



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

JACOB K. JAVITS FEDERAL BUILDING

NEW YORK, NEW YORK 10278

FEB 21

EXPRESS MAIL

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Legal Department
Texaco Inc.
P.O. Box 4596
Houston, Texas 77052

Re: Tutu Wells Site, Administrative Order Index No. II-RCRA-7003 & 9003-92-0401

Dear Sirs:

Enclosed please find signed copies of the above-referenced Order.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy R. Chester".

Amy R. Chester
Assistant Regional Counsel

Enclosure

TUT 007 0898

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

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IN THE MATTER OF THE

TUTU WELLS SITE, ANNA'S
RETREAT, ST. THOMAS, U.S.V.I.

ESSO Standard Oil S.A., Limited
Texaco Caribbean Inc.,

RESPONDENTS

Under Sections 7003 and
9003 of the Resource Conservation
and Recovery Act as amended, by
the Hazardous and Solid Waste
Amendments of 1984 ("RCRA")
42 U.S.C. § 6973 and 6991b.

ADMINISTRATIVE ORDER
ON CONSENT

INDEX NO. II-RCRA-Proceeding
7003 & 9003-92-0401

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I. JURISDICTION

1. This Administrative Order on Consent ("Order") is issued by consent to the above-captioned Respondents (hereinafter collectively referred to as "Respondents") pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") under Sections 7003 and 9003 of the Resource Conservation and Recovery Act as amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA") 42 U.S.C. §6973, 6991b, which authority was delegated to the Regional Administrator by EPA Delegation Nos. 8-22-A, dated March 20, 1985 and 8-37, dated June 5, 1987 respectively.
2. Notice of the issuance of this Order has been given to the Department of Planning and Natural Resources ("DPNR") of the United States Virgin Islands ("U.S.V.I.").

3. In the interest of environmental protection and public safety, Respondents voluntarily and in good faith agree to undertake all actions required by the terms and conditions of this Order without trial or adjudication of any issues of fact or law, and without admission by the Respondents to liability for any purpose, enter into this Order to avoid prolonged and complicated litigation and consent to and will not contest EPA's jurisdiction regarding this Order.
4. By signing this Order, Respondents do not admit, accept or intend to acknowledge any liability or fault with respect to conditions at or arising from ownership or operation of their respective facilities at the Tutu Wells site in the St. Thomas, U.S.V.I. or with respect to any matter arising from the Site. Furthermore, by signing this Order, no Respondent waives, for purposes of any proceedings, claims or defenses that it may have raised to this Order or that it may raise in any other proceeding brought by EPA or any other person except as otherwise provided in this Order.

II. DEFINITIONS

Unless noted to the contrary, the terms of this Order shall have the same meaning as terms defined in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. 9601 et seq. and RCRA. Whenever the following terms are used in this Order and any attachments hereto, the following definitions shall apply:

1. Respondents include ESSO Standard Oil S.A., Limited, an affiliate of EXXON Corporation, ("ESSO"), and Texaco Caribbean Inc., ("Texaco") a wholly owned subsidiary of a subsidiary of Texaco Inc.
2. The Tutu Wells Site is the area located at the eastern end of St. Thomas at the Estate Anna's Retreat section of the island ("Site").
3. Hazardous Substances shall mean any substance included within the definition of "Hazardous Substances" in Section 101 of CERCLA, 42 U.S.C. §9601.
4. Petroleum shall mean any substances included within the definition of "Petroleum" in Section 9001 of RCRA, 42 U.S.C. §6991.
5. Investigatorial Program shall mean those actions which are required of Respondents by this Order and are specified in a detailed work plan submitted by Respondents and reviewed and approved by EPA.

6. Designated Coordinator shall mean the persons designated by Respondents who shall be responsible for the implementation and coordination of this Order and all the activities required for the Investigatorial Program approved pursuant to this Order.
7. On-Scene Coordinator ("OSC") shall mean the persons designated by EPA to be responsible for on-scene monitoring of all actions and activities required pursuant to this Order. The OSC shall additionally be responsible for coordinating and directing any EPA investigatory actions which may be conducted at the Site.
8. National Contingency Plan ("NCP") shall mean the National Contingency Plan promulgated by EPA pursuant to Section 105 of CERCLA, 42 U.S.C. §9605, and codified at 40 C.F.R. Part 300, and all amendments or modification thereof.
9. Contractor (including subcontractors and consultants) shall mean the company or companies retained by Respondents to undertake and complete the work described in this Order.
10. Day shall mean business day. If the day for submission of any items required under this Order falls on a Saturday, Sunday or Federal or local holiday, it shall be submitted on the next business day.
11. ESSO TuTu Service Station is located in St. Thomas, U.S.V.I. on the west side of highway 38 and on south-eastern corner of the Four Winds Shopping Lot.
12. Texaco TuTu Service Station is located in the vicinity of intersection of highways 38 and 84 in St. Thomas.
13. O'Henry Cleaners is located at #5 Anna Retreat, St. Thomas, V.I., on the east side of highway 38.
14. Tillett Garden is located where highways 38 and 84 intersect and is at #126 Anna's Retreat in St. Thomas.
15. Facility shall have the meaning set forth in Section 101 of CERCLA and/or Section 9001 of RCRA.
16. Solid waste shall have the meaning set forth in Section 1004 of RCRA.
17. Hazardous waste shall have the meaning set forth in Section 1004 of RCRA.

III. PARTIES BOUND

1. This Order shall apply to and be binding on ESSO Standard Oil S.A., Limited, ("Esso") and Texaco Caribbean Inc. ("Texaco") and all of their successors and assigns.
2. No change in ownership or corporate status shall in any way alter the Respondents' responsibilities and obligations under this Order.
3. The Respondents shall provide a copy of this Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred. Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Order, within 14 days after the effective date of this Order or the date of retaining their services, whichever is later. Respondents shall condition any such contracts upon satisfactory compliance with this Order. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Order and for ensuring that their subsidiaries, employees, contractors, consultants, subcontractors, and agents perform work in accordance with this Order.
4. Each Respondent is jointly and severally liable for compliance with all provisions of this Order; the failure of one or more of the Respondents to comply with all or part of this Order shall not in any way excuse or justify non-compliance by any other Respondent, including but not limited to, failure to perform all obligations of any defaulting Respondent.
5. In the event of the inability to pay or the insolvency of any one of the Respondents, or any other reason one or more of the Respondents do not participate in the implementation of this Order, the remaining Respondent shall complete the work provided for in this Order. The failure of one or more of the Respondents to comply with all or part of this Order shall not excuse or justify noncompliance by any other Respondent.
6. In entering into this Order, the objectives of EPA and the Respondents are: a) to determine the nature and extent of contamination and any threat to the public health, welfare, and/or environment caused by any release or threatened release of petroleum and its constituents, hazardous substances, hazardous waste and its constituents and/or solid waste, pollutants or contaminants to the Tutu Wells area, by conducting a remedial/contamination investigation; and b) to conduct a feasibility study in order to develop an appropriate range of waste management options that will ensure the protection of human health and the environment.

