PLAINTIFF'S EXHIBIT

VRC-31

EARNEST MONEY CONTRACT

BETWEEN

CPC INTERNATIONAL INC.
"Seller"

AND

SABER REFINING COMPANY
"Purchaser"

Dated: September 13, 1979

EARNEST MONEY CONTRACT

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

THIS EARNEST MONEY CONTRACT ("Contract"), dated as of the 13th day of September, 1979, made and entered into by and between CPC INTERNATIONAL INC., a Delaware corporation ("Seller") and SABER REFINING COMPANY, a Texas corporation ("Purchaser") as follows:

ARTICLE I

(Definitions)

Seller and Purchaser mutually covenant and agree that the terms hereinafter defined shall have the meanings set forth below, unless the context of this Contract otherwise requires:

"Closing"	The time of consummation of the sale of the Properties and Equipment to Purchaser by Seller in accordance with this Contract.
"Earnest Money"	($, delivered simultaneously with the executed copy of this Contract to Seller.
"Equipment"	All equipment owned by Seller and located on the Properties on the Closing Date, save and except the Excepted Equipment.
"Excepted Equipment"	All equipment listed on Schedule 2 annexed to the Bill of Sale.
"Leased Properties"	Those certain parcels of land more particularly described in Exhibit "F" annexed hereto.

"Properties"	Those certain parcels of land more particularly described in Exhibit "A" annexed hereto.
"Purchase Price"	The consideration for the purchase and sale of the Properties and Equipment determined in accordance with Article III hereof.
"Seller's Bank"	Morgan Guaranty Trust Company, New York, New York.
"Survey"	A current boundary line survey of the Properties and the Leased Properties prepared by Munroe & Bass or such other licensed surveyor as may be mutually acceptable to Seller and Purchaser.
"Title Company"	Corpus Christi Title Company, or National Service Office (Fort Worth), as agent for the Title Insurer.
"Title Insurer"	Chicago Title Insurance Company
"Title Report"	A written commitment for an owner's title policy describing the Properties and committing the Title Company to issue a title policy at Closing upon normal closing conditions, subject to the exceptions (the "Permitted Title Exceptions") set forth in Exhibit "B" annexed hereto and the standard printed exceptions in a Texas owner's title policy.

ARTICLE II

(Sale and Purchase)

Seller agrees to sell and convey the Properties and Equipment to Purchaser, and Purchaser agrees to purchase

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the Properties and Equipment from Seller, for the Purchase Price, subject to the terms, covenants, conditions and provisions hereinafter set forth. Without limiting the generality of the foregoing, there is specifically excluded from said sale and conveyance any and all kinds, types and items of materials (including raw and manufacturing materials), supplies (including laboratory equipment, manufacturing spare parts, office and other supplies), merchandise, inventory (including raw materials, work in process and finished goods inventory), accounts, chattel paper, securities, documents, instruments, choses in action and general intangibles.

The obligation of Seller to consummate the transactions contemplated hereby is subject to the approval of this Contract by the Board of Directors of Seller on or prior to October 17, 1979. If such approval is not granted on or prior to such date, the Earnest Money shall be returned to Purchaser and both parties shall be relieved of all further obligations under this Contract.

In the event the transactions contemplated hereby are consummated, Seller agrees to assign to Purchaser at the time at which the Lease, as herein defined, terminates its rights at such time under the following permits: (a) Texas Department of Water Resources Permit to Dispose of Wastes No. 00358; (b) Texas Water Rights Commission Permit to Appropriate State Water No. 2830; (c) Texas Air Control Board Permit No. R-1507; (d) United States Environmental Protection Agency NPDES Permit No. TX0005649; and (e) Franchise from Nueces County Navigation District No. 1 dated October 31, 1960, to the extent such assignment is permitted by the terms of such permits and by applicable law, rules and regulations and without any representation or warranty of any kind regarding the validity or effect of any such permit or assignment or any other matter whatsoever. Purchaser agrees to assume all of the obligations and duties of Seller under such permits from and after the date of such assignment.

Within thirty (30) days after the execution of this Contract, Seller and Purchaser shall each make appropriate filings with the Federal Trade Commission and the Department of Justice under Section 7A of the Clayton Act, as amended by the Hart-Scott-Rodino Antitrust Improvements Act. In the event further information is requested of either party by either such agency and as a result, the waiting period is extended under Section 7A(e)(2) of the Clayton Act, such party shall immediately furnish the requested information to such agency and the Closing Date shall be automatically

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delayed until the first business day following the expiration of such waiting period.

