activities described in the notice in
8 accordance with the specifications and schedules established
9 pursuant to this Paragraph, subject to their right to invoke the
10 dispute resolution procedures set forth in Section XX (Dispute
11 Resolution).

12 b. If EPA concludes, based on the initial or any
13 subsequent report requesting Certification of Completion and
14 after a reasonable opportunity for review and comment by the
15 State, that the Remedial Action has been fully performed in
16 accordance with this Consent Decree and that the Performance
17 Standards have been achieved, EPA will so certify in writing to
18 Texaco. This certification shall constitute the Certification of
19 Completion of the Remedial Action for purposes of this Consent
20 Decree, including, but not limited to, Section XXII (Covenants
21 Not to Sue by Plaintiffs). Certification of Completion of the
22 Remedial Action shall not affect Texaco's obligations under this
23 Consent Decree.

24 47. Completion of the Work

25 a. Within 90 days after Texaco concludes that all phases
26 of the Work (including O & M), have been fully performed, Texaco
27 shall schedule and conduct a pre-certification inspection to be
28 attended by Texaco, EPA and the State. If, after the pre-

1 certification inspection, Texaco still believes that the Work has
2 been fully performed, Texaco shall submit a written report by a
3 registered professional engineer stating that the Work has been
4 completed in full satisfaction of the requirements of this
5 Consent Decree. The report shall contain the following
6 statement, signed by a responsible corporate official of Texaco
7 or Texaco's Project Coordinator:

8 "To the best of my knowledge, after thorough investigation,
9 I certify that the information contained in or accompanying
10 this submission is true, accurate and complete. I am aware
11 that there are significant penalties for submitting false
12 information, including the possibility of fine and
13 imprisonment for knowing violations."

14 If, after review of the written report, EPA, after reasonable
15 opportunity to review and comment by the State, determines that
16 any portion of the Work has not been completed in accordance with
17 this Consent Decree, EPA will notify Texaco in writing of the
18 activities that must be undertaken to complete the Work. EPA
19 will set forth in the notice a schedule for performance of such
20 activities consistent with the Consent Decree and the SOW or
21 require Texaco to submit a schedule to EPA for approval pursuant
22 to Section XII (Submissions Requiring Agency Approval). Texaco
23 shall perform all activities described in the notice in
24 accordance with the specifications and schedules established
25 therein, subject to their right to invoke the dispute resolution
26 procedures set forth in Section XX (Dispute Resolution).

27 b. If EPA concludes, based on the initial or any
28 subsequent request for Certification of Completion by Texaco and
after a reasonable opportunity for review and comment by the
State, that the Work has been fully performed in accordance with

1 this Consent Decree, EPA will so notify Texaco in writing.

2 XVI. EMERGENCY RESPONSE

3 48. In the event of any action or occurrence during the
4 performance of the Work which causes or threatens a release of
5 Waste Material from the Site that constitutes an emergency
6 situation or may present an immediate threat to public health or
7 welfare or the environment, Texaco shall, subject to Paragraph
8 49, immediately take all appropriate action to prevent, abate, or
9 minimize such release or threat of release, and shall immediately
10 notify the EPA's Project Coordinator, or, if the Project
11 Coordinator is unavailable, EPA's Alternate Project Coordinator.
12 If neither of these persons is available, Texaco shall notify the
13 EPA Emergency Response Section, Region IX. Texaco shall take
14 such actions in consultation with EPA's Project Coordinator or
15 other available authorized EPA officer and in accordance with all
16 applicable provisions of the Health and Safety Plans, the
17 Contingency Plans, and any other applicable plans or documents
18 developed pursuant to the SOW. In the event that Texaco fails to
19 take appropriate response action as required by this Section, and
20 EPA or, as appropriate, the State take such action instead,
21 Texaco shall reimburse EPA and the State all costs of the
22 response action not inconsistent with the NCP pursuant to Section
23 XVII (Reimbursement of Response Costs).

24 49. Nothing in the preceding Paragraph or in this Consent
25 Decree shall be deemed to limit any authority of the United
26 States, or the State, to take, direct, or order all appropriate
27 action or to seek an order from the Court to protect human health
28 and the environment or to prevent, abate, respond to, or minimize

1 an actual or threatened release of Waste Material on, at, or from
2 the Site.

3 XVII. REIMBURSEMENT OF RESPONSE COSTS

4 50. Within 30 days of the effective date of this Consent
5 Decree, Texaco shall:

6 a. RESERVED

7 b. Pay to the State \$ 107,607.12 in the form of a
8 certified check or checks made payable to State of California, in
9 reimbursement of Past Response Costs incurred by the State.
10 Texaco shall send the certified check(s) to Department of Toxic
11 Substances Control, Accounting Office, 400 P Street, 4th Floor,
12 P.O. Box 806, Sacramento, California.

13 51. Texaco shall reimburse the United States and the State
14 for all Future Response Costs not inconsistent with the National
15 Contingency Plan incurred by the United States and the State.
16 The United States and the State will each send Texaco a bill
17 requiring payment that includes a summary of costs incurred by
18 the Department of Justice, a summary of costs incurred by the
19 State and a copy of EPA's Cost Documentation Management System
20 ("CDMS") report, which includes direct and indirect costs
21 incurred by EPA, DOJ and the State and their contractors on an
22 annual basis. Texaco shall make all payments within 40 days of
23 Texaco's receipt of each bill requiring payment, except as
24 otherwise provided in Paragraph 52. Texaco shall make all
25 payments to the United States which are required by this
26 Paragraph in the form of a certified check or checks made payable
27 to "EPA Hazardous Substance Superfund" and referencing CERCLA
28 Number Site 9TJ6 and DOJ Case Number 90-11-2-840. Texaco shall

1 forward the certified check(s) to U.S. EPA Region IX, Attention:
2 Superfund Accounting, P.O. Box 360863M, Pittsburg, Pennsylvania
3 15251. Texaco shall make all payments to the State which are
4 required pursuant to this Paragraph in the form of a certified
5 check or checks made payable to the State of California and shall
6 forward the certified check to the Department of Toxic Substances
7 Control, Accounting Office, 400 P Street, 4th Floor, P.O. Box
8 806, Sacramento, California 95812-0806.