IV. FINDINGS OF FACT

1. On or about July 7, 1987 Mr. Eric Tillett contacted the U.S.V.I. DPNR regarding an odor emanating from the raw well water on his property located at Anna's Retreat, St. Thomas, U.S.V.I. Mr. Tillett's well provided the eastern portion of St. Thomas with a commercial source of drinking water.
2. On July 16, 1987 the EPA received a verbal request from the U.S.V.I. DPNR to sample and analyze Mr. Tillett's well. DPNR made a written confirmation of this request to EPA dated August 10, 1987.
3. On July 21, 1987 representatives of EPA and its Technical Assistance Team ("TAT") mobilized to perform sampling of Mr. Tillett's well and six (6) additional commercial wells which served residential customers and commercial establishments throughout St. Thomas.
4. The analytical results from the TAT July, 1987 sampling indicated that Mr. Tillett's well contained gasoline constituents and chlorinated organics and that the additional six (6) wells contained elevated levels of chlorinated volatile organic compounds ("VOCs").
5. Based on these results, in the summer of 1987 the DPNR declared that an imminent health threat existed which could affect 20,000 people living in St. Thomas and an indefinite number of tourists who vacation in St. Thomas.
6. In order to protect public health, DPNR closed thirteen (13) commercial wells and five (5) private wells. Specifically, DPNR closed: the TuTu Water Wells located at #126 Estate Anna's Retreat on July 31, 1987; the Plaza Associate Wells at #392 Estate Anna's Retreat on August 7, 1987; the Gene Eglin Wells at #2 Estate Anna's Retreat on August 7, 1987; the A.A.S.A. Water Supply (Hartman Wells) at #3 Estate Anna's Retreat on August 7, 1987; the Harvey Well at #5c Estate Anna's Retreat on September 2, 1987; and the Steel Well at #5A Estate Anna's Retreat on September 2, 1987.
7. Subsequent to the above, EPA expanded its sampling plan due to the threat of greater contamination.
8. On August 10 and 11, 1987 EPA sampled a total of twenty-four (24) wells identified in the Tutu Section of Anna's Retreat within the Tutu Water/Turpentine Run Aquifer.
9. The analytical results revealed the presence of 1,2-trans-dichloroethylene ("DCE"), trichloroethylene ("TCE"), tetrachloroethylene ("PCE"), toluene ("TOL"), benzene ("BEN") and terbutylmethylether ("TBME") in concentrations ranging from 61

parts per billion ("ppb") to 120,000 ppb in the twenty-four (24) wells. The analytical results also revealed that the EPA 10-Day Health Advisory Level for PCE of 175 ppb was exceeded in three (3) of the twenty four (24) wells sampled, with one of the three contaminated wells being private residential wells. The concentrations found ranged from 240 to 7,600 ppb of PCE with seven (7) additional wells being below the EPA 10-Day Health Advisory, but above the U.S.V.I. interim maximum permissible concentration levels set on September 1, 1987, by DPNR for volatile organics in drinking water in the Turpentine Run Aquifer (50 ppb for a single compound or 100 ppb for total volatile organic compounds ("VOCs")). Two (2) of the previously mentioned seven (7) wells were residential wells.

10. In addition to sampling twenty-four (24) wells, EPA sampled and analyzed 123 cisterns serviced by water haulers from this area. Three (3) cisterns were found to be contain VOCs in excess of 1000 ppb.
11. To confirm the previous data, in October 1987 EPA conducted additional sampling for the Hazardous Substance List ("HSL") in the same twenty-four (24) wells. The major contaminants found were DCE, TCE, PCE and TBME. In addition, metals such as arsenic (15 ppb), selenium (15 ppb) and zinc (460 ppb) were detected in some of the wells.
12. In January 1988 EPA initiated a limited CERCLA Removal Action which included the decontamination and cleaning of five (5) residential cisterns contaminated by hazardous substances, the modification of plumbing, the delivery of water by tank trucks as a temporary alternative water supply and a well water monitoring program.
13. On August 1-2, 1989, EPA and TAT conducted photovac sampling of the TuTu Wells Site. The results were:

All values are in (PPB)

WELL	BENZENE	TCE	PCE
Steele		280	>1000
Smith		73	181
Mathias		48	720
Tillet	>1000	135	
Dench	15		
VIHA #1		80	316

14. On November 6, 1987 EPA sent ESSO Standard Oil Company ("ESSO") an Information Request letter under Sections 104(e) of CERCLA and 3007 of RCRA regarding the Esso Tutu Service Station ("ETSS Facility").
15. On December 15, 1987, ESSO, in response to EPA's Information Request, stated that the ETSS facility had two existing underground storage tanks ("USTs") which store unleaded gasoline (installed in 1970) and one UST which stores used crankcase oil. The response stated that Rogue Schmidt performed a Petro-Tite test on the gasoline tanks but that the test of the premium unleaded UST was stopped due to "a possible leak in tank" structure. (Memorandum dated Aug. 10-87 from Rogue Schmidt to ESSO which was included in ESSO's December 15, 1987 response). The response further stated that ESSO questioned the structural integrity of the tank, immediately emptied the tank and removed it from service on July 27, 1987.
16. A subsequent inspection in September 1988 of the ETSS facility by EPA's contractor revealed that the tank referred in Paragraph 15 actually contained approximately 1000 gallons of product at least during the time period between August 1987 and February 1988.
17. On September 17, 1987 the DPNR issued an Administrative Order requiring ESSO to investigate possible product releases and refrain from disturbing the ETSS facility without receiving prior approval from the EPA and DPNR.
18. From April 5 to April 23, 1988, ESSO conducted a soil vapor survey for benzene, toluene, ethylbenzene, and xylene ("BTEX"), as well as TCE, PCE, and DCE at the ETSS facility.
19. Total BTEX soil gas values were reported in excess of 1000 parts per million ("ppm") in the southern portion of the ETSS facility property; the soil vapor survey results showed BTEX values in the southwest portion of the ETSS facility and the Four Winds Plaza Parking Lot.
20. The soil vapor survey results showed DCE, PCE, TCE concentrations ranging from non-detectable (ND) to 189 ppm were obtained in the west and southwest area of ETSS facility and the Four Winds Parking Lot.
21. The soil vapor survey results showed chlorinated hydrocarbons (DCE, PCE, TCE) in concentrations ranging from ND to 16 ppm were detected on the northwest corner of the ETSS facility.
22. The survey results showed an area of petroleum hydrocarbon vapor concentrations (benzene) with levels ranging from ND to

1,677 ppm in the south and central portion of ETSS facility.

