UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

841 Chestnut Building
Philadelphia, Pennsylvania 19107

SEP 8 1987

In Reply Refer To: 3AM22

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. M. J. Holmes
General Manager, Philadelphia Refinery
Chevron U.S.A. Inc.
30th Street and Penrose Avenue
Philadelphia, Pennsylvania 19104

Dear Mr. Holmes:

Under section 114(a)(1) of the Clean Air Act (CAA), 42 U.S.C. §7414(a)(1), the United States Environmental Protection Agency (EPA) may require a person who owns or operates an emission source to which an emission standard under Section 112 of the CAA, 42 U.S.C. §7412, applies, to provide information to EPA for the purpose of determining whether such person is in violation of such emission standard.

On June 6, 1984, EPA established an emission standard under Section 112 of the CAA, 42 U.S.C. §7412, for equipment leaks of benzene. Chevron U.S.A. Inc. presently owns and operates the Philadelphia Refinery which consists of various process units, and pieces of equipment contained therein, which are emission sources of benzene to which such emission standard applies.

Under Section 114(a)(1) of the CAA, 42 U.S.C. §7414(a)(1), EPA hereby requires Chevron U.S.A. Inc. to provide the following information to EPA for the purpose of determining whether Chevron U.S.A. Inc. is in violation of the emission standard for equipment leaks of benzene, established by EPA under section 112 of the CAA, 42 U.S.C. §7412, which emission standard was effective on Jun. 6, 1984, was applicable to new sources on that date, and was applicable to existing sources ninety (90) days thereafter on September 5, 1984:

1. A description of the history of Chevron U.S.A. Inc.’s ownership and operation of the Philadelphia Refinery, including the 1985 merger involving Gulf Oil Corporation (Gulf} and Chevron

U.S.A. Inc. (C-USA). The description of the merger should include, at minimum, the date of the merger, the surviving corporate entity, the date of the name change to Chevron U.S.A. Inc., and the consequences of the merger in terms of Chevron U.S.A. Inc.'s assumption of Gulf Oil Corporation’s liabilities for, among other things, any pre-merger violations of the emission standard for equipment leaks of benzene [See 40 C.F.R. Part 61, Subpart A, § 61.15(d)(5)].

2. An identification and description of all process units, past and present, at the Philadelphia refinery, including those which are, or were, considered, by Gulf or C-USA. to "conceivably contain equipment in [benzene] service". under 40 C.F.R. Part 61, Subpart. V, § 61.245(d)(1). For each process unit, past and present, at the Philadelphia refinery, and each piece of equipment contained therein, provide the dates that construction thereof (and any subsequent modification thereof) was commenced. their operating design capacities, their initial startup dates, and their actual operating production rates, including their actual hours of operation. For the Philadelphia refinery in its entirety, past and present, provide the amount of benzene per year (in megagrams) which the Philadelphia refinery is, and was, designed to produce or use [see 40 C.F.R. Part 61, Subpart J, § 61.110(c)(2).

3. Copies of any applications for determination of construction for modification submitted by, and any determinations provided to, Gulf or C-USA, under 40 C.F.R. Part 61, Subpart A, § 61.06.

4. Copies of any applications for approval of construction or modification submitted by, and any approvals granted to. Gulf or C-USA, under Section 112 (c)(l)(A) of the CAA, 42 U.S.C. § 7412(c)(1)(A), and 40 C.F.R. Part 61. Subpart A, §§ 61.07 and 61.08.

5. Copies of any notifications of anticipated and actual dates of initial startup furnished, by Gulf or C-USA, under 40 C.F.R. Part 61. Subpart A. § 61.10.

6. Copy of any information provided, by Gulf or C-USA, under 40 C.F.R. Part 61, Subpart A, § 61.10(a).

7. Copies of any requests for waiver of compliance submitted by, and any waiver of compliance granted to Gulf or C-USA, under Section 112(c)(1)(B)(ii) of the CAA, 42 U.S.C. § 7412(c)(1) (B)(ii), and 40 C.F.R. Part 61, Subpart A §§ 61.10(b) and 61.11.

8. Copies of any changes in the information provided by Gulf or C-USA under 40 C.F.R Part 61, Subpart A, §§ 61.10(a} or 61.07(b), provided, by Gulf or C-USA, under 40 C.F.R. Part 61, Subpart A, §

61.10(c).

9. An identification and description of, and copies of, any operating and maintenance procedures for minimizing emissions of benzene from equipment leaks used, by Gulf or C-USA, as required by 40 C.F.R. Part 61, Subpart A, § 61.12(c).

10. Copies of any permits, licenses, or approvals, and applications therefor, required of Gulf or C-USA by the commonwealth of Pennsylvania or the City of Philadelphia, for the construction, modification, and operation of all process units, past and present, which are, or were, considered, by Gulf or C-USA, to "conceivably contain equipment in [benzene] service", under 40 C.F.R. Part 61, Subpart V, § 61-245(d)(1), and each piece of equipment contained therein, at the Philadelphia refinery, under 40 C.F.R. Part 61, Subpart A, § 61.17(a)(2).

11. Copies of any applications for exemption submitted by, and any exemptions granted to, Gulf or C-USA, under 40 C.F.R. Part 61, Subpart J, § 61.110(c).

12. Copies of any documents evidencing demonstrations of compliance, by Gulf or C-USA, under 40 C.F.R. Part 61, Subpart V, § 61.242-l(a).

13. Copies of, or samples of, markings used, by Gulf or C-USA, under 40 C.F.R. Part 61, Subpart V, § 61.242-1(d).

14. An identification and description of each pump equipped with a dual mechanical seal system that includes a barrier fluid system, including an identification and description of the design criteria (failure) determined, by Gulf or C-USA, under 40 C.F.R. Part 61, Subpart V, § 61.242-2(d)(5)(ii).

15. A identification and description of each pump designated, by Gulf or C-USA, for no detectable emissions, under 40 C.F.R. Part 61, Subpart V, § 61.242-2(e), and copies of any documents evidencing the initial, and subsequent annual, tests, required by 40 C.F.R. Part 61, Subpart V, §§ 61.242-2(e)(3) and 61.245(c).

16. An identification and description of each pump equipped with a closed-vent system and control device, under 40 C.F.R. Part 61, Subpart V, § 61.242-2(f).

17. An identification and description of each pump located within the boundary of an unmanned plant site including an identification and description of the frequency of visual inspection, by Gulf or C-USA, of each such pump, under 40 C.F.R. Part 61, Subpart V, § 61.242-2 (g).

18. An identification and description of each compressor seal system equipped with a barrier fluid system that is connected by a closed-vent system to a control device, under 40 C.F.R. Part 6l, Subpart V, § 61.242-3(b) (2).

19. An identification and description of each compressor located within the boundary o£ an unmanned plant site, under 40 C.F.R. Part 61, Subpart V, § 61.242-3(e) (1).

20. An identification and description of the design criteria (failure) determined, by Gulf or C-USA, for compressor systems, under 40 C.F.R. Part 61, Subpart V, § 61.242-3(e)(2).

21. An identification and description of each compressor equipped with a closed-vent system and control device, under 40 C.F.R. Part 61, Subpart V, § 61.242-3(h).

22 . An identification and description of each compressor designated, by Gulf or C-USA, for no detectable emissions, under 40 C.F.R. Part 61, Subpart V, § 61.242-3(i), and copies of any documents evidencing the initial, and subsequent annual, tests, required by 40 C.F.R. Part 61, Subpart V, §§ 61.242-3(i)(2) and 61.245(c).

23. Copies of any documents evidencing monitoring, by Gulf or C-USA, of pressure relief devices in gas/vapor service to confirm the condition of no detectable emissions after pressure releases, under 40 C.F.R. Part 61, Subpart V, §§ 61.242-4(b)(2) and 61.245(c).

24. An identification and description of each pressure relief device in gas/vapor service equipped with a closed-vent system and control device, under 40 C.F.R. Part 61, Subpart V, § 61.242-4(c).

25. An identification and description of each sampling connection system equipped with a closed-purge system, under 40 C.F.R. Part 61, Subpart V, § 61.242-5(a), (b)(l) and (2).

26. An identification and description of each sampling connection system equipped with a closed-vent system and control device, under 40 C.F.R. Part 61, Subpart V, § 61.242-5(a) and (b)(3).

27. An identification and description of any in-situ sampling systems, under 40 C.F.R. Part 61, Subpart V, § 61.242-5(c).

28. An identification and description of each open-ended valve or line, including whether each open-ended valve or line is equipped with a cap, blind flange, plug, or second valve, indicating specifically with which of these four alternatives each open-

ended valve or line is equipped, under 40 C.F.R. Part 61, Subpart V, § 61.242-6(a)(1).

29. A specific identification of each valve monitored, by Gulf or C-USA, the first month of every quarter, rather than monthly, under 40 C.F.R. Part 61, Subpart V, § 61-242-7(c).

30. An identification and description of each valve designated, by Gulf or C-USA, for no detectable emissions, under 40 C.F.R. Part 61, Subpart V, § 61.242-7(f), and copies of any documents evidencing the initial, and subsequent annual, tests, required by 40 C.F.R. Part 61, Subpart V, § 61.242-7(f)(3) and 61.245(c).

31. An identification and description of each valve designated, by Gulf or C-USA, as unsafe-to-monitor, under 40 C.F.R. Part 61, Subpart V, § 61.242-7(g), including an identification and description of the basis for each such designation, and a copy of the written plan requiring monitoring as frequent as practicable during safe-to-monitor times, under 40 C.F.R Part 61, Subpart V, § 61.242-7(g)(2).

32. An identification and description of each valve designated, by Gulf or C-USA, as difficult-to-monitor, under 40 C.F.R. Part 61, Subpart V, § 61.242-7(h), including an identification and description of the basis for each such designation, and a copy of the written plan requiring monitoring at least once per calendar year, under 40 C.F.R. Part 61, Subpart V, § 61.242-7(h)(3).

33. Copies of any documents evidencing findings, by Gulf or C-USA. of evidence of potential leaks at pressure relief devices in liquid service and flanges and other connectors, and subsequent monitoring thereof, under 40 C.F.R. Part 61, Subpart V, § 61.242-8(a).

34. An identification and description of each product accumulator vessel equipped with a closed-vent system and control device, under 40 C.F.R. Part 61, Subpart V, § 61.242-9.

35. An identification and description of each delay of repair, by Gulf or C-USA, based upon the technical infeasibility of such repair without a process unit shutdown, under 40 C.F.R. Part 61, Subpart V, § 61.242-10(a).

36. An identification and description of each delay of repair, by Gulf or C-USA, beyond a process unit shutdown, under 40 C.F.R. Part 61, Subpart V, § 61.242-10(e).

37. An identification and description of each delay of repair, by Gulf or C-USA, for equipment isolated from the process and which did not remain in benzene service, under 40 C.F.R. Part 61,

Subpart V, § 61.242-10(b).

38. An identification and description of each delay of repair for valves, by Gulf or C-USA, based upon the emissions of purged material resulting from immediate repair being greater than the fugitive emissions likely to result from delay of repair, and involving the eventual collection and destruction or recovery of such purged material in a control device, under 40 C.F.R. Part 61, Subpart V, § 61.242-10(c).