ARTICLE III

(Purchase Price)

The total purchase price (the "Purchase Price") for the Properties and Equipment shall be determined in accordance with this Article III and shall be payable by Purchaser to Seller at the Closing in cash or by wire transfer of Federal funds to Seller's account at Seller's Bank, which transfer shall be deemed to have been completed only upon acknowledgement of receipt of such funds by Seller's Bank. The Purchase Price shall be the sum of No/100 Dollars ( ) and shall be payable by Purchaser at the Closing. The Earnest Money shall be applied on the Purchase Price at the Closing.

cannot determine whether adequate consideration was paid.

If prior to Closing, any portions of the Properties or Equipment are damaged or destroyed, the Purchase Price shall be credited with and reduced by the amount of any insurance proceeds paid to Seller as a result thereof, but this provision shall not require Seller to carry any insurance which Seller is not now carrying.

ARTICLE IV

(Remedies for Default)

If Seller fails or refuses to perform any of its obligations hereunder, Purchaser shall have the option of (i) cancelling this Contract, and in such event the Earnest Money shall be returned to Purchaser and both parties shall be relieved of all further obligations under this Contract or (ii) Purchaser may waive such condition, which shall include waiver of any title objections or defects [other than impairments of title resulting from voluntary acts of Seller in breach of its covenant set forth in the last paragraph of Article V hereof ("Special Impairments")] if such be the default in Seller's performance, and enforce specific performance of Seller's obligation to sell the Properties and Equipment to Purchaser, in which event Seller shall be obligated to cure any Special Impairments, and to lease the Leased Properties and Equipment from Purchaser.

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If Seller performs all of its obligations hereunder and if Purchaser does not purchase the Properties and Equipment within the time provided herein, Seller shall have the option of (i) cancelling this Contract, and in such event Seller shall have the right to retain the Earnest Money as liquidated damages and not as a penalty, in full satisfaction of all claims against the Purchaser or (ii) enforcing specific performance of Purchaser's obligations to purchase the Properties and Equipment from Seller and to lease the Leased Properties and Equipment to Seller.

ARTICLE V

(Title Report, Survey, Other Documents)

Within fifteen (15) days after the date of this Contract, Purchaser shall cause to be prepared and delivered to Seller the Title Report. In the event that the Title Report delivered to Seller reflects any material liens, claims, exceptions, easements, reservations, or restrictions other than the Permitted Title Exceptions described in Article I (herein such additional exceptions referred to as "Objections"), the title of Seller shall not be "good and indefeasible" within the meaning of this Contract. Seller shall have a reasonable time, not to exceed fifteen (15) days from the date of delivery of a title report containing Objections, within which to remedy or remove such Objections, but in no event shall Seller be obligated to file suit or to expend any of Seller's funds to remove any Objections.

Purchaser may, within twenty (20) days from the date of this Contract, at Purchaser's expense, cause the Survey to be prepared for the purpose of deleting the surveying exception from the owner's title policy referred to herein. Within such twenty (20) day period, if such Survey is made, Purchaser shall deliver two (2) copies of the Survey to Seller and one copy of the Survey to the Title Company. If such Survey reflects encroachments as a result of which the Title Company refuses to agree to delete the surveying exception from the title policy, such encroachments shall be deemed to be Objections as defined in the preceding paragraph and shall be subject to the same curative provisions as set forth in the preceding paragraph.

In the event that Seller fails to show good and indefeasible title to the Properties by the end of the fifteen (15) day curative period provided for herein, or

fails otherwise to comply with any of the terms contained in this Contract, Purchaser shall have the option, exercisable any time within five (5) days after the expiration of Seller's fifteen day curative period, of cancelling this Contract by delivering to Seller written notice of cancellation, whereupon the Earnest Money shall be promptly returned to Purchaser and both parties shall be relieved of all further obligations under this Contact. If Seller does not cure the Objections to Seller's title and Purchaser gives no written notice of termination within said five (5) days, then Purchaser shall be deemed to have elected to waive such Objections and consummate the purchase of the Properties and Equipment subject to such waived Objections.

Seller shall have no obligation to obtain or deliver an owner's title policy. Purchaser may obtain such an owner's title policy at its option and expense.

Seller covenants that from the date hereof through the Closing it will not grant any easement, right-of-way, lease or lien affecting the Properties or Equipment except to the extent permitted by this Contract or consented to by Purchaser.