23. The chemical results obtained from the soil samples collected during the removal of the two underground petroleum storage tanks at the ETSS performed in June 1989 revealed concentrations of BTEX in the tank pit ranging from ND to 540 ppm. Chlorinated hydrocarbons were not detected in any of the soil samples related to the petroleum tank excavation.
24. On November 6, 1987, EPA sent Texaco Caribbean Inc. ("Texaco") an Information Request letter under Sections 104(e) of CERCLA and 3007 of RCRA regarding the Texaco TuTu Service Station facility.
25. In a November 30, 1987, response to EPA's Information Request Mr. William Hroch of Texaco stated that:
 - a. One of three 4,000 gallon USTs (all installed in 1968) which stored motor gasoline was taken out of service on July 1980 due to a suspected leak.
 - b. One of three 4,000 gallon USTs which stored motor gasoline was taken out of service in July 1987 because it failed a mechanical integrity test.
 - c. The three USTs installed in the Texaco TuTu Service Station facility in 1968 were not equipped with lining system, though that type of system was not required in 1968.
 - d. Tank piping was replaced due to a pinhole in one of the pipes based on the results of the Pipeline test.
26. Mr. William Hroch of Texaco also attached to the November 30, 1987 response to EPA's Information Request:
 - a. A January 10, 1977 letter written by E.J. Ossi Jr., Manager of Texaco Puerto Rico, Inc. to Mr. R.P. Perkin, representative of Texaco Caribbean Inc., stating that 2,242 gallons of premium gasoline were lost due to pipeline leaks.
 - b. A December 29, 1977 memorandum from Mr. Clement Friday, Texaco Terminal Superintendent to Mr. Meyeringh, Texaco Sales Manager, indicating that 242 gallons of gasoline were lost from USTs due to pipeline leaks.
 - c. A September 5, 1980 memorandum from Mr. W. Sherman, Assistant Manager of Texaco, Puerto Rico indicated

1,212 gallons of lead-free gasoline were lost from USTs due to pipeline leaks.

27. On July 23, 1987 and August 5, 1987 the DPNR issued Texaco Administrative Orders requiring them to investigate possible product releases and refrain from disturbing the Texaco TuTu Service Station facility area without prior EPA and DPNR approval.
28. During November 1987, Geoscience Consultants, Ltd. ("GCL") (Texaco's Contractor) conducted a soil gas investigation in the vicinity of the Texaco TuTu Service Station facility.
29. GCL's analytical results showed a zone of total hydrocarbon concentrations up to 690 ppm in soil gas beneath the southwestern part of the Texaco TuTu Service Station facility and beneath adjacent roadways west and south of the facility. These values indicated the presence of hydrocarbons within the unsaturated soil zone.
30. In September 1988, Texaco excavated tanks at its TuTu Service Station facility pursuant to the Administrative Order issued by the DPNR in August 1987. EPA and DPNR field personnel documented that one of the excavated tanks (T2) had holes in it. The tank (T2) formerly held gasoline product.
31. On November 25, 1987 EPA sent O'Henry Cleaners an Information Request letter under Sections 104(e) of CERCLA and 3007 of RCRA regarding its facility located at #5 Anna's Retreat, St. Thomas, U.S.V.I. ("O'Henry facility").
32. On December 4, 1987 O'Henry Cleaners, in response to EPA's Information Request stated in a letter signed by Leo T. Barbel, President, that PCE is "used, stored and handled in the facility."
33. On September 8, 1988, three (3) soil samples were taken and composited at the O'Henry facility. The analysis revealed 440 ppm of PCE.
34. On March 22, 1990 EPA issued to ESSO, Texaco and O'Henry Cleaners an Administrative Order under RCRA and CERCLA which among other things, required these parties to take over EPA's well water monitoring program at the Tutu Wells Site. Pursuant to the Administrative Order, these parties prepared a Sampling and Monitoring Plan ("SAMP") for the Tutu Wells Site. The SAMP was approved by EPA on September 21, 1990. Pursuant to the SAMP, these parties conduct quarterly sampling. The first sampling event took place in September 1990 and the second sampling event took place in February, 1991. Results showing the highest concentrations obtained from the first two quarterly sampling events are set

forth below.

All values are in PPB

<u>WELL</u>	<u>Benzene</u>	<u>TCE</u>	<u>PCE</u>	<u>DCE</u>
Harvey			890 1500 ²	160 ²
Smith		23 ² 20		58
Steele		48 12 ²	65 ²	120 44 ²
Matthias			76 ²	22 21 ²
Eglin 2		19 ²		
Eglin 3		14 11 ²	35 ²	
Eglin 1			26 ²	
LaPlace		32 ²		
Tillet	27 ²		36 ²	

² Second quarter sampling event.

35. Health effects of some of the contaminants found in the TuTu Wells Site are listed below:

a. Chronic inhalation exposure to 1,2-trans-DCE causes liver degeneration, and acute exposure to high levels may have adverse effects on the central nervous system. Exposure to high vapor concentrations may cause nausea, vomiting, weakness, tremor, and cramps in humans.

b. Benzene is a known carcinogen, which may cause leukemia in exposed individuals. It also may

adversely affect the hematopoietic system. Exposure to high concentrations of benzene in the air may cause central nervous system depression and cardiovascular effects, and dermal exposure may cause dermatitis.

c. The prime toxic effect of PCE in humans and animals from acute and chronic exposure at high doses may include central nervous system depression and liver and kidney changes (tissue damage).

d. Acute toluene exposure may depress the central nervous system and causes narcosis.

e. TCE may cause liver and kidney effects, central nervous system effects and depression in myocardial contractility at high doses.

36. EPA offered Esso, Texaco and O'Henry Cleaners the option of signing this Order. Esso and Texaco consented; O'Henry Cleaners opted not to sign this Order.

V. EPA'S CONCLUSIONS OF LAW

1. Each Respondent is a "person" as that term is defined in Section 1004 of RCRA, 42 U.S.C. §6903, and/or Section 9001 of RCRA, 42 U.S.C. §6991.
2. Respondent ESSO is the "owner" and/or "operator" of one or more "underground storage tanks" located at the ETSS as those terms are defined in Section 9001 of RCRA.
3. ESSO owned the ETSS during the time petroleum was released into the environment and ESSO is a person who has contributed or who is contributing to the handling, storage or disposal of hazardous and/or solid waste at the ETSS facility. Thus, ESSO is a responsible party under Section 7003 of RCRA, 42 U.S.C. 6973, and Section 9003 of RCRA, 42 U.S.C. 6991b.
4. Respondent Texaco is the "owner" and/or "operator" of one or more "underground storage tanks" located at its TuTu Service Station facility, as those terms are defined in Section 9001 of RCRA.
5. Texaco owned the Texaco TuTu Service Station during the time petroleum was released into the environment and Texaco is a person who contributed or who is contributing to the handling, storage or disposal of solid waste at the Texaco Tutu Service Station. Thus, Texaco is a responsible party under Sections

7003 and 9003 of RCRA.

6. O'Henry Cleaners, is a person who contributed or who is contributing to the handling, storage or disposal of solid and/or hazardous waste at the O'Henry Cleaners facility. Thus, O'Henry Cleaners is a responsible party under Section 7003 of RCRA.

