

US EPA ARCHIVE DOCUMENT

OCC
DEC 18 1998

IN THE MATTER OF:

SHARON STEEL CORPORATION -
FAIRMONT COKE WORKS SITE,
FAIRMONT, WEST VIRGINIA.

EXXON CORPORATION

Respondent

EPA Docket No.

III-99-004-DC

Proceeding Under Sections 104,
106(a), and 122(a) of the
Comprehensive Environmental Response,
Compensation, and Liability Act of
1980, as amended by the Superfund
Amendments and Reauthorization Act
of 1986, 42 U.S.C. §§ 9604, 9606(a),
and 9622(a)

ADMINISTRATIVE ORDER BY CONSENT
FOR REMOVAL RESPONSE ACTION

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The party to this Administrative Order by Consent ("Consent Order" or "Order") Exxon Corporation ("Exxon") and the United States Environmental Protection Agency ("EPA" or "the Agency"), have agreed to the entry of this Consent Order, it is therefore Ordered, that:

I. JURISDICTION AND GENERAL PROVISIONS

- A. This Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 106(a) and 122(a) of the comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. §§ 9604, 9606(a) and 9622(a), delegated to the Administrator of EPA by Executive Order No. 12580, 52 Fed. Reg. 2923 (January 29, 1987), and further delegated to the Regional Administrators of EPA. This Consent Order pertains to the property located in East Fairmont, WV at the west end Lafayette Street. This property will hereinafter be referred to as the "Sharon Steel - Fairmont Coke Works Site" or "the Site" and is further described in Section III.D.
- B. The Respondent agrees to undertake all actions required by, and comply with all requirements of, this Consent Order including any modifications hereto (the "Work").
- C. The Work shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 C.F.R. Part 300, and CERCLA.
- D. The Respondent consents to and will not contest EPA's authority or jurisdiction to issue or to enforce this Consent Order.

II. STATEMENT OF PURPOSE

- A. In entering into this Consent Order, the mutual objectives of EPA and Respondent is to protect public health, welfare and the environment by performing an Engineering Evaluation/Cost Analysis ("EE/CA") to characterize the nature and extent of contamination at the Sharon Steel - Fairmont Coke Works Site and by implementing a response action to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at the Site.

III. EPA'S FINDINGS OF FACT

- A. Domestic Coke Corporation, a wholly owned subsidiary of Standard Oil of New Jersey (now known as Exxon Corporation), was incorporated in Delaware on May 23, 1918. On November 17, 1949 Domestic Coke changed its name to Esso Shipping Company. On December 31, 1958 Esso Tankers, Inc. merged into Esso Shipping Company, and the name of the corporation was changed to Esso Tanker, Inc. On December 31, 1962 Esso Tanker, Inc. merged into Esso International, Inc. On April 27, 1972, Esso International, Inc. merged into Exxon Corporation ("Exxon"). Respondent Exxon was incorporated on August 4, 1882, in New Jersey, under the name of Standard Oil Company of New Jersey.
- B. The coke production facility at the Fairmont Coke Works location in Fairmont, West Virginia was built from 1918 to 1920 by the United States Department of War for the Domestic Coke Corporation. The nature of business of Domestic Coke was to buy, sell, and deal in coal; to carbonize coal and to produce products and by-products of carbonization. These by-products included coal tar, phenol, ammonium sulfate, benzene, toluene, xylene, and coke oven gas. In 1948 Domestic Coke Corporation sold the Fairmont Coke Works facility to Sharon Steel Corporation. Sharon Steel operated the coke production facility until 1979, when operations ceased due to non-compliance with Clean Air Act ("CAA") and Clean Water Act ("CWA") regulations.
- C. Between 1918 and 1929, Domestic Coke Corporation purchased several parcels which comprise the Site from various individuals. In 1918, Domestic Coke Corporation transferred parcels A-D to the United States of America for construction of a 60-oven by-product coke facility. In 1925, parcels A-D were transferred back to Domestic Coke Corporation. In 1948 Domestic Coke Corporation sold the property to Sharon Steel Corporation. In 1991, Sharon Steel Corporation, through Agnew Franklin, the Chapter 11 Bankruptcy Trustee, transferred the property to FAC, Inc., a subsidiary of Sharon Steel Corporation. On July 22, 1998, Exxon notified the Agency that Green Bluff Development, Inc., a wholly owned subsidiary of Red Bluff Development, Inc., a wholly owned subsidiary of Exxon Corporation, purchased from FAC 93.08 acres of property located at the Fairmont Coke Works Site. The Fairmont property is the sole asset of Green Bluff Development, Inc. Green Bluff Development, Inc. conducts no operations at the Site.
- D. The Site is located in Fairmont, Marion County, West Virginia. The Site originally consisted of approximately 107 acres of adjoining parcels of land. Fifty-seven acres of the Site were utilized for coke plant operations, waste treatment, and disposal practices. The remaining 50 acres consists of a wooded hillside which descends to the Monongahela River, at the southern portion of the Site. Green

Bluff Development, Inc. has purchased all property including the areas where coke production and waste disposal took place at the Fairmont Coke Works Site.

The Site is entirely fenced along the north side of the property boundary which borders Suncrest Boulevard. Exxon has enclosed the processing areas of the Site with fencing. Access to the remainder of the Site has been secured through additional fencing and natural barriers. The west side of the Site is bordered by another Superfund Site, Big John's Salvage Company, also referred to as Reilly Tar and Chemical Site. The southern boundary of the Site parallels old railroad tracks that are being converted into a bike trail; the railroad tracks are immediately adjacent to the right descending bank of the Monongahela River. The Light of Life World Outreach Church is located approximately 50 feet to the south of the southeast boundary of the Site. The eastern portion of the Site is adjacent to a trucking company and several private residences.

Prior to 1993, the Site contained 41 buildings, half of which were involved in the refinement of coke by-products. There were an estimated 260 process vessels onsite, within and exterior to, the Site buildings. Many of the exterior tanks and vessels may have deteriorated and released their contents onto the ground. Certain overhead process lines, exterior containment structures and several of the buildings are known to have asbestos containing materials.

Solid waste from past plant operations and a large quantity of miscellaneous plant debris were placed into two landfills (north and south) at the Site. It has been estimated that the landfills contain a combined total of approximately 310,000 cubic yards of material.

There were two wastewater treatment/oxidation impoundments located within the southwest quadrant of the Site. The impoundments were utilized to physically and biologically treat process wastewater. The sludge which accumulated in the wastewater treatment impoundments was periodically removed and placed in two sludge impoundments within close proximity of the wastewater treatment/oxidation impoundments.

The breeze washout area is a low-lying surface water drainage that parallels the entire length of the north landfill. The surface water drainage was filled with material that had eroded from a nearby stockpile of production by-product. The stockpiled material, consisting mostly of carbon, is referred to as breeze. An estimated 12,000 cubic yards of breeze was deposited in the drainage area via surface water runoff. EPA excavated this breeze material from the former breeze washout area and transferred it to the redeposited sludge impoundment and covered with a 60-millimeter high-density polyethylene ("HDPE") liner.

The light oils storage ("LOS") area, located in the vicinity of the benzol recovery building, remains contaminated with benzene, toluene, ethylbenzene, and xylene (BTEX) compounds.

- E. The commercial by-products from operation of the coke plant included coal tar, phenol, ammonium sulfate, benzene, toluene, xylene, and coke oven gas.
- F. Several investigations have been conducted at the Fairmont Coke Works Site since 1979 when operations ceased. Sharon Steel hired a contractor to perform an Environmental Reconnaissance Assessment in 1980. Results of this assessment were submitted to EPA along with a RCRA permit application. EPA and Sharon Steel disagreed about the facility's RCRA status and cleanup requirements under RCRA.

EPA conducted a CERCLA preliminary assessment of the Site in 1983. This assessment identified the surface water discharges from the Site as a potential problem but concluded that CERCLA action was not warranted at that time.

A Phase II RCRA Facilities Assessment was conducted by Sharon Steel contractors and submitted to EPA for review in 1986. EPA began evaluating the Site for placement on the National Priorities List ("NPL") in 1987.

To evaluate its potential listing on the NPL, the Site was scored using the "old" Hazard Ranking System ("HRS") model in August of 1987. In order to be eligible for inclusion on the NPL a site must score 28.5 or higher. The 1987 score for the site was 15.50. A preliminary screening of the Site using the revised HRS model was performed in November of 1989; this score was 35.89, making the Site eligible for the NPL. A formal HRS scoring package was compiled and finalized in 1995. On June 17, 1996 the Site was proposed to the NPL. Final listing of the Site on the NPL occurred on December 23, 1996.

- G. During August and September of 1990, Sharon Steel removed 2.2 million pounds of waste tar from the onsite sludge impoundments and disposed of them at a municipal landfill in Ohio. According to the West Virginia Department of Natural Resources ("WVDNR"), currently known as the West Virginia Division of Environmental Protection ("WVDEP"), Fairmont Office, the sludge impoundments were not properly addressed. WVDNR began conducting its own investigation of the Site and requested EPA assistance. EPA's Removal Program revisited the Site at that time and evaluated the appropriateness of a Removal Action. In February of 1991 EPA's Technical Assistance Team was tasked to perform a site assessment, which identified the following problems: (1) erosion of the north landfill; (2) low pH (<2) leachate seeping into surface waters; (3) onsite tanks and vessels were

unstable creating potential release conditions; and (4) visual evidence of contamination in the sludge impoundments and site soils was noted. In May of 1993 EPA's removal program mobilized to the Site and initiated removal actions to eliminate immediate threats.

