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January 27, 1995

Carol Petersen, Chief
New York/Caribbean Superfund Branch II
United States Environmental Protection Agency, Region II
Jacob K. Javits Federal Building
New York, New York 10278-0012

**Re: Western Auto Supply Company's Reply to EPA's
December 28, 1994 Comments on Geraghty & Miller's
Draft Phase II Remedial Investigation Report For The
Tutu Wells Site, St. Thomas, USVI**

Dear Ms. Petersen:

As legal counsel for Western Auto Supply Company we submit the following response to EPA's comments to the Remedial Investigation Report ("RI Report") prepared for TEIC by Geraghty & Miller, as set forth in the attachments to your December 28, 1994 letter to *de maximis, inc.* Our attention has been initially focused upon the EPA's examination of a soil sample referred to as SS-1 and the EPA's apparent proposed finding that this sample "[w]as from stained soils in the vicinity of the ruptured pipe where PCE was detected at 5,900 to 10,000 ug/kg". (Comments to page 5-21, 2nd and 3rd paragraphs.) As a result of this apparent conclusion, the EPA goes on to conclude that this adjacent parcel of real estate, located behind Western Auto's store and owned and maintained by Four Winds Plaza, has somehow managed a "[p]ossible impact to soils from the waste

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oil tank pipe rupture". (Comments to pages 5-30.) The EPA has simply misinterpreted both the nature and the location of the data cited above, as is explained more fully below. Based upon this erroneous interpretation of fundamental data, the EPA is now compounding its extraordinary errors by requiring TEIC to revisit and modify the Summary and Conclusions of its R.I. Report based on the EPA's novel data interpretation so as to newly conclude that "Western Auto should be identified as a property with soils impacted by chlorinated VOCs". (Comment to page 8-3, respectively.) It might be of some import to note that this conclusion had previously been rejected by every other party involved in this matter.

It is the uncontradicted position of Western Auto that the EPA's comments with respect to PCE purportedly detected in sample SS-1 are contrary to the recorded observations of the persons whose job it was to participate in the UST excavation. In addition, all of the activities pertinent to the UST excavation were directed by and carried out under the exclusive supervision and control of capable on-site local governmental agency personnel. Finally, EPA's comments pertaining to the potential impacts to the soils in the vicinity of sample SS-1 disregard the location and disposition of these soils as well as the results of every other soil sampling conducted during the excavation.

The photographs, field notes and video tapes prepared by BB&L, ENSR and Western Auto's tank removal consultant Philip Pimentel, all of whom were present during the UST removal, directly refute EPA's finding that soil sample SS-1 was taken from stained soils "in the vicinity of a ruptured pipe where PCE was detected at 5,900 to 10,000 ug/kg". As EPA is aware the "5,900" and "10,000" ug/kg readings were detected in the analysis of BB&L samples PS-4 and PS-5. As described by BB&L, sample PS-4 was taken from the "drainage basin", located *inside* Western Auto's "repair shop", while PS-5 was obtained from *inside* a "waste oil line" which was "running from" this "basin".

As disclosed in ENSR's Closure Report for Underground Storage Tanks the "waste oil line" was connected to the waste oil tank by a "Y" fitting, located on the top and north end of the tank. This "waste oil line", which connected the "drainage basin" to the tank, was not "ruptured" during the

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excavation. It was not even exposed at the time sample SS-1 was obtained. (Sample SS-1, a split of ENSR's sample T2-AS, was logged by BB&L at 11:55 a.m., October 19, 1993. Samples PS-4 and PS-5 were obtained two days later - on October 21st. They were not obtained from the "vicinity" of either a "ruptured pipe" or sample SS-1.)

The "waste oil line" was severed with a saw, for the first time, at ENSR's direction. This event occurred after 1:00 p.m. When the "waste oil line" was opened its contents were placed into a 55 gallon drum, in which wastes from the site were stored. This drum and its contents, together with other drums of containerized wastes and eighty five cubic yards of soils, was subsequently appropriately disposed of off-site pursuant to a work plan approved by VIDPNR. Prior to such disposal all wastes and soils were tested. None were found to possess any of the VOC compounds allegedly detected in sample SS-1.

EPA's finding that PCE was detected in the soils behind Western Auto's store is directly controverted by the laboratory results of *all* of the other soil samplings which were taken by BB&L, ENSR or G&M. (G&M's soil samples were taken after the completion of the tank excavation during the installation of MW-24.) Not only was PCE not detected in the samplings of wastes and soils removed from the excavation, it was not observed in any of the Gore-Sorbers which were installed by ENSR throughout the entire excavation area.

EPA's contention that the soils at SS-1 "certainly represents a past release and potential impact" (Comments to page 5-21) or a "possible PCE impact to soils" (page 5-30), together with its Summary and Conclusion comment that there exists "soils impacted by chlorinated VOCs" (page 8-3) further disregards the location of these soils. Sample SS-1 was taken from soils which were located over the top of the waste oil tank. These soils were excavated prior to the removal of the tank. (These soils, together with a considerable amount of soil from under and around the tank, were subsequently removed from the site.) As noted previously, after the tank was removed BB&L and ENSR then sampled below the SS-1 location and around the entire tank grave. PCE remained undetected in any of these samplings.

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While Western Auto anticipates continued cooperation between itself and DPNR the purpose of this effort should in no way be motivated or directed by EPA's mischaracterization that "Western Auto should be identified as a property with soils impacted by chlorinated VOCs". This Summary finding by EPA, which is unsupported by prior findings, appears to serve no apparent remedial purpose. The PCE purportedly detected in sample SS-1, at a level of 160 ug/kg, is at least nine orders of magnitude below the soil cleanup goals/screening levels previously adopted by the EPA - under the New York State Technical And Administrative Guidance Memorandum. Instead the EPA's Summary Statement appears to be drafted so that, without further substantiation or justification, it could be included as a finding of fact in the EPA's Record of Decision. The continued inclusion of the EPA's Summary Statement with respect to Western Auto would simply perpetuate injustice, unfairness, and would certainly do nothing to further the goals and objectives underlying CERCLA.

From all of the above, it should be inherently clear that the further implementation by EPA of a remedial plan involving Western Auto, if premised upon a finding that "Western Auto should be identified as a property with soils impacted by chlorinated VOC's" would be scientifically unjustifiable and, really, quite off-base. Accordingly, please docket and include this letter and Western Auto's position in the administrative record.

While Western Auto believes that this entire matter may be resolved by a further discussion amongst the parties and their consultants we can only offer to attend such a meeting. Since Western Auto has been required by EPA to submit all of its communications solely to the Coordinator or consultants retained by TEIC, we are unaware of what information has been relied upon by EPA - though we believe it can not be complete. Moreover, we do not believe that EPA could reasonably interpret the documents by themselves since no one from the agency attended the UST excavation. EPA's comment about the "ruptured" pipe confirms this opinion. Field notes without attendant explanations and related photographs can be very misleading. Should the EPA desire at some point to seek relevant information from some one with personal knowledge of

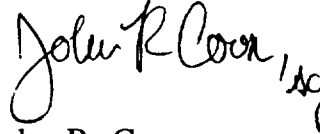
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the facts, we would be happy to cooperate. In this regard we will await your response.

Thank you for your attention.

Very truly yours,

A handwritten signature in cursive script that reads "John R. Coon, Esq." The signature is written in dark ink and is slanted slightly to the right.

John R. Coon

cc:

Carolyn Kwan, EPA NY
Andy Praschak, EPA, PR
Leonard Reed, VIDPNR
John McBurney, *de maximis, inc.*
Barry L. Huffman, Esquire