39. An identification and description of each delay of repair for pumps, by Gulf or C-USA, based upon such repair requiring the use of a dual mechanical seal system that includes a barrier fluid system, under 40 C.F.R. Part 61, Subpart V, § 61.242-10(d).

40. An identification and description of each closed-vent system and control device, under 40 C.F.R. Part 61, Subpart V, § 61.242-11(a), including an identification and description of all times when emissions may be vented to them, under 40 C.F.R. Part 61, Subpart V, § 61.242-11(g), and an identification and description o£ the nature and sources of all such emissions vented to them.

41. Copies of any documents evidencing the initial, and subsequent annual, monitoring of closed-vent systems by detection instrument and visual inspection, required by 40 C.F.R Part 61, Subpart V, § 61.242-ll(f), by Gulf or C-USA.

42. An identification and description of the organic vapor recovery efficiencies (both design and operating) of each vapor recovery system, under C.F.R. Part 61, Subpart V, § 61.242-ll(b).

43. An identification and description of the benzene emission reduction efficiencies and minimum residence time at minimum temperature specifications (both design and operating) of each enclosed combustion device, under 40 C.F.R. Part 61, Subpart V, § 61.242-11(c).

44. Copies of any documents evidencing visible emission observations, by Gulf or C-USA, of each flare, under 40 C.F.R. Part 61, Subpart V, § 61.242-ll(d).

45. An identification and description of each device used, by Gulf or C-USA, to monitor and detect the presence of a flare pilot flame at all times at each flare, under 40 C.F.R. Part 61, Subpart V, § 61-242-ll(d).

46. An identification and description of each flare, including the following information for each:

a. whether the flare is steam-assisted, air-assisted, or

non—assisted.

b. the net heating value of the gas being combusted in the flare, and the calculation thereof

c. the exit velocities of each flare. (both design and operating), and the calculation of each actual operating exit velocity; and

d. the maximum permitted velocity, V max, and the calculation thereof, for each flare for which such maximum permitted velocity is relevant;

under 40 C.F.R. Part 61, Subpart V, §, 61.242-ll(d) and 61.245 (e).

47. An identification and description of how each control device is, or was, monitored via selected parameters, by Gulf or C-USA, to ensure that each control device is, or was, operated and maintained in conformance with its design, under 40 C.F.R. Part 61, Subpart V, §§ 61.242-11(e) and 61.246(d)(3).

48. An identification and description of the detection instrument used, by Gulf or C-USA, under 40 C.F.R. Part 61, Subpart V, § 61.245(b).

49. For each process unit, past and present, at the Philadelphia refinery, which is, or was, considered, by Gulf or C-USA, to "conceivably contain equipment in [benzene] service”, under 40 C.F.R. Part 61, Subpart V, § 61~245(d)(l) [previously required to be identified and described as part of the information required to be provided in response to Paragraph 2. above], an identification and description of the basis for so considering such process units.

50. For each process unit, past and present, at the Philadelphia refinery, which is, or was, considered, by Gulf or C-USA, to not "conceivably contain equipment in [benzene] service”, under 40 C.F.R. Part 61, Subpart V, § 61.245(d)(1} [also previously required to be identified and described as part of the information required to be provided in response to Paragraph 2 above], an identification and description of the basis for so considering such process units, indicating specifically whether any applications for exemption were submitted, by Gulf or C-USA, under 40 C.F.R. Part 61, Subpart J, § 61.110(c)(1) and (3).

51. For each process unit, part and present, at the Philadelphia refinery, which is, or was, considered, by Gulf or C-USA, to ~conceivably contain equipment in [benzene] service", under 40 C.F.R. Part 61, Subpart V, § 61.245(d)(1), copies of any

documents evidencing any demonstrations that any pieces of equipment within such process units are not, or were not, in benzene service, under 40 C.F.R. Part 61, Subpart V, § 61.245(d).

52. For each piece of equipment within a process unit which is, or was, considered, by Gulf or C-USA, to be in benzene service at any time, copies of any documents evidencing any revised consideration of such piece, of equipment, under 40 C.F.R. Part 61, Subpart V, § 61.245~(d)(2)(ii).

53. Copies of, or samples of, the weatherproof and readily visible identifications attached, by Gulf or C-USA, to leaking equipment, under 40 C.F.R. Part 61, Subpart V, §; 61.246(b)(1).

54. Copy of the leak detection log(~) kept, by Gulf or C-USA. under 40 C.F.R. Part 61, Subpart V, § 61.246(c).

55. Copy of the records of the design requirements for closed-vent systems and control device. kept, by Gulf or C-USA, under 40 C.F.R. Pert 61, Subpart V, § 61.246(d).

56. Copy of the equipment log(s) kept, by Gulf or C-USA, under 40 C.F.R. Part 61, Subpart V, § 61.246(e).

57. Copy of the unsafe/difficult-to-monitor valve log(s) kept, by Gulf or C-USA, under 40 C.F.R. Part 61, Subpart V. § 61.246(f).

58. Copy of the design criteria (failure) log(s) kept, by Gulf or C-USA, under 40 C.F.R. Part 61, Subpart V, § 61.246(h).

59. Copy of the exemption log(s) kept, by Gulf or C-USA, under 40 C.F.R. Part 61, Subpart V, § 61.246(i).

60. Copy of the demonstration log(s) kept, by Gulf or C-USA, under 40 C.F.R. Part 61, Subpart V, § 61.246(j).

61. Copy of any statement submitted, by Gulf or C-USA, under 40 C.F.R. Part 61, Subpart V, § 61.247(a).

62. Copies of any semi-annual reports submitted, by Gulf or C-USA, under 40 C.F.R. Part 61, Subpart V, § 61.247(b).

63. An identification and description of any new sources resulting from construction or modification undertaken, by Gulf or C-USA, for which an application for approval of construction or modification was not required, under 40 C.F.R. Part 61, Subpart V, § 61.247(e).

All terms used in this letter shall have the meaning given them in the CAA. including Sections 112 and 302 of the CAA, 42 U.S.C.

§§ 7412 and 7602, and in 40 C.F.R. Part 61, Subparts A, including §§ 61.02 and 61.15, J, including § 61.111, and V, including § 61.241. Chevron U.S.A. Inc. is required to respond individually and completely to each numbered paragraph above without regard to any prior submissions or co~un~cations of information to EPA. With regard to those numbered paragraphs requiring the provision of copies of documents, a response which fails to provide a required copy of a document and which indicates the availability for inspection and copying of such document at premises of Chevron U.S.A. Inc. shall not be a complying response and shall constitute a failure or refusal by Chevron U.S.A. Inc. to comply with, and a violation of, a requirement of Section 114 of the CAA, 42 U.S.C. § 7414.

The above information required to be provided is to be provided by Chevron U.S.A. Inc. to EPA-Region III, by postmarked response, within fourteen (14) calendar days of the date of Chevron U.S.A. Inc.’s receipt of this letter. Failure to provide the above information as required may result in enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413. Section 113(c)(2) of the CAA, 42 U.S.C. § 7413(c)(2), states that “[a]ny person who knowingly takes any false statement, representation, or certification in any...document filed...under this Act...shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.” In addition, the Criminal Fine Enforcement Act o£ 1984, P.L. 98-596,- provides for fines in excess of the amount specified in the CAA under certain circumstances.

Any subsequent change which would have the effect of rendering the information initially provided incomplete, inaccurate, or misleading in any respect must be reported to EPA-Region III in a timely fashion, and any appropriate supplemental information must also be provided to EPA-Region III at that time.

Under regulations at 40 C.F.R. Part 2, Subpart B, Chevron U.S.A. Inc. is entitled to assert a claim of business confidentiality covering all or part of any provided information, in the manner required at 40 C.F.R. Part 2, Subpart B, § 2.203(b), unless such information is "emission data" as defined at 40 C.F.R. Part 2, Subpart B, § 2.301(a)(2). Information subject to a properly and permissibly asserted claim of business confidentiality will be made available to the public only in accordance with the regulations at 40 C.F.R. Part 2, Subpart B. Unless a business confidentiality claim is properly and permissibly asserted at the time required information is provided, EPA may make this information available to the public without further notice to Chevron U.S.A Inc.

If you should have any questions concerning this letter,

please contact Bernard E. Turlinski, Acting Chief, Air Enforcement Branch, at (215) 597-3989, or Ronald J. Patterson, of his staff, at (215) 597-6550.

Sincerely,

Thomas J Maslany, Director (signature)
Air Management Division
cc: William Reilly, Assistant Health Commissioner
Philadelphia Air Management Services

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,
Plaintiff,

v.

TEXACO REFINING AND MARKETING INC.-, f/k/a GETTY REFINING AND MARKETING COMPANY, and TEXACO CHEMICAL COMPANY.

Defendants.

Civil No. 86-321-MMS

Whereas, Plaintiff, the United States of America (hereinafter “United States”), on behalf of and at the request of the United States Environmental Protection Agency (”EPA”), filed its Complaint against defendants Texaco Refining and MARKETING Inc., f/k/a Getty Refining and MARKETING Company, and Texaco Chemical Company (collectively “Texaco”) on July 14, 1986, and filed its Amended Complaint against Texaco on July 28, 1987;

WHEREAS, the original Complaint and the Amended Complaint (collectively the “Complaint”) allege that Texaco violated the Clean Air Act (the “Act”),.42 U.S.C. §§ 7401-7642, and the National Emissions Standard for Hazardous Air Pollutants (“NESHAP”) for benzene, 40 C.F.R Part 61, Subparts A, J, and V, at Texaco's petroleum refinery in Delaware City, Delaware (“the refinery”);

WHEREAS, the Complaint alleges that in connection with owning and operating the refinery which produces benzene as part of the petroleum refining process, Texaco violated reporting, monitoring, and leak repair requirements of the benzene NESHAP;

WHEREAS, the United States' Complaint seeks permanent injunctive relief and the imposition of civil penalties;

WHEREAS, Texaco denies the material allegations of the Complaint and denies any ,and all liability and has asserted various defenses;

WHEREAS, the United States and Texaco agree that settlement of this action is in the public interest, and also agree to entry of this Consent Decree as an appropriate means of resolving this matter;

WHEREAS, this Consent Decree is entered prior to any trial or adjudication of any issue of law or fact in this action;

NOW THEREFORE, upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION

A. This Court has jurisdiction over the subject matter of this action and over the parties consenting hereto pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, and 1355. Venue is proper in this Court pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1391(b} and (c).

B. The Complaint filed states a claim upon which relief may be granted against Texaco pursuant to Section 113(b} of the Clean Air Act, 42 U.S.C. § 7413(b)

II. DEFINITIONS

Terms used in this Consent Decree that are defined in 42 U.S.C. § 7412, and 40 C.F.R. §§ 61.02, 61.111, and 61.241, shall have the meanings set forth in such definitions.

III. BINDING EFFECT

A. The provisions of this Consent Decree shall apply to and be binding upon the parties hereto, their respective officials, officers, directors, agents, servants, employees, successors, and assigns.