- H. There are areas of past process, storage, and disposal operations which are contaminated with hazardous substances. During removal response actions beginning in May 1993, the primary source areas were identified as follows: North and South Landfills, Oxidation Impoundments #1 and #2, Redeposited and Upper Sludge Impoundments, Breeze Washout Area, and Light Oils Storage Area. Secondary source areas included the Breeze Pile, Main Tar Pit, and Coke and Coal Storage Areas. Hazardous substances of concern which are found in these areas include benzene, toluene, xylene, PAHs (including Benzo(a)pyrene), cyanide and lead which are designated as hazardous substances under CERCLA Section 102(a) and are listed in 40 C.F.R. § 302.4.

- I. The Removal Response Action initiated in May of 1993 consisted of the following specific actions:

The redeposited sludge impoundment, located upgradient of wastewater oxidation pond No. 2, was modified to act as a temporary holding impoundment for breeze from the former breeze washout area. The earthen berm around the sludge impoundment was heightened and reinforced; it now encircles the impoundment.

An estimated 12,000 cubic yards of breeze material was excavated from the former breeze washout area. The material was transferred to the redeposited sludge impoundment and covered with a 60-millimeter high-density polyethylene ("HDPE") liner.

Surface water runoff throughout the site was managed via engineering controls, including a leachate collection system for the north landfill. These controls ensure that runoff from contaminated areas goes through the treatment system and runoff from clean areas does not enter the contaminated areas of the Site but goes directly to a tributary of the Monongahela River.

The NPDES permit acquired by Sharon Steel Corporation (which required treatment of the runoff with soda ash to adjust the pH of the water discharged from this point to the Monongahela River) is currently void. WVDEP, EPA and Exxon are currently working toward addressing the issue of treating the runoff previously handled by Sharon Steel with a NPDES permit. That work is not part of the scope of this Order.

The western end of the north landfill has been excavated and consolidated on top of the eastern end of the north landfill and a temporary soil cap has been installed over the entire north landfill.

A total of 1,310,500 gallons of water contaminated with low levels of benzene in an above ground holding tank was treated via aeration within the tank. Analytical data from samples taken following treatment showed non-detectable levels of benzene. The treated water was then discharged to the City of Fairmont's Publicly Owned Treatment Works ("POTW"). The tank itself was subsequently decontaminated and demolished.

Suspected asbestos containing building material ("ACBM") was removed from overhead process lines, exterior containment structures, and additional areas as necessary to facilitate removal actions. The ACBM was transported offsite for disposal.

The excavation and disposal of sludge from the facility process line trenches was completed. The majority of trenches were backfilled during Site grading operations. The location of the trenches were surveyed and marked for future reference.

Silt fence, erosion control matting, and rip-rap were installed at various locations throughout the Site as erosion control measures. Also, grasses and oats were planted in various areas of the Site for additional erosion control.

Offsite disposal of hazardous substances previously stored in drums, tanks, and vessels was completed in the spring of 1996.

- J. Although surface water runoff from the Site has been addressed by the removal actions, possible groundwater contamination has not yet been adequately characterized. Groundwater samples obtained during early investigations indicated that groundwater may have been impacted. Discharge of contaminated groundwater to surface water is being investigated further. The disposal areas that remain onsite are being assessed from a remediation standpoint and source control measures will be evaluated, where appropriate.
- K. The following substances were found in soils and sediments in the source areas at the Sharon Steel Fairmont Coke Works Site and are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14) because they are listed at 40 C.F.R. Part 302, table 302.4: polynuclear aromatic hydrocarbons (PAHs), benzene, toluene, xylene, arsenic, chromium, lead, and mercury.

- L. By signing the Engineering Evaluation/Cost Analysis Approval Memorandum for this Site on November 12, 1998, the EPA Region III Division Director for the Hazardous Site Cleanup Division determined that an imminent and substantial endangerment to public health or welfare or the environment exists due to the actual or potential for release of hazardous substances (as defined in Section 101 of CERCLA, 42 U.S.C. § 9601 et al.) from the Site.

IV. EPA'S CONCLUSIONS OF LAW

- A. The Sharon Steel - Fairmont Coke Works Superfund Site is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- B. The Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- C. PAHs, benzene, toluene, xylene, arsenic, chromium, lead, and mercury are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed at 40 C.F.R. Part 302.4.
- D. "Hazardous substances", as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14) have been disposed of at the Sharon Steel - Fairmont Coke Works Superfund Site and are currently present there.
- E. The presence of hazardous substances at the Site and the past, present, and/or potential migration of hazardous substances at or from the Site constitutes an actual and/or threatened "release" as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- F. EPA has determined that the Respondent is liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
- H. The Respondent is a former owner/operator of the Site from at least 1920 to 1948 Domestic Coke Corporation (now known as Exxon Corporation) operated the plant, to manufacture coke by-products.

V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, EPA has determined that:

- A. The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.
- B. The Work is necessary to protect the public health and welfare and the environment.
- C. Because there is a potential threat to public health or welfare or the environment, a removal action is appropriate to abate, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous substances at or from the Site.

VI. PARTIES BOUND

- A. This Consent Order shall apply to and be binding upon EPA and Respondent and its successors and assigns. All persons, contractors and consultants acting under or for the Respondent shall perform all work in a manner consistent with the terms of this Consent Order. No change in ownership or corporate or partnership status of the Respondent or the Site will in any way alter the Respondent's obligations under this Consent Order.
- B. In the event of any change in ownership or control of the Site or any portion thereof, Respondent shall notify EPA in writing, no later than thirty (30) calendar days prior to the change, of the nature of the change and the anticipated date of the change. Respondent shall provide a copy of this Consent Order to its successors before the proposed change becomes irrevocable.
- C. In the event that there is a change in Respondent's corporate organization or ownership of the Site because of bankruptcy proceedings, Respondent shall notify EPA within five calendar days of such event.
- D. Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, supervisory personnel, laboratories and consultants retained by Respondent to conduct any portion of the Work to be performed by Respondent pursuant to this Consent Order. Respondent shall require in any and all contracts related to this Site that the Work that is the subject of such contract be performed within the time and in the manner set forth in this Consent Order.
- E. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms of this Consent Order and to execute and legally bind such Respondent to this Consent Order.

VII. NOTICE TO THE STATE

Notice of issuance of this Consent Order has been given to the State of West Virginia, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VIII. WORK TO BE PERFORMED

- A. As a requirement of Section VIII. B. 2. of the Administrative Order on Consent for Remedial Investigation/Feasibility Study, Docket No. III-97-103-DC, ("RI/FS Order") Respondent proposed ICF Kaiser as the supervising contractor for Remedial Investigation/Feasibility Study ("RI/FS") activities. The requirements of the RI/FS Order will be suspended in accordance with Section XXXI. of this Consent Order. In order to facilitate implementation of the Engineering Evaluation/Cost Analysis ("EE/CA") under this Consent Order, EPA hereby accepts ICF Kaiser as the supervising contractor who will be responsible for developing any EE/CA submittals required by this Section (that have not yet been approved by EPA) and implementing all EE/CA submittals required by this Section.
- B. Respondent shall notify EPA in writing of the identity and qualifications of any other contractors, subcontractors, supervisory personnel and other persons selected by Respondent who will conduct all or any portion of the response action no less than ten (10) days prior to commencement of the response action to be performed by such persons. Respondent shall ensure that all contractors, subcontractors, supervisory personnel and/or other persons retained to perform the response action shall meet the applicable Occupational Safety and Health Administration ("OSHA") requirements as defined in 29 C.F.R. § 1910.120. The Respondent's selection of all contractors, subcontractors, supervisory personnel, and other persons who will perform the response action; the Respondent's Project Coordinator designated pursuant to Section IX; and any replacements to any such persons are subject to disapproval by EPA at any time. In the event of any such disapproval by EPA, Respondent shall notify EPA within ten (10) calendar days of receipt of such EPA disapproval of the selection of the person(s) who will replace the one(s) disapproved by EPA. If a person's selection for specified work is disapproved by EPA, they shall not perform such specified response action.
- C. Respondent shall within thirty (30) calendar days of the effective date of this Consent Order, amend and or supplement the Expanded Site Investigation Work Plan ("ESI Work Plan") and associated documents to develop a work plan for EPA approval for performance of an EE/CA that is consistent with CERCLA; the NCP; EPA guidance including, without limitation, EPA's "Guidance on Conducting Non-Time-Critical

Removal Actions Under CERCLA” (No. 9360.0-32 (August 1993)) (“Guidance”). The amended or supplemented ESI Work Plan shall be referred to as the EE/CA Work Plan and shall include but not be limited to:

1. An evaluation of the nature and extent of the threat to the public health and welfare and the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at and from the Site;
 2. An evaluation of response action alternatives to prevent, mitigate or eliminate unacceptable risks to human health and welfare and the environment arising from the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site;
 3. A listing and discussion of Applicable and Relevant and Appropriate Requirements (“ARARs”) for addressing contamination at the Site; and
 4. An preliminary schedule for completion of the EE/CA Report and facilitation of implementation of selected response actions.
- D. Implement the EPA-approved EE/CA Work Plan described in Section VIII. C. above.
- E. Within sixty (60) calendar days of the EPA-approved date for completion of the activities required by the EPA-approved EE/CA work plan, submit to EPA for approval an EE/CA Report. Respondent shall consider the findings obtained from implementation of the EE/CA work plan to propose removal cleanup levels and actions or treatment or removal alternatives to perform cleanup of contamination at the Site. The EE/CA Report shall be prepared in accordance with the Guidance.
- F. Within thirty (30) calendar days of EPA’s issuance of the Removal Action Memorandum resulting from the EE/CA required by this Consent Order, Respondent shall submit to EPA for approval a Response Action Plan (“RAP”) to perform the removal action selected by EPA, in consultation with WVDEP, after the public comment period required by 40 C.F.R. Section 415(n)(4)(iii). The EE/CA Work Plan, the EE/CA Report, and the RAP may subsequently be referred to as “EE/CA submittals”.
- G. Implement the EPA-approved RAP as described in Section F above, according to the EPA-approved schedule.