9 52. Texaco may contest payment of any Future Response Costs
10 under Paragraph 51 if it determines that the United States or the
11 State has made an accounting error or if they allege that a cost
12 item that is included represents costs that are inconsistent with
13 the NCP. Such objection shall be made in writing within 40 days
14 of receipt of the bill and must be sent to the United States (if
15 the United States' accounting is being disputed) or the State (if
16 the State's accounting is being disputed) pursuant to Section
17 XXVII (Notices and Submissions). Any such objection shall
18 specifically identify the contested Future Response Costs and the
19 basis for objection. In the event of an objection, Texaco shall
20 within the 40 day period pay all uncontested Future Response
21 Costs to the United States or the State in the manner described
22 in Paragraph 51. Simultaneously, Texaco shall establish an
23 interest bearing escrow account in a federally-insured bank duly
24 chartered in the State of California and remit to that escrow
25 account funds equivalent to the amount of the contested Future
26 Response Costs. Texaco shall send to the United States, as
27 provided in Section XXVII (Notices and Submissions), and the
28 State a copy of the transmittal letter and check paying the

1 uncontested Future Response Costs, and a copy of the
2 correspondence that establishes and funds the escrow account,
3 including, but not limited to, information containing the
4 identity of the bank and bank account under which the escrow
5 account is established as well as a bank statement showing the
6 initial balance of the escrow account. Simultaneously with
7 establishment of the escrow account, Texaco shall initiate the
8 Dispute Resolution procedures in Section XX (Dispute Resolution).
9 If the United States or the State prevail in the dispute, within
10 5 days of the resolution of the dispute, Texaco shall pay the
11 sums due (with accrued interest) to the United States or the
12 State, if State costs are disputed, in the manner described in
13 Paragraph 51. If Texaco prevails concerning any aspect of the
14 contested costs, Texaco shall pay that portion of the costs (plus
15 associated accrued interest) for which they did not prevail to
16 the United States or the State, if State costs are disputed in
17 the manner described in Paragraph 51; Texaco shall be disbursed
18 any balance of the escrow account. The dispute resolution
19 procedures set forth in this Paragraph in conjunction with the
20 procedures set forth in Section XX (Dispute Resolution) shall be
21 the exclusive mechanisms for resolving disputes regarding
22 Texaco's obligation to reimburse the United States and the State
23 for their Future Response Costs.

24 53. In the event that the payments required by Paragraph 50
25 are not made within 30 days of the effective date of this Consent
26 Decree or the payments required by Paragraph 51 are not made
27 within 40 days of Texaco's receipt of the bill, Texaco shall pay
28 interest on the unpaid balance at the rate established pursuant

1 to Section 107(a) of CERCLA, 42 U.S.C. § 9607. The interest to
2 be paid on Past Response Costs shall begin to accrue on the
3 effective date of the Consent Decree. The interest on Future
4 Response Costs shall begin to accrue 30 days from Texaco's
5 receipt of the bill. Interest shall accrue at the rate specified
6 through the date of Texaco's payment. Payments of interest made
7 under this Paragraph shall be in addition to such other remedies
8 or sanctions available to Plaintiffs by virtue of Texaco's
9 failure to make timely payments under this Section.

10 XVIII. INDEMNIFICATION AND INSURANCE

11 54. The United States and the State do not assume any
12 liability by entering into this agreement or by virtue of any
13 designation of Texaco as EPA's authorized representative under
14 Section 104(e) of CERCLA. Texaco shall indemnify, save and hold
15 harmless the United States, the State, and their officials,
16 agents, employees, contractors, subcontractors, or
17 representatives for or from any and all claims or causes of
18 action arising from, or on account of, acts or omissions of
19 Texaco, its officers, directors, employees, agents, contractors,
20 subcontractors, and any persons acting on their behalf or under
21 their control, in carrying out activities pursuant to this
22 Consent Decree, including, but not limited to, any claims arising
23 from any designation of Texaco as EPA's authorized representative
24 under Section 104(e) of CERCLA. Further, Texaco agrees to pay
25 the United States and the State all costs they incur including,
26 but not limited to, attorneys fees and other expenses of
27 litigation and settlement arising from, or on account of, claims
28 made against the United States or the State based on acts or

1 omissions of Texaco, its officers, directors, employees, agents,
2 contractors, subcontractors, and any persons acting on their
3 behalf or under their control, in carrying out activities
4 pursuant to this Consent Decree. Neither the United States nor
5 the State shall be held out as a party to any contract entered
6 into by or on behalf of Texaco in carrying out activities
7 pursuant to this Consent Decree. Neither Texaco nor any such
8 contractor shall be considered an agent of the United States or
9 the State. Nothing in this Consent Decree, however, shall
10 require indemnification by Texaco with respect to any claim or
11 causes of action against the United States or the State based on
12 negligent action by the United States or the State (not including
13 oversight or approval of Texaco's plans or activities).

14 55. Texaco waives all claims against the United States and
15 the State for damages or reimbursement or for set-off of any
16 payments made or to be made to the United States or the State,
17 arising from or on account of any contract, agreement, or
18 arrangement between Texaco and any person for performance of Work
19 on or relating to the Site, including, but not limited to, claims
20 on account of construction delays. In addition, Texaco shall
21 indemnify and hold harmless the United States and the State with
22 respect to any and all claims for damages or reimbursement
23 arising from or on account of any contract, agreement, or
24 arrangement between Texaco and any person for performance of Work
25 on or relating to the Site, including, but not limited to, claims
26 on account of construction delays.

27 56. No later than 15 days before commencing any on-site Work,
28 Texaco shall secure, and shall maintain until the first

1 anniversary of EPA's Certification of Completion of the Remedial
2 Action pursuant to Paragraph 46.b. of Section XV (Certification
3 of Completion) comprehensive general liability insurance and
4 automobile insurance with limits of two million dollars, combined
5 single limit naming as additional insured the United States and
6 the State. In addition, for the duration of this Consent Decree,
7 Texaco shall satisfy, or shall ensure that their contractors or
8 subcontractors satisfy, all applicable laws and regulations
9 regarding the provision of worker's compensation insurance for
10 all persons performing the Work on behalf of Texaco in
11 furtherance of this Consent Decree. Prior to commencement of the
12 Work under this Consent Decree, Texaco shall provide to EPA and
13 the State certificates of such insurance and a copy of each
14 insurance policy. Texaco shall resubmit such certificates and
15 copies of policies each year on the anniversary of the effective
16 date of this Consent Decree. If Texaco demonstrates by evidence
17 satisfactory to EPA and the State that any contractor or
18 subcontractor maintains insurance equivalent to that described
19 above, or insurance covering the same risks but in a lesser
20 amount, then, with respect to that contractor or subcontractor,
21 Texaco need provide only that portion of the insurance described
22 above which is not maintained by the contractor or subcontractor.