ARTICLE VI

(Purchaser's Cancellation Option; Inspection)

Purchaser shall have, and hereby reserves, the right and option to cancel this Contract by delivery of telegraphic or telex notice of cancellation to the Seller at the address herein provided for notice (with copy to Seller's counsel) (i) prior to 4 p.m. local time, Englewood Cliffs, New Jersey, on Friday September 21, 1979, in the event Purchaser, in its sole discretion and judgment, objects to any of the Permitted Title Exceptions or (ii) prior to 4 p.m. local time Englewood Cliffs, New Jersey, on Friday September 28, 1979, in the event Purchaser is unable to obtain the Title Report (being the owner's title policy commitment referred to herein); provided that in the event Purchaser is unable to obtain such Title Report prior to September 28, 1979, Seller shall have the right to obtain same within fifteen (15) days thereafter for Purchaser's account and thereupon this Contract shall be reinstated as though Purchaser had not elected to exercise its cancellation option. In regard to (i) above, Purchaser acknowledges that Seller has delivered to Purchaser's copies of the unrecorded instruments referred to in Exhibit "B" hereto other than any instruments creating the rights referred to in paragraph 36 of Exhibit "B" hereto.

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Seller agrees that at a time to be designated by Seller and occurring after October 1, 1979, and prior to October 15, 1979, Purchaser, or Purchaser's agents or representatives, shall have the right to inspect the Properties; provided, however, such right of inspection and entry upon the Properties shall not be deemed to grant Purchaser the right of beneficial use and occupancy of the Properties or any part thereof. Purchaser shall be liable for repairing any damage to the Properties caused by the activities of Purchaser, or Purchaser's agents and representatives, upon the Properties prior to Closing. Purchaser agrees to indemnify and hold harmless Seller from and against any loss, cost, expense, liability or claim arising from or in connection with Purchaser's activities on the Properties prior to Closing.

Purchaser agrees that, pursuant to such right of inspection, it shall examine those certain improvements on the Properties and categories of Equipment described in Exhibit "G" hereto in order to determine which of such improvements and Equipment shall be designated Special Assets under the Lease, as hereinafter defined. Purchaser shall prepare a list of such Special Assets, setting forth each such Special Asset by item, and shall deliver such list to Seller no later than October 15, 1979. Such list shall be attached to the Lease as Schedule II thereto.

ARTICLE VII

(Closing)

The Closing shall occur on November 15, 1979 (the "Closing Date"). The Closing shall occur at 10:00 o'clock a.m. on the Closing Date in the offices of Baker & Botts, One Shell Plaza, Houston, Texas, or at such other place as may be mutually acceptable to Seller and Purchaser.

At the Closing, the following shall occur:

1. Purchaser shall deliver or cause to be delivered to Seller the following:

(a) A Lease, in the form annexed hereto as Exhibit "C" (the "Lease"), properly executed by Purchaser, as lessor, which shall be executed and

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delivered at the Closing by Seller, as lessee, thereunder;

(b) The Purchase Price in the manner herein provided (with the Earnest Money to be applied on such Purchase Price);

(c) Appropriate corporate assurances necessary to evidence that all actions by Purchaser in consummating the transactions contemplated by this Contract have been duly and effectively taken, including certificates of existence and good standing, a Secretary's certificate of resolutions, an incumbency certificate and an opinion of counsel regarding due authorization, execution and delivery of all documents;

(d) Possession of the Leased Properties and Equipment;

(e) The undertaking of Purchaser, in form and substance acceptable to Seller, to assume all obligations and duties of Seller under the deed, dated September 10, 1947, between Nueces County Navigation District No. 1 and Corn Products Refining Company of record at Vol. 395, p. 13 et seq., Deed Records of Nueces County, Texas.

2. Seller shall deliver or cause to be delivered to Purchaser the following:

(a) A special warranty deed in the form annexed hereto as Exhibit "D" properly executed by Seller, conveying the Properties to Purchaser free and clear of all Objections unless waived pursuant to the terms hereof;

(b) Appropriate corporate assurances necessary to evidence that all actions by Seller in consummating the transactions contemplated by this Contract have been

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duly and effectively taken, including certificates of existence and good standing, a Secretary's certificate of resolutions, an incumbency certificate and an opinion of counsel regarding due authorization, execution and delivery of all documents;

(c) Possession of the Properties;

(d) A Bill of Sale in the form annexed hereto as Exhibit "E" properly executed by Seller, transferring the Equipment to Purchaser.