- H. EPA will review the EE/CA submittal(s) and notify the Respondent of EPA's approval or disapproval. In the event of disapproval, EPA will specify the deficiencies in writing. The Respondent shall respond to and correct the deficiencies identified by EPA and resubmit the EE/CA submittal(s) to EPA within fifteen (15) business days of receipt of EPA disapproval or such longer time as may be specified by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Consent Order. Approval, disapproval and/or modification by EPA of any subsequent EE/CA submittal shall be according to the provisions of Section VIII.L. below.
- I. Within fifteen (15) business days of receipt from EPA of written approval to proceed with implementation of the EPA-approved RAP ("written approval to proceed"), the Respondent shall begin implementation of the RAP in accordance with EPA-approved schedule therein, and shall further complete implementation of the RAP in accordance with the schedule therein. In the event EPA determines that any portion of the response action performed is deficient, and EPA requires Respondent to correct or re-perform such portion of the response action pursuant to this Consent Order, Respondent shall correct or re-perform such response action or portion of the response action in accordance with a schedule provided by EPA.
- J. Beginning January 1, 1999 and for every quarter thereafter, or, such longer interval as may be determined in writing by the EPA Project Coordinator designated pursuant to Section IX, and until EPA advises Respondent that the Work is complete, the Respondent shall provide EPA with a written Quarterly Progress Report for each preceding quarter or if applicable, the period specified in writing by the EPA Project Coordinator. In special circumstances when extensive work is being performed by the Respondent, the EPA Project Coordinator may require Respondent to provide progress reports for an interval as frequently as every 14 days. EPA shall provide Respondent with written notice that Quarterly Progress Reports must be submitted at intervals less than approximately 90 days. The Quarterly Progress Reports shall include, at a **minimum**:
1. A description of the actions that have been taken toward achieving compliance with this Consent Order;
 2. A description of all data anticipated and activities scheduled for the next quarter or if applicable, the period specified in writing by the EPA Project Coordinator;
 3. A description of any problems encountered or anticipated;
 4. Any actions taken to prevent or mitigate such problems;

5. A schedule for when such actions will be completed;
6. Access to all analytical data received during the reporting period via "LabLinks"; and
7. All modifications to any EE/CA submittal and schedule made in accordance with Section XVIII to this Consent Order during the reporting period.

K. Documents, including plans, reports, sampling results and other correspondence to be submitted pursuant to this Consent Order shall be sent by certified or overnight mail to the EPA Project Coordinator designated pursuant to Section IX. A copy of all documents shall also be simultaneously sent to the project manager for the Fairmont Coke Works Site, West Virginia Division of Environmental Protection at:

West Virginia Division of Environmental Protection
Office of Environmental Remediation
1356 Hansford Street
Charleston, WV 25301

L. All reports, plans, schedules, etc. that are required by this Consent Order that are subject to EPA approval shall be deemed incorporated into this Consent order upon approval by EPA. In the event that EPA approves a portion of any EE/CA submittal or other item required to be submitted under this Order, the approved portion shall be enforceable under this Order. In the event of conflict between this Consent Order and any document attached hereto, incorporated in or enforceable hereunder, the provisions of this Consent Order shall control. In the event that EPA disapproves any required submission, EPA will (1) specify the deficiencies in writing, and/or (2) submit its own modifications to the Respondent to accomplish the Work outlined above. Respondent shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies within fifteen (15) business days of receipt of EPA disapproval or such longer time as may be specified by EPA in its unreviewable discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Consent Order. In the event that EPA submits its own modifications to the Respondent, the Respondent is hereby required to implement such modifications within fifteen (15) calendar days of receipt of such modifications, or such longer time as may be specified by EPA in its discretion. Any non-compliance with EPA-approved reports, plans, specifications, schedules, attachments, or submission of deficient revisions following EPA disapproval, or non-compliance with an EPA-required modification shall be considered a failure to comply with a requirement of this Consent order. Determination(s) of non-compliance will

be made by EPA.

- M. In addition to the reports required by this order, Respondent shall provide to EPA, upon written request, any and all information and documents in their possession, custody or control related to the Site including, but not limited to, Site analytical data (including raw data), Site safety data, Site monitoring data, operational logs, copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage or disposal facility), the identity of treatment, storage and/or disposal facilities used, the identity of transporters used, the identity of any contractors, subcontractors and supervisory personnel used, information and documents concerning Respondent's compliance with Quality Assurance and Quality Control requirements of this Consent Order and information and documents relating to any project delays. Nothing herein shall be interpreted as limiting the inspection and information-gathering authority of EPA under Federal law.
- N. Within thirty (30) calendar days of the date Respondent concludes it has completed implementation of the removal response action outlined in the EPA-approved RAP, Respondent shall submit a written Final Report to EPA, subject to EPA approval as described in Section VIII.L. above. The written report shall detail the work undertaken to implement the RAP and shall be certified by Respondent in accordance with the terms of Section XXII, below. EPA will review the adequacy of Respondent's implementation of the RAP. EPA will notify Respondent, in writing, of any discrepancies in the Final Report or deficiencies in the execution of the RAP and the actions required to correct such discrepancies or deficiencies. Within thirty (30) calendar days of receipt of notification by EPA or as otherwise specified by EPA, Respondent shall amend the Final Report or develop an additional plan to address such discrepancies or deficiencies. Respondent shall perform such corrective actions in a manner consistent with the NCP and all applicable Federal laws and regulations. Any additional plan or amendment to the RAP or Final Report will be subject to the approval procedures outlined in Sections VIII.H. and VIII.L. above.
- O. Respondent shall not handle or remove any hazardous substances from the Site except in conformance with the terms of this Consent Order and all applicable Federal, State and local laws and regulations, as required by the NCP. Any hazardous substance, pollutant or contaminant transferred for disposal off-site as a result of this Order must be taken to a facility acceptable under EPA's Off-Site Rule, 40 C.F.R. § 300.440 in accordance with any rule or regulation promulgated pursuant to Section 121(d)(3) of CERCLA, 42 U.S.C. S 9621(d)(3).

- P. Respondent shall not commence any Work except in conformance with the terms of this Consent Order. Respondent shall not commence implementation of any EE/CA submittal developed hereunder until receiving written approval to proceed from EPA.
- Q. Respondent shall immediately notify EPA's Project Coordinator and the National Response Center ((800) 424-8802) and any other party required by law in the event of any action or occurrence during the pendency of this Consent Order which causes or threatens to cause an additional release of hazardous substances, pollutants or contaminants on, at, or from the Site, or which may create a danger to public health, welfare or the environment.
- R. In the event that EPA believes that response action or other current activities at the Site by the Respondent is causing or may cause a release or potential release of hazardous substances, or are a threat to public health or welfare or to the environment, EPA may, at its discretion, immediately halt or modify such response actions or other activities to eliminate or mitigate such actual or potential release or threat.
- S. Analytical data will be made available to EPA and WVDEP through Accutest Laboratories "LabLink" data management system. Accounts with passwords will be established for EPA and WVDEP project coordinators to access the LabLink data management system via the Internet using Microsoft Explorer or direct dial/modem. Information accessible using this system includes:
- Sample status information in real time, allowing one to track the progress of the analysis of the sample;
 - Complete access to the laboratory approved test results;
 - Downloading of analytical results in a format identical to the hard copy reports; and
 - Respondent will ensure that Accutest does not delete any of the pertinent data from the LabLink system, without ninety (90) days notice to EPA.

IX. DESIGNATED PROJECT COORDINATORS

- A. Designation of a Project Coordinator shall not relieve Respondent of its obligations to comply with the requirements of the Order. The Respondent's Project Coordinator shall be a technical and/or managerial representative of the Respondent and may be a contractor and/or consultant; provided, however, the Respondent's Project Coordinator shall not be a legal representative of the Respondent in this matter. The Project Coordinator for EPA designated pursuant to this Section and the Project Coordinator for the Respondent shall be responsible for overseeing the Work. To the maximum extent

possible, communications between the Respondent and EPA and all documents concerning the activities performed pursuant to the terms and conditions of this Consent Order, including plans, reports, approvals, and other correspondence, shall be directed to the Project Coordinators.

- B. The Respondent's Project Coordinator that has been approved with regard to the RI/FS Order is identified below. EPA hereby approves the same individual as the Project Coordinator for this Consent Order.

Arthur E. Chin, Ph.D.
Site Remediation
Exxon Company, U.S.A.
P.O. Box 728
Linden, NJ 07036

- C. EPA's Project Coordinator for this Consent Order is:

Melissa Whittington
U.S. Environmental Protection Agency (3HS23)
1650 Arch Street
Philadelphia, PA 19103-2029

- D. Respondent shall have the right to change its Project Coordinator. Such a change shall be accomplished by notifying the EPA Project Coordinator in writing at least five (5) calendar days prior to the change.
- E. EPA shall have the right to change its Project coordinators at any time without prior notice to Respondent. EPA's intent is to notify the Respondent as soon as practicable following any such change of a Project Coordinator.
- F. The absence of an EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work except when such stoppage or delay is specifically required by EPA.
- G. The EPA Project Coordinator shall have the authority to halt or modify Work or other activities performed by Respondent at the Site to eliminate a release or threat of release of hazardous substances. Such direction by an EPA Project Coordinator may be given verbally or in writing. If such direction is given verbally, the EPA Project Coordinator will later memorialize such direction in writing.