23 **XIX. FORCE MAJEURE**

24 57. "Force majeure," for purposes of this Consent Decree, is
25 defined as any event arising from causes beyond the control of
26 Texaco or of any entity controlled by Texaco, including, but not
27 limited to, its contractors and subcontractors, that delays or
28 prevents the performance of any obligation under this Consent

1 Decree despite Texaco's best efforts to fulfill the obligation.
2 The requirement that Texaco exercise "best efforts to fulfill the
3 obligation" includes using best efforts to anticipate any
4 potential force majeure event and best efforts to address the
5 effects of any potential force majeure event (1) as it is
6 occurring and (2) following the potential force majeure event,
7 such that the delay is minimized to the greatest extent possible.
8 "Force Majeure" does not include financial inability to complete
9 the Work or a failure to attain the Performance Standards.

10 58. If any event occurs or has occurred that may delay the
11 performance of any obligation under this Consent Decree, whether
12 or not caused by a force majeure event, Texaco shall notify
13 orally EPA's Project Coordinator or, in his or her absence, EPA's
14 Alternate Project Coordinator or, in the event both of EPA's
15 designated representatives are unavailable, the Director of the
16 Hazardous Waste Management Division, EPA Region IX, within 48
17 hours of when Texaco first knew or should have known that the
18 event might cause a delay. Within 5 days thereafter, Texaco
19 shall provide in writing to EPA and the State an explanation and
20 description of the reasons for the delay; the anticipated
21 duration of the delay; all actions taken or to be taken to
22 prevent or minimize the delay; a schedule for implementation of
23 any measures to be taken to prevent or mitigate the delay or the
24 effect of the delay; Texaco's rationale for attributing such
25 delay to a force majeure event if they intend to assert such a
26 claim; and a statement as to whether, in the opinion of Texaco,
27 such event may cause or contribute to an endangerment to public
28 health, welfare or the environment. Texaco shall include with

1 any notice all available documentation supporting its claim that
2 the delay was attributable to a force majeure. Failure to comply
3 with the above requirements shall preclude Texaco from asserting
4 any claim of force majeure for that event. Texaco shall be
5 deemed to have notice of any circumstance of which their
6 contractors or subcontractors had or should have had notice.

7 59. If EPA, after a reasonable opportunity for review and
8 comment by the State, agrees that the delay or anticipated delay
9 is attributable to a force majeure event, the time for
10 performance of the obligations under this Consent Decree that are
11 affected by the force majeure event will be extended by EPA,
12 after a reasonable opportunity for review and comment by the
13 State, for such time as is necessary to complete those
14 obligations. An extension of the time for performance of the
15 obligations affected by the force majeure event shall not, of
16 itself, extend the time for performance of any other obligation.
17 If EPA, after a reasonable opportunity for review and comment by
18 the State, does not agree that the delay or anticipated delay has
19 been or will be caused by a force majeure event, EPA will notify
20 Texaco in writing of its decision. If EPA, after a reasonable
21 opportunity for review and comment by the State, agrees that the
22 delay is attributable to a force majeure event, EPA will notify
23 Texaco in writing of the length of the extension, if any, for
24 performance of the obligations affected by the force majeure
25 event.

26 60. If Texaco elects to invoke the dispute resolution
27 procedures set forth in Section XX (Dispute Resolution), it shall
28 do so no later than 15 days after receipt of EPA's notice. In

1 any such proceeding, Texaco shall have the burden of
2 demonstrating by a preponderance of the evidence that the delay
3 or anticipated delay has been or will be caused by a force
4 majeure event, that the duration of the delay or the extension
5 sought was or will be warranted under the circumstances, that
6 best efforts were exercised to avoid and mitigate the effects of
7 the delay, and that Texaco complied with the requirements of
8 Paragraphs 57 and 58, above. If Texaco carries this burden, the
9 delay at issue shall be deemed not to be a violation by Texaco of
10 the affected obligation of this Consent Decree identified to EPA
11 and the Court.

12 **XX. DISPUTE RESOLUTION**

13 61. Unless otherwise expressly provided for in this Consent
14 Decree, the dispute resolution procedures of this Section shall
15 be the exclusive mechanism to resolve disputes arising under or
16 with respect to this Consent Decree. However, the procedures set
17 forth in this Section shall not apply to actions by the United
18 States to enforce obligations of Texaco that have not been
19 disputed in accordance with this Section.

20 62. Any dispute which arises under or with respect to this
21 Consent Decree shall in the first instance be the subject of
22 informal negotiations between the parties to the dispute. The
23 period for informal negotiations shall not exceed 20 days from
24 the time the dispute arises, unless it is modified by written
25 agreement of the parties to the dispute. The dispute shall be
26 considered to have arisen when one party sends the other parties
27 a written Notice of Dispute.

28 63. a. In the event that the parties cannot resolve a

1 | dispute by informal negotiations under the preceding Paragraph,
2 | then the position advanced by EPA (after providing the State with
3 | a reasonable opportunity for review and comment) shall be
4 | considered binding unless, within 10 days after the conclusion of
5 | the informal negotiation period, Texaco invokes the formal
6 | dispute resolution procedures of this Section by serving on the
7 | United States and the State, a written Statement of Position on
8 | the matter in dispute, including, but not limited to, any factual
9 | data, analysis or opinion supporting that position and any
10 | supporting documentation relied upon by Texaco. The Statement of
11 | Position shall specify Texaco's position as to whether formal
12 | dispute resolution should proceed under paragraph 64 or 65.

13 | b. Within fourteen (14) days after receipt of Texaco's
14 | Statement of Position, EPA will serve on Texaco its Statement of
15 | Position, including, but not limited to, any factual data,
16 | analysis, or opinion supporting that position and all supporting
17 | documentation relied upon by EPA. EPA's Statement of Position
18 | shall include a statement as to whether formal dispute resolution
19 | should proceed under Paragraph 64 or 65.