3. All ad valorem taxes or assessments on the Properties for the year in which the Closing occurs shall be prorated between Seller and Purchaser as of the Closing Date. If the amount of such taxes is not known at the time of Closing, they shall be estimated on the basis of the preceding tax year, but the amount owed by Seller and Purchaser hereunder shall be readjusted as soon as the amount of such taxes and assessments are known, and thereafter the party receiving the benefit of any erroneous prorations shall, upon receipt of appropriate evidence from the other party, promptly remit its pro rata portion thereof to the other party, and the provisions of this paragraph shall specifically survive the Closing.

4. Seller shall pay the cost of preparing the special warranty deed, the lease and the Bill of Sale and its own attorneys' fees. Purchaser shall pay the cost of the Title Report, the owner's title policy (if Purchaser elects to obtain same), the Survey (if Purchaser elects to obtain same), tax certificates, recording the special warranty deed and its own attorneys' fees.

ARTICLE VIII

(Commissions)

Seller and Purchaser each respectively represents to the other that no broker, agent or other party who could be entitled to a commission, fee or other compensation

payable by the other of them on account of the purchase and sale of the Properties and Equipment hereunder has been engaged by either of them, and each agrees to protect and save harmless the other of them ("indemnitee") from any cost, expense or liability of any kind or character whatsoever asserted against the indemnitee on account of the claims of any agent, broker or other person claiming under any agreement made or asserted to have been made by the indemnitor to pay or cause to be paid any fee, commission or other compensation.

ARTICLE IX

(Notice)

Any notice, communication, request, reply or advice ("notice"), in this Contract provided or permitted to be given, made or accepted by either party to the other must be in writing and shall, unless otherwise in this Contract expressly provided, be given or served by depositing the same in the United States mail, postage prepaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same in person to the party to be notified, or by postpaid telegram, when appropriate, addressed to the party to be notified. Except as otherwise expressly provided in this Contract, notice deposited in the mail in the manner hereinabove described shall be effective from and after the expiration of two (2) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For purposes of notice, the addresses for the parties shall, until changed as hereinafter provided, be as follows:

If to Seller:

CPC International Inc.
International Plaza
Englewood Cliffs, N.J. 07632
Attention: Messrs. K. L. Knief
and W. S. Wells

With Copy to:

Mr. M. S. Moehlman
Baker & Botts
3000 One Shell Plaza
Houston, Texas 77002

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If to Purchaser to: Saber Refining Company
1700 Houston Natural Gas Building
Houston, Texas 77002
Attention: Mr. L. M. McAlister

With Copy to: Mr. Robert B. Reynolds
c/o Butler, Binion, Rice, Cook & Knapp
1100 Esperson Building
Houston, Texas 77002

However, the parties hereto shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the continental United States of America by at least five (5) days' prior written notice to the other party as herein provided.

ARTICLE X

(Seller's Right of Removal)

Seller shall have the right and option, but shall not be obligated, to remove from the Properties at any time on or prior to the Closing and at any time during the term of the Lease any and all personal property and fixtures (including the Excepted Equipment) other than the Equipment (including Special Assets). Seller shall have no obligation to repair any damage to the improvements on the Properties resulting from removal of such personal property and fixtures.

ARTICLE XI

(Seller's Representations and Warranties)

Except as expressly set forth in this Contract, Seller makes no representations or warranties whatsoever to Purchaser. No person has been authorized by Seller to give any information or to make any representation or warranty not expressly set forth in this Contract and any information, representation or warranty not contained herein shall not be relied upon by Purchaser as having been authorized by Seller. Without limiting the generality of the preceding two sentences, it is expressly understood and agreed that Seller makes no representation or warranty (except as expressly set forth in

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this Contract) with respect to the Properties and Equipment (as to merchantability, fitness for any specific use or otherwise) and makes no representation or warranty with respect to the condition, physical, operating or otherwise, of the Properties or the Equipment.

ARTICLE XII

(Time of Essence and Entire Agreement)

Time is of the essence of this Contract and every provision hereof; provided, however, the time of performance of obligations hereunder by Seller or Purchaser shall be extended for a period of time, in no event to exceed ten (10) days, that performance by such party is delayed for any reason beyond the reasonable control of such party.

This Contract contains the entire agreement between Seller and Purchaser, and no oral statements or prior written matter not specifically incorporated herein shall be of any force or effect. No variation, modification or changes hereof shall be binding on either party hereto unless set forth in a document executed by such party or a duly authorized agent, officer or representative thereof.

