

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

**Total Petroleum, Inc.
Former Roosevelt Refinery**

MDEQ Docket No.: AOC-ERD-96-007

Mt. Pleasant, Michigan

ADMINISTRATIVE ORDER BY CONSENT

ADMINISTRATIVE ORDER BY CONSENT FOR RESPONSE ACTIVITY
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I. JURISDICTION

This Administrative Order by Consent ("Order") is entered into voluntarily by and between the Michigan Department of Environmental Quality ("MDEQ"), Frank J. Kelley, Attorney General for the State of Michigan, and Total Petroleum, Inc. ("Total Petroleum"), a Michigan corporation, pursuant to the authority vested in the MDEQ by Sections 20119 and 20134(1) of Part 201 of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended. The Order concerns the performance by Total Petroleum of certain response activities at its former Roosevelt Refinery, Isabella County, Michigan (hereafter, the "Facility").

II. DENIAL OF LIABILITY

The execution of this Order by Total Petroleum is neither an admission of liability with respect to any issue dealt with in this Order nor is it an admission of any factual allegations or legal determinations stated or implied herein.

III. PARTIES BOUND

3.1 This Order shall apply to and be binding upon Total Petroleum and its successors and assigns. No change in ownership or corporate status shall in any way alter Total Petroleum's responsibilities under this Order. Total Petroleum shall provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Facility. Total shall provide a copy of this Order to any subsequent owners or successors before ownership rights are transferred. Total Petroleum shall comply with the requirements of Section 20116 of NREPA, MCL 324.20116.

3.2 The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent.

IV. STATEMENT OF PURPOSE

In entering into this Order, it is the mutual intent of the parties to expedite effective response activities to determine the source, nature, extent and impact of contamination at the Facility and to undertake necessary actions to abate any threat to the public health, safety or welfare, or the environment, caused by the release or threatened release of hazardous substances, pollutants or contaminants from the Facility, including the Chippewa River and to minimize litigation.

V. DEFINITIONS

5.1 "Facility" means the property identified in Appendix A and any area, place, or property where a hazardous substance in excess of the concentrations which satisfy the requirements of Section 20120a(1)(a) or (17) of NREPA, MCL 324.20120a(1)(a) or (17) has been released, deposited, disposed of, or otherwise comes to be located including the Chippewa River as a result of the operation of the former Roosevelt Refinery.

5.2 "Property" means the 37 acres of vacant land located at the northeast corner Pickard Avenue and Crawford Road in Mt. Pleasant, Isabella County, Michigan, and described in the legal description provided in Appendix A.

5.3 The term "State" shall mean the State of Michigan, its departments, agencies, officials and employees.

5.4 "Total Petroleum" shall mean Total Petroleum, Inc., a Michigan corporation, its officers, employees, and contractors.

5.5 Unless otherwise stated herein, all terms used in this document which are defined in Part 201 of NREPA, MCL 324.20101, et seq. then effective, or the Part 201 Rules, AACCS R 299.5101, et seq., then effective, shall have the same meaning in this document as in Part 201 of NREPA and the Part 201 rules.

VI. FINDINGS OF FACT

6.1 The former Roosevelt Refinery is a 37 acre parcel of land located near the northeast corner of Pickard Avenue and Crawford Road in Mt. Pleasant, Michigan. The site is bounded by the Chippewa River to the east.

6.2 The Facility was previously owned and operated by Roosevelt Refining Company from the 1930's to the 1950's. Leonard Refinery, which is now Total Petroleum, merged with Roosevelt Refining Company in the late 1950's and continued petroleum refining operations through 1974.

6.3 An interim remedial action plan, remedial investigation, feasibility study, risk assessment, and a final remedial action plan with identified and MDEQ approved response activities will be conducted at the Facility by Total Petroleum or its consultants pursuant to the Administrative Order by Consent.

6.4 Hazardous substances, including crude oil, petroleum products and their constituents have been identified at the Facility.

6.5 Hazardous substances which have been identified in soils present at or near the surface may migrate causing potential contamination of drinking water, and actual contamination of the ground water and adjacent surface water, the Chippewa River.

6.6 The presence of hazardous substances at the Facility poses a potential exposure of hazardous substances to human health and the environment which may cause an imminent and substantial endangerment to public health, safety, and welfare.

6.7 Total Petroleum owned the Facility during its operations from 1950 through 1974. Total Petroleum presently owns portions of the closed Facility. Other persons have purchased other portions of the Facility.

6.8 Total Petroleum was an owner and operator of the former Roosevelt refinery at the time of disposal of hazardous substances at the Facility and is engaged in performing response activities relating to the release or threat of release of hazardous substances at the closed refinery, without admitting liability with respect to any issue dealt with in this Order.

VII. DETERMINATIONS

7.1 On the basis of the Findings of Fact, the MDEQ makes the following determinations:

(a) The Total Petroleum, Inc. former Roosevelt Site ("Roosevelt Refinery") is a "Facility" as that term is defined in Section 20101(l) of NREPA, MCL 324.20101(l).

(b) Total Petroleum ("Total Petroleum") is a "person" as that term is defined in Section 301(g) of Part 3 of NREPA, MCL 324.301(g), except as otherwise defined in the NREPA.

(c) "Hazardous substance(s)" as that term is defined in Section 20101(q) of NREPA, MCL 324.20101(q) are found at the Facility.

(d) Releases of hazardous substances from the soils to the groundwater and the Chippewa River constitute a "release or threatened release" within the meaning of Sections 20101(bb) and 20101(ii) of NREPA, MCL 324.20101(bb) and MCL 324.20101(ii).

(e) The release or threatened release of hazardous substances at or from the Facility may pose an imminent and substantial endangerment to the public health, safety, welfare, or the environment within the meaning of Section 20119 of NREPA, MCL 324.20119.

(f) In order to protect public health, safety, welfare, or the environment, and to abate any danger or threat, it is necessary and appropriate that response activity be taken. The response activity consists of the performance of the response activities specified in Section VIII of this Administrative Order by Consent.

(g) Total Petroleum is a person who is liable within the meaning of Sections 20119 and 20126(1) of NREPA, MCL 324.20119 and MCL 324.20126(1).

7.2 On the basis of the Findings of Fact, the MDEQ and the Attorney General make the following Determinations:

(a) Total Petroleum will properly implement the response activities required by this Order.

(b) This Consent Order is in the public interest, will expedite effective response activities and will minimize litigation.