VI. DETERMINATIONS

1. Based on the Findings of Fact and the Conclusions of Law set forth above and on the entire Administrative Record, EPA has determined: 1) that the past or present handling, storage, or disposal of solid waste and/or hazardous waste at and/or from the Tutu Wells Site may present an imminent and substantial endangerment to the public health or the environment within the meaning of Section 7003 of RCRA; and 2) that there has been a release of petroleum at and/or from the Tutu wells site within the meaning of Section 9003 RCRA.
2. In order to select an appropriate remedy it is necessary to issue this Order pursuant to Sections 7003 and 9003 of RCRA to fully and adequately determine the nature and extent of release and/or threatened release at the Tutu Wells Site in the manner set forth below.
3. The foregoing Findings of Fact, Conclusions of Law and Determinations have been made by EPA and are specifically denied by Respondents. Without limitation, Respondents deny that they are "responsible parties" under Section 7003 of RCRA, 42 U.S.C. §6973(a) and/or Section 9003 of RCRA 42 U.S.C. 6991(b); and deny that conditions at the Facility or surrounding area present or may present an imminent and substantial endangerment to the public health, welfare, and/or the environment within the meaning of Section 7003 of RCRA and/or Section 9003 of RCRA and further deny that a release of hazardous or solid waste and/or petroleum product has occurred at their respective facilities which may have affected the public health or the environment. By consenting to this Order, or by taking any actions under this Order, Respondents do not concede the correctness of any fact alleged, or the validity of any legal finding or determination asserted in the foregoing Findings of Fact, Conclusions of Law, Determinations or elsewhere in this

Order. Neither this Order nor any action taken by Respondents pursuant to this Order shall constitute any evidence against Respondents, an admission of liability or responsibility by Respondents, a waiver by Respondents of any rights or defenses except as otherwise provided by this Order, or an estoppel against Respondents with respect to any matter, act, claim or

thing related in any manner to the Facility for any purpose other than in an action by EPA to enforce the terms of this Order. No payment(s) by Respondents pursuant to this Order, except for any stipulated penalties that may be required under paragraph XIV below, shall be construed to be a fine, penalty, or monetary sanction. Nevertheless, Respondents agree not to contest the authority or jurisdiction of the EPA to issue this Order, and agree not to contest the validity or terms of this Order in any action brought by EPA to enforce the terms hereof.

4. Except as otherwise provided in this Order, Respondents reserve the right to contest in any proceedings the propriety of any determination or other action of EPA under this Order.

VII. ORDER

1. EPA hereby orders Respondents, with their consent, to undertake the Program outlined in Sections A - F below and in the attached Workplan. All work performed pursuant to this Order shall be in accordance with the NCP and all the paragraphs of this Administrative Order. The attached workplan is deemed by EPA to be consistent with the NCP.

A. REMEDIAL and/or CONTAMINATION INVESTIGATION WORKPLAN ("WORKPLAN")

1. Within twenty (20) days of the effective date of this Order or upon the incorporation of the Quality Assurance Project Plan (QAPP) into the attached Workplan, whichever is later, Respondents shall proceed to perform an Investigatorial Program according to the schedule included in the Workplan. The Workplan shall incorporate the QAPP upon its approval by EPA.
2. The objectives of the Workplan shall be to 1) determine the vertical and horizontal nature and extent of soil and groundwater contamination; and 2) determine or confirm the contaminant source(s), mechanisms of contaminant transport, and rate and direction of contamination movement in the soils, surface water, and groundwater flow.
3. The Workplan shall include a Quality Assurance Project Plan (QAPP), which includes Quality Assurance and Quality Control Plan (QA/QC Plan). The QAPP must be approved by EPA pursuant to this Order. Upon approval, the QAPP shall be incorporated into the Workplan and deemed by EPA to be consistent with the NCP. It shall include standard EPA Chain of Custody procedures as set forth in the National Enforcement Investigations Center Policies and Procedures Manual, as revised in November, 1984 or as updated, the National

Enforcement Investigations Center Manual for the Evidence Audit, published in September, 1981 or as updated, and SW-846, 3rd Edition, or as updated, for all sample collection and analysis activities conducted pursuant to this Order. In addition, the QAPP shall:

- a. ensure that all contracts with laboratories used by Respondents for analysis of samples taken pursuant to this Order provide for access of EPA personnel and EPA authorized representatives to assure the accuracy of laboratory results related to the Site;
 - b. ensure that laboratories utilized by Respondents for analysis of samples taken pursuant to this Order perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis," dated July 1985, and any amendments made thereto during the course of this Order;
 - c. ensure that all laboratories used by Respondents for analysis of samples taken pursuant to this Order participate in an EPA or EPA approved equivalent QA/QC program.
4. If performance of any subsequent phase of the Work required by this Order requires alteration of the QAPP, Respondents shall submit to EPA for review and approval proposed amendments to the QAPP.
 5. The sampling shall include the Target Compound List ("TCL"), and the following petroleum products (including motor gasoline, aviation gasoline, gasohol, kerosene, and diesel) and constituents listed below:

Total petroleum hydrocarbons (TPH)
Total TCL Volatile and Semi-Volatile Organic Aromatics (VOA)
Methyl Tertiary Butyl Ether (MTBE)
Total Analytes List

6. With respect to petroleum, Respondents Texaco and Esso shall determine the amount of product lost from their respective underground storage tanks and the time period during which it was lost.
7. Respondents Texaco and Esso shall conduct a free product investigation in accordance to 40 C.F.R. § 280.62(a)(6) and, if necessary, a free product removal pursuant to 40 C.F.R. §280.64.
8. The Respondents shall obtain information sufficient to develop and support clean-up alternatives.
9. The Respondents shall determine whether interim remedial measures are necessary to abate any imminent hazard.
10. EPA shall provide written comments to Respondents on the QAPP. Within ten (10) days of Respondents' receipt of said comments, Respondents may request a meeting with EPA to discuss its comments. Within twenty (20) days of such meeting, or if no meeting is requested, within twenty (20) days of Respondents' receipt of such comments, Respondents shall either: 1) submit a modified QAPP to EPA which incorporates all of EPA comments or 2) provide EPA with a written notice of dispute invoking the Dispute Resolution procedures set forth in this Order.
11. When Respondents submit a modified QAPP to EPA, EPA will, when appropriate, provide Respondents with a written statement of approval. The approved QAPP will automatically be incorporated into the workplan.