ARTICLE XIII

(Miscellaneous)

Prior to Closing, Seller and Purchaser shall make only such public announcements or press releases concerning the existence of this Contract as Seller and Purchaser shall have mutually agreed are reasonably advisable, both as to content and timing thereof. After Closing, Seller or Purchaser may make such public announcements or press releases concerning the existence of this Contract as Seller or Purchaser, respectively, shall deem advisable.

It is recognized that the parties hereto have certain options to terminate this Contract prior to Closing in accordance with the provisions hereof. In the event the parties hereto consummate the transactions contemplated hereby in accordance with this Contract, such parties shall have thereby waived any option or privilege hereunder to terminate or cancel this Contract.

Purchaser shall pay all sales and other taxes (excluding only Federal and State income taxes payable by Seller and ad valorem taxes prorated pursuant to Article VII hereof) in respect of the transactions contemplated hereby, in each case as such taxes become due and payable.

The article headings contained in this Contract are for reference only and shall not affect in any way the meaning or interpretation of this Contract.

The assignment of this Contract by any of the parties hereto without written consent of the other shall be void.

This Contract shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns.

This Contract shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, this Contract has been duly executed in multiple counterparts by the parties hereto as of the date set forth above.

CPC INTERNATIONAL INC.

ATTEST:

By _____
Director, Division Development

"SELLER"

SABER REFINING COMPANY

ATTEST:

By _____
President

"PURCHASER"

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LIST OF ATTACHMENTS

Exhibit "A"	-	Description of Properties
Exhibit "B"	-	Permitted Title Exceptions
Exhibit "C"	-	Lease
Exhibit "D"	-	Special Warranty Deed
Exhibit "E"	-	Bill of Sale
Exhibit "F"	-	Leased Properties
Exhibit "G"	-	Certain Categories of Properties

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EXHIBIT "A"

e following lands lying and being situated in Nueces County, Texas, d described as follows, to-wit:

RST TRACT:

The surface estate only of 107.30 acres of land out of the Rincon l Oso Grant to Enrique Villarreal, Abstract 1, being a part of a 0-acre tract conveyed to Charles and Wm. Ohler by H. L. Kinney, being the me tract conveyed by Alex, Moise and Joel Weil by A. R. Roark and wife, August 12, 1919, by deed of record at Vol. 127, page 165, et.seq., ed Records of Nueces County, Texas, together with accretion, said 7.30-acre tract being comprised of $112.40 acres of land LESS AND EXCEPT 10 acres heretofore conveyed to the San Antonio, Uvalde & Gulf Railroad mpany, which 5.10 acres are described in Agreement dated October 28, 47, by and between Corn Products Refining Company and Guy A.Thompson, ustee, for said Railroad Company, such Agreement of record at Vol. 384, ge 150, et.seq., Deed Records of Nueces County, Texas, said 112.40 acres land described as follows, to-wit:

Beginning at an existing 1/2-inch iron pipe in the north margin of a public road known as the Up River Road, the recognized southwest corner of the 50-acre tract set aside to A. R. Roark in the partition of the Roark 206-acre tract and southeast corner of the 106-acre tract set aside to Mrs. N. J. Roark in said partition, for the southwest corner of this tract, said partition deed dated August25 , 1916, of record at Vol. 116, page 58, et. seq., Deed Records of Nueces County, Texas;

Thence N. 35° 27' E., with the northwest boundary line of said A. R. Roark 50-acre tract and southeast boundary line of said N. J. Roark 106-acre tract and along the general line of an old fence,-at 2300 feet, top of bluff; at 2533.50 feet, intersect the southern meander boundary line of State of Texas Mineral File Survey No. 691 (in Nueces Bay), this being also the southern meander boundary line of submerged lands in Nueces Bay on which the State of Texas relinquished all its right and title, with certain reservations, to Nueces County Navigation District No. 1, as shown by Patent No. 84, dated May 7, 1930, and recorded in the Deed Records of Nueces County, Texas, in Volume 192 at page 579; at 2542.40 feet, an old pointed mesquite post, the original northwest shoreline corner of said A. R. Roark 50 acre tract, and Northeast shoreline corner of said N. J. Roark 106-acre tract,-in all, 2810.00 feet to a stake on the estimated line of ordinary high water on the south shore of Nueces Bay, for the northwest corner of this tract, being a shoreline corner, subject to change in position as a result of shoreline changes;

Thence in a general easterly direction along the south shore of said Nueces Bay, following the meanders of said line of ordinary high water as same is estimated to be located at this time, being subject to changes in position as a result of shoreline changes, S 42° 54' E., 670.00 feet; S. 72 ° 01' E. 1250.00 feet; S. 57° 05' E. 335.13 feet to a stake on a northerly extension of the east boundary line of said Roark 206-acre tract and west boundary line of the Reed and Perry tract, also known as the Terrell tract, for the northeast corner of this tract, being a shoreline corner, subject to change in position as a result of shoreline changes;

