

**JOINT COOPERATIVE ASSESSMENT AGREEMENT  
(Point Pedernales Pipeline Spill [ Platform Irene], Santa Barbara, CA)**

**I. PARTIES**

This Agreement is between the California Department of Fish and Game, Office of Spill Prevention and Response (CDFG), the California State Lands Commission (SLC), the United States Department of the Interior (DOI), the United States Department of Commerce acting through the National Oceanic and Atmospheric Administration (NOAA), the Department of Defense, acting through the United States Air Force at Vandenburg Air Force Base (VAFB), (collectively, the "TRUSTEES"), and NUEVO Energy and TORCH Operating Company (collectively TORCH); (collectively the TRUSTEES and TORCH are hereinafter referred to as the "PARTIES").

**II. AUTHORITY**

The TRUSTEES have authority to pursue these natural resource damage assessment (NRDA) activities pursuant to State and Federal Codes and Regulations, including but not limited to, Fish and Game Code section 2014, Government Code section 8670.1 et seq., Harbors and Navigation Code sections 151, 153, 291, 293, and 294, Public Resources Code section 6001 et seq., the Oil Pollution Act of 1990, 33 U.S.C. section 2701 et seq., and 15 C.F.R. section 990.11.

**III. PURPOSE**

This Agreement details the nature and scope of the joint cooperative efforts to be undertaken by the respective PARTIES for the purpose of conducting an NRDA, as that term is defined in 15 C.F.R. section 990.30 and in accordance with Government Code section 8670.1 et. seq.

By entering into this Agreement, the PARTIES agree that early resolution and settlement of the natural resource damage claims are desirable and in the best interests of the PARTIES. The PARTIES agree to work in good faith toward settlement.

**IV. BACKGROUND**

On or about September 29, 1997, a release of crude oil-water emulsion, estimated at 1,019 barrels, occurred from the 20-inch pipeline formerly referred to as the Point Pedernales pipeline (hereafter referred to as the "Spill"). This pipeline transports crude oil-water emulsion from Platform Irene on the Outer Continental Shelf, offshore of Santa Barbara County, California, to the HS&P Facility located in Lompoc.

Following the Spill, expedient response and clean-up operations were conducted in the open ocean in the vicinity of Platform Irene, and on shore along the VAFB shoreline and adjacent Santa Barbara County beaches.

In the aftermath of the Spill, the TRUSTEES have determined that assessment of the injuries to the natural resources is necessary. Upon TORCH's acceptance of the TRUSTEES' oral invitation to participate in a joint cooperative assessment of natural resource damages on September 30, 1997, the PARTIES' technical representatives began working together to plan and collect samples and other time-sensitive data.

## **V. SCOPE and LIMITS OF THIS AGREEMENT**

The TRUSTEES and TORCH agree that a cooperative assessment effort that will be cost effective, avoid duplication, and effectively use limited personnel resources is desirable. Further, to ultimately develop a restoration plan that will fully mitigate any injuries to natural resources that may have resulted from the Spill to the fullest extent possible, it is first necessary to determine what those injuries may be.

This Agreement is generally limited to Phase I of the assessment process, that is: the collection, preservation, and analysis of data and/or samples required to identify pathways of exposure; identification of potentially affected resources; and, assessment of the level of injury for resources for which restoration, rehabilitation, replacement, or acquisition of the equivalent may be appropriate or required, all collectively referenced as Phase 1. Additionally, the PARTIES have agreed to pursue habitat equivalency analysis techniques and restoration planning jointly under this Agreement.

Subsequent, phases that may be considered for joint assessment activities include, but may not be limited to: collection and analysis of additional data; analysis of the collected data to quantify identified injury and quantify loss of resource services; determination of appropriate measures necessary for restoration, rehabilitation, replacement, or acquisition of equivalent natural resources, including the possible use of modeling; determination of actions which will compensate for identified or determined loss of use values. Any subsequent phases of this cooperative assessment will be addressed by a separate document, or amendment to this Agreement.