B. Texaco shall give notice in writing of the Consent Decree to any successors in interest prior to a change in ownership or a transfer of right to operate the refinery. A copy of such written notice shall be simultaneously provided to EPA .

C. The undersigned defense counsel and representatives of Texaco are authorized to sign this Consent Decree on behalf of the entities they represent, and the undersigned representatives of the Department of Justice and EPA are authorized to sign this Consent Decree on behalf of the United States and EPA respectively.

IV. NOTICES

Unless otherwise indicated, whenever under the terms of this Consent Decree written notice is required to be given, or a report or other document is required to be forwarded by one party to the other, such notice or other document shall be mailed first class, postage prepaid, to the following individuals at the addresses specified below (or to such other addresses as may be designated by written notice):

a. If to the United States or EPA:

U.S. Environmental Protection Agency
Attention: Chief, Air Enforcement Activities Section (3AM22)
841 Chestnut Building
Philadelphia, Pennsylvania 19107

B. lf to Texaco:

Plant Manager
Texaco Refining and MARKETING, Inc.
2000 Wrangle Hill Road
Delaware City, Delaware 19706

Such notice shall be considered timely if postmarked on the date such notice is due.

V. REFINERY AUDIT

A. In accordance with the provisions set forth below, Texaco shall hire and bear the cost of an agreed-upon independent contractor (the "Contractor') to conduct a benzene audit (“audit”) of the refinery.

1. Within fifteen (15) working days (i.e., excluding weekends and federal holidays) of the entry of this Consent Decree, Texaco shall inform EPA of the identity of the Contractor that Texaco intends to employ to perform the audit.

2. The United States shall have the right to disapprove the Contractor if the United States determines that the Contractor is not qualified to perform the audit, or if the United States determines that the Contractor is not independent of Texaco. The United States shall notify Texaco, in writing, within twenty (20) working days following receipt of Texaco’s notice of Contractor whether the United States disapproves the proposal Contractor. Should the United States disapprove of the proposed Contractor, the United States shall state the reasons therefor.

3. In the event the United States disapproves the proposed Contractor, Texaco shall, as soon as practicable following receipt of the United States' notice but no later than fifteen (15) working days following receipt of such notice, propose an alternate Contractor to perform the audit. The United States shall have the right, as set forth in Paragraph V.A.2., to disapprove such Contractor.

4. In the event the United States does not notify Texaco that the United States disapproves of the Contractor within the time prescribed by Paragraph V.A.2., or if the United States notifies

Texaco, in writing, that the United States does not intend to invoke its right to disapprove the Contractor, the Contractor shall be deemed “selected” by Texaco to perform the audit of the refinery.

5. The United States shall not be held out as or deemed a party to any contract between or among Texaco and the Contractor retained to perform the audit.

B. Within thirty (30) working days from the entry of this Consent Decree, Texaco shall provide the following information to EPA
1. Schematics of the refinery that identify the refinery process flow with streams (i.e., as identified on the most recent version of drawing number 1201-120-KD-56 for the refinery in general, and as identified on the most recent version of drawing number 1290-132-KD-3000 for the benzene facilities in particular). These schematics shall be identified hereinafter as the “general schematic”.

2. Schematics of the refinery that identify each piece of equipment that contains or contacts benzene from the bottom of Unit 25-C-3 and the top of Unit 32-C-101 to the termination of the benzene process stream(s). These schematics, as well as any other schematics requested by the Contractor pursuant to Paragraph V.C.2., shall be identified hereinafter as the “detailed schematic” . The detailed schematic shall identify the complete benzene process streams from their initial formation to final off-loading sites, including all storage areas and vents, and shall indicate where, if anywhere, any fluid (liquid or gas) composed of 10% benzene by weight or greater is removed from the process stream.

3. For any piece of equipment identified on the detailed schematic that Texaco knows or determines in its engineering judgment contains or contacts a fluid (liquid or gas) less than 10% benzene by weight and that Texaco has not made a part of its benzene NESHAP program, Texaco shall indicate each such piece of equipment on the detailed schematic. In the event that Texaco and EPA do not agree on whether a piece of equipment is in benzene service, and at EPA's written request, Texaco shall verify the benzene content for each such piece of equipment through ASTM Method D-2267.

4. The results of the benzene content tests conducted pursuant to Paragraph V.B.3., shall be recorded in a log provided by Texaco to EPA.

5. The information required by Paragraph V.B. herein, shall be forwarded to EPA.

C. Within twenty (20) working days from the selection of the Contractor as described in Paragraph V.A., Texaco shell enter into a contract with the agreed-upon Contractor and provide the Contractor with copies of the general and detailed schematics referred to in Paragraph V.B. above. Texaco shall send a copy of such contract to EPA. Texaco shall ensure that the Contractor undertakes the following steps (which shall be made a part of the contract between Texaco and the Contractor):

1. The Contractor, using the general schematic referred to in Paragraph V.B., shall make an independent assessment of each process unit with regard to Texaco's determination as to the presence, or Lack thereof, of benzene.

2. The Contractor, using the detailed schematic referred to in Paragraph V.B., shall make an independent assessment of each piece of equipment shown and not already tagged and monitored to determine if such piece of equipment, in the Contractor's judgment, contains or contacts a fluid (liquid or gas) that is 10% or greater benzene by weight. The Contractor shall have the right to request of Texaco other schematics which, in the judgment of the Contractor, are needed to make an independent assessment. The Contractor, in making its assessment, shall conform to the procedures set forth at 40 C.F.R. § 61.245.

3. Pursuant to Paragraphs V.C.1. and 2. herein, the Contractor shall have the right to conduct whatever on site inspection and/or testing the Contractor deems necessary to determine the benzene content of any piece of equipment. If Texaco wishes to limit the extent of any on site inspection and/or testing by the Contractor, such limitation must be approved by EPA prior to Texaco's imposition of such limitation.

4. Once the Contractor has identified all pieces of equipment that contain or contact a fluid (liquid or gas) that is 10% or greater benzene by weight, the Contractor shall ensure, subject to EPA review, Texaco's compliance with the identification and equipment requirements of the benzene NESHAP. This shall require that the Contractor:

a. tag any piece of in benzene service equipment that has not been tagged pursuant to 40 C.F.R. § 61.242-l(d). Equipment may be tagged in a manner consistent with existing tagging at the refinery so long as such tagging complies with applicable regulations. The Contractor shall prepare a list of all pieces of equipment tagged pursuant to this subparagraph;

b. identify all open-ended valves and line. in benzene service to verify that each is equipped with a cap, blind flange, plug or second valve as required by 40 C.F.R. § 61.242-6. The Contractor

shall prepare a list of all open-ended valves and lines where such equipment is absent but is required pursuant to the benzene NESHAP; and,

c. review all other pieces of in benzene service equipment to verify that each such piece of equipment complies with the standards set forth in the benzene NESHAP. The Contractor shall prepare list of any equipment that does not comply with such standards.

5. The Contractor shall review all information that Texaco is required to keep under the benzene NESHAP to assess the completeness of such information and the efficacy of Texaco's information gathering methods. Subject to EPA review, the Contractor shall prepare a list of all deficiencies found. The Contractor's review shall include, without limitation, the record keeping and reporting requirements contained in 40 C.F.R. §§ 61.246 and 61.247.

6. The Contractor will review Texaco's monitoring and leak detection and repair practices to ensure such practices comply with tho benzene NESHAP. Subject to EPA review, the Contractor shall prepare a list of any deficiencies noted. This review shall consist of:

a. accompanying Texaco personnel or any agent or contractor hired by Texaco to perform any of Texaco's obligations under the benzene NESHAP, on one monthly leak detection review, during the month of a quarter, of all tagged in benzene service equipment at the refinery. Such leak detection review shall include those pieces of equipment required to be inspected on an annual basis; and,

b. reviewing the procedures employed by Texaco personnel and for any agent or contractor of Texaco responsible at the refinery for leak detection and leak repair to assure proper monitoring and leak detection and repair.

7. The Contractor shall have the right to perform any tease pursuant to 40 C.F.R. § 61.245 to assess the performance of Texaco or Texaco's agent or contractor. If Texaco wishes to limit the extant of any on site inspection and/or testing by the Contractor, such limitation must be approved by EPA prior to Texaco's imposition of such limitation.

8. For each piece of equipment that is either known or determined, in Texaco's engineering judgement, to contain or contact a fluid (liquid or gas) less than 10% benzene by weight and that is not tagged, the Contractor shall identify and prepare a list, subject to EPA review, of each such piece of equipment

whose content has the potential to at any time fluctuate to or over the 10% benzene limit. Texaco or the Contractor shall tag each such piece of equipment in the manner set forth at Paragraph V.C.4. above.

D. Within thirty (30) working days from the completion of the work as described in Paragraph V.C., Texaco, in conjunction with the Contractor, shall submit to EPA a compliance report (the "Report"). This Report shall be sent to EPA and shall include the following:

1. A complete description of the work performed by the Contractor pursuant to Paragraph V.C., attaching any lists or other documents prepared by the Contractor, or prepared by Texaco for the Contractor, pursuant to such paragraph.

2. A complete description of any work performed directly by Texaco pursuant to Paragraph V.C.

3. A detailed description of any remaining work (as of the date of the Report), that must be performed to bring the refinery into compliance with the benzene NESHAP and the terms of this Decree. This description shall include:
a. the nature and scope of the work to be performed;
b. for each item identified, an estimate of the time necessary for completion; and,
c. for each item identified, the person(s) responsible for the performance of the work.

4. The Report shall include a section entitled, "Compliance Program Schedule." Such section shall include the following

a. for the work identified in Paragraph V.D.3., for each item identified and/or described, Texaco shall set forth a deadline for completion and identify the person(s) responsible for each such deadline;
b. a description of all procedures, or training programs that Texaco and/or Texaco's contractor(s) shall use to assure future compliance with the benzene NESHAP, including an effective date for the implementation of each identified procedure or program. For each training program identified, such description shall include the date(s) of such programs, the identity of all persons responsible for instruction, and the identity of attendees.)
c. a statement by Texaco that all pieces of in benzene service equipment that were: identified and tagged pursuant to Paragraph V.C. shall be monitored in accordance with the benzene NESHAP; and,
d. a statement by Texaco explaining how deficiencies noted by the Contractor during the audit have been addressed in the Report.

E. Within forty-five (45) working days of the submission of the Report to EPA pursuant to Paragraph V.D., EPA shall inform Texaco, in writing, whether EPA accepts or rejects all or part of the Report. In the event of rejection, EPA shall specify its objections in writing the following schedule and provisions shall thereafter apply:

1. Within forty-five (45) calendar days of receipt of any EPA notification of rejection, Texaco shall submit to EPA a revised Report which remedies the specified objections.
2. In the event the parties cannot agree to appropriate amendments to the Report following EPA notification of Report rejection, either party may invoke the Dispute Resolution provision set forth in Paragraph VIII.

F. Once EPA accepts the Report, then the Compliance Program Schedule described in Paragraph V.D.4. shall become an enforceable addendum to this Consent Decree.

VI. STIPULATED PENALTIES

A. If Texaco fails to meet the deadlines and/or requirements imposed in this Consent Decree, Texaco shall pay stipulated penalties to the United States in the amount of Two-Hundred Fifty Dollars (S250) per day per violation for the first ten (10) days of noncompliance and One-Thousand Dollars ($1,000) per day per violation thereafter.