Thence S. 36° 06' W., with said east boundary line of Roark 206-acre tract and west boundary line of Reed and Perry or Terrell tract, and its northerly extension,-at 154.60 feet, an old pointed mesquite post, the original northeast shoreline corner of said Roark 206-acre tract, as partitioned, at 159.20 feet, intersect said southern meander boundar line of Mineral File Survey No. 691 and of Nueces County Navigation District No. 1 submerged land survey; at 385 feet, top of bluff,-in all 1756.60 feet to a 1-inch iron bar, set flush with the ground at the north margin of said Up River Road, for the southeast corner of this tract and of said Roark 206-acre tract;

Thence N. 88° 39' W., with the south boundary line of said Roark 206-acre tract and north margin of Up River Road, 1834.44 feet to a 1-inch iron bar set flush with the ground, for a corner of this tract and of said Roark 206-acre tract;

Thence N. 78° 01' W., with said South boundary line of Roark 206-acre tract and north margin of the Up River Road, 702.50 feet to the place of beginning.

SECOND TRACT:

The surface estate only of 32.166 acres of land out of the Rincon del Oso Grant to Enrique Villarreal, Abstract 1,sometimes called the Terrell Tract, being the same land conveyed to D.C. Reed and E. H. Perry by W. B. Terrell, et.al., by deed dated FEb. 6, 1924, of record at Vol. 145, page 204, Deed Records of Nueces County, Texas, together with accretion, said 32.166-acre tract being comprised of 34.32 acres of land LESS AND EXCEPT 2.154 acres heretofore conveyed to the San Antonio, Uvalde & Gulf Railroad Company, which 2.154 acres are described in Agreement dated October 28, 1947, by and between Corn Products Refining Company and Guy A. Thompson, Trustee for said Railroad Company, such agreement of record at Vol. 384, page 150, et.seq., Deed Records of Nueces County, Texas, said 34.32 acres of land described as follows, to-wit;

Beginning at a 1-inch iron bar set flush with the ground in the north margin of a public road known as the Up River Road for the southeast corner of the Roark 206-acre tract and for the southwest corner of this tract;

Thence N. 36° 06' E., with the east boundary line of said Roark 206-acre tract, - at 1370 feet, top of bluff; at 1597.40 feet, intersect the southern meander boundary line of State of TExas Mineral File Survey No. 691 (in Nueces Bay), this being also the southern meander boundary line of submerged lands in Nueces Bay on which the State of Texas relinquished all its rights and title, with certain reservations, to Nueces County Navigation District No. 1, as shown by Patent No. 84, dated May 7, 1930, and recorded in the Deed Records of Nueces County, Texas, in Volume 192 at page 579; at 1602.00 feet, an old pointed mesquite post, the original northeast shoreline corner of said Roark 206-acre tract, as partitioned,-in all, 1756.60 feet to a stake on the estimated line of ordinary high water on the south shore of Nueces Bay, for thenorthwest corner of this tract, being a shoreline corner, subject to change in position as a result of shoreline changes;

Thence in a general easterly direction along the South shore of said Nueces Bay, following the meanders of said line of ordinary high water, as same is estimated to be located at this time, being subject to change in position as a result of shoreline changes, S. 57° 05' E. 274.87 feet; S. 67° 36' E. 500.00 feet; N. 34° 59' E. 175.00 feet; S.75 ° 56' E. 78.21 feet to a stake for the northeast corner of this tract, being a shoreline corner, subject to change in position as a result of shoreline changes;

THENce S. 24° 29' 50"W., with the general line of an old fence,-at 170.30 feet, intersect the southern meander boundary line of State of Texas Mineral File Survey No. 689 (in Nueces Bay), this being also the southern meander boundary line of said submerged lands in Nueces Bay, relinquished with reservations, to Nueces County Navigation District No. 1; at 490 feet, top of bluff; at 1350.88 feet a 1-inch iron bar set flush with the ground in the north margin of said Up River Road, as now in use, - in all, 1366.60 feet to a stake set flush with the ground on the shoulder of said Up River Road, for the southeast corner of this tract, being 16.30 feet northerly, measured at right angles, from the centerline of pavement on said Up River Road;

Thence N. 88 ° 39' W., at 125.75 feet, a 1-inch iron bar set flush with the ground in the north margin of said Up River Road,-and continuing along the north margin of said Up River Road, in all 1343.00 feet to the place of beginning.