20 | c. If there is disagreement between EPA and Texaco as to
21 | whether dispute resolution should proceed under Paragraph 64 or
22 | 65, the parties to the dispute shall follow the procedures set
23 | forth in the paragraph determined by EPA to be applicable.
24 | However, if Texaco ultimately appeals to the Court to resolve the
25 | dispute, the Court shall determine which paragraph is applicable
26 | in accordance with the standards of applicability set forth in
27 | Paragraphs 64 and 65.

28 | 64. Formal dispute resolution for disputes pertaining to the

1 selection or adequacy of any response action and all other
2 disputes that are accorded review on the administrative record
3 under applicable principles of administrative law shall be
4 conducted pursuant to the procedures set forth in this Paragraph.
5 For purposes of this Paragraph, the adequacy of any response
6 action includes, without limitation: (1) the adequacy or
7 appropriateness of plans, procedures to implement plans, or any
8 other items requiring approval by EPA under this Consent Decree;
9 and (2) the adequacy of the performance of response actions taken
10 pursuant to this Consent Decree. Nothing in this Consent Decree
11 shall be construed to allow any dispute by Texaco regarding the
12 validity of the ROD's provisions.

13 a. An administrative record of the dispute shall be
14 maintained by EPA and shall contain all statements of position,
15 including supporting documentation, submitted pursuant to this
16 Paragraph. Where appropriate, EPA may allow submission of
17 supplemental statements of position by the parties to the
18 dispute.

19 b. The Director of the Waste Management Division, EPA
20 Region IX, will issue a final administrative decision resolving
21 the dispute based on the administrative record described in
22 Paragraph 64.a. This decision shall be binding upon Texaco,
23 subject only to the right to seek judicial review pursuant to
24 Paragraph 64.c. and d.

25 c. Any administrative decision made by EPA pursuant to
26 Paragraph 64.b. shall be reviewable by this Court, provided that
27 a notice of judicial appeal is filed by Texaco with the Court and
28 served on all Parties within 10 days of receipt of EPA's

1 decision. The notice of judicial appeal shall include a
2 description of the matter in dispute, the efforts made by the
3 parties to resolve it, the relief requested, and the schedule, if
4 any, within which the dispute must be resolved to ensure orderly
5 implementation of this Consent Decree. The United States may
6 file a response to Texaco's notice of judicial appeal.

7 d. In proceedings on any dispute governed by this
8 Paragraph, Texaco shall have the burden of demonstrating that the
9 decision of the Waste Management Division Director is arbitrary
10 and capricious or otherwise not in accordance with law. Judicial
11 review of EPA's decision shall be on the administrative record
12 compiled pursuant to Paragraphs 64.a.

13 65. Formal dispute resolution for disputes that neither
14 pertain to the selection or adequacy of any response action nor
15 are otherwise accorded review on the administrative record under
16 applicable principles of administrative law, shall be governed by
17 this Paragraph.

18 a. Following receipt of Texaco's Statement of Position
19 submitted pursuant to Paragraph 63, the Director of the Waste
20 Management Division, EPA Region IX, will issue a final decision
21 resolving the dispute. The Waste Management Division Director's
22 decision shall be binding on Texaco unless, within 10 days of
23 receipt of the decision, Texaco files with the Court and serves
24 on the parties a notice of judicial appeal setting forth the
25 matter in dispute, the efforts made by the parties to resolve it,
26 the relief requested, and the schedule, if any, within which the
27 dispute must be resolved to ensure orderly implementation of the
28 Consent Decree. The United States may file a response to

1 Texaco's notice of judicial appeal.

2 b. Notwithstanding Paragraph M of Section I
3 (Background) of this Consent Decree, judicial review of any
4 dispute governed by this Paragraph shall be governed by
5 applicable provisions of law.

6 66. The invocation of formal dispute resolution procedures
7 under this Section shall not extend, postpone or affect in any
8 way any obligation of Texaco under this Consent Decree not
9 directly in dispute, unless EPA or the Court agrees otherwise.
10 Stipulated penalties with respect to the disputed matter shall
11 continue to accrue but payment shall be stayed pending resolution
12 of the dispute as provided in Paragraph 75. Notwithstanding the
13 stay of payment, stipulated penalties shall accrue from the first
14 day of noncompliance with any applicable provision of this
15 Consent Decree. In the event that Texaco does not prevail on the
16 disputed issue, stipulated penalties shall be assessed and paid
17 as provided in Section XXI (Stipulated Penalties).

18 XXI. STIPULATED PENALTIES

19 67. Texaco shall be liable for stipulated penalties in the
20 amounts set forth in Paragraphs 68 and 69 to the United States
21 for failure to comply with the requirements of this Consent
22 Decree specified below, unless excused under Section XIX (Force
23 Majeure). "Compliance" by Texaco shall include completion of the
24 activities under this Consent Decree or any work plan or other
25 plan approved under this Consent Decree identified below in
26 accordance with all applicable requirements of law, this Consent
27 Decree, the SOW, and any plans or other documents approved by EPA
28 pursuant to this Consent Decree and within the specified time

1 schedules established by and approved under this Consent Decree.

2 68. a. The following stipulated penalties shall be payable
3 per violation per day to the United States for any noncompliance
4 identified in Subparagraph 68b:

| <u>Penalty Per Violation</u> <u>Per Day</u> | <u>Period of Noncompliance</u> <u>in Days</u> |
|--|--|
| \$5,000 | 1 - 20 |
| \$7,500 | 21 - 35 |
| \$15,000 | 36 and beyond |

8 b. Failure to submit the Final Design Report and the
9 Extraction and Treatment System Construction Completion Report as
10 required by the SOW.