## **VI. CONDUCT AND LIMITATIONS OF PHASE I ASSESSMENT ACTIVITIES**

The guiding principle of Phase I activities shall be to obtain results in accordance with sound scientific methods. Injury shall be assessed by application of the "pathway, exposure, injury determination" approach. The cost of Phase I activities must be reasonable, and as required by 15 C.F.R. section 990.27(c)(2) "where a range of assessment of procedures providing the same type and quality of information is available, the most cost effective procedure must be used." For purposes of this joint effort, TORCH agrees to fund reasonable costs of projects and/or studies determined by the TRUSTEES, utilizing their best professional judgement and based on their previous NRDA experience and pursuant to 15 C.F.R. section 990, to be necessary to advance or accomplish Phase I activities. Such costs shall not exceed the anticipated estimate of damages from the potential injuries.

The PARTIES shall work in good faith to identify and reach Agreement on studies to be undertaken to assess pathway, exposure, and injuries to natural resources potentially injured by the spill. The term "studies" may include work identified by the PARTIES to develop and complete stipulations, or to refine or identify the types of work or workplans which should be implemented.

Following identification of each of the specific studies to be undertaken, the PARTIES shall establish and form one or more groups of technical representatives (technical groups) to develop the necessary workplans and perform each such study as assigned to them by the PARTIES. Two technical leads shall be designated for each workplan and associated study. One to be designated by the Trustee members of the technical group(s) and one to be designated by TORCH members of the technical group(s). It is anticipated that each group will develop one or more, as required, workplans per direction of the PARTIES; however, the PARTIES may also establish and form a group for the purpose of identifying proposed studies needed to address an issue. Each technical group shall only conduct the work specifically assigned by the PARTIES. Each of the PARTIES shall have the right to participate in all technical groups established and formed through assignment of one or more individuals to each of the technical groups.

Workplans developed by the groups shall include the following:

- study objectives, including statement of how the study will lead to identification or documentation of pathway/exposure/injury;
- study design, including: types of data, sampling protocols, and sampling plan;
- quality assurance/quality control plan, schedules, and any other deliverables;
- who will collect data;
- analysis plan, including description of any phased analyses, selection of samples for analysis, and analytical methods (including anticipated detectability limits for laboratory analyses);
- report plan indicating generally how the data will be tabulated, summarized, and presented in report or other form;
- procedures for dissemination and sharing of data;
- budget (including all laboratory analyses); and
- schedule of work.

Each workplan developed by a technical group shall be submitted to the PARTIES for their review and approval. Workplans shall only be approved by unanimous consent of the PARTIES.

Following approval, the PARTIES shall direct the technical group, or others identified in the workplan, to proceed with the study. Any substantial changes to the workplan that may subsequently be necessitated as a result of unanticipated issues, as well as any changes that may potentially result in a ten per cent (10%) or greater increase in the estimated cost, must be submitted to the PARTIES for approval prior to proceeding. Cost differences of \$1,000 or less are not subject to this approval, so long as the workplan was changed with the consensus of the designated technical leads for each workplan.

The PARTIES will use their best efforts to reach consensus on the interpretation of data collected or exchanged pursuant to this Agreement. However, the PARTIES also reserve the right to disagree on the interpretation of data, and to produce separate and independent findings and conclusions.

## **VII. EXCHANGE OF INFORMATION**

The PARTIES agree that the sharing of data in an unrestricted and timely manner is crucial to the process of a cooperative assessment. Therefore, within thirty (30) calendar days following execution of this Agreement, the TRUSTEES and TORCH shall identify and/or provide all available data and information previously gathered for the purpose of assessment of injuries to natural resources resulting from the Spill which have not previously been exchanged, including, but not limited to, the following:

- Copies of original Shoreline Cleanup Assessment Team forms and field notes made during the course of the response effort or during subsequent trips to the spill-impacted locations;
- Photographs, videotapes, and similar documentary materials;
- Lists of samples, including chain of custody and other forms;
- Present location of samples;
- Analytical results of any tests performed on any of the samples; and
- Electronic copies of GIS/database established by the PARTIES.