HIRD TRACT:

The surface estate only of 20.02 acres of land situated in the waters of Nueces Bay, embracing that portion of State of TExas Submerged Land Surveys No. 691, made for John D. Cochran, et al., and 689, made for D. Odem, et al., lying between a northeasterly extension of the Northwest boundary line of a 107.30 - acre tract conveyed to Corn Products Refining Company by Alex Weil et al by deed dated December 13, 1946, and recorded in the Deed Records of Nueces County, Texas.

in Volume 353 at page 100, and a northeasterly extension of the southeast boundary line of a 32.17-acre tract conveyed to said Corn Products Refining Company by D. C.Reed and E. H. Perry by deed dated December 13, 1946, and recorded in the Deed Records of said Nueces County in Volume 353 at page 134, and southwest of a line crossing the waters of said Nueces Bay in a general northwesterly and Southeasterly direction and referred to as the Navigation District bulkhead line. Said survey is a part of those Nueces Bay submerged lands patented to Nueces County Navigation District No. 1 by the State of Texas on May 7, 1930, as of record in the Deed Records of Nueces County, Texas, in Volume 192, at page 579, and is described by metes and bounds, as surveyed, as follows:

Beginning at the point of intersection of the southeast boundary line of said 32.17-acre tract conveyed to Corn Products Refining Company by D.C. Reed and E. H. Perry, being also the southeast boundary line of the Corn Products Refining Company 139.47-acre tract, with the south boundary line of said State Submerged Land Survey No. 689 and of said tract patented by the State of Texas to Nueces County Navigation District No. 1 for the south corner of this survey, whence the southeast corner of said 32.17-acre tract bears S. 25° 12' 20" W. 1196.30 feet;

Thence N. 76° 43' 30" W., with the south boundary line of said Survey No. 689 and of said tract patented by the State of Texas to Nueces County Navigation District No. 1, 708.60 feet to a concrete monument, five inches square on top, the southwest corner of said Survey No. 689, and southeast corner of said Survey No. 691 and a corner of said tract patented to Nueces County Navigation District No. 1, for a corner of this survey;

Thence N. 68° 09' 10" W. with the south boundary line of said survey No. 691 and of said tract patented by the State of Texas to Nueces County Navigation District No. 1, 1022.60 feet to a concrete monument, five inches square on top, a corner of said survey No. 691 and of said tract patented to Nueces County Navigation District No. 1, for a corner of this survey;

Thence N. 60° 53'50" W., continuing with said south boundary line of Survey No. 691 and of said tract patented to Nueces County Navigation District No. 1, 1415.20 feet to a point in the northwest boundary line of said 107.30-acre tract conveyed to Corn Products Refining Company by Alex Weil et al, being also the northwest boundary line of said Corn Products Refining Company 139.47-acre tract, for the West corner of this survey, whence the southwest corner of said 107.30-acre tract bears S.36° 09' 30" W. 2533.50 feet;

Thence N. 36 ° 09' 30" E., with said northwest boundary line of 107.30-acre tract and of Corn Products Refining Company 139.47-acre tract, and a northeasterly extension thereof into the waters of said Nueces Bay, 271.11 feet to a point in a line running in a general northwesterly and southeasterly direction, referred to as the Navigation District bulkhead line, being located parallel with, on straight courses, and concentric with, on curved courses, and 300.00 feet southwesterly, measured, respectively, at right angles and radially from a line established as the centerline of a proposed channel, to be 200 feet wide at the bottom and 34 feet deep, for the north corner of this survey;

Thence S. 63° 46' 40" E., with said 300-foot offset line, referred to as the Navigation District bulkhead line, 2275.37 feet to the point of beginning of a circular curve to the left, for a corner point of this survey, whence the center point for the circular curve of the next succeeding course bears N. 26° 13' 20" E. 4119.83 feet;

Thence curve left along a circular curve of 4119.83 feet radius, 803.36 feet to a point in a Northeasterly extension of said southeast boundary line of 32.17-acre tract and of Corn Products Refining Company 139.47-acre tract, for the east corner of this survey, whence said center point for circular curve bears N. 15° 03' 00" E. 4119.83 feet;

Thence S. 25° 12' 20" W., with said northeasterly extension of southeast boundary line of 32.17-acre tract and of Corn Products Refining Company 139.47-acre tract, 179.49 feet to the place of beginning.

(The meridian used is that of the Texas Coordinate System, South Zone, based on points established by the U. S.Engineers Office.)