B. Stipulated penalties shall be paid within fifteen (15} calendar days of demand by the United States, shall be paid by check made payable to “Treasurer, United States of America,” and shall be delivered to the United States Attorney for the District of Delaware, J. Caleb Boggs Federal Building, 844 Ring Street, Room 5001, Wilmington, Delaware 19801. Texaco shall send a copy of any such check together with the transmittal letter to the Regional Hearing Clerk (3RCOO), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

C. If Texaco wishes to contest any liability for, and/or the amount of, any demand by the United States for stipulated penalties made pursuant to Paragraph VI.A. herein, Texaco may invoke the Dispute Resolution provision set forth in Paragraph VIII.

D. Nothing contained in this Consent Decree shall be construed to prevent or limit the rights of the United States to obtain any other appropriate relief under the Act, including but not limited to any injunctive relief or civil penalties, in order to obtain compliance with this Consent Decree, the Clean Air Act, or the

regulations promulgated thereunder, except as expressly provided in this Consent Decree.

E. Payment by Texaco of stipulated penalties is in the nature of a civil penalty and Texaco shall not claim this payment as a deduction for federal tax purposes.

VII. FORCE MAJEURE

A. If any event occurs that causes or may cause a delay in Texaco's compliance with any of the deadlines set forth in this Consent Decree, Texaco shall notify EPA in writing within ten (10) calendar days of such occurrence, describing in detail the anticipated length of delay, the specific cause or causes of the delay, the measures taken or to be taken to minimize the delay, and the timetable for the implementation of such measures Texaco shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Texaco to notify EPA within the time period set forth shall constitute a waiver of any claim that circumstances beyond Texaco's control have prevented compliance with this Consent Decree Notification, by itself shall not excuse the delay.

B. If the parties agree that the delay in compliance with this Consent Decree has been or will be caused by circumstances entirely beyond tho control of Texaco and that Texaco could not have foreseen or prevented such delay by the exercise of due diligence, the time for performance of such requirement may be extended for a period not exceeding the delay actually caused by such circumstances. Stipulated penalties shall not be due for such delay. In the event the parties cannot reach such agreement, than any party may invoke the Dispute Resolution provision set forth in Paragraph VIII. The burden of proving that any delay is caused by circumstances beyond the control of Texaco and that Texaco could not have foreseen or prevented such delay by the exercise of due diligence, and of proving the appropriate duration of any extension shall rest upon Texaco.

C. The following shall not, in and of themselves, be a basis for changes in this Consent Decree or for extensions of time under this Paragraph:

1. Increased costs or expenses associated with the implementation of actions called for in this Consent Decree;

2. A change in the economic circumstances of Texaco;

3. Any claim of technical infeasibility in achieving compliance with the Consent Decree or applicable Clean Air Act requirements; or,

4. Difficulty in achieving compliance with the Consent Decree or applicable Clean Air Act requirements.

VIII. DISPUTE RESOLUTION

Any dispute that arises among the parties regarding the requirements of this Consent Decree, shall, in the first instance, be the subject of informal negotiations between Texaco and the United States. If either party believes it has a dispute with the other party, it shall notify the other party in writing, setting forth the matter(s) in dispute. For purposes of this Paragraph only, Texaco shall address such notification to: U.S. Environmental Protection Agency, Attention Chief, Air and Toxics Branch (3RC10), 841 Chestnut Building, Philadelphia, Pennsylvania 19107, with a copy to Robert L. Hines, Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 (referring to case No 90-5-2-1-952) If the dispute cannot be resolved by the parties within thirty (30) calendar days from receipt of such notice, then Texaco shall follow the position of the United States unless Texaco files a petition with the court for resolution of the dispute within fifteen (15) calendar days of receipt of the final decision of the United states, which shall be denominated as such and shall not be mailed prior to the expiration of the thirty (30) day period described above. The petition shall set forth the nature of the dispute with a proposal for its resolution. The United States may within thirty (30) calendar days file a response with an alternate proposal for resolution in any such dispute, Texaco shall have the burden of proving that its proposal fulfills the terms, conditions, requirements, and objectives of this Consent Decree, and that its proposal is more reasonable proposal of the United States.

IX. CIVIL PENALTY

A. Texaco shall pay a civil penalty in the total sum of ONE HUNDRED FIFTY-THREE THOUSAND DOLLARS ($15300) in settlement of all civil violations alleged in the Complaint, and all other violations described in Paragraph XI. C. below. Within thirty (30) calendar days after entry of this Consent Decree, Texaco shall tender payment of the civil penalty to the United States Attorney for the District of Delaware, J. Caleb Boggs, Federal Building, 844 King Street, Room 5001, Wilmington, Delaware 19801, by check payable to “Treasurer, United States of America.” Copies of the transmittal letter and check shall be sent to Robert L. Hines, Environmental Enforcement Section, Land and Natural Resource. Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 (referring to Case No. 90-5-2-1-952) and Regional Hearing Clerk (3RCOO), Office

of Regional Counsel, Region III, U.S. EPA, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

B. Such payment is in the nature of a civil penalty and Texaco shall not claim this payment as a deduction for federal tax purposes.

X. RIGHT OF ENTRY

A. For the purposes of monitoring compliance with the provisions of this Consent Decree, any authorized representative of the United States Environmental Protection Agency shall have right a right of entry into the refinery.

B. Paragraph X. herein in no way limits or otherwise affects any right of entry hold by the United States pursuant to applicable Federal or State laws, regulations or permits.

XI MISCELLANEOUS PROVISIONS

A. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that complete compliance by Texaco with Paragraph V. above will result in compliance with the provisions of the benzene NESHAP, or the Act. Notwithstanding any review and acceptance by the United States of any plans, reports, policies or procedures, Texaco shall remain solely responsible for compliance with the terms of this Consent Decree and the benzene NESHAP regulations, 40 C.F.R. Part 61, Subparts A, J, and V.

B. Nothing contained in the Consent Decree shall be construed to prevent or limit the rights of the United States to obtain civil penalties, interest, costs or fees under the Clean Air Act or any other Federal statutes or regulations for violations of this Consent Decree or any other provisions of law, except as expressly provided in this Consent Decree .

C. This Consent Decree shall be in full settlement and satisfaction only of those claims set forth in the Complaint filed by the United States with this Court, except that in consideration of Texaco's performance of, and compliance with, the provisions of Paragraph V. above, the United States covenants not to sue Texaco for de minimis violations discovered in this course of implementation of the provisions of Paragraph V. of the Consent Decree.

D. This Consent Decree does not relieve Texaco of its obligation to comply with all applicable requirements of the Clean Air Act, 42 U.S.C. §§ 7401-7462, and the regulations promulgated thereunder, and in no way affects or relieves Texaco of any

responsibility to comply with the requirements of any other federal, state, or local laws and regulations, or any order of this Court. It shall be the responsibility of Texaco to achieve and maintain complete compliance with all applicable Federal and State laws, regulations and permits, and compliance with this Consent Decree shall be no defense to any actions commenced pursuant to said laws, regulations or permits, except as expressly provided in this Consent Decree.

E. Nothing contained in this Consent Decree is intended or shall be construed as a waiver by the United States of its right to institute enforcement action or abatement action against Texaco for any past, present or future violations of any statutes or rules or regulations enforced by the United States except for those violations specified in the Complaint filed herein and except as otherwise expressly provided in Paragraph XI.C. herein.

F. This Consent Decree does not limit or affect the rights of the United States or Texaco as against any third parties. This Consent Decree shall not operate to release, waive, limit or impair in any way the claims, rights, remedies or defenses of the Unites States or Texaco against any person or entity not a party hereto.

G. This Consent Decree represents the entire agreement between the parties.

H. There shall be no modification of this Consent Decree without the written consent of all parties and the approval of the Court.

XII. TERMINATION

A. One year from the date that Texaco has completed the requirements set forth in Paragraph V. above, and has paid all outstanding penalties, and has otherwise complied with all of the provisions of this Consent Decree, and on notice to the Court, this Consent Decree shall terminate. Until such termination, jurisdiction is retained by this Court to enable the Court to issue such further orders or grant such relief as is necessary and appropriate to carry out this Consent Decree and to resolve all disputes arising hereunder.

B. Texaco shall notify EPA when Texaco has completed the requirements set forth in Paragraph V. above, and has paid all outstanding penalties; and has otherwise complied with all of the provisions of the Consent Decree. A copy of such notification shall be provided to the Court.

C. The United States may petition the Court, on the basis of a showing of good cause, to extend the termination date set forth

in Paragraph XII.A. above.

XIII. SEVERABILITY

The provisions of this Consent Decree shall be severable, and if any provision is declared by a Court of competent jurisdiction to be inconsistent with any law, and therefore unenforceable, the remaining provisions of this Consent Decree shall remain in full force and effect.

XIV. COSTS OF ACTION

Each party shall bear its own costs and attorney fees in this action. Should Texaco subsequently be determined to have violated the terms and conditions of this Consent Decree, then Texaco shall be liable to the United States for reasonable costs and attorneys' fees incurred by the United States in any action against Texaco for noncompliance with this Consent Decree.

XVI. PUBLIC COMMENT

In accordance with 28 C.F.R. § 50.7, this Consent Decree shall be lodged with the Court and published in the Federal Register to allow thirty (30) days for public comment prior to entry of the Decree.

The parties hereby consent to entry of the foregoing Consent Decree:

FOR THE UNITED STATES OF AMERICA:

ROGER.J. HARZULLA Date
Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

WILLIAM C. CARPENTER, JR.
United States Attorney
District of Delaware

By:
DAVID C. WEISS
Assistant United States Attorney
District of Delaware
J. Caleb Boggs Federal Bldg.
844 King Street
Wilmington, Delaware 19801

ROBERT L. HINES, Trial Attorney

Environmental Enforcement Section
Land and Natural Resources Division
United States Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

THOMAS L. ADAMS, JR. (Signature)
Assistant Administrator
Office of Enforcement and
Compliance Monitoring
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Date
7/19/88

BRUCE M. DIAMOND (Signature) Date 6/22/88
Regional Counsel
Region III
U.S. Environmental Protection Agency
841 Chestnut Building
Philadelphia, Pennsylvania 19107

KATHERINE L. SNINE (signature) Date 6/21/88
Assistant Regional Counsel
Region III
U.S. Environmental Protection Agency
841 Chestnut Building
Philadelphia, Pennsylvania 19107

FOR TEXACO:
RICHARD G. SOEHLKE (SIGNATURE) Date: 6/11/88
Plant Manager .
Texaco Refining and MARKETING Inc.
2000 Wrangle Hill Road
Delaware City, Delaware 19706

N.R. YOUNG (SIGNATURE) Date: 6/13/88
Senior vice President
Texaco Chemical Company
Houston, Texas

RICHARD D. ALLEN (Signature) Date: 6/3/88
Morris, Nichols, Arsht & Tunnell
1105 Market Street
P.O. Box 1347
Wilmington, Delaware 19899

Judgment is hereby entered in accordance with the foregoing
Consent Decree this day of , 1988, Wilmington,

Delaware. The parties are hereby ordered to comply with the terms thereof.
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,
Plaintiff,
v.
CITY QF OTTUMWA, IOWA,
and
OTTUMWA AIRPORT AUTHORITY,
Defendant.