11 69.a. The following stipulated penalties shall be payable per
12 violation per day to the United States where EPA determines that
13 there has been a noncompliance identified in Subparagraph 69 b:

| <u>Penalty Per Violation</u> <u>Per Day</u> | <u>Period of Noncompliance</u> <u>in Days</u> |
|--|--|
| \$3,000 | 1 - 15 |
| \$4,500 | 16 - 30 |
| \$7,500 | 31 and beyond |

17 b. Failure to submit a timely or adequate Final Remedial
18 Action Work Plan, Construction Quality Assurance Plan,
19 Construction Quality Control Plan, Operation and Maintenance
20 Plan, Monitoring and Confirmation Sampling Plan, Health and
21 Safety Plan, Closeout Report, Quarterly Progress Reports, as
22 these deliverables are defined in the SOW; failure to timely
23 commence, perform or complete field work, construction or
24 operation of any element of the Work

25 c. The following stipulated penalties shall be payable per
26 violation per day to the United States where EPA determines there
27 has been noncompliance identified in 69d:
28

| <u>Penalty per Violation per Day</u> | <u>Period of Noncompliance in Days</u> |
|--------------------------------------|--|
| \$ 3,000 | 1 - 14 |
| \$ 4,000 | 15 - 30 |
| \$ 5,000 | 31 and beyond |

d. Texaco's failure to comply with any other requirements of this Consent Decree, including undertaking unauthorized or unapproved work, with the exception of any failure that is defined in Paragraphs 68b or 69b of this Consent Decree.

70. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 83 of Section XXII (Covenants Not to Sue by Plaintiffs), Texaco shall be liable for a stipulated penalty in the amount of \$500,000 thousand.

71. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

72. Following EPA's determination that Texaco has failed to comply with a requirement of this Consent Decree, EPA may give Texaco written notification of the same and describe the noncompliance. EPA may send Texaco a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Texaco of a violation.

73. All penalties owed to the United States under this section shall be due and payable within 30 days of Texaco's receipt from EPA of a demand for payment of the penalties, unless

1 | Texaco invokes the Dispute Resolution procedures under Section XX
2 | (Dispute Resolution). All payments under this Section shall be
3 | paid by certified check made payable to "EPA Hazardous Substances
4 | Superfund," shall be mailed to U.S. Region IX, Attention:
5 | Superfund Accounting, P.O. Box 360863M, Pittsburgh, Pennsylvania,
6 | 15251, and shall reference CERCLA Number Site # 9TJ6 and DOJ Case
7 | Number 90-11-2-840. Texaco shall also send copies of check(s)
8 | paid pursuant to this Section, and any accompanying transmittal
9 | letter(s) to the United States as provided in Section XXVII
10 | (Notices and Submissions).

11 | 74. The payment of penalties shall not alter in any way
12 | Texaco's obligation to complete the performance of the Work
13 | required under this Consent Decree.

14 | 75. Penalties shall continue to accrue as provided in
15 | Paragraph 71 during any dispute resolution period, but need not
16 | be paid until the following:

17 | a. If the dispute is resolved by agreement or by a
18 | decision of EPA that is not appealed to this Court, accrued
19 | penalties determined to be owing shall be paid to EPA within 15
20 | days of the agreement or the receipt of EPA's decision or order;

21 | b. If the dispute is appealed to this Court and the
22 | United States prevails in whole or in part, Texaco shall pay all
23 | accrued penalties determined by the Court to be owed to EPA
24 | within 60 days of receipt of the Court's decision or order,
25 | except as provided in Subparagraph c below;

26 | c. If the District Court's decision is appealed by any
27 | Party, Texaco shall pay all accrued penalties determined by the
28 | District Court to be owing to the United States into an interest-

1 bearing escrow account within 60 days of receipt of the Court's
2 decision or order. Penalties shall be paid into this account as
3 they continue to accrue, at least every 60 days. Within 15 days
4 of receipt of the final appellate court decision, the escrow
5 agent shall pay the balance of the account to EPA or to Texaco to
6 the extent that it prevails.

7 76. a. If Texaco fails to pay stipulated penalties when due,
8 the United States may institute proceedings to collect the
9 penalties, as well as interest. Texaco shall pay interest on the
10 unpaid balance, which shall begin to accrue on the date of demand
11 made pursuant to Paragraph 73 at the rate established pursuant to
12 Section 107(a) of CERCLA, 42 U.S.C. § 9607.

13 b. Nothing in this Consent Decree shall be construed as
14 prohibiting, altering, or in any way limiting the ability of the
15 United States or the State to seek any other remedies or
16 sanctions available by virtue of Texaco's violation of this
17 Decree or of the statutes and regulations upon which it is based,
18 including, but not limited to, penalties pursuant to Section
19 122(1) of CERCLA. In EPA's unreviewable discretion, and not
20 subject to Section XX (Dispute Resolution), EPA may waive, in
21 whole or in part, the stipulated penalties under this section.

22 77. No payments made under this Section shall be tax
23 deductible for Federal or State tax purposes.

24 XXII. COVENANTS NOT TO SUE BY PLAINTIFFS

25 78. In consideration of the actions that will be performed
26 and the payments that will be made by Texaco under the terms of
27 the Consent Decree, and except as specifically provided in
28 Paragraphs 79, 80, and 82 of this Section, the United States

1 covenants not to sue or to take administrative action against
2 Texaco pursuant to Sections 106 and 107(a) of CERCLA and Section
3 7003 of RCRA relating to the Site. Except with respect to future
4 liability, these covenants not to sue shall take effect upon the
5 receipt by Plaintiffs of the payments required by Paragraph 50 of
6 Section XVII (Reimbursement of Response Costs). With respect to
7 future liability, these covenants not to sue shall take effect
8 upon Certification of Completion of Remedial Action by EPA
9 pursuant to Paragraph 46.b of Section XV (Certification of
10 Completion). These covenants not to sue are conditioned upon the
11 complete and satisfactory performance by Texaco of its
12 obligations under this Consent Decree. These covenants not to
13 sue extend only to Texaco and do not extend to any other person.

14 79. United States' Pre-certification reservations.

15 Notwithstanding any other provision of this Consent Decree, the
16 United States reserves, and this Consent Decree is without
17 prejudice to, the right to institute proceedings in this action
18 or in a new action, or to issue an administrative order seeking
19 to compel Texaco (1) to perform further response actions relating
20 to the Site or (2) to reimburse the United States for additional
21 costs of response if, prior to certification of completion of the
22 Remedial Action:

23 (i) conditions at the Site, previously unknown to EPA,
24 are discovered, or

25 (ii) information, previously unknown to EPA, is received,
26 in whole or in part,

27 and these previously unknown conditions or information together
28 with any other relevant information indicates that the Remedial

1 Action is not protective of human health or the environment.

2 80. United States' Post-certification reservations.