X. QUALITY ASSURANCE

- A. The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with the following documents while conducting all sample collection and analysis activities required by this Consent Order:
1. "EPA NEIC Policies and Procedures Manual" (EPA Document 330/9-78001-R (revised November 1984));
 2. "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," (QAMS-005/80 (December 1980));
 3. "QA/QC Guidance for Removal Activities," (EPA/540/G-90/004 (April 1990)) and;
 4. A Compendium of Superfund Field Operations Methods" (OSWER Directive 9355-0-14 (December 1987)).
- B. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by this Consent Order.
- C. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, Respondent shall at a minimum:
1. Use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80 and ensure that the laboratory(s) use the methods and submit deliverables delineated in the current "Statement of Work" for the EPA Contract Lab Program (current copies are available from the Environmental Services Division QA Section, Annapolis, Maryland [(410) 573-6837]). If any parameter to be analyzed for is not one of the parameters for which Contract Laboratory Program ("CLP") methods are available, the laboratory shall use methods which are EPA-approved.
 2. Ensure that EPA personnel and EPA authorized representatives are allowed access during normal business hours to the laboratory(s), records, and personnel utilized by the Respondent for analysis of samples collected pursuant to this Consent Order.
 3. For all sample collection and analysis to be conducted pursuant to this Consent Order, Respondent shall ensure that the Quality Assurance Project Plan ("QAPP") that was developed for use with the ESI work plan is adhered to. This QAPP can be amended by mutual consent of the project coordinators designated in Section IX of this Consent Order.
 4. The Respondent shall ensure that the laboratory(s) analyzing samples pursuant

to this Consent Order agrees to demonstrate its capability to perform analysis in compliance with Contract Lab Program requirements through the analysis of Performance Evaluation ["PE"] samples prior to conducting any analysis. Analysis of PE samples may be waived if the laboratory has satisfactorily analyzed PE samples submitted by EPA or the appropriate state agency within the past six (6) months. Documentation of such PE sample analysis must be submitted to the EPA Project Manager for verification.

5. Conduct and submit reports on the laboratory and field audits as described in the EPA-approved QAPP. CLP laboratories need not be audited.
6. Provide data validation of analyses done by the laboratory in accordance with the EPA-approved QAPP. The appropriate quality assurance data validation summary reports shall be submitted along with sample data and summary sheets, to the EPA Project Coordinator.
7. Respondent shall be permitted to use non-CLP methods and procedures only as provided in "Data Quality Objectives for Remedial Response Activities" (OSWER Directive No. 9355.0-7B (March 1987)).

XI. ACCESS

- A. As of the effective date of this Consent Order, Respondent shall provide to EPA and the State, and their respective employees, agents, consultants, contractors, and other authorized and/or designated representatives at all reasonable times, for the purposes of conducting and/or overseeing the Work, access to all property owned or controlled by Respondent wherein Work must be undertaken. Such access shall permit EPA and the State, and their respective employees, agents, consultants, contractors, and other authorized and designated representatives to conduct all activities described in Section XI.C. of this Consent Order. EPA and the State, and their respective employees, agents, consultants, contractors, and other authorized and designated representatives must comply with the Site Health and Safety Plan while onsite.
- B. To the extent that property wherein Work must be undertaken is presently owned or controlled by parties other than the Respondent, the Respondent shall use its best efforts to obtain Site access agreements from the present owners. Such access agreements shall be finalized as soon as practicable but no later than 10 calendar days after receiving EPA's written approval to proceed. Such agreements shall provide reasonable access for the Respondent and its employees, agents, consultants, contractors and other authorized and designated representatives to conduct the work, and for EPA and its designated representatives to conduct the activities outlined in Section XI.C. of this Consent Order.

In the event that any property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondent shall notify EPA at that time, in writing, of all efforts to obtain access and the circumstances of the failure to obtain such access. EPA may then take steps to provide such access.

- C. In accordance with law and regulation, as appropriate, EPA and its employees, agents, contractors, consultants and other authorized and designated representatives shall have the authority to enter and freely move about the location where the response actions and/or Work is being performed at all reasonable times for the purpose of, inter alia: inspecting Work, inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to the Work.
- D. Respondent may make a claim of business confidentiality for information submitted pursuant to this Order in the manner described in 40 C.F.R. S 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. S 2.204(e)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by EPA only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to Respondent.
- E. The Respondent may withhold those records and documents covered by any privilege or protection under federal law applied by federal courts in actions commenced by the United States. In the event that the Respondent withholds a document as privileged, the Respondent shall provide EPA with the title of the document, the date of the document, the name(s) of the author(s), and addressee(s)/recipient(s), a description of the nature of the document, and identification of the privilege asserted at the time such document is withheld.
- F. No such claim of confidentiality or privilege shall be made regarding any data required to be submitted pursuant to this Order, including, but not limited to sampling, analytical, monitoring, hydrogeologic, scientific, chemical or engineering data, or documents or information evidencing conditions at or around the Site, such as weekly reports, the final report, and information for the administrative record. Nor shall such claims be made for analytical data, Site safety data, Site monitoring data, operational logs, hazardous waste manifests, identities of treatment, storage and/or disposal

facilities used, identities of transporters used, identities of any contractors or subcontractors used which information is required to be submitted pursuant to this Order.

- G. Notwithstanding any provision of this Order, EPA retains all of its access and information-gathering authorities and rights under CERCLA and any other applicable statute and regulation.

XII. DISPUTE RESOLUTION

- A. Except as provided elsewhere in this Consent Order, if the Respondent objects to any EPA notification of deficiency, disapproval or other EPA action taken pursuant to this Consent Order, including billings for oversight costs, the Respondent shall notify EPA in writing of its objections within fourteen (14) calendar days of receipt of such notification or action.
- B. EPA and the Respondent shall have fourteen (14) calendar days from the receipt by EPA of the notification of objection to reach agreement. Respondent shall be given an opportunity to confer with the Director of the Hazardous Site Cleanup Division. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA will provide a written statement of its decision to the Respondent. Respondent's obligations under this Consent Order shall not be tolled by submission of any objection for dispute resolution under this Section XII.
- C. In order to prevail in any dispute regarding oversight costs otherwise payable by Respondent under this Order, Respondent must demonstrate that the costs have been calculated incorrectly or have been incurred in a manner inconsistent with the NCP.
- D. Following resolution of the dispute, as provided by this Section XII, Respondent shall perform the Work that was the subject of the dispute in accordance with the agreement reached or EPA's decision. To the extent that Respondent does not prevail upon resolution of any dispute involving contested costs, Respondent shall submit to EPA within fourteen (14) calendar days of receipt of such resolution all outstanding oversight costs determined to be owed to EPA, including any accrued interest, as specified in Section XIII.A. below.
- E. Notwithstanding any other provision of this Consent Order, no action or decision by EPA pursuant to this Consent order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. S 9613(h).

XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

- A. For each day, or portion thereof, that Respondent fails to comply with any requirement of this Consent Order at the time and in the manner set forth herein, the Respondent shall be liable upon demand to EPA for the sums set forth below as stipulated penalties. Checks shall be made payable to the "Hazardous Substance Superfund" and checks shall be transmitted to:

U.S. Environmental Protection Agency, Region III
Attention: Superfund Accounting
P.O. Box 360515
Pittsburgh, PA 15251-6515

Payment shall be made by cashier's or certified check within thirty (30) calendar days of receipt of demand. Interest at the rate of the current annualized treasury bill rate shall begin to accrue on the unpaid balance at the end of the thirty day period pursuant to Section 107(a) of, CERCLA, 42 U.S.C. S 9607(a). A copy of the transmittal letter shall be sent simultaneously to the EPA Project Coordinator. A copy of the transmittal letter and a copy of the check shall be sent simultaneously to:

EPA Region III Hearing Clerk (3RCOO)
1650 Arch Street
Philadelphia, PA 19103-2029

- B. Stipulated penalties shall accrue per violation per day in accordance with the following schedule:

<u>Period of Non-Compliance</u>	<u>Penalty</u>
1st through 15th day	\$1,500.00
15th through 30th day	\$2,500.00
31st day and each day, thereafter	\$3,500.00

Neither the accrual of, nor demand for stipulated penalties set forth in this Section XIII shall preclude EPA from pursuing other penalties or sanctions available to EPA for Respondent's failure to comply with the requirements of this Consent Order.

- C. To the extent that the Respondent prevails in any dispute resolution pursuant to Section XII above, penalties will not be assessed by EPA for matters settled in Respondent's favor by the dispute resolution.

- D. Notwithstanding EPA's ability to obtain penalties for noncompliance pursuant to this Section, EPA reserves the right to terminate this Consent Order pursuant to Section XXXI.

XIV. FORCE MAJEURE AND NOTIFICATION OF DELAY

- A. The Respondent, through its Project Coordinator, shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made verbally as soon as possible but not later than three (3) business days after Respondent becomes aware or should have become aware of any such delay or anticipated delay and in writing no later than seven (7) business days after Respondent becomes aware, or should have become aware, of such delay or anticipated delay. Such written notification shall be certified by the Project Coordinator in accordance with Section XXII of this Consent Order and shall describe fully the nature of the delay, including how it may affect the Work and schedule; the actions that will be or have been taken to mitigate, prevent, and/or minimize further delay; and the timetable according to which the future actions to mitigate, prevent and/or minimize the delay will be taken. The Respondent shall ensure that their Project Coordinator provides Respondent with immediate notification of any project delays. The Respondent shall adopt all reasonable measures to avoid and minimize such delay.
- B. To the extent Respondent intends to claim that any delay or anticipated delay described by Respondent in accordance with Section XIV.A. was or will be caused by circumstances beyond their control, Respondent shall, within fourteen (14) calendar days after the Respondent becomes aware or should have become aware of such delay or anticipated delay, submit to EPA a "Notice of Force Majeure" in which Respondent fully demonstrates that the delay was caused by circumstances beyond its control which could not have been overcome by due diligence, the necessity of the proposed length of the delay, and that the Respondent took, and is taking all reasonable measures to avoid and minimize delay. The Respondent shall have the burden of proving these factors, to EPA. Any "Notice of Force Majeure" shall be certified by a responsible official of Respondent pursuant to Section XXII.A. of this Consent Order.
- C. Any such delay that EPA determines (1) has resulted or will result from circumstances beyond the control of Respondent and (2) that could not and cannot be overcome by due diligence on the Respondent's part, shall not be deemed to be a violation of Respondent's obligations under this Consent Order, and shall not subject Respondent to stipulated penalties under this Consent Order for that particular delay. In such event, the schedule affected by the delay shall be extended for a period EPA deems necessary to complete the Work on an expedited basis, but no greater than a period equal to the delay directly resulting from such circumstances. Increased costs of performance of the

requirements of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent. Delay in one item or component of Work or EE/CA submittal does not necessarily justify delay in timely achievement of other items or components. Each such item must be separately addressed and delay substantiated according to the provisions of Sections XIV.A. & B. above.