CIVIL ACTION NO. 88-164-E

PARTIAL CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, on behalf of the Administrator of the Environmental Protection Agency ("EPA" or "Plaintiff") filed a complaint herein on March 28, 1988, alleging that Defendants City of Ottumwa, Iowa, ("the City") and Ottumwa Airport Authority ("OAA") had violated the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq ("the Act"), and certain specified provisions of the National Emission Standards for Hazardous Air Pollutants established pursuant to section 112 of the Act, 42 U.S.C, § 7412, codified at 40 C.F.R. Part 61 (the "asbestos NESHAP"); and

WHEREAS, Plaintiff and Defendants agree that settlement of the aforesaid matters without further litigation would serve the public interest and that entry of this Partial Consent Decree is the most appropriate means of resolving this matter; and

WHEREAS, Plaintiff and Defendants have consented to the making and entering of this Partial Consent Decree; obligating Defendants to implement certain remedial actions as specified herein; providing for payment of a civil penalty in settlement of violations alleged in the Complaint; and providing for stipulated penalties in the event of noncompliance herewith; and

WHEREAS, Defendants' agreement to this settlement and entry of this Consent Decree does not constitute an admission or an adjudication of the validity of Plaintiff's allegations or of any liability by Defendants but such agreement by Defendants is solely to terminate this lawsuit and to settle these claims on the terms set forth in this document;

NOW, THEREFORE, upon consent and agreement of these parties herein, and the Court having considered the matter and being duly advised,

It is hereby ADJUDGED, ORDERED AND DECREED as follows:

I JURISDICTION

This Court has subject matter jurisdiction pursuant to sections 112 and 113 of the Act, 42 U.S.C. §§ 7412 and 7413, and pursuant to the 28 U.S.C §§ 1331, 1345, and 1355. The Complaint states: a claim upon which relief can be granted.

II. APPLICATION AND SCOPE

A. The provisions of this Partial Consent Decree shall apply to and be binding upon the: parties to this action, and upon Defendants' officers, directors, agents, servants, employees, successors and assigns, and to all persons, firms or corporations having actual notice of the Decree who are, or will be, acting in active concert or participation with the Defendants or their officers, directors, agents, servants, employees, successors or assigns.

B. Prior to any sale, assignment, or other transfer of property or operations which are subject to this Partial Decree, Defendants shall advise the purchaser, assignee or transferee, in writing, of the existence of this Partial Consent Decree, and of its binding effect upon said purchaser, assignee or transferee. A copy of such written notification shall be sent by certified mail, return receipt requested, to the Director, Air and Toxics Division, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 no later than 5 days after any such sale, assignment, or transfer.

C. The Provisions of this Partial Consent Decree shall apply to all of Defendant's demolition and/or renovation operations.

III. DEFINITIONS

Terms used in this Partial Consent Decree that are defined in Section 112 of the Act, 42 U.S.C. § 7412, or in 40 C.F.R., Part 61, Subpart M, shall have the meanings assigned to those terms in said definitions.

IV. INSPECTION, SAMPLING AND ANALYSIS

A. Prior to commencing any demolition or renovation operation, Defendants shall conduct diligent and complete survey of the

facility to be demolished or renovated for the presence of friable asbestos-containing material (“ACM”) and/or ACM which may become friable during the course of demolition or renovation operations.

B. If Defendants discover suspected ACM and/or ACM during the course of its operations, all work which could disturb the suspected ACM and/or ACM shall cause immediately until Defendants inform, in writing, the Director, Air and Toxics Division, EPA Region VII, 716 Minnesota Avenue, Kansas City, Kansas 64101 and appropriate state and/or local air pollution control authorities. Defendants shall notify all appropriate authorities within 24 hours. If Defendants' previous notice to EPA indicated that no ACM was present, or if the amount of ACM discovered puts the total amount of ACM over 260 linear feet on pipes or 160 square feet on other facility components, then Defendants shall immediately inform EPA and the appropriate state and/or local authorities. Defendants shall make this notification to the appropriate authorities within 24 hours and shall discontinue any operations which may disturb ACM or suspected ACM for at least 24 hours after EPA and the appropriate state and/or local authorities have received such notice.

C. If Defendants discover any friable materials or any materials which may become friable, Defendants may elect to treat these materials as ACM without sampling and analyzing. Except as provided for in Section IV.B and IV.D, before Defendants may treat such materials as non-ACM Defendants shall collect at least three representative samples of the materials. Defendants shall take these samples from representative locations within the materials, and shall label each sample container with a sample identification number unique to the sampling location. Defendants shall arrange for analysis of the samples by an independent laboratory with expertise and experience in analyzing samples for the presence of asbestos, as evidenced by an EPA-approved test method. Defendants shall not commence any work which might disturb any suspected ACM until the laboratory has completed its analysis and reported the results to Defendants, confirming said material is, in fact, non-ACM.

D. Nothing in this Section IV shall be construed to relieve Defendants of their obligations under the asbestos NESHAP set forth at 40 C.F.R. Part 61. Subpart M.

V. NOTIFICATION

Defendants shall, by written notification postmarked or delivered ten days prior to commencement of work which may potentially disturb ACM if the amount of ACM is at lease 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160

square feet) on other components or twenty (20) days prior to commencement of work which may potentially disturb ACM in all other operations, advise EPA Region VII and the appropriate state and/or local air pollution control authorities, of any planned demolition and/or renovation of a facility containing ACM. If ACM is discovered after the project has begun, Defendants shall notify the EPA Region VII and the appropriate state and/or local air pollution control authorities as provided in Section VI.B, hereof.

B. In the case of a facility being demolished pursuant to the order of a State or local governmental agency, issued because the facility is structurally unsound and in danger of immanent collapse, Defendants shall send written notification of the demolition of such facility to the appropriate EPA Regional office, and the appropriate State and/or local air pollution control authorities, as early as possible, and shall include with

such notification (i) a copy of the order pursuant to which the demolition is being conducted, and (ii) recitation of the name, title, address, and authority of the State or local official who ordered the demolition.

C. Any notification required by Section V(A) and (B) shall be provided by employing the Notice form annexed hereto as Attachment I, and shall include all of the information required by that form. In addition, Defendants shall prepare for each site a graphic representation generally depicting the proposed demolition or renovation showing the location(s) of the areas sampled in accordance with Section IV hereof, and identifying all areas where ACM was found. This graphic representation shall be maintained on-site by the Asbestos Site Coordinator.

VI. ASBESTOS CONTROL PROGRAM

Defendants shall establish an internal program to assure compliance with the asbestos NESHAP, and the requirements of this Partial Consent Decree (the “Asbestos Control Program”) as hereinafter specified.

A. Within 60 days of the entry of the Partial Consent Decree, Defendants shall designate an Asbestos Program Manager and, in his/her absence or unavailability, an alternate asbestos Program Manager (the “Asbestos Program Manager”). Defendants may at their option amend their designation of the Asbestos Program Managers upon 30 days prior notice to EPA. The Asbestos Program Managers will report directly to the Deputy Health Officer of the City of Ottumwa, Iowa or his designee and shall have the following duties and responsibilities:

1. Managing all of Defendants' Asbestos Control Program activities including the asbestos training program required by Section VII hereof.

2. Ensuring that EPA and the appropriate state or local air pollution control agency receive the notifications required by Section V hereof.

3. Ensuring that each job site within their purview is properly inspected, and that samples of all friable materials are taken and analyzed, to the extent required by Section IV hereof.

4. Supervising the asbestos site coordinators in the performance of their proscribed duties under Section VI(B) hereof.

5. Acting as Defendants' primary liaison with EPA and any state or local air pollution control agency on matters not covered by the duties of the asbestos site coordinator.

6. Maintaining the following records for activities:

(i) a complete record of each demolition or renovation operation involving asbestos, as required by Paragraph C, Subparagraph 7 of this Section:

{ii) reports of samples taken and analyses performed to determine the presence of ACM or to monitor the presence of asbestos in the air;

(iii) manifests, landfill receipts, and other documentation relating to transport and disposal of ACM; and

(iv) Any other record required to be maintained pursuant to the terms of this Partial Consent Decree.

7. Complete the training required ln Section VII A., B., and C., herein.

B. Commencing no later than 60 days after entry of this Partial Consent Decree, Defendants shall designate an asbestos site coordinator within seven (7) days after learning that any new site at which Defendants proposes to engage in demolition or renovation work contains ACM. If suspected ACM is discovered during the course of its work, Defendants shall designate an asbestos site coordinator as soon as possible after learning that suspected ACM is present. Operations shall neither commence nor continue prior to the designation of an asbestos site coordinator. The asbestos site coordinator shall oversee all activities involving ACM at tho site and shall have been trained according to the training requirements described herein in

Section VII.

C. The asbestos site coordinator shall report directly to the Asbestos Program Manager and shall have the following duties and responsibilities:

1. Being present when actual asbestos removal or stripping first commences at a project site.

2. Managing all activities at the work site relating to the requirements of the asbestos NESHAP and the provisions of this Partial Consent Decree.

3. Giving guidance and instructions on asbestos removal to employees at the site.

4. Acting as the primary liaison between on-site employees and EPA and state or local inspectors.

5. Immediately correcting any violations of the asbestos NESHAP or this Partial Consent Decree. If an immediate remedy is not possible, the asbestos site coordinator shall stop all ACM removal activities until all such violations are corrected.

6. Retaining the following documents in his possession while at the work site a) a copy of the written notification for the site, required by Section V, hereof b) a copy of the graphic representation required by Section V(C), hereof c) a copy of the certification of training for each employee on site, as required by Section VII(L), hereof, or a copy of the card issued by Defendants certifying the successful completion of the required training, pursuant to Section VI(M), hereof; and d) a copy of Defendants' “Asbestos Training Pamphlet”, preparation of which is required by Section VI(D), hereof.

7. Recording, on a daily basis, with respect to any demolition or renovation of a facility at which ACM has been found, the information called for by a prescribed Daily Check List in the form annexed hereto as Attachment II, and certifying to the accuracy of the recorded information.

8. Complete the training required in Section VII D., E., and F., herein.

D.1. Defendants shall develop a written document entitled Defendants “Asbestos Training Pamphlet” {”the Pamphlet”) The Pamphlet shall address all of the requirements of this Partial Consent Decree and 40 C.F.R. Part 61, Subpart M, shall describe Defendants's Asbestos Control Program, and the respective responsibilities of the Asbestos Program Managers, the asbestos

site coordinator, and all employees engaged in work involving ACM shall detail the requirements applicable to handling, removal, transportation and disposal of ACM and shall encourage workers to report any violations of these requirements to the Asbestos Program Manager, the asbestos site coordinator, as appropriate. The Pamphlet may contain additional material related to particular state and/or local requirements which may apply.

2. Within thirty (30) after the Asbestos Program Manager has completed the training described in Section VII, A, hereof, Defendants shall submit a draft of the Pamphlet to the Director, Air and Toxics Division, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 for review and approval.