B. COMMUNITY RELATIONS PLAN

EPA will prepare a community relations plan, in accordance with EPA guidance and the NCP. Respondents shall provide information, as requested by EPA, supporting EPA's community relations program. As requested by EPA, Respondents shall participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

C. REMEDIAL INVESTIGATION and/or CONTAMINATION INVESTIGATION REPORT ("INVESTIGATION REPORT")

1. Following completion of the tasks of the Workplan, and within thirty (30) days after EPA's submittal of the Baseline Risk Assessment report to Respondents, Respondents shall submit a draft written Investigation Report to EPA. Respondents shall refer to the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, Interim Final, OSWER Directive 9355.3-01 dated October 1988 for report content and format. The Report shall include but not be limited to:
 - (a) Site background, including previous investigations, geology, hydrogeology, demography and land use;
 - (b) Discussion of Workplan objectives outlined in Section A of this Order above;
 - (c) Summary of all Workplan tasks;
 - (d) Nature of extent of contamination, presenting the results of the Workplan;
 - (e) Summary of conclusions regarding Workplan objectives; and
 - (f) Submission of all analytical data.
2. EPA will provide written comments on the draft Investigation Report. Within ten (10) days of Respondents' receipt of said comments, Respondents may request a meeting with EPA to discuss its comments. Within twenty (20) days of said meeting, or if no meeting is requested, within twenty (20) days of Respondents' receipt of said comments, Respondents shall either: 1) submit a modified Investigation Report to EPA which incorporates EPA's comments or 2) provide EPA with a notice of dispute invoking the dispute resolution procedures set forth in this Order.
3. At said time as EPA determines the Investigation Report is adequate, EPA will provide a written statement to Respondents deeming the Investigation Report final.

D. TREATABILITY STUDY (TS)

1. At EPA's request, Respondents shall conduct a treatability study (TS), except where Respondents can demonstrate to EPA's satisfaction that a TS is not needed. The purpose of performing a TS is to determine

performance, operating parameters, and relative costs of potential remedial technologies. If a TS is determined to be necessary by EPA, Respondents shall provide EPA with the following deliverables listed below. All of these deliverables are subject to EPA's approval pursuant to Section X of this Order.

- a. Treatability Testing Statement of Work If EPA determines that treatability testing is required and so notifies Respondents, Respondents shall within fourteen (14) days thereafter, submit to EPA a treatability Testing Statement of Work.
- b. Treatability Testing Work Plan. Within fifteen (15) days of submission of the treatability testing statement of work, Respondents shall submit a treatability testing work plan, including a schedule. Upon its approval by EPA, said schedule shall be deemed incorporated into this Consent Order by reference. If EPA disapproves or requires revisions to the Treatability Testing Work Plan, in whole or in part, Respondents shall amend and submit to EPA a revised Treatability Testing Work Plan which is responsive to the directions in all EPA comments, within twenty (20) days of receiving EPA's comments.
- c. Treatability Study Sampling and Analysis Plan (SAP), QAPP and/or HSP. Within fifteen (15) days of the identification of the need for a separate or revised QAPP, SAP and/or HSP, Respondents shall submit to EPA a revised QAPP, SAP and/or HSP, as required by EPA.
- d. Treatability Study Evaluation Report. Within thirty (30) days of completion of the Treatability Testing in accordance with its schedule as specified in paragraph (b) above, Respondents shall submit a treatability study evaluation report. Respondents shall refer to the RI/FS Guidance for report format and content.

E. DEVELOPMENT AND SCREENING OF REMEDIAL ALTERNATIVES

1. Within thirty (30) days following EPA approval of the Treatability Study Evaluation Report or, if a TS was not required within thirty (30) days after Respondents' receipt of EPA's final Baseline Risk Assessment, Respondents shall conduct a detailed analysis of remedial alternatives. Major

components of the detailed analysis are to further define alternatives as necessary, analyze alternatives using the nine criteria set forth in the NCP and compare the alternatives against each other. Within ten (10) days of submitting this analysis, Respondents shall make a presentation to EPA during which Respondents shall summarize the submission described above. Respondents shall address any comments made by EPA during this presentation by amending the above-referenced submittal and resubmit it within seven (7) days.

- F. Feasibility Study ("FS") Report.** Within thirty-five (35) days of the presentation to EPA, Respondents shall submit a draft feasibility study (FS) report. Respondents shall refer to the RI/FS Guidance for report content and format. Within twenty (20) days of submitting the draft FS report, Respondents shall make a presentation to EPA and the State at which Respondents shall summarize the findings of the draft report and associated with the draft FS report.

1. EPA will provide written comments on the draft FS Report. Within ten (10) days of Respondents' receipt of said comments, Respondents may request a meeting with EPA to discuss its comments. Within ten (10) days of said meeting, or if no meeting is requested, within twenty (20) days of Respondents' receipt of said comments, Respondents shall either: 1) submit a modified Report to EPA which incorporates EPA's comments or 2) provide EPA with a notice of dispute invoking the dispute resolution procedures set forth in this Order.
2. At said time as EPA determines the FS Report is adequate, EPA will provide a written statement to Respondents deeming the report final.

VIII. DESIGNATED COORDINATOR

1. Not later than five (5) business day after the effective date of this Order, Respondents shall designate a coordinator, to be known as the Designated Coordinator, and shall notify EPA in writing of the name, address, job title, qualification and telephone number of the Designated Coordinator. All EPA communications with Respondents regarding this Order shall be addressed to the Designated Coordinator. The Designated Coordinator shall be responsible for the implementation of the requirements of this Order, and shall have the necessary technical expertise to coordinate all aspects of the work contemplated by this Order.

2. Respondents shall use their best efforts to avoid or minimize any delay or prevention of performance of its obligations under this Order. In the event of an inability or anticipated inability on the part of Respondents to perform in a timely manner any of the activities required under this Order, the Designated Coordinator shall immediately inform EPA, verbally and in writing of the reason, the date, and the duration of such inability to perform and the actions taken or to be taken by Respondents to avoid or mitigate the impact of such inability to perform, including a proposed schedule for such actions.
3. As appropriate during the course of implementation of the Remedial and/or Contamination Investigation at the Site, Respondents or their consultants or contractors, acting through the Designated Coordinator, may confer with the EPA concerning those actions. Based upon new circumstances or new information not in the possession of EPA on the date of this Order, the Designated Coordinator may request in writing EPA approval of a modification of the Investigation set forth in the EPA approved Workplan. If the modifications approved by EPA in writing it shall be implemented immediately by Respondents and incorporated into this Order. Changes in deadlines must be approved in writing, and may be approved by the Chief of the New York/Caribbean Compliance Branch.
4. In the event of significant change in conditions at the Tutu Wells Site which will affect the submitted Workplan, the Designated Coordinator shall notify EPA immediately at the following emergency telephone number: (212) 264-0151. Until EPA provides direction, Respondents may take reasonable measures under the circumstances. Respondents shall remain liable for any adverse consequences of such measures. If the EPA determines that the activities performed pursuant to this Order, or that significant changes in conditions at the Tutu Wells Site, pose a threat to public health or welfare or the environment, EPA may direct Respondents to stop further implementation of the Contamination Investigation or to take other and further actions reasonably necessary to abate the threat. This provision is not to be construed so as to limit any rights EPA may have under 40 C.F.R. § 300.65, any other applicable provision of the NCP, or any other applicable law or regulation.