BASED ON THE FOREGOING FACTS AND DETERMINATIONS, THE MDEQ, THE ATTORNEY GENERAL AND TOTAL PETROLEUM HEREBY AGREE, AND IT IS HEREBY ORDERED THAT:

VIII. IMPLEMENTATION OF RESPONSE ACTIVITIES

8.1 In accordance with this Order, Total Petroleum shall submit work plans for the performance of an Interim Remedial Action Plan (IRAP); a remedial investigation/feasibility study (RI/FS); a risk assessment (RA) report; and a remedial action plan (RAP) to cease the discharges of liquid phase hazardous substances seepage to the Chippewa River and associated wetland area and to remediate the Facility to eliminate potential imminent and substantial hazards to human health and the environment. The MDEQ shall approve or deny work plans in accordance with the procedures specified in Section XVIII of this Order within 90 days of receipt of such work plans. Each work plan shall include a detailed description of the tasks to be conducted during the response activity, including the methodology, specifications, and a schedule for implementation, completion of the response activity(ies) and submission of a final report. Total Petroleum shall implement each work plan upon approval pursuant to the procedures provided for in this Order. As approved, each component of each work plan, and approved modifications thereto, shall be deemed incorporated into this Order and made an enforceable part of this Order. Total Petroleum shall submit to the MDEQ a complete written description of the activities conducted pursuant to this Section as part of any Submission required under the terms of this Order. Such description shall include, but not be limited to, an overview of the response activity(ies) conducted, a complete description of the methodologies employed, and documentation and analysis of data collected pursuant to this Order and the subject Submission.

8.2 All response activities conducted at the Facility must be conducted in accordance with this Order, MDEQ-approved work plans, Part 201 of NREPA then in effect, the Part 201 rules then in effect and other applicable laws and regulations.

8.3 Within 60 days of the effective date of this Agreement, Total Petroleum shall submit to MDEQ a Quality Assurance Project Plan (QAPP) which describes the quality control, quality assurance, sampling protocol and chain of custody procedures that shall be implemented in carrying out the tasks required by this Order. The QAPP shall be developed in accordance with the U.S. EPA's "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" QAMS-005/80, EPA 600/4-83-004; NTIS PB 83-170514; and the MDEQ QAPP Guidance dated February 1993.

8.4 Within 30 days of the effective date of this Agreement, Total Petroleum shall submit to MDEQ a Health and Safety Plan that assigns Facility safety and security responsibilities to all on-site personnel, establishes personnel safety and protection standards, establishes mandatory safe operating procedures for physical and chemical hazards that may be encountered at the Facility, demarcates and classifies various zones of contamination, establishes decontamination procedures, and provides for contingencies that may arise during the course of the implementation of the requirements of this Order. The Health and Safety Plan shall be developed in accordance with the standards promulgated pursuant to Section 126 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC Section 9621, Section 6 of the Occupational Safety and Health Act of 1970 and the Michigan Occupational Safety and Health Act. The Health and Safety Plan is not subject to MDEQ approvals required in Section XVIII of this Order.

8.5 Total Petroleum has submitted an IRAP to the MDEQ for review and approval. MDEQ has approved the IRAP. Total Petroleum has begun implementation of the IRAP and shall proceed in accordance with the approved time schedule. Within ninety (90) days of Total Petroleum's submission of its IRAP implementation report, MDEQ shall review and respond to said report in accordance with paragraph 8.1 of this Section.

8.6 By September 1, 1997, Total Petroleum shall submit to the MDEQ for review and approval a work plan for implementation of an RI/FS and a RA for the Facility. The work plan shall include a description of the Facility history and characteristics. Within forty-five (45) days of receiving MDEQ approval of the work plan, Total Petroleum shall implement the plan in accordance with the approved time schedule.

8.7 Within forty-five (45) days of receiving MDEQ approval of the final RI/FS and risk assessment reports, Total Petroleum shall submit a RAP. Within forty-five (45) days of receiving MDEQ approval of the RAP, Total Petroleum shall implement the plan in accordance with the approved time schedule.

8.8 Within ninety (90) days of the approval of the RAP, Total Petroleum shall file with the Isabella County Registrar of Deeds a deed restriction which has been approved by the MDEQ. A true copy of the recorded restrictive covenant shall be provided to the MDEQ within thirty (30) days of receiving a copy from the Register of Deeds.

8.9 Within thirty (30) days of the approval of the RAP, Total Petroleum shall notify the zoning authority of the local unit of government that includes the Facility.

8.10 If during the course of conducting response activities Total Petroleum discovers situations where response activities are needed other than those in the approved work plans, Total Petroleum shall notify the MDEQ Project Manager in writing within 14 days of discovering such situations. Total Petroleum shall document in writing what situation was discovered and what response activities Total proposes to undertake to address the situation(s) in this notification.

8.11 The parties acknowledge and agree that this Order does not constitute a warranty or representation of any kind by the MDEQ that the response activity(ies) performed in accordance herein will result in the achievement of the remedial criteria as established by law.

IX. ADDITIONAL RESPONSE ACTIVITY

9.1 As used in this Section, "Additional Response Activity" shall mean all activities not specifically set forth in the approved IRAP, RI/FS, RA, and RAP that the MDEQ or Total Petroleum determine are necessary to meet the performance and cleanup standards described in the administrative rules pursuant to Part 201 of NREPA, 1990 AACRS R 299.5101 et seq., and all applicable state and federal requirements and that do not fundamentally change the overall remedial approach outlined in the approved IRAP, RI/FS, RA, and RAP. These activities may include modifications to the components of the IRAP, RI/FS, RA, and RAP and to the type and cost of materials, equipment, facilities, services and supplies used to implement these workplans.

9.2 In the event the MDEQ determines that additional response activity is necessary, notifications of such additional response activity will be provided to Total Petroleum's project coordinator. Total Petroleum may also propose additional response activity which shall be subject to approval by the MDEQ. Any additional response activity determined to be necessary by the MDEQ, or otherwise agreed to by the parties, shall be completed by Total Petroleum in accordance with the standards, specifications and schedules proposed by Total Petroleum and approved by the MDEQ.

9.3 Unless the MDEQ agrees to extend the time period, within forty-five (45) days of receipt of notice from the MDEQ that additional response activity is necessary, or from the date on which the parties otherwise agree that additional response activity is necessary, Total Petroleum shall submit a plan for the additional response activity to the MDEQ for approval. The plan shall be developed in conformance with the requirements of this Order. Upon approval, the plan shall be incorporated herein

and made an enforceable part of this Order. Total Petroleum shall implement the plan for additional response activity in accordance with the schedule contained therein.

9.4 Nothing in the preceding paragraph shall limit the power and authority of the MDEQ, the Attorney General, a court, or Total Petroleum to take, direct or order all appropriate action to protect public health, welfare and safety or the environment or to prevent, abate or minimize a release or threatened release of hazardous substances.

X. FINANCIAL ASSURANCE MECHANISM

10.1 Total Petroleum shall provide for a financial assurance mechanism in the form of a Letter of Credit, attached hereto as Appendix B, or another MDEQ approved financial assurance mechanism, to secure the performance of the response activities provided in Section VIII of this Order.

10.2 Within thirty (30) days of the effective date of this Agreement, Total Petroleum shall develop an estimate of response costs and procure a Letter of Credit issued by a bank or financial institution which reflects the present value of the estimated costs of performing the response activities as provided in Section VIII of this Order.

10.3 If Total Petroleum fails to comply with Section VIII, the MDEQ may draw upon the Letter of Credit and place it in an MDEQ approved escrow or the Environmental Response Fund for the purpose of carrying out the provisions of this Order.