3. EPA shell notify Defendants, in writing, of EPA approval or disapproval of the draft Pamphlet, and shall specify deficiencies, if any.

4. Within 30 days of receipt of EPA notification of disapproval of any portions of the draft Pamphlet, Defendants shall amend and submit to EPA a revised draft that remedies the deficiencies specified by EPA.

5. A copy of the Pamphlet, in the form approved by EPA, shall be given by Defendants to each employee and supervisor involved with asbestos activities.

6. The Pamphlet shall be reviewed by the Asbestos Program Managers and Defendants's officers annually in addition to whomever there is a change in the asbestos NESHAP. The Pamphlet shall be revised to reflect changes in the asbestos NESHAP regulations.

7. Neither the terms of the Pamphlet nor Defendants failure to timely develop or distribute to its employees an EPA approved Pamphlet or to revise an approved Pamphlet to reflect new regulatory requirements shall absolve Defendants of liability for any violation of the terms of this Partial Consent Decree the asbestos NESHAP whether or not attributable to the actions or derelictions of any of defendant's employees.

E. Defendants shall maintain all of the records required by this Partial Consent Decree for the duration of the Partial Consent Decree, including any extension, pursuant to Section IX hereof, and shall make them available to EPA upon request. These records shall include, but not be limited to, records of: (1) employee training; (2) inspections made prior to demolition/renovation jobs; (3) any demolition or renovation work involving ACM including, but not limited to, the Daily Check List required by Section VI(C)(7) hereto; (4) transportation of ACM: and (5)

disposal of ACM.

VII. REQUIRED ASBESTOS TRAINING

No employee of Defendants shall engage in the demolition or renovation of any facility containing ACM, or inspect a facility for the presence of ACM pursuant to the requirements of Section [V hereof, unless he has successfully completed a course of asbestos training, as hereinafter specified.

A. The Asbestos Program Manager ("APM"), the alternate Asbestos Program Manager, and all employees whose duties include inspection of facilities for the presence of ACM pursuant to the provisions of Section IV hereof, shall successfully complete, or have already completed, an EPA-approved training course entitled, "Inspector/Management Planner" or equivalent, subject to EPA approval. In the alternative, Defendants may engage an instructor, accredited by EPA to provide the AHERA asbestos training course entitled "Inspector/Management Planner" or an EPA-approved equivalent to the APM and alternate APM.

B. Defendants' employees subject to the requirements of Section VII(A), hereof, who have not successfully completed the five day course of study by the date of entry of this Partial

Consent Decree, shall be enrolled in the next EPA-approved five day course of study, "Inspector/Management Planner" or an EPA-approved equivalent, offered within the EPA Region VII or, at Defendants's election, an earlier five day course of study offered in any other Region, or, if Defendants elect to engage an instructor as provided in Section VII(A) no later than 90 days after entry of this Partial Consent Decree.

C. Employees of Defendants who become subject to the requirements of Section VII(A), hereof, after the date of entry of this Partial Consent Decree, either by hiring or assignment of new work responsibility subsequent to that date, shall not engage in work involving ACM until they have successfully completed a five day course of study.

D. Defendants' asbestos site coordinator ("ASC") shall successfully complete, or have completed, an EPA-approved training course entitled "Contractor/Supervisor" or an EPA-approved equivalent. In the alternative, Defendants may engage an instructor, accredited by EPA to provide the AHERA asbestos training course entitled, "Contractor/Supervisor" or an EPA-approved equivalent, to the ASC.

E. All asbestos site coordinators who have not successfully completed a four day course of study by the date of entry of the

Partial Decree shall be enrolled in the next EPA approved four day course of study, “Contractor/Supervisor” or an EPA-approved equivalent, offered within EPA Region or at Defendants’s election, an earlier four day course of study offered in any other Region, or, if Defendants elect to engage an instructor, accredited by EPA to provide the AHERA asbestos training course entitled, “Contractor/Supervisor” or an EPA-approved equivalent, said course must be held no later than 90 days after entry of this Partial Consent Decree.

F. Employees of Defendants who become subject to the requirements of Section VII(D} hereof, after the date of entry of this Partial Consent Decree, either by hiring or assignment of new work responsibilities subsequent to that date, shall not be Asbestos Site Coordinators until they have successfully completed a four day course of study.

G. All employees of Defendants who are not required by the terms of this Partial Consent Decree to complete a four or five day course of study, and who will engage in asbestos removal, handling, transportation and/or disposal activities, shall successfully complete, or have completed, an EPA-approved training course entitled: “Abatement Worker” or an EPA-approved equivalent. Defendants' employees subject to the requirement of this paragraph, who have not successfully completed a three day course of study by the entry of this Partial Consent Decree, shall be enrolled in the next EPA-approved three day course of study, “Abatement Worker” or an EPA-approved equivalent, offered within EPA Region VII or at Defendants' election, an earlier EPA-approved three day course of study offered in any other Region or if Defendant elects to engage an instructor accredited by EPA to provide the AHERA asbestos training course entitled, “Abatement Worker” or an EPA-approved equivalent, said course must be held within 90 days of the date of entry of this Partial Consent Decree.

H. No employee of Defendants shall engage in asbestos removal, handling, transportation, and/or disposal activities unless he has successfully completed the EPA-approved three day training course entitled “Abatement Worker” or an EPA-approved equivalent.

I. Appropriate tests shall be administered at the conclusion of the five, four, and three day courses. Such tests shall be administered by the organization conducting the course, and shall be in writing to those Defendants employees who read English. The tests shall be administered orally, ln the native language of the employee, to those Defendants employees not fluent in English. The passing grades for such tests, whether written or oral, shall be those established in 40 C.F.R. 763, Appendix C to Subpart E--EPA Model Contractor Accreditation Plan (I)(2), Examinations. No

employee of the Defendants will be deemed to have “successfully completed” his training, as that term is used in this Partial Consent Decree, until he has passed the test associated with the relevant course of study or training program.

J. Defendants shall retain a record of each employee's training which will be kept at the office where the employee will work. This record shall include:

1. A certification of successful completion of the training together with any supporting documentation to evaluate the identity of the employee and the validity of certification;

2. A copy of the test taken or, for test administered by outside EPA-approved vendors, a record from which it can be determined that an appropriate test was taken and passed:

3. A statement as to whether the employee can read the language in which the materials are printed, and if not, the name of the person who orally tested him; and

4. For those subject to the one-day training program, or those who have supplied documentation of successful completion of training from another EPA-approved source, an acknowledgment in the form annexed hereto as Attachment III signed by the employee. If the employee is unable to read, the document shall also be signed by the person who read the document to the employee.

K. For each employee for whom Defendants have compiled and maintained the documentation required by Section VII(J) above, Defendants may issue the employee a card, in a form to be approved by EPA, indicating that the employee has fulfilled all of the training requirement or the training provider may issue the employee such a card.

L. An employee’s successful completion of the training required by this Partial Consent Decree shall not absolve Defendants of liability for any violation of the Partial Consent Decree or the asbestos NESHAP whether or not attributable to the action(s) or dereliction(s) of that employee.

M. Nothing in this Section shall be construed as relieving Defendants from any more stringent training obligations imposed or to be imposed by any federal, state or local law or regulation, including but not limited to EPA’s regulations promulgated pursuant to the Toxics Substances Control Act, as amended.

VIII. CONTRACTOR AND SUBCONTRACTOR EXCLUSION

Section VI, paragraphs C.2-4 and D.5 and the training requirements of Section VII of this Partial Consent Decree do not apply to third-party contractor or subcontractor employees conducting demolition or renovation operations on behalf of the Defendants provided, however, that nothing in this Section shall be construed to relieve Defendants of their obligations under the Asbestos NESHAP set forth at 40 C.,F.R. Part 61, Subpart M.

IX. SITE ACCESS

a. During the duration of this Partial Consent Decree, Defendants shall not withhold consent fro EPA and/or state or local air pollution control agencies, and/or their authorized contractors and consultants and representatives, to enter on, through and about the site of any demolition and/or renovation operation with which Defendants is involved, at reasonable times, and without notice, to take such samples and photographs and to inspect and copy any records as may be deemed necessary to determine Defendants's compliance with the requirements of the asbestos NESHAP and the provisions of this Partial Consent Decree.

B. The provisions of Section VIII(A) hereof are in addition to, and not a limitation on, any rights of access afforded by any statute, regulation, or other law.

X. DURATION OF THIS DECREE

Defendants's obligations under this Partial Consent Decree shall commence upon entry hereof. Unless extended by the Court, this Partial Consent Decree shall terminate two (2) years after the date of final entry of the Decree by the Court. The United States shall have the right to seek extension of the period of time this Partial Consent Decree is in effect. This right is in addition to any other rights the United States may have to enforce this Partial Consent Decree.

XI. PENALTIES

A. Defendants shall pay a civil penalty of fifty thousand dollars ($50,000.00). This civil penalty shall be paid within thirty days of the date of entry of this Partial Consent Decree by certified check payable to The United States of America, and forwarded to:

United States Attorney's Office
Souther District of Iowa
115 U.S. Courthouse
Des Moines, Iowa 50309

Notification of all such payments, as well as copies of all such

certified checks shall be sent to:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

B. The United States shall be deemed a judgment creditor for purposes of collection of the foregoing civil penalties. Any penalty payment made under this Partial Consent Decree are not tax deductible.

XII. STIPULATED PENALTIES

Defendants shall be liable to Plaintiff or Stipulated Penalties in the amount of Five Hundred Dollars ($500.00) per violation per day for each violation of any requirement of this Partial Consent Decree contained in Section IV, Section V, Section VI, Section VII, and Section VIII hereof. This stipulated penalty provision does not apply to violations of the asbestos NESHAP regulation, 40 C.F.R. Part 61, Subpart M. Defendants shall pay Stipulated Penalties within fifteen (15) days of its receipt of a written demand by Plaintiff for such penalties. If Defendants believes it is not liable for the demanded Stipulated Penalties, it may petition the Court within fifteen (15) days of its receipt of the written demand to hear evidence on whether Defendants is liable for the Stipulated Penalties demanded by Plaintiff. Defendants shall have the burden of proof in establishing that it is not liable for the Stipulated Penalties demanded by the United States. Defendants may present matters tot he Court wich it believes mitigates the amount of any stipulated penalties for any violation of the Partial Consent Decree, provided however that nothing in this Section shall be deemed to expand any defenses available to Defendants pursuant to the terms of Section XII, hereof. Payment of Stipulated Penalties will be made in the manner as that specified in Section X hereof. Plaintiff reserves the right to seek such additional relief for violations of the Partial Consent Decree and/or applicable law as is available by law or in equity.

XIII. GENERAL PROVISIONS

A. The Court shall retain jurisdiction to modify and enforce the provisions of this Partial Consent Decree, to resolve disputes arising hereunder, and to entertain any application as may be necessary or appropriate for the construction and effectuation of this Partial Consent Decree.

B. Any modification of this Partial Consent Decree shall be in

writing and approved by the Court. EPA reserves the right to seek a modification of this Partial Consent Decree to conform to any asbestos NESHAP requirements made applicable by reason of any revision of the Clean Air Act and/or its implementing regulations.