These provisions do not apply to data and information obtained outside of the scope of this Agreement or obtained following termination of a joint effort on a particular task.

## **VIII. DISPUTE RESOLUTION AND TERMINATION**

The TRUSTEES and TORCH agree to attempt to resolve any disputes concerning the implementation of this Agreement through good faith negotiations between the individuals identified in the paragraph entitled, "NOTICES." Disputes that cannot be resolved at that level shall be referred to appropriate officials of the PARTIES.

In the event a dispute cannot be resolved, the TRUSTEES jointly or TORCH may terminate cooperative work under this Agreement in its entirety or with respect to the particular task in dispute. Written notification shall be provided to all PARTIES by the terminating party within forty-eight (48) hours of such termination. Termination of one or more task shall not void the Agreement as to the remaining tasks and financial responsibility for costs incurred prior to that termination.

In the event of a whole or partial termination of this Agreement, the PARTIES agree to exchange all data and information jointly collected prior to the date of the termination.

## **IX. RETENTION OF PRIVILEGES**

Nothing in this Agreement is intended, nor shall it be construed, as a waiver of any attorney-client privilege, work product privilege, work product protection, or any other privilege that has been, or may be, asserted in this matter unless such waiver has been explicitly stated. Any party wishing to assert a claim of privilege is responsible for asserting its own claim. Any party originating a document will be notified in advance of its release to a third party.

Raw or factual data collected or exchanged pursuant to this Agreement, including the workplans and any deliverables jointly generated by the workplans, shall not be considered work product, attorney-client or otherwise privileged, and will be admissible in any administrative or judicial proceeding regarding the alleged liability of TORCH for the Spill.

No party may challenge the validity of the jointly developed workplans, any deliverables generated by those workplans, or the validity of any raw or factual data developed pursuant to this Agreement. All interpretations, however, of the raw or factual data, for purposes of settlement (including settlement offers), or in anticipation of litigation, shall be considered privileged and confidential.

The exchange of information under this Agreement among the PARTIES shall not be construed as a waiver of any privilege and shall be without prejudice to any subsequent assertion of privilege as to other documents concerning the same or similar subject matter(s).

## **X. CONFIDENTIALITY**

Documents which are or may be privileged may only be released by a party to this Agreement to third parties following and with the express approval of all PARTIES to this Agreement.

Documents which are required by law to be released may only be released by a party to a third party following notice to all PARTY(IES) claiming the privilege.

To the extent allowed by law, nonprivileged data, which is collected pursuant to this Agreement, shall only be released after it has been compiled, verified, and validated as part of the joint assessment activities.

It is agreed that communications between the TRUSTEES and TORCH, preceding and in the course of working under the terms of this Agreement, are in furtherance of settlement.

## **XI. INDEPENDENT STUDIES AND RIGHTS**

The PARTIES expressly reserve the right to perform independent natural resource damage assessment studies outside the scope of this Agreement. The PARTIES agree, however, that each shall be barred from introducing new or different data collected outside this Agreement to challenge the validity of the jointly collected data in either a judicial or administrative proceeding which involves any of the TRUSTEES and TORCH.

## **XII. FINANCIAL RESPONSIBILITY**

**Scope.** TORCH agrees to be financially responsible for the reasonable and necessary (as delineated in Section VI) expenses incurred in developing and performing the studies as provided by this Agreement, including such costs incurred to date that have not yet been reimbursed. All such expenses authorized and anticipated by workplans shall not be subject to further audit or contest.

**Invoices.** Each TRUSTEE shall provide to John Deacon for TORCH periodic invoices detailing the number of hours, specific tasks performed, and the expenses incurred by each individual assigned to this project, including all back-up documentation. The TRUSTEES will provide the first invoice for each agency as soon as possible and will make a good faith effort to provide subsequent invoices no less frequently than quarterly. TORCH agrees to promptly review all properly submitted invoices and shall process payments conforming to previously approved workplans and associated budgets (and approved modifications under this Agreement to such workplans and/or associated budgets) to the individual TRUSTEE agency, or its technical advisor where direct payments are authorized, within forty-five (45) days.