3 Notwithstanding any other provision of this Consent Decree, the
4 United States reserves, and this Consent Decree is without
5 prejudice to, the right to institute proceedings in this action
6 or in a new action, or to issue an administrative order seeking
7 to compel Texaco (1) to perform further response actions relating
8 to the Site or (2) to reimburse the United States for additional
9 costs of response if, subsequent to certification of completion
10 of the Remedial Action :

11 (i) conditions at the Site, previously unknown to EPA,
12 are discovered, or

13 (ii) information, previously unknown to EPA, is received,
14 in whole or in part,

15 and these previously unknown conditions or this information
16 together with other relevant information indicate that the
17 Remedial Action is not protective of human health or the
18 environment.

19 81. For purposes of Paragraph 79, the information and the
20 conditions known to EPA shall include only that information and
21 those conditions set forth in the Record of Decision for the Site
22 and the administrative record supporting the Record of Decision.
23 For purposes of Paragraphs 80, the information previously
24 received by and the conditions known to EPA shall include only
25 that information and those conditions set forth in the Record of
26 Decision, the administrative record supporting the Record of
27 Decision, and any information received by EPA pursuant to the
28 requirements of this Consent Decree prior to Certification of

1 Completion of the Remedial Action.

2 82. General reservations of rights. The covenants not to sue
3 set forth in this Section do not pertain to any matters other
4 than those expressly specified in Paragraphs 78 and 85. The
5 United States and the State reserve, and this Consent Decree is
6 without prejudice to, all rights against Texaco with respect to
7 all other matters, including but not limited to, the following:

8 (1) claims based on a failure by Texaco to meet a
9 requirement of this Consent Decree;

10 (2) liability arising from the past, present, or future
11 disposal, release, or threat of release of Waste Materials
12 outside of the Site;

13 (3) liability for damages for injury to, destruction
14 of, or loss of natural resources;

15 (4) liability for response costs that have been or may
16 be incurred by the Department of Interior;

17 (5) criminal liability;

18 (6) liability for violations of federal or state law
19 which occur during or after implementation of the Remedial
20 Action;

21 (7) liability for costs that the United States will
22 incur related to the Site but which are not covered by this
23 Consent Decree.

24
25 83. In the event EPA determines that Texaco has failed to
26 implement any provisions of the Work in an adequate or timely
27 manner, EPA may perform any and all portions of the Work as EPA
28 determines necessary. Texaco may invoke the procedures set forth

1 in Section XX (Dispute Resolution) to dispute EPA's determination
2 that Texaco failed to implement a provision of the Work in an
3 adequate or timely manner as arbitrary and capricious or
4 otherwise not in accordance with law. Such dispute shall be
5 resolved on the administrative record. Costs incurred by the
6 United States in performing the Work pursuant to this Paragraph
7 shall be considered Future Response Costs that Texaco shall pay
8 pursuant to Section XVII (Reimbursement of Response Costs).

9 84. Notwithstanding any other provision of this Consent
10 Decree, the United States and the State retain all authority and
11 reserve all rights to take any and all response actions
12 authorized by law.

13 85. State's Covenant Not To Sue. In consideration of the
14 actions that will be performed and the payments that will be made
15 by Texaco under the terms of the Consent Decree, and except as
16 specifically provided in Paragraph 82 of this Section, the State
17 covenants not to sue Texaco pursuant to Section 107(a) of CERCLA
18 and California Health and Safety Code 25358.3 or to take
19 administrative action against Texaco under California Health and
20 Safety Code 25358.3 relating to the Site. Except with respect to
21 future liability, these covenants not to sue will take effect
22 upon the receipt by the State of the payments required by
23 Paragraph 50 of Section XVII. With respect to future liability,
24 these covenants not to sue shall take effect upon Certification
25 of Completion of Remedial Action by EPA pursuant to Paragraph
26 46.b of Section XV. These covenants not to sue are conditioned
27 upon the complete and satisfactory performance by Texaco of its
28 obligations under this Consent Decree. These covenants not to

1 sue extend only to Texaco and do not extend to any other person.

2 XXIII. COVENANTS BY TEXACO

3 86. Texaco hereby covenants not to sue and agrees not to
4 assert any claims or causes of action against the United States
5 or the State with respect to the Site or this Consent Decree,
6 including, but not limited to, any direct or indirect claim for
7 reimbursement from the Hazardous Substance Superfund (established
8 pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through
9 CERCLA Sections 106(b)(2), 111, 112, 113 or any other provision
10 of law, or any claims arising out of response activities at the
11 Site. However, Texaco reserves, and this Consent Decree is
12 without prejudice to, actions against the United States or the
13 State based on negligent actions taken directly by the United
14 States (not including oversight or approval of Texaco's plans or
15 activities) or the State that are brought pursuant to any statute
16 other than CERCLA and for which the waiver of sovereign immunity
17 is found in a statute other than CERCLA. Nothing in this
18 Consent Decree shall be deemed to constitute preauthorization of
19 a claim within the meaning of Section 111 of CERCLA, 42 U.S.C.
20 § 9611, or 40 C.F.R. § 300.700(d).

21 XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

22 87. Nothing in this Consent Decree shall be construed to
23 create any rights in, or grant any cause of action to, any person
24 not a party to this Consent Decree. The preceding sentence shall
25 not be construed to waive or nullify any rights that any person
26 not a signatory to this decree may have under applicable law.
27 Each of the Parties expressly reserves any and all rights
28 (including, but not limited to, any right to contribution),

1 defenses, claims, demands, and causes of action which each party
2 may have with respect to any matter, transaction, or occurrence
3 relating in any way to the Site against any person not a party
4 hereto.

5 88. With regard to claims for contribution against Texaco for
6 matters addressed in this Consent Decree, the Parties hereto
7 agree that Texaco is entitled to such protection from
8 contribution actions or claims as is provided by CERCLA Section
9 113(f)(2), 42 U.S.C. § 9613(f)(2).

10 89. Texaco agrees that with respect to any suit or claim for
11 contribution brought by Texaco for matters related to this
12 Consent Decree, it will notify the United States and the State in
13 writing no later than 60 days prior to the initiation of such
14 suit or claim.

15 90. Texaco also agrees that with respect to any suit or claim
16 for contribution brought against it for matters related to this
17 Consent Decree it will notify in writing the United States and
18 the State within 10 days of service of the complaint on Texaco.
19 In addition, Texaco shall notify the United States and the State
20 within 10 days of service or receipt of any Motion for Summary
21 Judgment and within 10 days of receipt of any order from a court
22 setting a case for trial.