C. This Partial Consent Decree is neither a permit nor a modification of any existing permit and in no way relieves Defendants of its obligations to comply with all applicable federal, state or local laws or regulations.

D. Plaintiff reserves any and all legal and equitable remedies available to enforce the provisions of this Partial Consent Decree, and of the Clean Air Act and its implementing regulations.

E. Nothing herein shall be construed to limit the authority of the United States to undertake any action against any person, including the Defendant, in response to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment.

F. Notices required in this Decree, as applicable (and except as otherwise provided herein), shall be transmitted to the addresses noted in Attachment II.

XIV. COSTS

Defendants shall pay the plaintiff United States of America $1102.64 in costs for this action.

XV. PUBLIC NOTICE

The parties agree that final approval and entry of this Decree is subject to the public notice requirements of 28 C.F.R. § 50.7.

For Plaintiff United States of America:

ROGER J MARZULLA
Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice

CYRUS S PICKEN, JR.
Trial Attorney
Land and Natural Resources Division
Environmental Enforcement Section
United States Department of Justice

CHRISTOPHER D HAGEN
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THOMAS L. ADAMS, JR.
Assistant Administrator Enforcement
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United States Environmental Protection
Agency

HENRY ROMPAGE
Assistant Regional Counsel
United States Environmental Protection Agency
Region III
726 Minnesota Avenue
Kansas City, Kansas 66101

For the Defendants

Ottumwa Airport Authority
City of Ottumwa, Iowa

THOMAS KINTIGH
Attorney for Defendants

IT IS SO ORDERED

IN THE UNITED STATES DISTRICT COURT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MEMORANDUM

SUBJECT: Guidance on Inclusion of Environmental Auditing Provision in Clean Air Act Settlements

FROM: Terrell E. Hunt (signature)
Associate Enforcement Council
Air Enforcement Division

John S. Seitz, Director (signature)
Stationary Source Compliance Division
Office of Air Quality Planning & Standards

TO: Addressees

Attached is the new "Guidance on Inclusion of Environmental Auditing Provisions in Clean Air Act Settlements." This guidance supplements the "EPA Policy on te Inclusion of Environmental Auditing Provisions in Enforcement Settlements," issued by Tom Adams on November 14, 1986. A draft of this guidance was distributed to the Regions and DOJ for comment on June 30, 1987.

As you can see from the attached summary of comments submitted by the Regions (DOJ asked that their comments remain confidential), considerable effort has been invested in this project. We attempted to incorporate every comment submitted.

The Geppert Bros . Consent decree was the best example of an asbestos case with environmental auditing that was available when this guidance was sent out for comment. Several suggestions for improvements in the Geppert Bros . Consent decree were received. Those improvements plus more recent consent decrees that have been entered with the courts are available upon request. The best example currently in U.S. v. City of Ottumwa , which is appended to this guidance, but it too will certainly be surpassed in time. To stay abreast of the latest developments in this and other dynamic areas, we recommend that you utilize the clearing-house function provided by the lead regional attorney concept in addition to the resources we offer at Headquarters. Presently, the lead regional attorney for environmental auditing is Randy Stein, Region II (FTS 264-3277).

1) National demolition/renovation companies engaged in activities subject to the National Emission Standard for Asbestos. This is a unique category for air pollution sources, since a company does not typically own and operate a fixed universe of facilities but instead is involved in the operation of a constantly changing group of transient activities. EPA has learned in enforcing the asbestos regulations that large demolition companies may have a corporate awareness of the applicable requirements but lack an effective environmental management system to assure compliance with the law. The need for such a system is particularly acute due to the very nature of the business, which involves an itinerant work force and sometime relies on temporary employees. Establishing a means of managing the activity of demolition or renovation crews is an appropriate element of a consent decree designed to enjoin future noncompliance with asbestos control requirements. Such a system should involve accountability for environmental compliance at each work site involving asbestos, training of workers, and enhanced corporate oversight of the activities of the work crews. As an example of model provisions applicable to a demolition contractor see the consent decree in U.S. v. City of Ottumwa, et al . (S.D. Iowa), attached.

Common characteristics of recent asbestos consent decrees include:

*Training for all asbestos workers with tests to ensure understanding.

*Enhanced training for supervisors/managers.

*Instruction brochures for each employee to keep permanently as a reference.

*Ensuring the presence of trained supervisors at work sites.

*Checklist for proper equipment notice, training certificates.

2) Owners/operators of multiple volatile organic compound (VOC) sources. Companies that own several facilities, such as can-coating or automobile-coating plants, may benefit from environmental auditing. In such instances, a compliance audit may identify common problems at similar facilities, and the same or similar remedies at one facility may be applicable to the company's other plants. Environmental auditing would be particularly appropriate where EPA or a State has cited more than one facility for VOC violations.

Suggested provisions for VOC environmental auditing include:

*Improved checklists to log all coatings with a certification

that they are in compliance with the relevant requirements.

*Establishment of procedure for periodic maintenance of VOC incinerators and other control equipment.

*Training for supervisors and other employees on recognizing the occurrence of abnormal operating conditions.

3) Volatile hazardous air pollutant (VHAP) sources. The National Emission Standard for Hazardous Air Pollutants regulates fugitive emissions of VHAPs at 40 CFR Part 61, Subpart V. The regulations require that a source institute specified lead detection and repair procedures addressing potentially hundreds of pumps valves, and other pieces of equipment at a facility. The standard requires monitoring, reporting, and record keeping, rather tan installation of control equipment. Compliance with the VHAP regulations demands particular diligence and attention to detail. Our limited enforcement experience to date indicates that companies have not completely identified the equipment subject to the standard and have not established adequate systems to assure that the required procedures are followed. Due to the nature of the VHAP standard, a compliance audit would be appropriate to enable corporate management to identify violations and to put management systems in place to ensure that the requirements are followed. An example of such a VHAP auditing requirement is attached. (Consent decree, U.S. v. Texaco Refining & MARKETING, Inc . (D. Del.)).

The major provisions in the Texaco environmental auditing decree are:

*Selection of EPA approved independent contractor.

*Delivery of detailed schematics identifying all equipment in benzene service to EPA and auditor.

*Thorough compliance audit.

*Compliance report with schedule for correction to be undertaken and training to be conducted.

4) Asphalt Concrete Plants are likely candidates for the auditing provisions because these air pollution sources, which have a high turnover in ownership, can be easily relocated. They, therefore, can be subject to differing emission limits because of the various state implementation plan provisions.

Consequently, mobility of the source can result in the evasion of enforcement. Environmental auditing of such sources would give enforcement personnel data that would help in identifying similar

violations of plant owners. Owners often have several other facilities and an audit would reveal the locations of the plants. Likely auditing provisions in this category could include:

*Making available to the auditor and EPA a list of all plants owned within the last five years, a list of those currently owned and the various states in which they have been located.

* Providing to the auditor an EPA any and all evidence that these plants have been and are in compliance with applicable SIPs.

*Conducting a thorough compliance audit of all facilities.

*Having the auditor prepare a plan (training, management procedures) to ensure compliance, which plan would be an enforceable provision of the decree.

5) Multi-media sources. Facilities that are likely to have water pollution or waste management problems in addition to being a source of air pollution may also benefit from environmental auditing. A compliance audit in such circumstances would enable the company to develop a comprehensive approach to its environmental responsibilities. Environmental auditing would be particularly appropriate where EPA or a State has cited violations by the facility under more than one statute.

A multi-media audit would at least include:

* A review of current management practices and procedures used to ensure compliance with various environmental requirements.

* An in-depth compliance audit to determine how well these procedures are being utilized.

* An analysis of additional management procedures needed to track compliance.

* Employee and supervisor training in the law and regulations affecting the facility and in the new protocol to be implemented.

* Certification by the source that it is in compliance with all environmental requirements.

We appreciate the considerable efforts which you have made to comment on the draft guidance and to include environmental auditing in your programs. Please continue to emphasize this valuable enforcement tool

Questions regarding this guidance should be addressed to Charles Garlow of OECM at FTS 475-7088

Attachment

Addressees:

regional Counsels
Regions I-X

Regional Counsel Air Contracts
Regions I - X

Air and Waste Management Division Director
Region II

Air Management Division Directors
Regions I III, and IX

Air and Radiation Management Division Director
Region V

Air, Pesticides, and Toxics Management Division Directors
Regions IV and VI

Air and Toxics Division Directors
Regions VII, VIII, and X

David Buente, Chief
Environmental Enforcement Section
Department of Justice

Robert Van Heuvelen, Assistant Chief
Environmental Enforcement Section
Department of Justice

Justina Fugh
EDRS Coordinator
OECM-Air

INCLUSION OF ENVIRONMENTAL AUDITING PROVISIONS IN CLEAN AIR ACT SETTLEMENTS

This document sets forth guidance for inclusion of environmental auditing provisions in settlement of Clean air Act enforcement actions. EPA policy encourages the use of environmental auditing to enable regulated entities to achieve and maintain compliance with environmental laws and regulations. EPA maintains that effective environmental auditing promotes higher levels of compliance and reduces risks to human health and the environment. 51 Fed. Reg. 25004 (July 9, 1986). This policy is based on the statutory authority of Section 114 of the Clean Air Act, 42 U.S.C., §7414 and the information gathering provisions of other environmental statutes. [1]

The Clean Air Act environmental auditing guidance supplements the "EPA Policy on the Inclusion of Environmental Auditing Provisions in Enforcement Settlements," issued on November 14, 1986 ("EPA Policy"). That policy establishes a general framework, applicable to enforcement under all environmental statutes, for the use of environmental auditing provisions in settlement agreements. This guidance addresses the application of the general policy to air pollution cases.

Appropriateness of Environmental Auditing Provisions

As stated in the general policy, environmental auditing provisions are appropriate to propose in settlement negotiations in instances in which: 1) a pattern of violations results, at least partially, from the absence of an effective environmental management system or 2) the nature of the violations indicates a likelihood that similar noncompliance may occur at other parts of the same facility or at other facilities owned by the same entity. The need for environmental auditing is most likely to apply to the owner or contractor of extensive or multiple facilities, but may in some circumstances apply to a single-facility company as well. See EPA Policy at p. 2.

In the stationary source program, the most likely candidates to benefit from environmental auditing would include:

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[1]Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9604 et seq.; Section 308 of the Clean Water Act, as amended, 33 U.S.C. §1318 et seq.; Sections 3007 and 3013 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6927 and 6933; Section 1423(c)(8) of the Safe Drinking Water Act, 42 U.S.C. §300h-2(c)(8); and Section 11© of the Toxic Substances Control Act, 15 U.S.C. §2610(c).

The consent decree should include clearly specified and enforceable schedules, timetables and requirements for completion of the audit. In the case of demolition/renovation contractors, the audit will be an ongoing requirement that will accompany the performance of work at facilities containing friable asbestos, and will not be subject to a schedule for completion.

EPA assumes that any and all information submitted to EPA pursuant to these audit provisions is not automatically considered to be confidential business information (CBI). However, a business may submit such information with a request that the information be treated as CBI, subject to appropriate statutory and regulatory restrictions (cf. 5 U.S.C. §552, 40 C.F.R. Part 2, Subpart B).