- D. Failure of the Respondent to comply with the notice requirements of Sections XIV.A. & B. above shall constitute a waiver of the Respondent's right to invoke the benefits of this Section with respect to that event.
- E. In the event that EPA and the Respondent cannot agree that any delay in compliance with the requirements of this Consent Order has been or will be caused by circumstances beyond the control of the Respondent that cannot be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of Section XII (Dispute Resolution) of this Consent Order.

XV. RESERVATION OF RIGHTS

- A. Except as expressly provided in this Consent Order, (1) all parties reserve all rights, claims, interests and defenses it may otherwise have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order, including the right to seek injunctive relief and/or the imposition of statutory penalties.
- B. As provided by this Consent Order, EPA expressly reserves its right to disapprove of Work performed by Respondent; to halt Work being performed by Respondent if Respondent has not complied with any approved EE/CA submittal or this Consent Order, or at any time EPA deems necessary to protect public health, welfare or the environment and to perform such Work; and to request and require hereunder that Respondent corrects and/or re-performs any and all Work disapproved by EPA; and/or to request or require that Respondent perform response actions in addition to those required by this Consent Order. Further, EPA reserves the right to undertake response action at any time EPA deems appropriate. In the event EPA requires Respondent, and Respondent declines, to correct and/or re-perform work that has been disapproved by EPA and/or to perform response actions in addition to those required by this Consent Order, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred, and/or to seek any other appropriate relief. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred and/or take

any other action authorized by law.

- C. EPA reserves the right to bring an action against the Respondent for recovery of all recoverable costs incurred by the United States related to this Consent Order which are not reimbursed by the Respondent, as well as any other costs incurred by the United States in connection with response actions conducted at the Site.
- D. This Consent Order concerns certain response actions (Work described in Section VIII, above) concerning the Site. Such response actions might not fully address all contamination at the Site. Subsequent response actions which may be deemed necessary by EPA are not addressed by this Consent Order. EPA reserves all rights including, without limitation, the right to institute legal action against Respondent and/or any other parties in connection with the performance of any response actions not addressed by this Consent Order.
- E. Nothing in this Consent Order shall limit the authority of the EPA Project Coordinators in accordance with their duties as outlined in the NCP and CERCLA.

XVI. OTHER CLAIMS

- A. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not bound by this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.
- B. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. S 9611(a)(2).
- C. By consenting to the issuance of this Consent Order, the Respondent waives any claim to reimbursement they may have under Sections 106(b) or any claims against the Hazardous Substance Superfund or the EPA under Sections 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611 and 9612.

XVII. OTHER LAWS

All Work shall be undertaken in accordance with the requirements of all applicable and/or relevant and appropriate local, State, and Federal laws and regulations, as required by the NCP.

XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

- A. The effective date of this Consent Order shall be the date on which it is signed by EPA.
- B. This Consent Order may be amended by mutual agreement of EPA and the Respondent. Such amendments shall be in writing and shall have as their effective date the date on which such amendments are signed by EPA. Modifications to any EPA-approved EE/CA submittal and its implementation may be made by mutual agreement of the Project Coordinators. Such modifications shall be memorialized in writing by the Project Coordinators.
- C. Any reports, plans, specifications, schedules, or other submissions required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved reports, plans, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and will subject the Respondent to the requirements of Section XIII (Delay in Performance and Stipulated Penalties), above. Determinations of non-compliance will be made by EPA. EPA reserves its right to terminate this Consent Order for noncompliance pursuant to Section XXXI.
- D. No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, schedules, or other submissions by the Respondent or the requirements of this Consent Order will be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Consent Order, and to comply with the requirements of this Consent Order unless formally modified.

XIX. LIABILITY OF THE UNITED STATES GOVERNMENT

- A. Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, or of its employees, agents, servants, receivers, successors, or assigns, or of any persons, including, but not limited to firms, corporations, subsidiaries, contractors, or consultants, in carrying out the Work, nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondent in carrying out the Work.

XX. INDEMNIFICATION AND HOLD HARMLESS

- A. Respondent agrees to indemnify and hold harmless the United States, its agencies, departments, agents, officers, employees and representatives from any and all causes of action caused by any acts or omissions of Respondent or its contractors in carrying out the response action.

XXI. REIMBURSEMENT OF COSTS

- A. EPA shall submit to Respondent periodic and/or a final accounting of oversight costs incurred by the U.S. Government with respect to this Consent Order. Oversight costs shall consist of all costs, including indirect costs incurred by EPA, its employees, agents, contractors, consultants and other authorized and/or designated representatives in connection with EPA's oversight of the Work.
- B. Respondent shall, within forty five (45) calendar days of receipt of the accounting, remit a check for the amount of those costs which Respondent is obliged by law to pay, made payable to the "Hazardous Substance Superfund". Interest at a rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) shall begin to accrue on the unpaid balance from the day after the expiration of the thirty-day period notwithstanding any dispute or an objection to any portion of the costs. Checks shall specifically reference the Site and shall be transmitted as specified in Section XIII of this Consent order.

XXII. CERTIFICATION OF COMPLIANCE

- A. Unless otherwise required by the terms of this Order, any notice, report, certification, data presentation, or other document submitted by Respondent under or pursuant to this Consent Order, which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirements of this Consent Order shall be certified by the Respondent, a responsible official of the Respondent or by the Project Coordinator for the Respondent. The term "responsible official" means:
1. A president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or
 2. The manager of one or more manufacturing facilities employing more than 250

persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the consumer price index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The responsible official of a partnership or sole proprietorship means the general partner or the proprietor, respectively.

- B. The written Final Report required by Section VIII.N. of this Consent Order, any written notification described in Section XII.A. of this Consent Order, and any "Notice of Force Majeure", described in Section XIV.D. of this Consent Order, shall be certified by the Respondent or a responsible official of the Respondent.
- C. The certification required by Section XXII.A. of this Consent Order shall be in the following form:

I certify under penalty of law that this document and all attachments hereto were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted.

Based on my inquiry of the person or persons who manage such system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

I am aware that there are significant penalties for submitting false information including the possibility of fines and imprisonment for knowing violations.

Signature:

Name (print):

Title:

- D. **Submission of documents** pursuant to this Consent Order which are found by EPA to **contain false information** shall constitute a failure to comply with this Consent Order and shall subject Respondent to stipulated penalties whether or not a responsible official of Respondent has certified the document.

XXIII. SHIPMENT OF HAZARDOUS SUBSTANCES

- A. Respondent shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the

appropriate state environmental official in the receiving state and to EPA's Project Coordinator of such shipment of hazardous substances. However, the requirement to notify to EPA of shipments shall not apply to any such off-site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards. Notifications to states in those circumstances shall be governed by applicable State law.

- B. The notification required by Section XXIII.A. shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation of the hazardous substances. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.
- C. The identity of the receiving facility and state will be proposed by Respondent and subject to EPA approval. Respondent shall provide all relevant information, including information under the categories noted in Section XXIII.A., above, on the off-site shipments, as soon as practicable, but no later than three (3) business days before the hazardous substances are actually shipped.

XXIV. RECORD RETENTION

- A. Respondent shall preserve all documents and information relating to the Work performed under this order, or relating to the hazardous substances found on or released from the Site, for ten (10) years following completion of the response action required by this Order. In addition, Respondent shall also retain, as appropriate, monthly reports on analytical services pursuant to OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to Potentially Responsible Party-Lead Superfund Sites", (July 6, 1992). At the end of this ten year period and thirty (30) days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA.

XXV. NO ADMISSIONS

- A. By entering into this Consent Order, or by taking any action in accordance with it, Respondent does not admit any of the findings of fact, conclusions of law, determinations or any of the allegations contained herein, nor does Respondent admit liability or admit any issues of law or fact or any responsibility for the alleged release or

threat of release of any hazardous substance into the environment. Notwithstanding any other provision of this Consent Order, Respondent agrees not to contest EPA's authority or jurisdiction to issue or enforce this Consent Order in any proceeding to enforce the terms of this Order. The participation of any Respondent in this Consent Order shall not be admissible against any Respondent in any judicial or administrative proceeding, except in an action by EPA to enforce the terms of this Consent Order, or in actions to which EPA is a party which allege injury based, in whole or in part, on acts or omissions of Respondent in connection with performance under this Consent Order.

- B. By signing and consenting to this Consent Order or by taking any actions pursuant hereto, Respondent does not concede that any investigation or action at the Site is necessary to protect the public health or welfare or the environment, or for any other reason; that the methodologies or protocols prescribed by the applicable EPA guidance or described or noted herein or otherwise required by the EPA for performance of work pursuant hereto are the only ones appropriate for the proper conduct of such work; or that a release or threatened release of hazardous waste or substance at the Site may present an imminent and substantial endangerment to the public health or welfare or to the environment. Respondent has agreed to this Consent Order to further the public interest in avoiding unnecessary conflict or litigation between the parties.