IX. REPORTING, ACCESS, SAMPLING

1. All submittals and notifications to EPA pursuant to this Order shall be made in writing to:

- (5 copies) i. Caroline Kwan, Project Officer, New York/Caribbean Superfund Branch II, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278;
- (1 copy) ii. Jose Font, Project Officer, U.S.E.P.A.- Caribbean Field Office, Office 2A, Podiatry Center Building, 1413 Fernandez Juncos Avenue, Santurce, Puerto Rico 00907
- (2 copies) iii. Commissioner
Department of Planning and Natural Resources
Nisky Center, Suite 231
45A Estate Nisky
St. Thomas, U.S.V.I. 00801
2. Respondents shall provide written monthly progress reports to EPA by the tenth day of every month following the effective date of this Order. These reports shall describe all work performed during the past month as well as work expected to be performed during the coming month.
3. Respondents shall grant access to the areas in the Tutu Wells Site, which are under their control, to EPA, DPNR, the various Respondents and each party's respective representatives, agents, employees, contractors, and consultants. The Respondents shall permit EPA and DPNR representatives to be present at those areas in the Tutu Wells Site which are under their control, at any and all times and to observe any and all activities conducted pursuant to this Order. If the Site, or any off-Site area that is to be used for access or is within the scope of the requirements of this Order, is owned in whole or in part by parties other than those bound by this Order, Respondents shall obtain, or use their best efforts to obtain, access agreements from the present owner(s) within thirty (30) days of the effective date of this Order. Such agreements shall provide access for EPA, its contractors and oversight officials, DPNR and its contractors, and the Respondents or their authorized representatives, and such agreements shall specify that Respondents are not EPA's representatives with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA prior to Respondents' initiation of field activities. Respondents' best efforts shall include providing reasonable compensation to any property owner. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify EPA of their failure to obtain access.

EPA may, in its sole discretion, obtain access for the Respondents, or perform those tasks or activities with EPA contractors in the event that Respondents cannot obtain access agreements. To the extent that it becomes necessary for EPA to exercise its statutory authority to obtain access to certain property or properties on Respondents' behalf so that Respondents can carry out work required by this Order, Respondents agree to indemnify and hold harmless EPA and the United States Government, its agencies, departments, agents and employees, from all claims, causes of action, damages and costs of any type or description by third parties for any injuries or damages to persons or property resulting from acts or omissions of Respondents or their officers, directors, officials, agents, servants, receivers, trustees, successors or assigns, in carrying out any activities at the aforesaid property or properties. In the event that EPA performs those tasks or activities with EPA contractors, Respondents shall reimburse EPA for all costs incurred in performing such activities and shall perform all other activities not requiring access to the given property. Respondents additionally shall integrate the results of any such tasks undertaken by EPA into their reports and deliverables. Respondents also shall reimburse EPA pursuant to Section XIX of this Order for all costs and attorney fees incurred by the United States to obtain access for the Respondents.

4. All data, information, and records maintained or created by Respondents and its agents, employees, contractors or consultants in connection with the implementation of this Order--including, but not limited to, contractual documents and raw sampling and other monitoring data shall be made available to EPA, DPNR and their designated representatives. In addition, no such data, information or records shall be destroyed for eight years, following completion of the Investigatorial Program set forth in the EPA approved Workplan without: 1) a written offer by Respondents to provide such material to these agencies; and 2) receipt of express written approval from EPA.
5. All records produced by Respondents and delivered to EPA and/or DPNR in the course of implementing this Order shall be available to the public unless identified as confidential in accordance with Section 9005(b) of RCRA, 42 U.S.C. §6991d(b) and/or Subpart B of 40 C.F.R. Part 2. Any records identified as confidential in accordance with Section 9005(b) of RCRA and/or Subpart B of 40 C.F.R. Part 2 will be handled in accordance with the procedures set forth in those sections.
6. The Respondents may, if appropriate, assert that certain documents, records and other information are

privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: 1) the title of the document, record or information; 2) the date of the documents, record or information; 3) the name and title of the author of the document, record or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record or information; and 6) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of the Order shall be withheld on the grounds that they are privileged.

7. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.
8. Respondents shall give EPA fifteen (15) working days advance notice of all sampling activities.
9. Upon two (2) days advance request by the EPA or DPNR, Respondents shall provide split samples of any material sampled in connection with the implementation of this Order.
10. All employees of all persons or entities, including contractors, who engage in activities pursuant to this Order, shall be available to and shall cooperate with EPA and DPNR in providing information and in implementing the Investigatorial Program for the Tutu Wells Site.
11. With respect to all chemical analyses and all disposal operations conducted pursuant to this Order, Respondents shall provide the OSC with the identity of and, if applicable, licensing identification numbers of all persons or entities performing such work (e.g., waste haulers or disposal facilities) within two (2) working days of selection of such persons, companies, or facilities, for purposes of establishing that all such activities are performed in accordance with EPA approved methodology and that all hazardous wastes ultimately disposed of are disposed of at EPA approved hazardous waste disposal facilities.

X. EPA APPROVALS

1. Unless otherwise specified, EPA shall review any plan, report, specification or schedule submitted pursuant to, or

required by this Order, and provide its written approval/disapproval, comments and/or modifications to the Respondents. Within ten (10) days of Respondents' receipt of EPA's approval/disapproval, comments and/or modifications, Respondents may request a meeting with EPA to discuss the approval/disapproval, comments and/or modifications. Within twenty (20) days of such meeting, or if no meeting is requested, within twenty (20) days of receipt of EPA's approval/disapproval, comments and/or modifications, Respondents shall either: 1) amend or modify the submission to incorporate all EPA comments and proposed modifications; or 2) provide EPA with a written notice of dispute, setting forth Respondents' position, any actions which Respondents consider necessary to resolve the dispute, and the basis for Respondent's position. Any such written notice of dispute shall be subject to the dispute resolution procedures as set forth in this Order.

2. Any reports, plans and specifications or schedules, submitted pursuant to, or required by this Order, are hereby incorporated by reference into this Order on the date written approval is given by EPA or the date a decision has been issued pursuant to the Dispute Resolution procedures set forth in this Order, whichever date is later. Prior to this approval determination or dispute resolution determination, no plan, report, specifications or schedules shall be construed as a final approved plan. Verbal advice, suggestions, or comments given by EPA representatives shall not constitute an official approval, nor shall any verbal approval or verbal assurance of approval be considered binding.
3. Any noncompliance with an approved EPA document or determination under the dispute resolution provision of this Order constitutes noncompliance with this Order.
4. All plans and reports which require Agency approval pursuant to this Order, shall be incorporated into this Order upon approval by EPA.

XI. OTHER APPLICABLE REQUIREMENTS

1. All activities required of Respondents under this Order shall be performed only by qualified persons possessing all necessary permits, and other authorizations required by the Federal Government and the U.S.V.I.
2. All actions and activities carried out by Respondents Pursuant to this Order shall be performed in accordance with

all applicable, relevant and appropriate federal, territorial, and local laws, regulations, requirements and guidances applicable at the time of the action. In the case of a conflict, the most stringent standards shall apply.

3. All waste disposal conducted by Respondents pursuant to this Order shall comply with the requirements of the RCRA, 42 U.S.C. § 6901 et seq., the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq., and all applicable regulations promulgated pursuant thereto, as well as all other applicable federal, U.S.V.I., local laws and regulations.