10.4 If the bank or financial institution does not extend the Letter of Credit or fails to renew the Letter of Credit, Total Petroleum shall provide within 30 days an alternate financial assurance mechanism approved by the MDEQ or place an adequate amount of funds for the response activities

remaining to be performed in an MDEQ approved environmental escrow for the implementation of remaining response activities at the Facility.

10.5 The financial assurance mechanism shall be released upon the issuance by MDEQ of the Certificate of Completion as provided in Section XXXI of this Order.

XI. ENGAGEMENT OF A CONTRACTOR

11.1 EnecoTech has been designated by Total Petroleum to be its contractor to perform the response activities required under this Order. All response activities performed by said contractor pursuant to this Order shall be under the general direction and supervision of a qualified individual with a minimum of five (5) years direct experience and expertise in the investigation and cleanup of sites of environmental contamination. Total Petroleum's contractor shall also employ project personnel who shall have direct experience in the investigation and cleanup of sites of environmental contamination. A statement of qualifications and identification of personnel designated for the project has been submitted to the MDEQ.

11.2 Total Petroleum may change its designated contractor during the terms of this Order. Should Total Petroleum choose to change its contractor, Total Petroleum shall provide thirty days written notice to MDEQ, requesting MDEQ's response to said contractor selection. No written response from MDEQ during this thirty day period shall indicate MDEQ's concurrence with Total Petroleum's selected contractor.

11.3 Total Petroleum shall provide a copy of this Order to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the response activities performed pursuant to this Order within three (3) calendar days of the effective date of such retention.

11.4 Notwithstanding the terms of any such contract, Total Petroleum is responsible for compliance with the terms of this Order, and shall ensure that such contractors, subcontractors, laboratories and consultants perform all response activities in conformance with the terms and conditions of this Order.

XII. SAMPLING AND ANALYSIS

12.1 All sampling and analysis conducted to implement this Agreement shall follow the methodologies prescribed by the Part 201 rules and guidance provided by the MDEQ on sampling locations, parameters, detection limits and analytical methods.

12.2 Whenever possible Total Petroleum or its consultant(s) or subcontractor(s), shall provide the MDEQ two (2) days notice prior to any sampling activity undertaken pursuant to this to allow the ERD Project Coordinator, or his/her authorized representative, to take split or duplicate samples and/or to observe the sampling procedures. In circumstances where two (2) days notice is not possible, Total Petroleum or its consultant(s) or subcontractor(s) shall provide notice of the planned sampling activity as soon as possible to the ERD Project Coordinator and explain why earlier notification was not possible. If the ERD Project Coordinator concurs with the explanation provided, Total Petroleum may forego the 2-day notification period.

12.3 The MDEQ ERD Project Coordinator shall provide the Total Petroleum or its consultants two (2) days notice prior to any sampling activity undertaken pursuant to this Order to allow Total Petroleum or its authorized representative to take split or duplicate samples and/or to observe the sampling procedures. In circumstances where two (2) days notice is not possible, the MDEQ ERD Project Coordinator shall provide notice of the planned sampling activity as soon as possible to Total Petroleum or its consultants.

12.4 Total Petroleum shall provide the MDEQ with the results of all environmental sampling, treatment system sampling, aquifer pump tests and other data generated in the performance or monitoring of any requirement under this Order, Parts 201, 211 or 213 of NREPA, or other relevant authorities . Said results shall be included in progress reports as set forth in Section XIX.

12.5 Total Petroleum shall assure that the MDEQ and its authorized representatives are allowed access to any laboratory utilized by Total Petroleum in implementing this Order for quality assurance monitoring.

12.6 Notwithstanding any provision of this Order, the MDEQ and the Attorney General shall retain all of their information gathering, inspection and enforcement authorities and rights under Part 201 of NREPA and any other applicable statute or regulation.

XIII. PROJECT COORDINATORS AND COMMUNICATIONS/NOTICES

13.1 Each party shall designate a Project Coordinator. The MDEQ's Project Coordinator is Allan Brouillet. Total Petroleum's Project Coordinator is James E. Charles. Whenever notice is required to be given or a communication, report, sampling data, analysis of data or other technical submission is required to be forwarded by one party to the other party under this Order, such communication shall be directed to the Project Coordinators at the below listed addresses. If any party changes its designated Project Coordinator, the name, address and telephone number of the successor shall be provided to the other party, in writing, as soon as practicable.

As to MDEQ:

A. For all matters:

Allan Brouillet, Project Coordinator
Environmental Response Division
Saginaw Bay District
Michigan Department of Environmental Quality
603 N. Euclid Ave., Bay City, MI 48706
(517) 684-9141, (517) 684-9799 FAX

B. For Record Retention pursuant to Section XVII and Financial/Escrow matters pursuant to Section X:

Patricia McKay
Chief, Compliance and Enforcement Section
Environmental Response Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909
(517) 335-3398
(517) 373-2637 FAX

(Via courier)
300 South Washington Square
Lansing, MI 48933

C. For all payments pertaining to this Order:

Administration Section
Environmental Response Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909-7926
or
First Floor, Knapp's Office Centre
300 S. Washington Square
Lansing, MI 48933-2125

D. For all other matters pertaining to this Order:

Robin Oeming, Technical Project Manager
Environmental Response Division
Saginaw Bay District
Michigan Department of Environmental Quality
603 N. Euclid Ave., Bay City, MI 48706
(517) 684-9141
(517) 684-9799 FAX

As to Total Petroleum:

James E. Charles
900 19th Street, Total Tower
Denver, CO 80202
(303) 291-2220
(303) 291-2104 FAX

A. Notices shall also go to:

Chris Barricklow - EnecoTech
39255 Country Club Dr., Suite B40
Farmington Hills, MI 48331
(810) 489-0809
(810) 423-4184 FAX

13.2 Total Petroleum's Project Coordinator shall have primary responsibility for overseeing the implementation of the response activities and other requirements specified in this Order.

13.3 The MDEQ may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Order.

XIV. ACCESS

14.1 Upon reasonable notice to Total Petroleum, the MDEQ, its authorized employees, agents, representatives, contractors and consultants, upon presentation of proper credentials, shall have access at all reasonable times to the Facility and any property to which access is required for the implementation of this Order, to the extent access to the Facility is controlled by, or available to Total Petroleum for the purpose of conducting any activity authorized by this Order or otherwise fulfilling any responsibility under federal or state law with respect to environmental conditions at the Facility, including, but not limited to:

(a) Monitoring the response activities or any other activities taking place pursuant to this Order on the Facility;

(b) Verifying any data or information submitted to the MDEQ;

(c) Conducting investigations relating to contamination at or near the Facility;

(d) Obtaining samples;

(e) Assessing the need for or planning and implementing response activities at or near the Facility;

(f) Assessing compliance with requirements for the implementation of monitoring, operation, maintenance and other measures necessary to assure the effectiveness and integrity of a remedial action;

(g) Inspecting and copying nonprivileged records, operating logs, contracts or other documents; and

(h) Interviewing employees, contractors, agents, or representatives of Total Petroleum.