XXVI. DEFINITIONS

- A. "Business days" as used in this Order shall mean every day of the week except Saturdays, Sundays and federal holidays.
- B. "Calendar days" as used in this Order shall mean every day of the week, including Saturdays, Sundays and federal holidays.
- C. "Days" as used herein shall mean "calendar days" unless specified otherwise.
- D. The term "Work" shall mean any and all items included in Section VIII. (Work to be Performed) of this Consent Order and any other activities required to be undertaken pursuant to this order.
- E. "Quarterly Progress Reports" are progress reports described in Section VIII.J. of this Consent Order that are due the first day of the following months: January, April, July, and October, beginning on January 1, 1999, and every year thereafter, until such a time that EPA notifies Respondent that the Work has been completed.
- F. "LabLinks" is a database that the EPA and State project coordinators will have access to in order to evaluate all raw analytical data collected from the Site, as soon as it is

available.

- G. "The State" shall mean the State of West Virginia, including all departments, offices and agencies thereof.
- H. All terms not defined herein shall have the meanings set forth in CERCLA and the NCP.

XXVII. NOTICE OF COMPLETION

- A. When Respondent believes that (1) the RAP has been fully implemented in accordance with the requirements of this Consent Order; (2) all costs reimbursable under Section XXI of this Consent Order have been paid to EPA; and (3) all penalties assessed by EPA pursuant to this Consent Order have been paid to EPA, Respondent shall so notify EPA in writing ["Respondent's Completion Petition"].
- B. If, following receipt of Respondent's Completion Petition, EPA determines that (1) the RAP has been fully implemented in accordance with the requirements of this Consent Order; (2) all costs reimburseable under Section XXI of this Consent Order have been paid to EPA, and (3) all penalties assessed by EPA pursuant to this Consent Order have been paid to EPA, EPA shall so notify Respondent in writing ["Notice of Completion"]. EPA issuance of a Notice of Completion shall not alter or affect any provision of this Consent Order including, without limitation, Sections XV ("Reservation of Rights"), XVI ("Other Claims"), XIX ("Liability of the United States"), XX ("Indemnification and Hold Harmless"), and XXIV ("Record Retention").
- C. If EPA does not agree that (1) the RAP has been fully implemented in accordance with the requirements of this Consent Order; (2) all costs reimburseable under Section XXI of this Consent Order have been paid to EPA, and (3) all penalties assessed by EPA pursuant to this Consent Order have been paid to EPA, EPA shall notify Respondent in writing of the activities that must be undertaken to complete such work. If applicable, EPA will set forth a schedule for performance of such activities consistent with this Consent Order or may require Respondent to submit a schedule for EPA approval. Respondent shall perform all activities described in EPA's notice in accordance with the specifications and schedules established pursuant to this paragraph, subject to Respondent's right to invoke dispute resolution under Section XII of this Consent Order, and shall submit a Completion Petition to EPA in accordance with Section XXVIII.A. of this Consent Order.

XXVIII. COVENANT NOT TO SUE/CONTRIBUTION PROTECTION

- A. From the effective date of this Consent Order and for as long as EPA determines that the terms of this Consent Order, including any modifications made hereto, are being and have been fully complied with, and except for any proceeding to enforce its terms or collect any applicable costs or penalties, EPA agrees not to sue or take any administrative action against the Respondent, its assigns, and successors in interest, for the Work required by this Consent Order or for reimbursement of costs incurred in connection with this Consent Order.
- B. Nothing in this Consent Order shall be construed to limit the rights EPA has reserved under Section XV of this Consent Order.
- C. Nothing in this Consent Order shall be construed to grant any rights to persons not a party to this Consent Order.
- D. The Parties agree that Respondent is entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Order. "Matters addressed in this Consent Order" shall mean the actions described in Section VIII of this Consent Order and payment of oversight costs as required by Section XXI of this Consent Order.

XXIX. COMMUNITY RELATIONS

- A. Where appropriate, EPA and Respondent shall cooperate in the preparation of information to be disseminated to the public at the Fairmont Community Liaison Panel meetings and other public meetings which may be held to explain the Work.

XXX. ENFORCEMENT OF NEGOTIATED FINAL PROJECT AGREEMENT

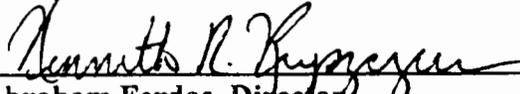
- A. The Parties agree that this Consent Order shall be modified to incorporate the requirements of a Final Project Agreement ("FPA") to be executed by EPA, Exxon and WVDEP under EPA's Project XL.

XXXI. SUSPENSION OF REQUIREMENTS UNDER ADMINISTRATIVE ORDER

- A. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), EPA hereby suspends all requirements under the Administrative Order on Consent for Remedial Investigation /Feasibility Study (Docket No. III-97-103-DC) issued by EPA on September 17, 1997 ("RI/FS Order") until further notice. Such suspension of requirements may be lifted at any time, based solely on the discretion of EPA, upon notice to Exxon from the Chief of the Remedial Branch, Region III, Hazardous Site Cleanup Division. Such Notice shall be effective upon receipt by the Exxon Project Coordinator designated pursuant to Section XI. of the RI/FS Order. A decision to lift the suspension of the RI/FS Order requirements pursuant to this Section shall not be subject to Dispute Resolution under this Consent Order.
- B. If the Parties fail to reach agreement on the terms on an FPA, or the respondent is in noncompliance with the requirements of this Consent Order (pursuant to Section XVIII), EPA reserves to right to lift the suspension of the RI/FS Order and to rescind this Consent Order. In the event the suspension of the RI/FS Order is lifted, Respondent shall submit a revised work schedule within twenty (20) calender days from the date in which Respondent received notice of suspension

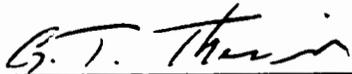
IT IS SO AGREED AND ORDERED:

**FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY:**


Abraham Ferdas, Director
for Hazardous Site Cleanup Division
United States Environmental Protection Agency
Region III

12/11/98
Date

FOR THE RESPONDENT:


G. T. Theriot

12/4/98
Date

Name: G. T. Theriot

Title: Environmental & Safety Manager

IN THE MATTER OF:

SHARON STEEL CORPORATION -
FAIRMONT COKE WORKS SITE,
FAIRMONT, WEST VIRGINIA

EXXON CORPORATION

Respondent

Proceeding Under Sections 104,
106(a), and 122(a) of the
Comprehensive Environmental Response,
Compensation, and Liability Act of
1980, as amended by the Superfund
Amendments and Reauthorization Act
of 1986, 42 U.S.C. §§ 9604, 9606(a),
and 9622(a)

EPA Docket No.

III-99-004-DC

FIRST MODIFICATION TO THE
ADMINISTRATIVE ORDER BY CONSENT
FOR REMOVAL RESPONSE ACTION

The United States Environmental Protection Agency ("EPA") issued an Administrative Order by Consent for Removal Response Action ("Order"), Docket No. III-99-004-DC, providing for the implementation of removal response actions at the Fairmont Coke Works Site ("Site") located in Fairmont, Marion County, West Virginia. EPA and Exxon Corporation ("Exxon" or "Respondent") agreed to the entry of the Order, which became effective on December 11, 1998.

Pursuant to Section XXX.A of the Order, EPA and Exxon have agreed to the following modifications to the Order:

1. ***Paragraphs C.1. and C.2 of Section VIII. as they appeared in the original Order are deleted and the following is added:***
- C. Respondent shall, within thirty (30) calendar days of the effective date of this Consent Order, amend the Expanded Site Investigation Work Plan ("ESI Work Plan") and associated documents to develop a work plan for EPA approval for performance of an Engineering Evaluation/Cost Analysis ("EE/CA"), and a baseline human health risk assessment that is consistent with CERCLA; the NCP; EPA guidance including, without limitation, EPA's "Guidance on Conducting Non-Time-Critical Removal Actions Under CERCLA" (No. 9360.0-32 (August 1993)) ("Guidance") and those conditions as set forth herein. The amended or supplemented ESI Work Plan shall be referred to as the EE/CA Work Plan and shall include, but not be limited to:
 1. An evaluation of the nature and extent of the threat to the public health and welfare and the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at and from the Site. As identified in the Final Project Agreement ("FPA") to be executed by EPA, Exxon and WVDEP on or about May 24, 1999, the baseline human health risk assessment identified in Section VIII.C.1. above shall be conducted as follows:
 - a. A baseline human health risk assessment shall be a required component of the EE/CA Work Plan. The assessment of the potential risk associated with the direct contact exposure of onsite receptors to contamination observed at the Site will be limited to commercial/industrial exposure scenarios. This limitation is appropriate since Exxon has ownership of the Site and expects to limit the redevelopment of the Site to commercial/industrial uses through institutional controls.
 - b. The acceptable carcinogenic risk range for remedial actions at Superfund sites identified by the 1990 National Oil and

Hazardous Substances Pollution Contingency Plan (NCP) (40 C.F.R. § 300.430(e)(2)(I)(A)(2)) ranges from 10^{-4} to 10^{-6} depending on site specific factors. This is consistent with EPA's goal to reduce the threat from carcinogenic contaminants such that the excess risk of cancer to an individual exposed over a lifetime generally falls within a range of 10^{-4} to 10^{-6} (i.e., an exposed individual will have an estimated upper bound excess probability of developing cancer of one in ten thousand (1×10^{-4}) to one in one million (1×10^{-6})). The 10^{-4} risk level will be used at the Fairmont Coke Works Site as: (1) the target risk level for determining the need for removal/remedial action, and (2) the preliminary remediation goal (PRG). As noted in the FPA, the factors which went into the decision to use the 10^{-4} value include:

- (i) The current and anticipated zoning of the property;
 - (ii) The redevelopment strategy that Exxon has proposed to EPA;
 - (iii) The expected future use of the property (i.e., commercial/industrial); and
 - (iv) The anticipated low probability of exposures of receptors to residual contamination, if any, at the Site.
- c. The PRGs discussed in Section VIII.C.1.(b) above may be modified by EPA as more information becomes available based on sound scientific considerations and/or the given waste management strategy selected at the time of selection of the response action.
- d. The final remediation goals (i.e., media-specific cleanup levels) for the Site will be determined by EPA when the response action is selected by EPA. The criteria identified in Section 2.6 of the EE/CA guidance (EPA 540-R-93-057), effectiveness, implementability, and cost, shall be used in the comparative analysis of removal alternatives and will be considered in determining the appropriate level of protection. The media-specific cleanup levels will be set forth in the Action Memorandum(s) and the Record of Decision.
- e. Respondent shall use alternative published toxicity and site-specific exposure data/criteria in the risk assessment instead of default parameter values, provided that the sources of these data are proposed by Exxon and acceptable to EPA and WVDEP. Emphasis shall be placed on the use of site-specific factors in the

risk assessment.