The consent decree should specify that the Agency is entitled to copies of all information developed during the audit, including not only final audit reports, but also copies of all underlying audit data as well as draft audit reports, whether developed by the employees or contractors of the defendant. Though entitled to this information, the Agency need not always demand access to the data.

Consequences of Audit

For an audit to benefit the company and the environment, the consent decree should require that, upon completion of the audit, the company implement its recommendations provided, however, that some procedure should be included for the Agency to review and approve the audit's conclusions and for the company to dispute the findings/recommendations of the audit. The consent decree may require the company simply to certify that it has remedied any problems uncovered by the audit, or it may require full disclosure to EPA of the audit results. The decree may also require the party to submit a compliance or environmental management plan, or both, with an enforceable schedule for completion.

Additionally, the consent decree should address the enforcement of audit-discovered violations. In particular, the consent decree may provide for stipulated penalties for violations that can be predicted and are promptly remedied. See EPA Policy at p. 5. See also the City of Ottumwa consent decree for an example of stipulated penalties for violations of the audit provisions.

Impact of Audit Provisions on Civil Penalties

If a source, by agreeing to implement an environmental audit, exhibits an extraordinary degree of cooperation, it may be appropriate to consider that cooperation in adjusting the gravity

component, but not the economic benefit of noncompliance, downward. See EPA Policy at p.6. An audit would not be a credit towards paying the bottom line penalty.

We suggest these categories of sources as likely candidates to benefit from environmental auditing, but they are not intended to limit in any way the universe of sources for which auditing is appropriate. The case development or litigation team should be alert to indications that a company has an environmental management problem or that similar violations are likely to occur at other parts of the same facility or at other facilities. An example of such a management problem would be a continuing series of violations blamed on operator error. This management problem could be addressed by better required operator training courses complemented by periodic refresher courses. The litigation team should routinely review the case docket to determine if the company has had environmental problems in other regions or other media. Where such indications exist, EPA should probe the need for auditing with a site inspection, in a Section 114 letter or in a discovery request. An example of such a Section 114 letter is attached.

Contents of Audit Provisions

The consent decree provisions should clearly identify the type of audit to be performed. A compliance audit is an independent assessment of the current status of the party's compliance policies, practices, air controls. The nature of each type of audit is described in greater detail in the EPA Policy at p.3.

Both a compliance audit and a management audit should be encouraged. The nature of the case will determine which type of audit is more appropriate. The audit provisions appropriate for demolition and renovation contractors are unique but fit more closely within the ambit of a management audit. Its focus is to assure centralized management controls over the decentralized functions of the company. VOC sources are most likely to benefit from a compliance audit, which may identify recurring problems at similar facilities. VHAP sources may be candidates for a hybrid of the two. Violating VHAP sources typically have not even determined what equipment is subject to the standard and consequently are not fully aware of their compliance status. In addition, VHAP sources have particular need for operation and maintenance programs, monitoring, record keeping, and reporting systems, and other management controls to assure compliance with the standard.

The consent decree provisions should identify the party conducting an audit. The auditors may be a consultant or an in-house person or team. In any event, the auditors should be

independent of the persons and activities to be audited, although in-house auditors are often not as “independent” as outside auditors. See EPA Policy at p.4. EPA and the State should be provided with advance notice of the audit and an opportunity to participate in the audit.

Summary of Regional Comments on Draft Guidance on the Inclusion of Environmental Auditing Provisions in Clean Air Act Enforcement Cases

Region I: In-house auditors are not likely to be “independent.”
EPA and States should get advance notice of audit and an opportunity to participate in audit.
Audit results should always be fully disclosed.
Several comments on improving the Geppert Bros. Consent Decree were offered.

Region III: Regions should remain free to determine when auditing is appropriate.
I*t is good that no additional decree requirements are mandated.

Region V: Asphalt/concrete plants are good examples of candidates for auditing.
There should be due process for companies by including an opportunity to dispute the findings of the audit.
Agency should review & approve audit findings before the company is required to implement the recommendation.

Region VI: In-house auditors are not very independent.
Difficult to determine how much to adjust penalties if auditing done.

Adjustments to the gravity component should only be made n compelling circumstances in cases in which the gravity component is a major portion of the penalty. Appendix III of the Civil Penalty Policy, pertaining to asbestos cases, establishes a scheme for the gravity component which recognizes that asbestos is a hazardous air pollutant and explicitly punishes repeat violators more than first-time violators. EPA should assure that the penalty in any asbestos case meets these objectives. In most such asbestos cases, the gravity component of the penalty is much higher than the benefit component. Similarly, the benefit component in VHAP cases is likely to be smaller than the gravity component. Therefore, in both instances, the gravity component should not be adjusted unless the bottom line penalty is still sufficient to deter future violations.

NOTICE OF
ASBESTOS REMOVAL ACTIVITIES
DEMOLITION AND/OR RENOVATION

ASBESTOS NESHAP's CONTACT

AIR MANAGEMENT DIVISION

US EPA

_____

_____

Dear_____,

FACILITY TO BE DEMOLISHED OR RENOVATED

_____

Name, address and phone number of facility:

_____

_____

_____

_____

Name, address and phone number of owner:

_____

_____

_____

_____

Description, size, age and prior use of facility:

_____

_____

_____

_____

Demolition or renovation methods to be used:

_____

_____

_____

_____

Name, title and authority of state or local government representative who has ordered the demolition (if applicable)

_____

_____

_____

_____

ASBESTOS NOTIFICATION

ASBESTOS INFORMATION

Site Asbestos Coordinator: _____

Site-Asbestos-Foreman (if applicable): _____

Start date: _____ Completion date: _____

Quantity of friable asbestos containing material on pipes: _____

Linear ft. (Required) _____

Cubic ft. (Optional) _____

Quantity of friable asbestos-containing material on other facility components:

_____

Square Ft. (Required) _____

Cubic Ft. (Optional) _____

If less than 260 linear feet on pipes and less than 160 square feet on other facility components, explain techniques of estimation _____

_____

Description of Asbestos-Containing Materials _____

Location of Asbestos-Containing Materials: _____

Person who made the identification: _____

Method of identification: _____

(Attach the results of any laboratory analysis of suspected asbestos-containing material to this form.)

Emission Control Procedures and other procedures to be used to comply with 40 C.F.R. Part 61 Subpart M: _____

_____

_____

ASBESTOS DISPOSAL INFORMATION

Type of leak tight containers to be used: _____

Waste handling emission control procedure and other procedures to be used to comply with 40 C.F.R. Part 61, Subpart M: _____

_____

_____

Transporter: name address and Phone number: _____

_____

_____

Disposal Site: Name, address and phone number; _____

_____

_____

Sincerely,

Asbestos Program Manager

cc: Appropriate State or Local
Air Pollution Control Agency

ATTACHMENT II

ASBESTOS REMOVAL PROJECT
DAILY CHECK LIST

PROJECT LOCATION:_____

ASBESTOS SITE COORDINATOR:_____

JOB NUMBER: _____ DAY:_____ DATE:_____

ASBESTOS SITE COORDINATOR, TIME AT SITE ____ TIME LEFT SITE ___

	YES	NO	
1.	( )	( )	COPY OF ALL NOTIFICATIONS AND WORKER TRAINING RECORDS AT SITE
2.	( )	( )	ALL ASBESTOS WORKERS TRAINED AND TESTED AND RECORDS CERTIFYING TRAINING ARE COMPLETE
3.	( )	( )	MEDICALS PERFORMED ON ALL ASBESTOS WORKERS BEFORE JOB BEGAN
4.	( )	( )	WORK AREA ISOLATED BEFORE JOB BEGAN
5.	( )	( )	WARNING SIGNS POSTED BEFORE JOB BEGAN
6.	( )	( )	DECONTAMINATION UNIT INSTALLED AND OPERATING
7.	( )	( )	PROTECTIVE CLOTHING USED BY ALL WORKERS DURING ENTIRE WORKDAY ( ) COVERALLS ( ) RESPIRATORS ( ) HOODS ( ) SPARE FILTERS ( ) BOOTS ( ) GLOVES
8.	( )	( )	WATER AVAILABLE AT SITE AND USED FOR ASBESTOS REMOVAL AND SHOWERS
9.	( )	( )	AIRLESS SPRAYER/BETTER WETTER ON SITE AND USED IN WETTING OPERATION
10.	( )	( )	NEGATIVE AIR MACHINES USED ENTIRE WORKDAY
11.	( )	( )	HEPA VACUUM USED ENTIRE WORKDAY (NO: _____
12.	( )	( )	VACU-LOADER USED ENTIRE WORKDAY (NO: _____
13.	( )	( )	ALL ASBESTOS CONTAINING MATERIALS (ACM) HANDLED WET
14.	( )	( )	AFTER WETTING, ALL ASBESTOS CONTAINING MATERIALS PLACED IN PROPERLY LABELED LEAK TIGHT CONTAINERS. - NUMBER OF CONTAINERS USED _____ - TYPE OF CONTAINERS USED _____ - SIZE OF CONTAINERS USED _____
15.	( )	( )	ALL ACM REMOVED BEFORE ANY DISMANTLING OR DEMOLITION STATED
16.	( )	( )	VISIBLE EMISSIONS TO OUTSIDE AIR PREVENTED
17.	( )	( )	ALL ACM DISPOSED OF IN AN APPROVED LANDFILL
18.	( )	( )	MANIFESTS COMPLETE (OWNER SIGNATURE)
19.	( )	( )	VISITORS ON SITE _____ _____ _____

_____

Asbestos-Site-Supervisor

COMMENTS:

ATTACHMENT III

In accordance with applicable law, Cleveland Wrecking Company is required to provide proper safety training to all employees whose job responsibilities involve (or will involve) the removal, handling, transportation or disposal of materials containing asbestos.

If you have received asbestos training, please read paragraph 1, below, and decide if it accurately describes the training you received. By signing your name at the bottom of this sheet, you will be acknowledging (1) that you received the training described; and (2) that you understand that review of the training materials by the United States Environmental Protection Agency does not assure that your job site is free from all health and safety risks.

ACKNOWLEDGMENT

1. I have completed at least eight hours of training on the dangers of asbestos, and the proper procedures for removing, handling, transporting, and disposing of materials containing asbestos. I took an examination following the training course, and was informed that I had passed that examination. I will keep on my person proof of my training.

2. I have received and read a copy of the Cleveland Wrecking Company's Asbestos Training Pamphlet.

3. I understand that although the Environmental Protection Agency reviewed the materials employed by the Cleveland Wrecking Company in training me, the Environmental Protection Agency's approval of those materials was not intended as a guarantee or assurance to me that my workplace is free of all health and safety risks, or that Cleveland Wrecking is in compliance with regulations and laws enforced by EPA or other agencies such as the Occupational Safety and Health Administration.

Signature of Employee _____

Printed Name of Employee _____

WITNESS

I witnessed the named employee's signature.

(_) I certify that the employee can read English.
OR
(_) The employee cannot read, or cannot read English. I read this document to him before he signed it and he acknowledged understanding its contents.

Signature of Witness _____

Printed Name of Witness _____