14.2 To the extent that the Facility or any other area where the response activity is to be performed by Total Petroleum under this Order is owned or controlled by persons other than Total Petroleum, Total Petroleum shall use its best efforts to secure from such persons access for the parties and their authorized employees, agents, representatives, contractors and consultants. Total Petroleum shall provide the MDEQ with a copy of each access agreement secured pursuant to this Section. For purposes of this paragraph, "best efforts" includes, but is not limited to, reasonable compensation to the owner to secure such access and taking judicial action to secure such access. Total Petroleum shall notify MDEQ of its inability to obtain access to the Facility or other area, and MDEQ shall informally assist Total Petroleum in obtaining access to the Facility or other area. If, after using best efforts, Total Petroleum is unable to obtain access within forty-five (45) days of the effective date of this Order, Total Petroleum shall promptly notify the MDEQ. MDEQ may then use its best efforts to obtain access to the Facility or other area.

14.3 Any lease, purchase, contract or other agreement entered into by Total Petroleum after the effective date of this Order which transfers to another party a right of control over the Property or a portion of the Property shall contain a provision preserving for the MDEQ or another party undertaking the response activities and their authorized representatives, the access provided under Section XIV.

14.4 All parties granted access to the Facility pursuant to this Order shall comply with all applicable health and safety laws and regulations.

14.5 Notwithstanding any provision of this Order, the MDEQ and the Attorney General shall retain all of their inspection and access authorities under any applicable statute or regulation.

XV. CREATION OF DANGER

15.1 Upon obtaining information concerning the occurrence of any event during performance of response activities conducted pursuant to this Order that causes a release or threat of release of a hazardous substance from the Facility or that may present an imminent and substantial endangerment to on-site personnel or to the public health, safety, or welfare or the environment, Total Petroleum shall immediately undertake all appropriate actions to prevent, abate or minimize such release, threat, or endangerment and shall immediately notify the MDEQ's project coordinator or, in the event of his or her unavailability, shall notify the Pollution Emergency Alerting System (PEAS, 1-800-292-4706). In such an event, any action undertaken by Total Petroleum shall be in accordance with all applicable health and safety laws and regulations, and with the provisions of the Facility Health and Safety Plan. Total Petroleum shall submit a written report setting forth the events that occurred and the measures taken and to be taken to mitigate any release, threat, or endangerment caused or threatened by the incident and to prevent recurrence of such an incident. Regardless of whether Total Petroleum notifies the MDEQ under this subsection, if response activities undertaken under this Order cause a release or threat of release or may present an imminent and substantial endangerment to on-site personnel or to public health, safety, or welfare or to the environment, the MDEQ may: (a) require Total Petroleum to stop response activities at the Facility for such period of time as may be needed to prevent or abate any such release, threat or endangerment; and/or, (b) require Total Petroleum to undertake any such activities that the MDEQ determines are necessary to prevent or abate any such release, threat or endangerment; and/or (c) undertake any actions that the MDEQ determines are necessary to prevent or abate such release, threat or endangerment. In the event that the MDEQ undertakes any action to abate such a release, threat or endangerment, the MDEQ shall notify Total Petroleum in writing of such actions. Total Petroleum shall

reimburse the state for all costs incurred by the state that are not inconsistent with law. Payment of such costs shall be made in the manner provided in Paragraph 25.3

15.2 Nothing in the preceding subsection shall limit the power and authority of the MDEQ, the State of Michigan to take, direct or order all appropriate action to protect the public health, welfare and safety, or the environment, or to prevent, abate or minimize a release or threatened release of hazardous substances, pollutants or contaminants on, at or from the Facility.

XVI. COMPLIANCE WITH OTHER LAWS

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws and regulations, including Part 201 of NREPA, the Part 201 Rules, laws relating to occupational safety and health and other state environmental laws. Other agencies may also be called upon to review the conduct of response activities under this Order. Further, Total Petroleum must designate, in a report to the MDEQ, any facilities that Total Petroleum proposes to use for the off-site transfer, storage, treatment or disposal of any waste material.

XVII. RECORD RETENTION/ACCESS TO INFORMATION

17.1 Total Petroleum and its representatives, consultants and contractors shall preserve and retain, during the pendency of this Order and for a period of five (5) years after its termination, all records, sampling or test results, charts and other documents relating to historical hazardous substance disposal, treatment or handling activities at the Facility or that are maintained or generated pursuant to any requirement of this Order. After the five (5) year period of document retention, Total Petroleum and its successors and assigns shall obtain the MDEQ's written permission prior to the destruction of such

documents and, upon request, Total Petroleum and/or its successors and assigns shall relinquish custody of all documents to the MDEQ. Total Petroleum's request shall be accompanied by a copy of this Order and sent to the address listed in Section XIII or at such other address as may subsequently be designated in writing by the MDEQ.

17.2 Total Petroleum shall, upon request, provide to the MDEQ copies of all documents and information within its possession, or within the possession or control of its employees, contractors, agents or representatives relating to the response activities at the Facility or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence or other documents or information related to the response activities. Total Petroleum shall also, upon request, make available to the MDEQ, upon reasonable notice, Total Petroleum's employees, contractors, agents or representatives with knowledge of relevant facts concerning the performance of the response activities.

17.3 Total Petroleum may assert a confidentiality or privilege claim, if appropriate, covering all or part of the information requested by this Order. Such an assertion shall be adequately substantiated when it is made. If no such claim accompanies the information when it is submitted to the MDEQ, it may be made available to the public by the MDEQ without further notice to Total Petroleum. Analytical data shall not be claimed as confidential or privileged by Total Petroleum.

XVIII. SUBMISSIONS AND APPROVALS

18.1 All plans, schedules, documents, submissions and reports ("Submissions") required by this Order shall be delivered to the MDEQ in accordance with the schedule set forth in this Order. Prior to receipt of MDEQ approval, any report submitted to the MDEQ for approval shall be marked "Draft" and shall include, in a prominent location in the document, the following disclaimer: "Disclaimer: This document is a DRAFT document, which has not received final acceptance from the Michigan Department

of Environmental Quality ("MDEQ"). This document was prepared pursuant to a governmental Administrative Order. The opinions, findings, and conclusions expressed are those of the authors and not those of the MDEQ."

18.2 Upon receipt of any Submission relating to the response activities that is required to be submitted for approval pursuant to this Order, the MDEQ project coordinator will in writing: (a) approve the Submission; or (b) deny the Submission, notifying Total Petroleum of the conditions and requirements necessary to obtain approval. Upon receipt of a notice of approval, Total Petroleum shall proceed to take any action required by the Submission as approved, and shall submit modified pages of the plan marked as directed by MDEQ.

18.3 Notice of any disapproval will specify the reason(s) for the disapproval. Unless a notice of disapproval specifies a longer time period, upon receipt of a notice of disapproval from the MDEQ, Total Petroleum shall, within thirty (30) days thereafter, correct the deficiencies and resubmit the Submission for approval. Notwithstanding a notice of disapproval, Total Petroleum shall proceed to take any response activity not directly related to the deficient portion of the submission. If, upon resubmission, the Submission is not approved, the MDEQ shall so advise Total Petroleum and Total Petroleum shall be deemed to be in violation of this Order.

18.4 A finding of approval shall not be construed to mean that the MDEQ concurs with all conclusions, methods or statements in the Submission or warrants that the Submission comports with law.