23 91. In any subsequent administrative or judicial proceeding
24 initiated by the United States or the State for injunctive
25 relief, recovery of response costs, or other appropriate relief
26 relating to the Site, Texaco shall not assert, and may not
27 maintain, any defense or claim based upon the principles of
28 waiver, res judicata, collateral estoppel, issue preclusion,

1 claim-splitting, or other defenses based upon any contention that
2 the claims raised by the United States or the State in the
3 subsequent proceeding were or should have been brought in the
4 instant case; provided, however, that nothing in this Paragraph
5 affects the enforceability of the covenants not to sue set forth
6 in Section XXII (Covenants Not to Sue by Plaintiffs).

7 XXV. ACCESS TO INFORMATION

8 92. Texaco shall provide to EPA and the State, upon request,
9 copies of all documents and information within its possession or
10 control or that of its contractors or agents relating to
11 activities at the Site or to the implementation of this Consent
12 Decree, including, but not limited to, sampling, analysis, chain
13 of custody records, manifests, trucking logs, receipts, reports,
14 sample traffic routing, correspondence, or other documents or
15 information related to the Work. Texaco shall also make
16 available to EPA and the State, for purposes of investigation,
17 information gathering, or testimony, its employees, agents, or
18 representatives with knowledge of relevant facts concerning the
19 performance of the Work.

20 93. a. Texaco may assert business confidentiality claims
21 covering part or all of the documents or information submitted to
22 Plaintiffs under this Consent Decree to the extent permitted by
23 and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. §
24 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information
25 determined to be confidential by EPA will be afforded the
26 protection specified in 40 C.F.R. Part 2, Subpart B. If no claim
27 of confidentiality accompanies documents or information when they
28 are submitted to EPA and the State, or if EPA has notified Texaco

1 that the documents or information are not confidential under the
2 standards of Section 104(e)(7) of CERCLA, the public may be given
3 access to such documents or information without further notice to
4 Texaco.

5 b. Texaco may assert that certain documents, records and
6 other information are privileged under the attorney-client
7 privilege or any other privilege recognized by federal law. If
8 Texaco asserts such a privilege in lieu of providing documents,
9 it shall provide the Plaintiffs with the following: (1) the
10 title of the document, record, or information; (2) the date of
11 the document, record, or information; (3) the name and title of
12 the author of the document, record, or information; (4) the name
13 and title of each addressee and recipient; (5) a description of
14 the contents of the document, record, or information: and (6) the
15 privilege asserted by Texaco. However, no documents, reports or
16 other information created or generated pursuant to the SOW,
17 Preliminary Design Work Plan Summary or Sections VI, VII, VIII,
18 IX, XI, XII, XV of the Consent Decree shall be withheld on the
19 grounds that they are privileged.

20 94. No claim of confidentiality shall be made with respect to
21 any data, including, but not limited to, all sampling,
22 analytical, monitoring, hydrogeologic, scientific, chemical, or
23 engineering data, or any other documents or information
24 evidencing conditions at or around the Site.

25 XXVI. RETENTION OF RECORDS

26 95. Until 10 years after Texaco's receipt of EPA's
27 notification pursuant to Paragraph 47.b of Section XV
28 (Certification of Completion of the Work), Texaco shall preserve

1 and retain all records and documents now in its possession or
2 control or which come into its possession or control that relate
3 in any manner to the performance of the Work or liability of any
4 person for response actions conducted and to be conducted at the
5 Site, regardless of any corporate retention policy to the
6 contrary. Until 10 years after Texaco's receipt of EPA's
7 notification pursuant to Paragraph 47.b of Section XV
8 (Certification of Completion), Texaco shall also instruct its
9 contractors and agents to preserve all documents, records, and
10 information of whatever kind, nature or description relating to
11 the performance of the Work.

12 96. At the conclusion of this document retention period,
13 Texaco shall notify the United States and the State at least 90
14 days prior to the destruction of any such records or documents,
15 and, upon request by the United States or the State, Texaco shall
16 deliver any such records or documents to EPA or the State.
17 Texaco may assert that certain documents, records and other
18 information are privileged under the attorney-client privilege or
19 any other privilege recognized by federal law. If Texaco asserts
20 such a privilege, it shall provide the Plaintiffs with the
21 following: (1) the title of the document, record, or
22 information; (2) the date of the document, record, or
23 information; (3) the name and title of the author of the
24 document, record, or information; (4) the name and title of each
25 addressee and recipient; (5) a description of the subject of the
26 document, record, or information; and (6) the privilege asserted
27 by Texaco. However, no documents, reports or other information
28 created or generated pursuant to the requirements of the Consent

1 Decree shall be withheld on the grounds that they are privileged.

2 97. Texaco hereby certifies that it has not altered,
3 mutilated, discarded, destroyed or otherwise disposed of any
4 records, documents or other information relating to its potential
5 liability regarding the Site since notification of potential
6 liability by the United States on or about October 5, 1992 or the
7 State or the filing of suit against it regarding the Site and
8 that it has fully complied with any and all EPA requests for
9 information pursuant to Section 104(e) and 122(e) of CERCLA and
10 Section 3007 of RCRA.

11 XXVII. NOTICES AND SUBMISSIONS

12 98. Whenever, under the terms of this Consent Decree, written
13 notice is required to be given or a report or other document is
14 required to be sent by one party to another, it shall be directed
15 to the individuals at the addresses specified below, unless those
16 individuals or their successors give notice of a change to the
17 other parties in writing. All notices and submissions shall be
18 considered effective upon receipt, unless otherwise provided.
19 Written notice as specified herein shall constitute complete
20 satisfaction of any written notice requirement of the Consent
21 Decree with respect to the United States, EPA, the State, and
22 Texaco, respectively.

23 As to the United States:

24 Chief, Environmental Enforcement Section
25 Environment and Natural Resources Division
26 U.S. Department of Justice
27 P.O. Box 7611
28 Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-2-840

1 As to EPA:

2 Michael Montgomery
3 EPA Project Coordinator
4 United States Environmental Protection Agency
5 Region IX
6 75 Hawthorne Street
7 San Francisco, California 94105
8 Telephone (415) 744-2403

6 As to the State:

7 Hamid Saebfar,
8 Acting Chief Site Mitigation Branch
9 Region III
10 Department of Toxic Substances Control
11 1011 North Grandview Avenue
12 Glendale, California 91201

11 As to Texaco:

12 Glenn R. Anderson
13 Texaco's Project Coordinator
14 Texaco Inc.
15 EHS Division, Suite 830
16 10 Universal City Plaza
17 Universal City, CA 91608
18 Telephone: (818) 505-2680

16 XXVIII. EFFECTIVE DATE

17 99. The effective date of this Consent Decree shall be the
18 date upon which this Consent Decree is entered by the Court,
19 except as otherwise provided herein.