2. An evaluation of response action alternatives to prevent, mitigate or eliminate unacceptable risks to human health and welfare and the environment arising from the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Site. As identified in the FPA, during the evaluation of response actions the following concepts shall be adhered to:
 - a. To the extent practicable, the non-time critical removal action shall be consistent with and contribute to the efficient performance of any long-term remedial action at this Site.
 - b. The northern area of the Site, as delineated on Figure 1 (attached), which encompasses all of the waste management units at the Site shall be designated as a single Area of Contamination ("AOC") in accordance with OSWER Directive 9347.3-05FS, July 1989. This designation is justified due to the close proximity of the landfills, waste sludge areas and impoundment, and the dispersed nature of the contamination in these parcels. Any onsite management/disposal of the wastes present in this area shall proceed in a safe, regulatory compliant and efficient manner without triggering RCRA land disposal restrictions ("LDRs"). Any offsite management/disposal of the wastes present in this area shall also proceed in a safe, regulatory compliant and efficient manner.
 - c. It is recognized that some onsite wetland areas were formed as a result of site grading/contouring that occurred during EPA's interim removal actions (May 1993 - August 1996). Exxon will prepare a map that identifies such potential wetland areas that were created by EPA removal actions; the determination that such wetlands were created by EPA is subject to EPA approval. EPA will evaluate such mapped wetland areas using the following decision process:
 - (i) If any such areas are part of existing treatment or drainage systems, no mitigation will be required.
 - (ii) If, in the process of the anticipated Site response (e.g., landfill capping), such areas would be improved due to grading and/or drainage reconstruction/upgrade, such grading and/or drainage reconstruction/upgrade may be

considered mitigation.

- (iii) Wetlands identified as being created during the 1993-1996 EPA removal action that do not meet the criteria listed in (i) and (ii) above, will be evaluated on a case-by-case basis to determine if mitigation will be required.

2. Section VIII.J. as it appeared in the original Order is deleted and the following Section VIII. J. is added:

- J. Beginning January 1, 1999 and for every quarter thereafter, or, such longer interval as may be determined in writing by the EPA Project Coordinator designated pursuant to Section IX, and until EPA advises Respondent that the Work is complete, the Respondent shall provide EPA with a written Progress Report for each preceding quarter or if applicable, the period specified in writing by the EPA Project Coordinator. In special circumstances when extensive work is being performed by the Respondent, the EPA Project Coordinator may require Respondent to provide progress reports for an interval as frequently as every 14 days. EPA shall provide Respondent with written notice that Progress Reports must be submitted at intervals less than approximately 90 days. The Progress Reports shall include, at a minimum:
 - 1. A description of the actions that have been taken toward achieving compliance with this Consent Order;
 - 2. A description of all data anticipated and activities scheduled for the next quarter or, if applicable, the period specified in writing by the EPA Project Coordinator;
 - 3. A description of any problems encountered or anticipated;
 - 4. Any actions taken to prevent or mitigate such problems;
 - 5. A schedule for when such actions will be completed;
 - 6. A description of all raw analytical data available via "LabLinks";
 - 7. All modifications to any EE/CA submittal and schedule made in accordance with Section XVIII of this Consent Order during the reporting period; and
 - 8. A complete account of all Project XL related activities that have occurred in the previous quarter or, if applicable, the period specified in writing by the EPA Project Coordinator, and those Project XL activities anticipated for the coming quarter or, if applicable, the period specified in writing by the EPA Project Coordinator.

3. *Section X.C.6 as it appeared in the original Order is deleted and the following Section X.C.6 is added:*

C. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, Respondent shall, at a minimum:

6. Provide data validation of analyses done by the laboratory in accordance with the EPA-approved QAPP and the Data Usability Assessment set forth in this Paragraph X.C.6. The appropriate quality assurance data validation summary reports shall be submitted along with sample data and summary sheets, to the EPA Project Coordinator at the time sample results are provided to EPA. As identified in the FPA, the following validation concepts shall be adhered to:

a. In the Data Usability Assessment (DUA), Data Usability Assessment/Data Validation Worksheets shall be used in conjunction with data summary tables generated directly from the project database to assess all samples submitted for Target Analyte List/Target Compound List ("TAL/TCL") analysis. Standard data qualifiers shall be applied to the data based on the U.S. EPA Region III Modifications to the *National Functional Guidelines for Organic Data Review* (September 1994), the U.S. EPA Region III Modifications to the *Laboratory Data Validation Functional Guidelines for Evaluating Inorganic Analysis* (February 1994), the project-specific Quality Assurance Project Plan (ICF Kaiser, 1998a), method specific criteria and sound technical judgment.

b. The DUA shall include the following eight steps:

- (i) Upload electronic data results into the project database and generate data summary tables; Compare the electronic data results to the results reported on the Form I's to verify accuracy of the electronic data;
- (ii) Review of data package completeness;
- (iii) Review of quality control (QC) summary forms to determine if the QC requirements were met and to determine the effect of any non-compliance with QC requirements on the precision, accuracy, and sensitivity of the data;
- (iv) Review of the overall data package to determine if

- contractual requirements were met (based on method requirements and data validation guidelines);
- (v) Within a Sample Delivery Group (SDG), review of raw data associated with ten of twenty samples per parameter type (VOC, SVOCs, pesticides/PCBs, and metals) per SDG to verify that the sample results and quantitation limits were correctly calculated and reported;
 - (vi) Review of additional quality assurance/quality control (QA/QC) parameters (e.g., field duplicates, field blank contamination, and matrix interference) to determine technical usability of the data;
 - (vii) Apply standard data quality qualifiers (U, J, UJ, R) to the data, as appropriate; and
 - (viii) Update the project database with the data quality qualifiers.
- c. Steps b. ii. through b.vi., above, shall involve an evaluation of the following QA/QC parameters to determine the technical usability of the data:
- (i) Holding times to assess potential for degradation that could affect accuracy;
 - (ii) Method, field, trip and rinsate blank results to assess contamination for all compounds/analytes. Instrument blank results for inorganics to assess contamination and instrument performance problems that may result in false positive or false negative results;
 - (iii) Matrix spike and matrix spike duplicate (MS/MSD) recoveries for organics and laboratory control sample (LCS) recoveries for inorganics to assess accuracy of the methods;
 - (iv) Inorganic instrument calibrations and performance standards to assess accuracy and sensitivity;
 - (v) Surrogate spike recoveries for organics to assess extraction efficiency and the accuracy of the analysis;
 - (vi) MS/MSD relative percent differences (RPDs) for organics, and sample and matrix duplicate RPDs for inorganics to assess precision of the method relative to the specific sample matrix;
 - (vii) Field duplicate RPDs to assess precision of the method relative to field sampling techniques, the specific sample matrix, and representativeness of the sample to the area sampled;

- (viii) Matrix interference effects on inorganic analytes that may affect accuracy (false positives and negatives) using method QC results;
 - (ix) Detection and quantitation limits to assess sensitivity as compared to data user needs; and
 - (x) Determination of which set of analyses to use when multiple analyses for one sample have been submitted by the laboratory (e.g., due to dilutions, re-extractions, re-analyses).
- d. If during the DUA technical or reporting issues are noted, a more in-depth review of the data shall be performed. If such technical or reporting issues are noted, Exxon shall submit a work plan to EPA for approval, outlining the steps that will be taken to ensure the quality of the data.
- e. The DUA reports shall include completed Worksheets which shall note all quality control outliers, their effects on the reported results, and determination of usability for each compound/analyte reported in each sample included in the data package. An overall summary of data quality shall be presented with the worksheets and shall define data acceptability and/or problems with accuracy, precision, sensitivity, and representativeness of the results. Data summary tables in spreadsheet format that include the results and the qualifiers added during the DUA shall be included in the DUA reports.

4. Section XXVII of the original Order is deleted and the following Section XXVII is added:

XXVII. NOTICE OF COMPLETION

- A. When Respondent believes that (1) the RAP has been fully implemented in accordance with the requirements of this Consent Order; (2) all costs reimbursable under Section XXI of this Consent Order have been paid to EPA, (3) all penalties assessed by EPA pursuant to this Consent Order have been paid to EPA; and (4) Sections XXIX and XXXII have been fully implemented, Respondent shall so notify EPA in writing ["Respondent's Completion Petition"].
- B. If, following receipt of Respondent's Completion Petition, EPA determines that (1) the RAP has been fully implemented in accordance with the requirements of

this Consent Order; (2) all costs reimbursable under Section XXI of this Consent Order have been paid to EPA, (3) all penalties assessed by EPA pursuant to this Consent Order have been paid to EPA, and (4) Sections XXIX and XXXII have been fully implemented, EPA shall so notify Respondent in writing ["Notice of Completion"]. EPA issuance of a Notice of Completion shall not alter or affect any provision of this Consent Order including, without limitation, Sections XV ("Reservation of Rights"), XVI ("Other Claims"), XIX ("Liability of the United States"), XX ("Indemnification and Hold Harmless"), and XXIV ("Record Retention").