18.5 No informal advice, guidance, suggestions or comments by the MDEQ regarding Submissions or any other writing submitted by Total Petroleum shall be construed as relieving Total Petroleum of its obligation to obtain such formal approval as may be required by this Order.

XIX. PROGRESS REPORTS

Total Petroleum shall provide to the MDEQ written annual progress reports relating to response activities that shall: (a) describe the activities that have been taken toward achieving compliance with this Order during the previous year; (b) describe data collection and activities scheduled for the next year; and (c) include all results of sampling and tests and other data received by Total Petroleum its employees or authorized representatives during the previous year relating to the response activities performed pursuant to this Order. The first annual report shall be submitted to the MDEQ by Total Petroleum within sixty (60) days following the effective date of this Order and annually thereafter until the issuance of the Certificate of Completion as provided in Section XXXI.

XX. INDEMNIFICATION AND INSURANCE

20.1 Total Petroleum shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for any and all claims or causes of action arising from or on account of acts or omissions of Total Petroleum its officers, employees, agents or any persons acting on its behalf or under its control in carrying out response actions pursuant to this Order. Neither the State of Michigan nor any of its departments, agencies, officials, agents, employees, contractors or representatives shall be held out as a party to any contract entered into by or on behalf of Total Petroleum in carrying out actions pursuant to this Order. Neither Total Petroleum nor any contractor shall be considered an agent of the State.

20.2 Total Petroleum waives any and all claims or causes of action against the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for damages, reimbursement or set-off of any payments made or to be made to the State that arise from, or on account of, any contract, agreement or arrangement between Total Petroleum and any person for performance of response activities at the Facility, including claims on account of construction delays.

20.3 Total Petroleum shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for any and all claims or causes of action for damages or reimbursement from the State arising from, or on account of, any contract, agreement or arrangement between Total Petroleum and any person for performance of response activities at the Facility, including claims on account of construction delays.

20.4 Prior to commencing any response activities on or near the Facility, Total Petroleum shall secure, and maintain for the duration of this Order comprehensive general liability insurance with limits of one million dollars (\$1,000,000), combined single limit, naming the MDEQ, the Attorney General and the State of Michigan as additional insured parties. If Total Petroleum demonstrates by evidence satisfactory to the MDEQ that any contractor or subcontractor maintains insurance equivalent to that described above, then with respect to that contractor or subcontractor, Total Petroleum needs to provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor. Regardless of the method used to insure, Total Petroleum shall provide the MDEQ and the Attorney General with certificates evidencing said insurance and the MDEQ's, the Attorney General's and the State of Michigan's status as additional insured parties. In addition, for the duration of this Order, Total Petroleum shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of Workers' Disability Compensation Insurance for all persons performing response activities on behalf of Total Petroleum in furtherance of this Order. Prior to commencement of the response activities under this Order, Total Petroleum shall provide to the MDEQ satisfactory proof of such insurance.

XXI. PUBLIC REVIEW OF REPORTS

The proposed RAP required under this Order shall be made available by the MDEQ and Total Petroleum for public comment for a period of thirty (30) days. Total Petroleum shall be responsible for publication in the Mt. Pleasant newspaper and library. Following the public review and comment period, the MDEQ may refer the proposed RAP back to Total Petroleum for revision pursuant to public comments and MDEQ comments. In addition, Total Petroleum shall provide information for the responsiveness summary as required by the MDEQ and submit the draft to MDEQ. Total Petroleum shall prepare all portions of a draft responsiveness summary as specified by the MDEQ. The MDEQ will prepare the final responsiveness summary for the proposed RAP.

XXII. MODIFICATIONS/INCORPORATION BY REFERENCE

22.1 If this Order, other than work plans for the IRAP, RI/FS, RA, and RAP or time schedules contained herein, is modified, such modifications shall be in writing by signature of the Director of the MDEQ and Attorney General and Total Petroleum's designated Project Coordinator or other authorized representative. Amendments to the IRAP, RI/FS, RA and time schedules contained in this Order shall be made in writing by the MDEQ Project Coordinator. The RAP may only be modified by written agreement between Total Petroleum's Project Coordinator and the MDEQ-ERD Division Chief or his or her representative.

22.2 The IRAP, RI/FS, and RA, RAP as amended and time schedules contained herein are incorporated into this Order and are an enforceable part thereof. Any plans, specifications and schedules required by this Order are, upon approval by the MDEQ, incorporated into this Order and made enforceable parts thereof.

XXIII. DELAYS IN PERFORMANCE

23.1 Total Petroleum shall perform the requirements of this Order within the time limits established herein, unless performance is prevented or delayed by events which constitute a "Force Majeure". Any delay in the performance attributable to a "Force Majeure" shall not be deemed a violation of Total Petroleum's obligations under this Order in accordance with this Section.

23.2 For the purpose of this Order, "Force Majeure" means an occurrence or non-occurrence arising from causes not foreseeable, beyond the control of and without the fault of Total Petroleum such as: an Act of God; untimely review of permit applications or Submissions by the MDEQ or other applicable authority; and acts or omissions of third parties with which Total Petroleum has no contractual relationships or is otherwise not responsible for, that could not have been avoided or overcome by Total Petroleum's due diligence and that delay in the performance of an obligation under this Order. "Force Majeure" does not include unanticipated or increased costs, changed financial circumstances, commencement of a proceeding in bankruptcy, contractual disputes, or failure to obtain a permit or license as a result of Total Petroleum's actions or omissions.

23.3 When circumstances occur that Total Petroleum determines constitute a Force Majeure, Total Petroleum shall notify the MDEQ of its determination. Within five (5) working days after Total Petroleum makes its determination, Total Petroleum shall supply the MDEQ, in writing: an explanation of the causes(s) of any actual or expected delay; the obligations of this Order affected by the delay; the anticipated duration of the delay; the measures taken and to be taken by Total Petroleum to avoid, minimize or overcome the delay and the timetable for implementation of such measures.

23.4 In the event that Total Petroleum complies with this Section and the MDEQ concurs that an event causing a delay is a Force Majeure, the MDEQ shall not deem Total Petroleum to be in

violation with this Order as to the obligation directly affected by the Force Majeure. The MDEQ shall communicate its concurrence to Total Petroleum and shall identify which obligations are directly affected by the Force Majeure. Such a MDEQ determination does not excuse or limit Total Petroleum's obligations under this Order which are not identified by the MDEQ as being directly affected by the Force Majeure.

23.5 Total Petroleum's failure to comply with the notice provisions of this Section shall constitute a waiver of Total Petroleum's right to assert a claim of Force Majeure with respect to the circumstances in question, and the MDEQ may, accordingly, deem Total Petroleum to be in noncompliance with this Order. Similarly, if the MDEQ determines that an event is not a Force Majeure, the MDEQ may deem Total Petroleum to be in noncompliance with this Order if Total Petroleum does not timely perform the obligation or any other obligation imposed upon Total Petroleum by this Order. Any dispute regarding events claimed as Force Majeure or Total Petroleum's noncompliance with this Section shall be negotiated in good faith by the parties and, lacking resolution, shall be subject to Dispute Resolution, as provided for in Section XXIV.