20 XXIX. RETENTION OF JURISDICTION

21 100. This Court retains jurisdiction over both the subject
22 matter of this Consent Decree and Texaco for the duration of the
23 performance of the terms and provisions of this Consent Decree
24 for the purpose of enabling any of the Parties to apply to the
25 Court at any time for such further order, direction, and relief
26 as may be necessary or appropriate for the construction or
27 modification of this Consent Decree, or to effectuate or enforce
28

1 compliance with its terms, or to resolve disputes in accordance
2 with Section XX (Dispute Resolution) hereof.

3 XXX. APPENDICES

4 101. The following appendices are attached to and
5 incorporated into this Consent Decree:

6 "Appendix A" is the ROD.

7 "Appendix B" is the SOW.

8 "Appendix C" is the Preliminary Design Work Plan Summary.

9 "Appendix D" is the description and/or map of the Site.

10
11 XXXI. COMMUNITY RELATIONS

12 102. Texaco shall propose to EPA and the State its
13 participation in the community relations plan to be developed by
14 EPA. EPA will determine the appropriate role for Texaco under the
15 Plan. Texaco shall also cooperate with EPA and the State in
16 providing information regarding the Work to the public. As
17 requested by EPA or the State, Texaco shall participate in the
18 preparation of such information for dissemination to the public
19 and in public meetings which may be held or sponsored by EPA or
20 the State to explain activities at or relating to the Site.

21 XXXII. MODIFICATION

22 103. Except for (1) changes to the schedules specified in
23 this Consent Decree, (2) changes to the Parties' addresses in
24 paragraph 98, or (3) as provided for in paragraph 104, there
25 shall be no modification of this Consent Decree without the
26 written agreement of the United States, the State and Texaco and
27 entry by the Court.

28 104. The United States and Texaco may agree to modify the

1 SOW, the Preliminary Design Work Plan Summary, and any documents
2 or deliverables approved by the United States pursuant to this
3 decree. Any such modification must be in writing and must be
4 signed by EPA and Texaco. No such modifications shall change any
5 of the requirements of the body of the Consent Decree (i.e., the
6 Consent Decree exclusive of those attachments which have been
7 incorporated into the Decree by reference) or the ROD.

8 Prior to providing its approval to any modification pursuant to
9 this paragraph, the United States will provide the State with a
10 reasonable opportunity to review and comment on the proposed
11 modification.

12 105. Nothing in this Decree shall be deemed to alter the
13 Court's power to enforce, supervise or approve modifications to
14 this Consent Decree.

15 XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

16 106. This Consent Decree shall be lodged with the Court for a
17 period of not less than thirty (30) days for public notice and
18 comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.
19 § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves
20 the right to withdraw or withhold its consent if the comments
21 regarding the Consent Decree disclose facts or considerations
22 which indicate that the Consent Decree is inappropriate,
23 improper, or inadequate. Texaco consents to the entry of this
24 Consent Decree without further notice.

25 107. If for any reason the Court should decline to approve
26 this Consent Decree in the form presented, this agreement is
27 voidable at the sole discretion of any party and the terms of the
28 agreement may not be used as evidence in any litigation between

1 the Parties.

2 XXXIV. SIGNATORIES/SERVICE

3 108. The undersigned representative of Texaco and the State
4 and the Chief of the Environmental Enforcement Section,
5 Environment and Natural Resources of the Department of Justice
6 certify that each of them is fully authorized to enter into the
7 terms and conditions of this Consent Decree and to execute and
8 legally bind such party to this document.

9 109. Texaco hereby agrees not to oppose entry of this Consent
10 Decree by this Court or to challenge any provision of this
11 Consent Decree unless the United States has notified Texaco in
12 writing that it no longer supports entry of the Consent Decree.
13 Texaco shall identify, on the attached signature page, the name,
14 address and telephone number of an agent who is authorized to
15 accept service of process by mail on behalf of Texaco with
16 respect to all matters arising under or relating to this Consent
17 Decree. Texaco hereby agrees to accept service in that manner
18 and to waive the formal service requirements set forth in Rule 4
19 of the Federal Rules of Civil Procedure and any applicable local
20 rules of this Court, including, but not limited to, service of a
21 summons.

22 SO ORDERED THIS _____ DAY OF _____, 19__.

23
24 _____
25 United States District Judge
26
27
28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the
2 matter of United States v. Texaco, Inc., relating
3 to the Pacific Coast Pipeline Superfund Site.
4

5 FOR THE UNITED STATES OF AMERICA
6

7 Date: _____
8

_____ MYLES E. FLINT
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530
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10
11

12 Date: _____
13

_____ RICHARD L. BEAL
TRIAL ATTORNEY
Environmental Enforcement Section
Environment and Natural Resources
Division
301 Howard Street, Suite 870
San Francisco, California 94105
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Date: 3.31.93

John Wise
JOHN C. WISE
Regional Administrator, Region IX
U.S. Environmental Protection
Agency
75 Hawthorne Street
San Francisco, California 94105

Date: March 29, 1993

Randa Bishlawi
Randa Bishlawi
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105

FOR THE STATE OF CALIFORNIA

1
2
3 Date: 05 MAR 93
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William P. Ryan
Acting Deputy Director
Department of Toxic Substances
Control
400 P Street, 4th Floor
P.O. Box 806
Sacramento, California 95812-806

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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Texaco, Inc., relating
3 to the Pacific Coast Pipeline Superfund Site.
4

5 FOR TEXACO INC.
6

7 Date: FEBRUARY 23, 1993

 GEM
8 VICE PRESIDENT
9

10 Agent Authorized to Accept Service on Behalf of Above-signed
11 Party:

12 Name: Lowell N. Elsen, Esq.
13 Title: Assistant Secretary - Texaco Inc.
14 Address: 10 Universal City Plaza, Universal City, CA 91608
15 Tel. Number: (818) 505-3100
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