**Payments to DOI.** TORCH agrees to pay such expenses invoiced by DOI within thirty (30) calendar days of receipt. TORCH agrees that it will reimburse DOI for the reasonable expenses of the activities described herein, up to an initial funding ceiling of \$50,000 per calendar year. This initial funding ceiling is agreed upon in order to allow DOI to set up a reimbursable account and avoid any potential for violation of the Anti-Deficiency Act. DOI agrees to notify TORCH in writing within thirty (30) days if its costs reach ninety percent (90%) of the amount listed above and if DOI will be requesting a new funding ceiling. DOI and TORCH agree to review the costs actually incurred and work in good faith to determine whether the funding ceiling listed above should be adjusted. Notwithstanding the foregoing, however, nothing herein shall be construed to limit the obligation of TORCH to the above-specified funding ceiling for DOI.

**Acknowledgment of Payment.** Promptly upon receipt of funds from TORCH, each TRUSTEE shall furnish TORCH with an itemized invoice dated and stamped "**Payment Received.**" However, an annotated cover page with the date that payment was received, or a letter or memorandum on Trustee letterhead noting the date and amount of any payment received with a copy of the first page of the itemized invoice shall be an acceptable substitute.

**Funding of Approved Natural Resource Damage Assessment Studies.** The TRUSTEES agree that no funds to be received from TORCH pursuant to this Agreement will be used to fund ongoing or continuing research projects unless and to the extent these projects incur additional expenses arising specifically from work for this NRDA with the Agreement of all PARTIES.

**Admissibility.** The expenditure of money that TORCH has or may in the future transfer to the TRUSTEES, in accordance with this written or previous similar oral agreement, will be admissible as evidence in any claim to reduce the liability of TORCH for assessment costs arising from the Spill under applicable federal, State, or local laws or regulations.

#### **XIV. RESERVATION OF RIGHTS AND CLAIMS**

By entering into this Agreement, the PARTIES agree that none of them is making any admission of fact or law. The Agreement may be admissible in an action to enforce the Agreement, but execution of the Agreement itself shall not be evidence or proof of liability or non-liability. Nothing in the Agreement is to be construed to abrogate the right of any Party to pursue claims against or contribution from another Party. Nothing in the Agreement is intended or shall be construed as a waiver by the PARTIES of defenses or affirmative claims in any proceedings relating to the Spill or of any other rights or remedies. Notwithstanding the foregoing language, nothing in the Agreement precludes the PARTIES from agreeing otherwise in an amendment, modification, or attachment to the Agreement, or in a separate document.

Except for payments made by TORCH, TORCH is not released from any potential liability, including but not limited to claims for damage, injury, loss, or destruction of natural resources or their uses; claims for the costs of assessing damage, injury, loss, or destruction of natural resources or their uses; claims for restoration or replacement of natural resources or lost uses of these resources; or any other causes of action or requests for relief, either administrative or judicial, under either State or federal law, as well as any claims, causes of action, or requests for relief in admiralty, arising from the Spill.

## **XX. NOTICES**

All written communications, submission of data, and NOTICES shall be sent to the following designated representatives of the PARTIES:

For the TRUSTEES:

### **CDFG-OSPR**

Hand deliveries only:  
1700 K Street, Suite 250  
Sacramento, CA 95814

Robert W. Ricker  
Dept. of Fish and Game-OSPR  
P.O. Box 944209  
Sacramento, CA 94244-2090  
Telephone: (916) 323-0635  
Facsimile: (916) 324-8829

Vivian Murai  
DFG-OSPR  
P.O. Box 944209  
Sacramento, CA 94244-2090  
Telephone: (916) 445-1373  
Facsimile: (916) 324-5662

### **State Lands Commission**

Maurya Falkner  
Marine Facilities Division  
State Lands Commission  
330 Golden Shore, Suite 210  
Long Beach, CA 90802-4246  
Telephone: (562) 499-6312  
Facsimile: (562) 499-6317