- C. If EPA does not agree that (1) the RAP has been fully implemented in accordance with the requirements of this Consent Order; (2) all costs reimbursable under Section XXI of this Consent Order have been paid to EPA, (3) all penalties assessed by EPA pursuant to this Consent Order have been paid to EPA, and (4) Sections XXIX and XXXII have been fully implemented, EPA shall notify Respondent in writing of the activities that must be undertaken to complete such work. If applicable, EPA will set forth a schedule for performance of such activities consistent with this Consent Order or may require Respondent to submit a schedule for EPA approval. Respondent shall perform all activities described in EPA's notice in accordance with the specifications and schedules established pursuant to this paragraph, subject to Respondent's right to invoke dispute resolution under Section XII of this Consent Order, and shall submit a Completion Petition to EPA in accordance with Section XXVII.A. of this Consent Order.

5. *Section XXIX of the original Order is deleted and the following Section XXIX is added:*

XXIX. COMMUNITY RELATIONS AND STAKEHOLDER INVOLVEMENT

- A. Where appropriate, EPA and Respondent shall cooperate in the preparation of information to be disseminated to the public at the Fairmont Community Liaison Panel (FCLP) meetings and other public meetings which may be held to explain the Work.
- B. Respondent and EPA agree to go beyond the minimum Superfund community relations requirements in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and involve the community, through its representative (the FCLP), in the planning and implementation of the response action(s). Respondent and EPA agree to work cooperatively with the WVDEP and the FCLP to share information and responsibility, and to attempt in good faith to build a process geared toward achieving a consensus among the Parties on all major aspects of the Work.

6. *The following provision (Section XXXII.) is added:*

XXXII. REDEVELOPMENT

- A. Exxon shall work in cooperation with EPA, WVDEP and the community of Fairmont to clean up the Site and facilitate the redevelopment of the property. Exxon shall manage all demolition debris and asbestos containing material (ACM) in accordance with the requirements of all applicable local, state and federal laws and regulations.
1. Exxon shall facilitate redevelopment of the Site through the following demolition program;
 - a. Phase 1: demolition of the smoke stack and structures within the coal and coke handling area (with the exception of the coke ovens); removal of all ACM from such structures;
 - b. Phase 2: demolition of the coke oven; removal of all ACM from such coke oven;
 - c. Phase 3: demolition of all process buildings; removal of all ACM from the process buildings; demolition of all foundations/tank platforms to one foot below grade; and segregation of demolition debris for recycling of salvagable materials.
 2. All reasonable steps shall be taken by Exxon to facilitate the industrial/commercial redevelopment of the property. Such steps shall include, but are not necessarily limited to:
 - a. Engaging the services of redevelopment consultants and companies to determine how best to make the Site most amenable to development and to market the Site;
 - b. Working with local and state redevelopment agencies (e.g., Fairmont Industrial Credit Corporation and West Virginia Development Office) in identifying potential redevelopment options and developers;
 - c. Securing the opinion of the Fairmont community on redevelopment options for the site;

- d. Instituting improvements to the Site and area infrastructure, to be determined by Exxon on a case-by-case basis, in order to make the Site more suitable for development; and
 - e. Conducting the building demolition program outlined in A.1., above, in a manner consistent with the intent to bring the property to a condition amenable to industrial/commercial redevelopment.
3. Exxon shall implement the following general approach to facilitate the redevelopment of the Site, and to make the Site attractive to the widest number of possible commercial/industrial users;
- a. Conduct a "potential for redevelopment" Site assessment to determine the physical characteristics of the Site relative to the potential for redeveloping the Site, such as (a) the capacity of the Site to support commercial/industrial development, (b) subsoil characteristics (e.g., load bearing capacity), (c) the anticipated condition of the Site following demolition activities and any response actions and (d) recommended upgrades to the Site. An engineering analysis of the Site infrastructure shall be conducted to examine utilities available at the property boundary, available services and access to the Site (e.g., transportation, roads, rail, waterways, etc.) and recommended upgrades to the infrastructure to improve its development potential.
 - b. Conduct an environmental assessment summarizing the contamination at the Site and what contamination will remain after implementation of response action(s). The impact of institutional controls and/or deed restrictions on the redevelopment of the Site shall also be studied. Any necessary restrictions or precautions on construction and excavation activities shall be identified.
 - c. Conduct a real estate market overview compiling the historic uses of the Site and surrounding areas in Marion County and available technical data on the Site, such that it can be made available to prospective redevelopers. Other factors that shall be examined are the regional need for land, market value of land, and the availability and quality of the work force.
 - d. Identify market options, including examination and identification of legal, regulatory and/or political factors, which could constrain or enhance the redevelopment of the Site.

- e. Conduct a real estate market analysis integrating all information obtained in the previous four steps into a final report to identify the range of potential uses of the Site. Environmental, site, regulatory, legal and/or political factors, and public opinion will determine the possible outcomes.
- f. Conduct a financial analysis and develop estimates of the potential value of the Site. These estimates will depend on whether redevelopment interest in the Site exists in either the public or private market sector or both. An estimate of the potential economic value of the commercial/industrial redevelopment of the Site to the Fairmont community and region shall also be obtained.
- g. Prepare a disposition plan that includes the assessments, analyses and conclusions identified in A.3.a-f, above, and that outlines the strategy for facilitating the redevelopment of the Site beyond the assessment and planning stages. Exxon shall submit such plan to EPA for review and comment.

IT IS SO AGREED AND ORDERED:

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

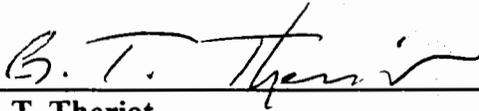


Abraham Ferdas, Director
Hazardous Site Cleanup Division
United States Environmental Protection Agency
Region III

5/21/99

Date

FOR THE RESPONDENT:



G. T. Theriot
Manager, Environmental and Safety Department
Exxon Company U.S.A.

5/20/99

Date

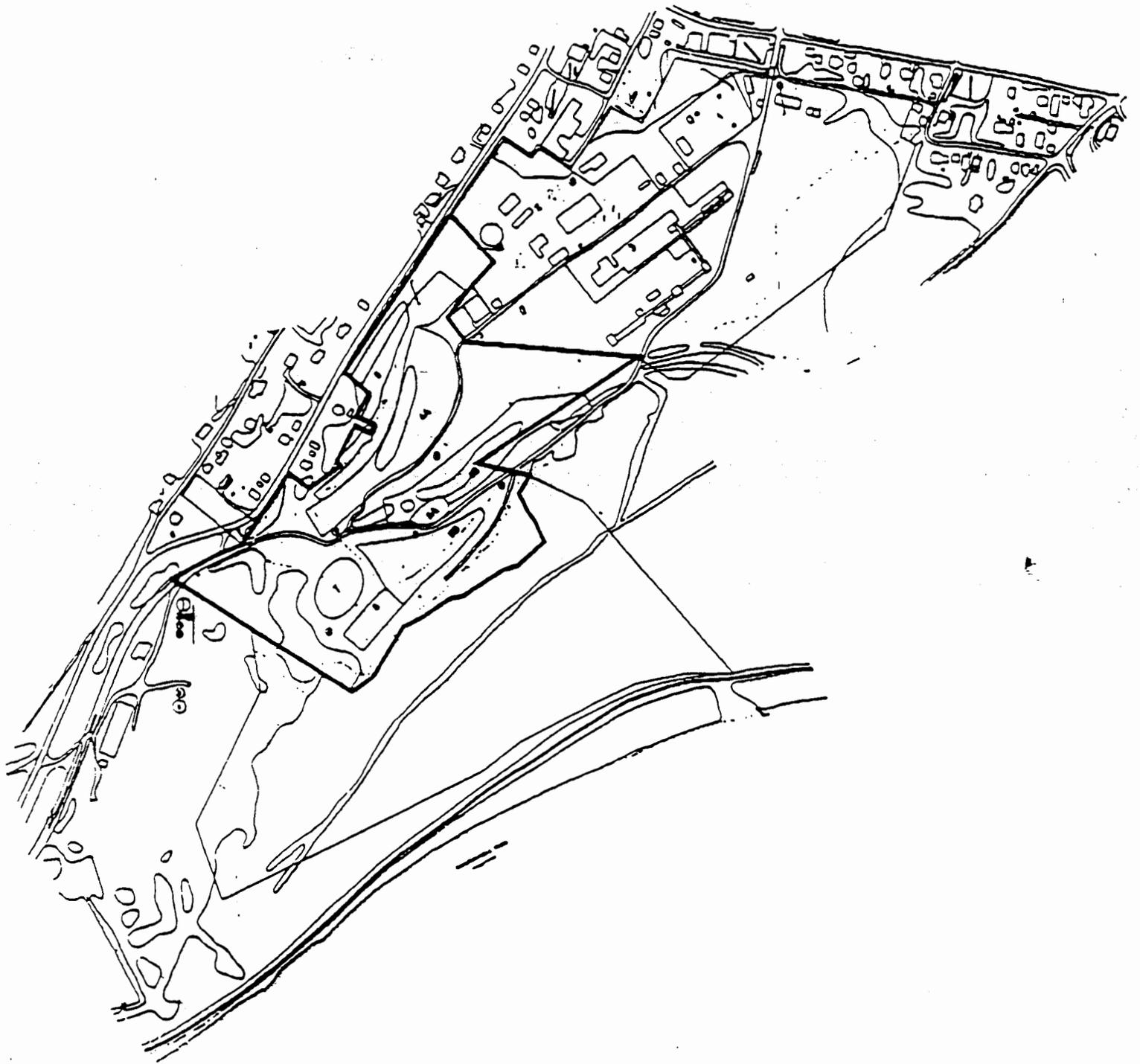


FIGURE 1
AREA OF CONTAMINATION MAP