XII. ADDITIONAL WORK

1. EPA may determine that work, in addition to that detailed in this Order and the Attachments, is necessary to protect human health and the environment. If EPA determines that any such additional work is necessary it shall notify the Respondents in writing specifying the basis for EPA's determination and the additional work deemed necessary. Within fifteen (15) days after receipt of any such notice, the Respondents shall be afforded an opportunity to meet with EPA to discuss the additional work being required by EPA. Thereafter, the Respondents shall either: 1) within twenty (20) days of such meetings with EPA, provide a written notice of dispute to EPA in accordance with the dispute resolution procedures of this Order; or 2) perform any such additional work, including the submission of a workplan, in accordance with the standards, specifications, and schedules deemed necessary and approved by EPA. All additional work performed by the Respondents pursuant to this paragraph shall be performed subject to, and in a manner consistent with, the terms and conditions of this Order. Any requirements for additional work shall be incorporated into this Order as if fully set forth herein. In no event shall any such additional work under this paragraph include the performance of remedial action as defined in Section 101 of CERCLA.

XIII. LIABILITY, INDEMNIFICATION, RELEASES and INSURANCE

1. Neither EPA nor the United States, by issuance of this Order, assumes any liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents or Respondents' employees, agents, contractors, and consultants.

2. Nothing herein shall constitute or be construed as, a satisfaction or release from liability with respect to any conditions or claims arising as a result of past, current, or future operations, ownership, or use of the Tutu Wells Site by Respondents, Respondents' employees, agents, contractors, lessees, successors, and/or assigns. Except as specifically provided elsewhere in this Order, nothing herein shall also constitute or be construed as a waiver by Respondents with respect to any action, defense, right or claim they may assert.
3. Nothing in this Order constitutes a decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2), or any authorization for the Respondents, their agents, contractors, assigns or successors to assert any claim(s) against or to request any reimbursement from the Hazardous Substance Superfund, pursuant to Section 111 or 112 of CERCLA, 42 U.S.C. §§9611 or 9612, or under any other provision of CERCLA or based upon common law, statutory or equitable grounds.
4. In entering this Order, Respondents waive any right to seek reimbursement under Section 106(b) of CERCLA.
5. EPA is not, and shall not be represented as, a party to any contract entered into by, or on behalf of Respondents in carrying out the work pursuant to this Order.
6. Nothing contained in this Order shall affect any right, claim, interest, defense or cause of action of EPA with respect to Respondents (including its past cost recovery claim under CERCLA) or third parties or of any right, claim, interest, defense or cause of action by Respondents with respect to any party other than EPA and with respect to EPA, except as otherwise provided in this Order.
7. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondents shall submit to EPA a certification that either Respondents or their contractors and subcontractors have adequate insurance coverage or indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Order. Respondents shall insure that such insurance coverage or indemnification is maintained for the duration of the work required hereunder. If Respondents disagree with EPA's determination that the amount of insurance coverage or indemnification for liabilities secured is not adequate, Respondents may dispute EPA's determination as to the adequate amount by invoking the dispute resolution procedures under Section XXI herein.

8. For the duration of this Order, Respondents shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workman's compensation insurance for all persons performing work on behalf of Respondents, in furtherance of this Order.

XIV. ENFORCEMENT ACTIONS

1. Failure of Respondents to carry out expeditiously and completely the terms of this Order may result in EPA taking the required actions unilaterally, pursuant to Section 104(a)(1) of CERCLA, Section 7003 of RCRA and/or Section 9003 of RCRA.
2. This Order, and the EPA approved Workplan prepared in compliance herewith, shall be enforceable pursuant to Sections 7003(b) and/or Sections 9003 and 9006 of RCRA. Respondents may also be subject to administrative and civil penalties as provided in Sections 7003(b) and Section 9006 of RCRA, 42 U.S.C. §6991e, for failure to comply with the terms of this Order. Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or additional actions as it may deem necessary for any purpose, including the prevention or abatement of an imminent and substantial endangerment to the public health, welfare, and/or the environment arising from conditions at the Tutu Wells Site and from recovering the costs thereof; nor shall anything herein preclude DPNR from taking legal action pursuant to U.S.V.I. law.
3. Respondents are hereby placed on notice that EPA may take any action described in this Order which may be appropriate to protect public health, welfare or the environment, and Respondents may be held liable under Section 107 of CERCLA 42 U.S.C. §9607 and/or Section 9003 of RCRA, 42 U.S.C. §6991b, for the costs of such action.
4. If Respondents fail to conform with the requirements set forth in this Order in accordance with the schedule set forth in this Order or the EPA approved Workplan, and such failure is not excused by a force majeure event pursuant to Section XVII of this Order or by an extension of time granted in accordance with the terms of this Order, Respondents shall make payment to EPA in the amount indicated below for each day of noncompliance:

<u>Days After Required Date</u>	<u>Stipulated Penalties</u>
1-14	\$ 500 for each day
15-30	\$ 1000 for each day

31 PLUS

\$ 1500 for each day

5. Payment of such stipulated penalties shall be made by delivery of a cashier's or certified check made payable to the Hazardous Substance Superfund with a letter specifically referencing the identity of the TuTu Wells Site and the docket number of this Order and describing the basis of penalties to the address listed in paragraph one of Section XIX of this Order. Such payment shall not be deductible for purpose of federal tax laws.

XV. EMERGENCY PROVISION

1. In the event Respondents identify a current or immediate threat to human health or the environment, the Respondents shall immediately notify EPA orally and notify EPA in writing within five (5) days summarizing the immediacy and magnitude of the potential threats to human health or the environment. The Respondents shall submit to EPA, as soon as possible but no later than five (5) days from their written notification to EPA, a plan for approval which mitigates this threat. EPA will disapprove, approve or modify this plan. If EPA directs Respondents to modify the plan, Respondents shall modify the plan as directed by EPA and then resubmit it to EPA for approval as soon as possible but no later than five (5) days from Respondents' receipt of EPA's comments. The Respondents shall implement the plan as approved or modified by EPA. If EPA determines that immediate action is required, then the Deputy Director for New York/Caribbean Programs of the Emergency and Remedial Response Division, Region II, may orally authorize the Respondents to act prior to making the required written submission to EPA.
2. If EPA determines that activities in compliance or non-compliance with this Order, have caused or may cause a release of a hazardous waste, hazardous constituents, pollutant, contaminant or petroleum or may pose a threat to human health or the environment, EPA may order the Respondents to stop further implementation of this Order for such period of time as may be needed to abate any such release or threat and/or 2) undertake any action which EPA determines is necessary to abate such release or threat.

XVI. PUBLIC PARTICIPATION

1. Unless materials are entitled to be kept confidential pursuant to Section IX. of this Order and applicable law, EPA shall make all reports pertaining to this Order and any EPA summaries of those reports, available for public review

and comment.