Mark Meier  
Senior Staff Counsel  
State Lands Commission  
100 Howe Ave., Ste. 100- South  
Sacramento, CA 95825-8202  
Telephone: (916) 574-1853

Facsimile: (916)  
574-1855**US DOI**

Lisa Roberts  
US FWS  
2943 Portola Rd., Suite B  
Ventura, CA 93003  
Telephone: (805) 644-1766  
Facsimile: (805) 644-3958

Robin Kohn Glazer  
Office of the Solicitor, DOI  
600 Harrison Street, Suite 545  
San Francisco, CA 94107  
Telephone: (415) 427-1465  
Facsimile: (415) 744-4122

Chip Demarest  
DOI OEPC  
600 Harrison Street, Suite 515  
San Francisco, CA 94107  
Telephone: (415) 427-1479  
Facsimile: (415) 744-4121

**NOAA, US DOC**

Douglas R. Helton  
NOAA, DAC  
7600 Sand Point Way, NE,  
Building 1  
Seattle WA 98115-0070  
Telephone: (206) 526-4563  
Facsimile: (206) 526-6665

Elizabeth R. Mitchell  
NOAA General Counsel's Office  
501 W. Ocean Boulevard  
Ste. 4470  
Long Beach, CA  
Telephone: (562) 980-4088  
Facsimile: (562) 980-4084

**US Air Force, US DOD**

Nancy Read  
USAF-VAFB  
30 CES/CEVPN  
806 13th Street, Suite 116  
Vandenburg AFB, CA  
93437-5242  
Telephone: (805) 734-8232,  
ext. 5-8399  
Facsimile: (805) 734-1339

Glen Richardson  
USAF-VAFB  
30 SW/JAV  
806 13th Street, Suite 116  
Vandenburg AFB, CA  
93437-5242  
Telephone: (805) 734-8232,  
ext. 5-6228  
Facsimile: (805) 734-1339

**For TORCH:**

John Deacon  
Torch Operating Company  
201 South Broadway  
Orcutt, CA 93455  
Telephone: (805) 934-8239  
Facsimile: (805) 937-3030

Nicholas C. Yost  
Sonnenschein Nath & Rosenthal  
685 Market Street, 6th Floor  
San Francisco, CA 94105  
Telephone: (415) 882-2440  
Facsimile: (415) 543-5472

**XXI. EFFECTIVE DATE**

This Agreement may be executed in counterparts. The Effective Date of this Agreement shall be the date of the last affixed signature.

**XXII. SEVERABILITY**

The terms of this Agreement are severable. If any of the provisions of this Agreement are found to be unenforceable, the remaining provisions shall remain in force.

**XXIII. PARTIAL INTEGRATION**

Recognizing that the assessment process is dynamic and based on information that will be developed through the tasks and workplans contemplated under this Agreement, the PARTIES agree that this is not a fully integrated agreement.



**SIGNATURES**

For each PARTY:

Dated: July \_\_, 1998

CALIFORNIA DEPARTMENT OF FISH AND GAME  
OFFICE OF SPILL PREVENTION AND RESPONSE

By:

Pete Bontadelli  
Administrator  
Office of Spill Prevention and Response

Dated: July \_\_, 1998

CALIFORNIA STATE LANDS COMMISSION

By:

Robert C. Hight  
Executive Officer

Dated: July \_\_, 1998

UNITED STATES DEPARTMENT OF THE INTERIOR

By:

Willie R. Taylor

Director

Office of Environmental Policy and Compliance

Dated: July \_\_, 1998

UNITED STATES DEPARTMENT OF COMMERCE  
Acting  
Through The NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION

By:  
Craig R. O'Connor  
Deputy General Counsel  
National Oceanic and Atmospheric Administration

Dated: July \_\_, 1998

DEPARTMENT OF DEFENSE, Acting Through the  
UNITED STATES AIR FORCE AT VANDENBURG AIR  
FORCE BASE

By:

Dated: July \_\_, 1998

TORCH OPERATING COMPANY, and  
NUEVO ENERGY

By:

John M. Deacon  
Manager, ES and RC  
Torch Operating Company