23.6 Total Petroleum shall have the burden of demonstrating that: (i) the delay is or was caused by a Force Majeure event; and (ii) that the amount of additional time requested is necessary to compensate for that event. An extension of one compliance date based upon a particular Force Majeure incident does not mean that Total Petroleum qualifies for an extension of a subsequent compliance date without meeting its burden of proof as specified in this Section for each incremental step or other requirement for which an extension is sought.

XXIV. DISPUTE RESOLUTION

24.1 If Total Petroleum objects to any notice of denial, modification or decision (Notice) concerning a "Covered Matter" as defined in Paragraph 27.2 of this Order, Total Petroleum shall have thirty (30) days from its receipt of the written Notice from the MDEQ to informally work with the MDEQ project coordinator to resolve its objections. During this thirty (30) day period, the project coordinators

shall attempt to clarify and resolve any potential dispute. If Total Petroleum does not resolve its objections to the Notice during this informal opportunity to confer, then Total Petroleum shall notify the MDEQ's project coordinator, in writing, of its objections to the Notice and request a meeting with the MDEQ Environmental Response Division's Saginaw Bay District Supervisor (District Supervisor). The written notification of objection must be submitted to the MDEQ project coordinator within thirty (30) days of Total Petroleum's receipt of the Notice, and shall include a statement describing the disputed matter, the efforts made by the Total Petroleum to resolve the disputed matter, and the decision desired by Total Petroleum. Total Petroleum and the MDEQ shall have thirty (30) calendar days from receipt by the MDEQ of Total Petroleum's written notification of objection to reach agreement. If agreement cannot be reached during this period, the District Supervisor will provide Total Petroleum with a written statement of decision regarding the disputed matters. This written statement of decision will be sent to Total Petroleum within thirty (30) days of MDEQ's receipt of Total Petroleum's written notification of objection. Total Petroleum shall commence activities required by the District Supervisor's decision unless, within five (5) days or receipt of the District Supervisor's written statement of decision, Total Petroleum provides the MDEQ project coordinator with a written request for a meeting with the Chief of the MDEQ Environmental Response Division (Chief) to resolve the dispute. As before, the written request for a meeting with the Chief shall include a statement describing the disputed matter, the efforts made by Total Petroleum to resolve the disputed matter, and the decision desired by Total Petroleum. Within thirty (30) calendar days after receipt of the request, the Chief shall meet with Total Petroleum in an attempt to resolve the dispute. If agreement cannot be reached on the disputed matter within the thirty (30) day period after receipt of Total Petroleum's request for a meeting with the Chief, the MDEQ shall provide a written statement of its decision to Total Petroleum. Total Petroleum shall commence the activities required by Chief's decision within five (5) days of receipt of his decision. Total Petroleum and the MDEQ may agree to extend the deadline for dispute resolution by mutual consent.

24.2 In the event Total Petroleum does not commence the activities required by the MDEQ decision, the Department of Attorney General on behalf of the MDEQ, may take such civil enforcement actions against Total Petroleum as may be provided for by Sections 20119(4) and 20137(1) of NREPA, MCL 324.20119(4) and MCL 324.20137(1), and other statutory and/or equitable authorities, including, but not limited to, the assessment of such civil penalties or damages as are authorized by law. In such an event, the MDEQ retains the right to perform necessary response activities and to recover the costs thereof from Total Petroleum. Engagement of a dispute resolution among the parties shall not be cause for the delay of any undisputed response activities.

24.3 Notwithstanding the invocation of dispute resolution, Stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Order subject to the provisions of Paragraph 24.4. Penalties shall be paid into an escrow account established by Total Petroleum as they continue to accrue, at least every seven (7) days. Upon each deposit, Total Petroleum shall provide the MDEQ with a copy of the deposit slip. Within ten (10) days of the MDEQ decision, the escrow agent shall pay the balance of the account of any relevant portion thereof, to the MDEQ in the manner provided in Section XXV and/or to Total Petroleum to the extent each party prevailed in dispute resolution.

24.4 Notwithstanding this Section, Total Petroleum shall pay that portion of a demand for reimbursement of costs or payment of stipulated penalties that is not subject to a good faith resolution in accordance with and in the manner provided in Sections XXI and XXVI, as appropriate. Stipulated penalties under Section XXIV shall accrue from the date Total Petroleum requests a meeting with the District Supervisor pursuant to Paragraph 24.1.

24.5 No action or decision of the MDEQ or the Attorney General shall constitute final agency action giving rise to any rights of judicial review, prior to the Attorney General's initiation of judicial

action to compel Total Petroleum to comply with this Order or to enforce a term, condition or other action required by this Order in accordance with Section 20137 of NREPA, Part 201, MCL 324.20137. Nothing in this Order shall expand Total Petroleum's ability to obtain pre-enforcement review of this Order.

XXV. REIMBURSEMENT OF COSTS

25.1 For the purposes of this Order, the term "Past Response Activity Costs" shall mean those costs incurred and paid by the State prior to the dates set forth in the attached Final Summary Report. The term "Future Response Activity Costs" shall mean the response activity costs incurred but not paid prior to the dates set forth on the Final Summary Report or to be incurred by the State. For purposes of this Order, the term "Oversight Costs" is a subcategory of "Future Response Activity Costs" that are related to the State's development, enforcement, monitoring and documentation of compliance with this Order. Oversight Costs may include, costs incurred to monitor response activities at the Facility; observe and comment on field activities; review and comment on Submissions; collect and evaluate samples; purchase equipment and supplies to perform monitoring activities; attend and participate in meetings; prepare cost reimbursement documentation; and enforce, monitor and document compliance with this Order.

25.2 On the effective date of this Order, Total Petroleum shall pay the MDEQ eighty three thousand dollars (\$83,000) to resolve all claims for Past Response Activity Costs relating to this Order.

25.3 Total Petroleum shall reimburse the State for all Oversight Costs incurred by the State. As soon as possible after each anniversary of the effective date of this Order, pursuant to Sections 20119(4) and 20137(1) of NREPA, the MDEQ will provide Total Petroleum with a written demand of Oversight Costs lawfully incurred by the State. Any such demand will set forth with reasonable specificity the nature of the costs incurred.

25.4 Total Petroleum shall have the right to request a full and complete accounting of all demands made hereunder, including timesheets, travel vouchers, contracts, invoices, and payment vouchers, as may be available to the MDEQ. Provision of these documents by the MDEQ may result in the MDEQ incurring additional oversight costs which will be included in the annual demand of Oversight Costs. Except as provided by Section XXIV (Dispute Resolution), Total Petroleum shall reimburse the MDEQ for such costs within thirty (30) days of receipt of a written demand from the MDEQ. In any challenge by Total Petroleum to a demand for recovery of costs by the MDEQ, Total Petroleum shall have the burden of establishing that the costs were not lawfully incurred, in accordance with Section 20126a(2)(a) of NREPA. All payments made pursuant to this Order shall be by certified check payable to the "State of Michigan - Environmental Response Fund", and shall be sent by first-class mail to the address listed in Section XIII. The Total Petroleum Inc., Roosevelt site name, and AOC-ERD-96-007 shall be identified on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ Project Coordinator and the Assistant Attorney General in Charge, Department of Attorney General, Natural Resources Division, 530 Mason Building, Lansing, Michigan 48909. Costs recovered pursuant to this Section shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 20108(3) of NREPA.