XVII. FORCE MAJEURE AND EXCUSABLE DELAY

1. Respondents shall perform all the requirements of this Order within the time limits set forth, approved or established herein, unless the performance is prevented or delayed solely by events which constitute a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of the Respondents which could not be overcome by due diligence and which delays or prevents performance by a date required by this Order. Such events do not include unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure, due to Respondents' actions or lack thereof, to obtain federal, state or local permits.
2. The Respondents shall notify the EPA Project Coordinator and the OSC as soon as possible after they become aware of an event, which they know or should have known, constitutes a force majeure. Within ten (10) days after they become aware of events which they know or should know constitute a force majeure, the Respondents shall submit to EPA a report detailing the estimated length of delay, including necessary demobilization and remobilization, its causes, measures taken or to be taken to minimize the delay, and an estimated time table for implementation of these measures.

Respondents must adopt all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall constitute a waiver of Respondents' right to assert a force majeure and shall be grounds for EPA to deny Respondents an extension of time for performance.

3. If a force majeure has occurred, the time for performance may be extended, upon EPA approval, for a period equal to the delay resulting from such circumstances. This shall be accomplished through written amendment to this Order. Such an extension does not alter the schedule for performance or completion of any other tasks required by this Order unless these are also specifically altered by amendment of this Order.

XVIII. NO FINAL AGENCY ACTION

1. Notwithstanding any other provision of this Order, no action or decision by EPA pursuant to this Order, including without limitation, decisions of the Regional Administrator, or any

authorized representative of EPA, shall constitute final agency action giving rise to any rights of judicial review.

2. In any action brought by EPA for a violation of this Order the Respondents shall bear the burden of proving that EPA's actions were arbitrary and capricious and not in accordance with the law, or this Order. EPA will bear the burden of proving the existence of any violation and the appropriateness of any penalties sought.

XIX. REIMBURSEMENT

1. EPA will periodically send billings to Respondents for the costs incurred by the EPA. Those billings will be accompanied by a printout of cost data in EPA's financial management system, supplemented, if necessary, by a letter report(s) documenting additional costs incurred by the EPA which are not reflected in that printout. The billings will also be accompanied by a calculation of EPA's indirect costs. The U.S. Government's costs may include, but are not limited to costs incurred by the Government in overseeing Respondents' implementation of this Investigatory Program and community relations, including any costs incurred while obtaining access. Such costs will include both indirect and direct costs of oversight and response costs incurred by the U.S. Government, whether such oversight or response is performed by EPA or by a contractor selected by EPA, with respect to work associated with this Investigatory Program by Respondents. Within thirty (30) calendar days of receipt of that accounting, the Respondents shall remit a check for the amount of those costs made payable to the Hazardous Substances Superfund, pursuant to Section 107 of CERCLA, 42 U.S.C. §9607. Checks should specifically reference the identity of the Tutu Wells Site and the docket number of this Order. Payment should be sent to:

**U.S. Environmental Protection Agency
Region II
Attn: Superfund Accounting
P.O. Box 360188M
Pittsburgh, PA 15251**

A letter of explanation shall include the name and address of Respondents, the name of the Site and the EPA Region number (EPA, Region II). A copy of the letter and check shall be sent to the EPA addresses in Section IX, paragraph 1i and 1ii.

2. Respondents may invoke the Dispute Resolution procedures of this Order with respect to payment demands submitted to Respondents by EPA in accordance with Paragraph 1 above.

However, Respondents agree to limit any disputes concerning such costs to accounting errors and the inclusion of costs inconsistent with the NCP. Respondents shall identify any contested costs and the basis of their objection. All undisputed costs shall be remitted by Respondents as set forth above. Disputed costs shall be paid by Respondents into an escrow account while the dispute is pending. Respondents bear the burden of establishing an EPA accounting error or the inclusion of costs inconsistent with the NCP.

XX. TERMINATION

1. When Respondents conclude that the work required under this Order has been fully performed, the Respondents shall notify EPA by submitting a written report certifying that all the work has been completed in full satisfaction of and compliance with the Order. If EPA determines that the work has been fully performed and concludes that the performance standards have been satisfied, EPA's Regional Administrator will notify Respondents in writing. This order terminates upon Respondents' receipt of EPA's termination notice, except for paragraph 4 of Section IX of this Order which requires preservation of records.

XXI. DISPUTE RESOLUTION

1. The parties shall first try to resolve all disputes informally. If informal resolution is not possible, any disputes concerning activities or deliverables required under this Order, for which dispute resolution has been expressly provided for herein, shall be resolved as follows: If Respondents object to any EPA notice of disapproval or requirement made pursuant to this Order, Respondents shall notify EPA's Project Coordinator in writing of their objections within 14 days of receipt of the disapproval notice or requirements or in the time frame otherwise provided in this Order. Respondents' written objections shall define the dispute, state the basis of Respondents' objections, and be sent certified mail, return receipt requested. EPA and the Respondents then have an additional 14 days to reach agreement. If an agreement is not reached within 14 days, Respondents may request a determination by EPA's Superfund Deputy Director for the New York/Caribbean Programs. The Deputy Director's determination is EPA's final decision. Respondents shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If the Respondents do not agree to perform or do not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to

conduct the work itself, to seek reimbursement from the Respondents, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief.

2. Respondents are not relieved of their obligations to perform and conduct activities and submit deliverables on the schedules set forth in the Workplan, while a matter is pending in dispute resolution. The invocation of dispute resolution does not stay stipulated penalties under this Order but shall void any stipulated penalties if, according to EPA's final decision, Respondents' view prevails.

XXII. MODIFICATION

1. The schedules and provisions specified in this Order may be modified by agreement of EPA and Respondents. All such modifications shall be made in writing and shall be made part of this Order.

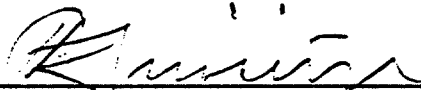
XXIII. EFFECTIVE DATE

1. This Order shall become effective ten (10) days after signature by EPA.

XXIV. CONSENT

Respondents consent to and agree not to contest EPA's jurisdiction to issue this Order. In addition, whether brought in an administrative or judicial proceeding, the Respondents consent to and agree not to contest EPA's jurisdiction to issue this Order and agree not to contest the validity or terms of this Order in any action brought by EPA to enforce the terms hereof.

Each undersigned signatory to this Order certifies that he or she is fully authorized to enter into the terms and conditions of this Order.


Signature for ESSO Standard
Oil S.A., Limited

2/10/92
Date

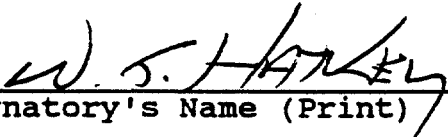
Stuart Griffith
Signatory's Name (Print)

President and General Manager
Esso Standard Oil Company (PR)
Signatory's Title (Print)

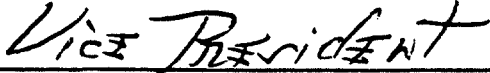


Signature for Texaco Caribbean Inc.

Jan. 24, '92
Date



Signatory's Name (Print)



Signatory's Title (Print)

It is so Ordered:



William J. Muszynski, P.E.
Deputy Regional Administrator
U.S. Environmental Protection Agency
Region II

2/19/92

Date