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April 17, 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: Tutu Water Wells Superfund Site, St. Thomas, U.S.V.I.
Comments of Western Auto to Geraghty & Miller Proposed FS

Dear Ms. Petersen:

As you may be aware, this law firm represents Western Auto Supply Company in the matter referenced above. Enclosed herewith please find the comments of ENSR, the environmental consultants for Western Auto, to the draft Feasibility Study ("FS") authored by Geraghty & Miller ("GM") on behalf of the Tutu Environmental Investigation Committee ("TEIC").

While ENSR's comments pertain appropriately to issues of data and science as set forth in GM's FS, it has become clear that other issues pertaining to statements and assumptions made in the FS, the draft RI, and in the EPA's comments to the RI need to be addressed and clarified. The purpose of this cover letter is to once again highlight the data that indicates the following: 1) The only contamination remaining in the soil behind Western Auto is a result of contamination seeping from under Four Winds through the 4" pipe in the gravel layer, and 2) Western Auto is in no way responsible for the remaining contamination given the fact that Western Auto never

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leased, maintained, or controlled either the soil or area behind Western Auto or the underground 4" pipe that is acting as a conduit for the substances seeping into the gravel layer from the upgradient source beneath Four Winds.

1. The Area Behind The Western Auto Store At Four Winds Plaza is Not Western Auto "Property".

Throughout the draft RI, the draft FS, and even the EPA's comments to the draft RI, the common area located behind Western Auto is described in one way or another as Western Auto "property". Examples include page 2-17 of GM's FS wherein paragraph 2 begins with: "At the Western Auto property,..." Further, in GM's discussion of S.W.R.A. 2, found at pages 4-11 and 4-12 of the FS, GM includes Western Auto in its analysis of institutional controls, suggesting that "deed restrictions" limiting excavation be instituted "placing limitations on property usage..."

Western Auto does not have a deed. Western Auto has a lease. The property behind Western Auto is and always has been owned, maintained, and controlled by the landlord. The lease agreement dated June 22, 1977, between Plaza Associates and Western Auto Supply Company sets out the contractual obligations which govern the relationship between Western Auto and Four Winds. According to the terms of the lease, a copy of which was supplied to the EPA as part of Western Auto's 104 response, Western Auto leased only the interior space of the pertinent portion of Four Winds. The landlord retained ownership, control, and maintenance responsibilities for all external problems.

In addition, lease provisions call for strict adherence by the landlord to Western Auto construction specifications during the construction of the Western Auto premises. Upon excavation of the UST's, it was discovered that the landlord failed to install the UST's, underground piping, and oil-water separator in accordance with Western Auto's detailed specifications. (See ENSR Tank Closure Report, Appendix D, Report of Phil Pimentel)

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The lease also speaks to the continuing duty of the landlord to maintain certain aspects of the Four Winds premises. Paragraph 8 states that the Lessor "agrees to maintain in good repair at Lessor's cost the roof, outer walls..., down spouts, *underground plumbing*...and without limitation, structural portions of the demised premises." (emphasis added)

Similarly, paragraph 9 of the lease agreement states that the Lessor "hereby warrants and guarantees that at the commencement of this lease the wiring, floors, *plumbing, underground plumbing*...are each and everyone in good repair and are adequate to furnish the proper service for which each was installed." (emphasis added)

Thus, it is a given that Western Auto is in no way responsible for the parking lot, the Four Winds common areas, the 4" pipe leading from beneath Four Winds and travels through the parking lot to the Four Winds cistern, and which for years served to introduce contamination into the Four Winds parking area behind Western Auto, or even the other shopping center-wide faulty underground construction and plumbing which may have exacerbated the situation.

2. The Contamination Remaining Behind Western Auto Came From An Upgradient Source Beneath Four Winds, Not From The Former Western Auto UST's.

The enclosed comments of ENSR address the objective data upon which Western Auto relies for the premise that the contamination remaining behind Western Auto could not have emanated from Western Auto. Instead, the data show that the source of this contamination, as revealed by the Gore-Sorber studies, is upgradient underneath Barker's, and is transported throughout the area behind Western Auto by a 4" PVC pipe originating beneath the Cost-U-Less store and terminating at the Four Winds cistern. (see ENSR comments and attachments thereto). We will not belabor these facts further in this cover letter.

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One further objection to the language of the FS needs to be highlighted in this letter, however. This objection is to the language used by GM in its summary paragraph purporting to summarize the contamination in "soil samples" at "the Western Auto property". See FS p. 2-17.

As discussed above, the area behind Western Auto is not the property of Western Auto. Furthermore, the samples summarized at page 2-17 without qualification are generally misleading, distorted, misdescribed, and, at times, simply erroneous.

While the ENSR comments to the FS and the Table attached thereto describe completely the actual data that provides the basis for the GM mischaracterizations on page 2-17, the undersigned feels bound to outline some of the more serious GM narrative "flaws".

For instance, the FS narrative on paragraph 2-17 states without reservation that "at the diesel tank" benzene and toluene were found. An investigation of the data underlying this data reveals that the samples relied upon for these findings were all "J" or estimated values. Furthermore, GM also does not say that these samples are more representative of the substances from the gravel layer as they oozed into the tank graves during excavation and not the actual soil in which the UST's were situated. (See ENSR FS Comments, page 5).

The paragraph goes on to note that "ethylbenzene was found in eight samples (16 to 1,700 ug/kg)." Again, no qualification by GM. As more fully set forth in the attached ENSR comments, however, one rapidly sees that there were not eight samples, there were four samples that were split. Many of these are "J" values. One of these splits, BB&L's in fact, was a non-detect for ethylbenzene. Examining the data further, one also realizes that there never was an ethylbenzene result showing 1,700 ug/kg. GM clearly made a multiplication error and the true result for this 1,700 sample is, in fact, 17 ug/kg.

The same distorted GM analysis pattern persists throughout the balance of the paragraph. Samples of product from inside the tanks

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or piping are continually mischaracterized as soil samples, values used by GM which are qualified in the laboratory data are included in the FS analysis as if they are without qualification, etc.

The bottom line is that GM, as the author of the draft FS, continues to ignore the objective data in its zeal to implicate parties other than the Esso PRP's and Texaco for the site-wide contamination of the Tutu aquifer. Such antics only serve to confirm the deep concern expressed by Judge Brotman in the civil litigation paralleling this investigation to the effect that "Esso may have compromised the reliability and credibility of the studies and reports of the TEIC consultant." In Re Tutu Wells Contamination Litigation, Civil No. 1989-107, Memorandum Opinion, Page 67, n. 18 (D.C.V.I. March 20, 1995).

In conclusion, as counsel for Western Auto, we once again would implore the EPA to examine the objective data as presented by the scientists for the various parties and to discount the continued distorted analysis of that data as expressed by the TEIC consultants. It is our firm opinion that such an analysis will result in the inescapable conclusion that Western Auto's contribution to the soil problems in the area in back of its Four Winds facility was modest in comparison to the contamination seeping into that area from upgradient source or sources. Furthermore, it is the position of Western Auto that any contamination that may have resulted from the brief use of the UST's some fifteen years ago was remediated during the tank excavations.

Thank you for your attention and cooperation.

Very truly yours,

John R. Coon

cc:
Barry L. Huffman, Esq.