XXVI. STIPULATED PENALTIES

26.1 Except as provided by Sections XXIV and XXV, if Total Petroleum fails or refuses to comply with any term or condition in Sections VIII, IX, X, XV and XXVI, Total Petroleum shall pay the MDEQ stipulated civil penalties in the following amounts for each day for every failure or refusal to comply or conform:

<u>Period of Delay</u>	<u>Penalty Per Violation Per Day</u>
1st through 15th day	\$500.00
16th through 30th day	\$1500.00

Beyond 30 Days

\$5,000.00

MDEQ shall notify Total in writing within ten (10) days of determining Total Petroleum has allegedly violated this Order.

26.2 Except as provided in Sections XXIV and XXV, if Total Petroleum fails or refuses to comply with any other term or condition of this Order, other than Section XV, Total Petroleum shall pay the MDEQ stipulated penalties of \$500.00 a day for each and every failure or refusal to comply.

26.3 Total Petroleum shall notify the MDEQ, in writing, of any violation of this Order no later than ten (10) days after becoming aware of such violation and shall describe the violation. Failure to notify the MDEQ as required by this Paragraph constitutes an independent violation of this Order.

26.4 Stipulated penalties shall begin to accrue on the day performance was due, or other failure or refusal to comply occurred and shall continue to accrue until the final day of correction of the noncompliance. Separate penalties shall accrue for each separate failure or refusal to comply with the terms and conditions of this Order.

26.5 Except as provided in Section XXIV, stipulated penalties owed to the state shall be paid no later than thirty (30) days after receiving a written demand from the State. Payment shall be made in the manner provided in Section XXV. Interest shall accrue on the unpaid balance at the end of the thirty (30) day period at the rate provided for in Section 20126a(3) of NREPA, MCL 324.20126a(3) . Failure to pay the stipulated penalties within thirty (30) days after receipt of a written demand constitutes a further violation of the terms and conditions of this Order.

26.6 Liability for or payment of stipulated penalties are not the state's exclusive remedy in the event Total Petroleum violates this Order. The State reserves the right to pursue any other remedy or remedies that it is entitled to under this Order or any applicable law for any failure or refusal of Total Petroleum to comply with the requirements of this Order, including, but not limited to, seeking civil penalties, injunctive relief, specific performance, reimbursement, exemplary damages in the amount of three (3) times the costs incurred by the State of Michigan as a result of Total Petroleum's violation of or failure to comply with this Order pursuant to sections 20119(4) and 20137(1) of NREPA, MCL 324.20119(4) and MCL 324.20137(1), and sanctions for contempt of court, as a result of Total Petroleum's violation of or failure to comply with this Order, provided that the stipulated penalties set forth above shall be credited against any such civil penalties.

XXVII. COVENANT NOT TO SUE BY THE STATE

27.1 In consideration of the actions that will be performed and the payments that will be made by Total Petroleum under the terms of this Order, and except as specifically provided in this Section, the State of Michigan hereby covenants not to sue or to take further administrative action against Total Petroleum for claims arising from Covered Matters.

27.2 "Covered Matters" shall include any liability to the State of Michigan under applicable state and federal law relating to the Facility for releases or threatened releases which were identified prior to the effective date of this Order for the following:

- (a) Performance of the approved response activity by Total Petroleum under the Order;
- (b) Reimbursement of past costs incurred by the State as set forth in Paragraph 25.1 of this Order;

(c) Payment of oversight costs incurred by the State as set forth in Paragraphs 25.2 and 25.3 of this Order;

27.3 The covenant not to sue set forth in this Section does not pertain to any matters other than those expressly specified in "Covered Matters" in Paragraph 27.2. The State reserves, and this Order is without prejudice to, all rights against Total Petroleum with respect to all other matters, including, but not limited to, the following:

(a) Liability arising from a violation by Total Petroleum of a requirement of this Order, including conditions of an approved submission required herein;

(b) Liability for response activity costs other than those referred to in Section XXV;

(c) Liability for criminal acts;

(d) Liability arising from the past, present or future treatment, handling, disposal, release or threat of release of hazardous substance(s) taken from the Facility;

(e) Liability for damages for injury to, destruction of, or loss of natural resources;

(f) Any matters for which the State is owed indemnification under Section XX of this Order;

(g) Liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

h) Liability arising from the past, present or future treatment, handling, disposal, release or threat of release of hazardous substances outside of, and not attributable to the Facility.

i) Liability for any other Response Activities required to address environmental contamination at the Facility.

27.4 With respect to liability for Facility response activity costs incurred prior to the effective date of this Order, this covenant not to sue shall take effect upon receipt by the MDEQ of the payments required by Paragraph 25.1. With respect to liability for performance of response activities required to be performed under this Order, and response activity costs incurred by the State after the effective date of this Order and reimbursement of those costs by Total Petroleum pursuant to Section XXV of this Order, the covenant not to sue shall take effect upon issuance by the MDEQ of the Certification of Completion in accordance with Section XXXI. The covenant not to sue is conditioned upon the complete and satisfactory performance by Total Petroleum of its obligations under this Order. The covenant not to sue extends only to Total Petroleum, and does not extend to any other person(s).

27.5 The State's Pre-Certification of Completion Reservations: Notwithstanding any other provision of this Order, the State reserves, and this Order is without prejudice to, the right to institute proceedings in this action or in a new action or to issue an administrative order seeking to compel Total Petroleum (1) to perform further response activities relating to the Facility or (2) to reimburse the State of Michigan for additional costs of response if, prior to Certification of Completion of the response activities:

(a) Conditions at the Facility, previously unknown to the MDEQ, are discovered after the entry of this Order; or

(b) Information is received, in whole or in part, after the entry of this Order; and

(c) These previously unknown conditions or this information, together with any other relevant information, indicates that response activities are not protective of the public health, safety or welfare or the environment.

27.6 The State's Post-Certification of Completion Reservations: Notwithstanding any other provision of this Order, the State reserves, and this Order is without prejudice to, the right to institute proceedings in this action or in a new action or to issue an administrative order seeking to compel Total Petroleum (1) to perform further response activities relating to the Facility or (2) to reimburse the State of Michigan for additional costs of response if, subsequent to Certification of Completion of response activities:

(a) Conditions at the Facility, previously unknown to the MDEQ, are discovered after the Certification of Completion; or

(b) Information is received, in whole or in part, after the Certification of Completion; and

(c) These previously unknown conditions or this information, together with other relevant information, indicate that the response activities are not protective of the public health, safety or welfare or the environment.

27.7 For purposes of Paragraph 27.5, the information previously received by and the conditions known to the MDEQ shall include only that information and those conditions set forth in the administrative record supporting the response activities at the time of entry of this Order. For purposes of Paragraph 27.6, the information previously received by and the conditions known to the MDEQ shall include only that information and those conditions set forth in the administrative record supporting the

response activities, and any information received by the MDEQ pursuant to the requirements of this Order prior to Certification of Completion of response activities. The administrative record shall include all information in the State's files relating to the Facility and all information submitted by Total Petroleum pursuant to this Order.

XXVIII. COVENANT NOT TO SUE BY TOTAL PETROLEUM

28.1 Total Petroleum hereby covenants not to sue or take any civil, judicial or administrative action against the State, its agencies or their authorized representatives, for any claims or cause of action against the State with respect to the Facility arising from this Order including any direct or indirect claim for reimbursement from the Environmental Response Fund pursuant to Section 20119(5) of NREPA, MCL 324.20119(5), or any other provision of law.

28.2 In any subsequent administrative or judicial proceeding initiated by the Attorney General for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, Total Petroleum agrees not to assert, and may not and shall not maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting or other defenses based upon any contention that the claims raised by the MDEQ or the Attorney General in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this paragraph affects the enforceability of the covenants not to sue set forth in Section XXVII.

XXIX. CONTRIBUTION PROTECTION

Pursuant to Section 20129(5) of NREPA, MCL 324.20129(5) and to the extent provided in Section XXVII, Total Petroleum shall not be liable for claims for contribution regarding matters addressed in this Order. Entry of this Order does not discharge the liability of any other person(s) that may be liable under Section 20126 of NREPA, MCL 324.20126. In any action by Total Petroleum for contribution from

any person not a party to this Order, Total Petroleum's cause of action shall be subordinate to the right of the State of Michigan if the State files an action pursuant to NREPA or other applicable federal or state law, in accordance with Section 20129(9) of NREPA, MCL 324.20129(9).

XXX. RESERVATION OF RIGHTS BY THE STATE

30.1 The MDEQ and the Attorney General reserve the right to bring an action against Total Petroleum under federal and state law for any matters that are not "Covered Matters" as defined by Paragraph 27.2.

30.2 The MDEQ and the Attorney General expressly reserve any and all rights and defenses pursuant to any available legal authority that they may have to enforce this Order against Total Petroleum including the MDEQ's right both to disapprove of response activities performed by Total Petroleum and to require Total Petroleum to perform tasks in addition to those detailed in this Order.

30.3 In the event the MDEQ timely determines that Total Petroleum has failed to implement any provisions of the Order in an adequate or timely manner, the MDEQ may perform, or contract to have performed, any and all portions of the response activity(ies) as the MDEQ determines necessary and to recover response activity costs. The MDEQ shall provide written notice to Total Petroleum of its determination pursuant to the paragraph prior to MDEQ exercising its rights under this section.

30.4 Failure by the MDEQ or the Attorney General to timely enforce any term, condition or requirement of this Order shall not:

(a) Provide or be construed to provide a defense for Respondents' noncompliance with any such term, condition or requirement of this Order; or

(b) Estop or limit the authority of MDEQ or the Attorney General to later enforce any such term, condition or requirement of the Order or seek any other remedy provided by law.

30.5 Notwithstanding any other provision of this Order, the MDEQ retains all authority and reserves all rights to take any and all response activity(ies) authorized by law.

XXXI. CERTIFICATION

31.1 When Total Petroleum determines that it has completed all the response activities required by this Order, it shall submit to the MDEQ a notification of completion and a draft final report. The draft final report shall summarize all response activities performed under this Order. The draft final report shall include or reference any supporting documentation.

31.2 Upon receipt of the Notification of Completion, the MDEQ will review the Notification of Completion, the draft final report, any supporting documentation and the actual response activities performed pursuant to this Order. Within ninety (90) days of receipt of the Notification of Completion, the MDEQ will determine whether Total Petroleum has satisfactorily completed all requirements of this Order, including, but not limited to, completing the response activities required by this Order, complying with all terms and conditions of this Order and paying any and all cost reimbursement and stipulated penalties owed to the MDEQ. If the MDEQ determines that all requirements have been satisfied, the MDEQ will so notify Total Petroleum and upon receipt of a "Final" final report, shall issue a Certificate of Completion. If applicable, the financial assurance mechanism established pursuant to Section X may be dissolved, after issuance of the Certificate of Completion.

XXXII. TERMINATION/AGREEMENT FOR LIMITED CATEGORY REMEDY

Upon completion of the response activities addressing the existing contamination in connection with the Facility and issuance of a Certificate of Completion in accordance with Section XXXI, Total Petroleum, Inc.'s obligations as set forth in Sections VIII, X and XI shall automatically terminate except to the extent that such obligations may be incorporated into a written Administrative Order By Consent between the State and Total Petroleum with respect to a limited category closure pursuant to Part 201 of NREPA and the Part 201 Rules.

XXXIII. SEPARATE DOCUMENTS

This Order may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.


XXXIV. SEVERABILITY

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

XXXV. EFFECTIVE DATE

This Order is effective upon Signature of the Director's designee. All times for performance of obligations under this Order shall be calculated from the effective date. For the purposes of this Order, the term "day" shall mean a calendar day unless otherwise noted herein.

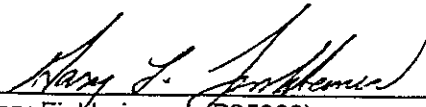
IT IS SO AGREED AND ORDERED BY:



Alan Howard, Chief
Environmental Response Division
Michigan Department of Environmental Quality
P.O. Box 30426
Lansing, MI 48909
Telephone: (517) 373-9837
FAX: 517-373-2637

3/20/97
Date

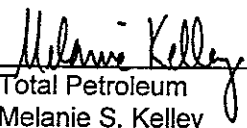
(Via courier)
300 South Washington Square
Lansing, MI 48933



Gary Finkbeiner (P25363)
Assistant Attorney General
Michigan Attorney General
Law Building
Natural Resources Division
530 W. Allegan, 8th Floor
Lansing, MI 48913
(517) 373-1110
FAX (517) 373-4916

3/19/97
Date

IT IS SO AGREED BY:



Total Petroleum
Melanie S. Kelley
Vice President
Environment, Safety, & Public Affairs
900 19th Street
Denver, CO 80202
(303) 291-2042
FAX (303) 291-2104

2/24/97
Date

APPENDIX A

Legal Description

PROPERTY ADDRESS: S. CRAWFORD RD.

S 1/2 OF N 1/2 OF SW 1/4 OF SECTION 10, T14N-R4W & THAT PT OF NE 1/4 OF SW 1/4 LYING W OF CHIPPEWA RIVER EXC RAILROAD ROW ALSO EXC COM AT INTERSECTION OF N LN OF NE 1/4 OF SW 1/4 OF SEC 10 AND THE EASTERLY ROW LN OF ANN ARBOR RAILROAD TH SWLY AL NG SD ROW 550 FT, TH E 325 FT, MORE OR LESS TO BANK OF CHIPEWA RIVER. TH NELY TO N LN OF NE 1/4 OF SW 1/4 OF SAID SEC.(PROPERTY 37.53 ACRES, PARCEL 37-14-010-30-003-00)