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1. The reservation by Moise Weil individually and as Independent Executor and Trustee of the Estate of Jos. L. Weil, deceased, Alex Weil, and Bertha Weil, a widow, of all oil, gas and other minerals in and under First Tract hereinabove described, such reservation being set forth in deed from the above parties to Corn Products Refining Company, dated Dec. 13, 1946, recorded at Vol. 353, pp. 101-104, Deed Records of Nueces County, Texas. (As to First Tract)

2. The reservation by D. C. Reed and wife, Laura Moses Reed, E. H. Perry and wife, Lutie Perry, of all oil, gas and other minerals, such reservation set forth in deed from said Reeds and Perrys to Corn Products Refining Company, recorded at Vol. 353, Page 135, Deed Records of Nueces County, Texas. (As to Second Tract)

3. The ownership by Nueces County Navigation District No. 1 of all littoral and riparian rights belonging to or appertaining to First Tract, Second Tract and Third Tract, same conveyed by Corn Products Refining Company to said District by deed of Sept. 10, 1947, of record at Vol. 395, p. 13, et. seq., Deed Records of Nueces County, Texas.

4. The ownership by Nueces County Navigation District No. 1 of a triangular tract or strip of land out of the Northwest portion of First Tract, which strip lies to the Northeast of the south bulkhead line of the ship channel of said District, as such bulkhead line is established in the deed recorded in Vol. 395, Page 13 of the Deed Records of Nueces County, Texas.

5. The possible relocation from time to time of the North boundary line of Third Tract, which, according to the terms and provision of the deed recorded in Vol. 395, Page 13 of the Deed Records of Nueces County, Texas, is and shall always remain coincident with the south bulkhead line of the ship channel of Nueces County Navigation District No. 1, as such line is established in such deed or as it might thereafter be relocated as the result of changes, alterations or further extensions of said ship channel on the part of such district.

6. The reservation by the State of Texas of all oil, gas and other minerals in and under Third Tract as set forth in its patent to Nueces County Navigation District No. 1, of submerged lands in Nueces Bay, being Patent

No. 84, Vol. 47-A, same recorded at Vol. 192, page 579, et. seq., Deed Records of Nueces County, Texas.

7. The right and easement reserved to Nueces County Navigation District No. 1 in the deed recorded in Vol. 395, Page 13 of the Deed Records of Nueces County, Texas, to deposit or dump upon Third Tract any and all dredge spoil obtained in the construction of the ship channel and turning basin mentioned in said deed, or any enlargements, extension, deepening or widening of said channel and basin.

8. Conditions imposed by both parties to the deed recorded in Vol. 395, Page 13 of the Deed Records of Nueces County, Texas, together with possibility of reverter for breach thereof.

9. Right-of-way easement, covering an unspecified 12-foot strip across First Tract, for gas pipeline and installation of private telephone line, executed by Alex Weil, et al., to O. R. Seagraves, dated May 31, 1924, of record at Vol. 27, p. 443, Bond & Mortgage Records of Nueces County, Texas, which easement was amended by instrument of writing dated Aug. 24, 1955, executed by Corn Products Refining Company and by United Gas Pipe Line Company, such latter Company having acquired such original easement, such amendment of record at Vol. 708, p. 49, Deed Records of Nueces County, Texas, and affecting Third Tract as well as First Tract.

10. Right-of-Way easement for gas pipeline purposes, providing for laying of 8-inch gas pipeline on First Tract for a distance of 2376 feet paralleling and as near the western boundary of First Tract as practical, same executed by Moise Weil, et al., to Houston Gulf Gas Company, dated September 1933, of record at Vol. 208, p. 256, Deed Records of Nueces County, Texas, such Company later merging with United Gas Pipe Line Company, as shown by instrument of record at Vol. 299, p. 115, Deed Records of Nueces County, Texas.

11. Right-of-Way easement for pipeline for transportation of oil, gas, water, or any other fluid or substance, covering all of First Tract, executed by Weil Brothers to Magnolia Pipe Line Company, dated Jan. 11, 1937, of record at Vol. 228, page 82, Deed Records of Nueces County, Texas.

12. Right-of-way easement, for pipeline for laying, maintaining and operating, a pipeline for transportation

for oil, gas, water, and their products, covering all of First Tract, executed by Weil Bros. to Humble Pipe Line Company, dated March 10, 1937, of record at Vol. 229, p. 432, Deed Records of Nueces County, Texas.

13. Right-of-way easement, for gas, oil and water pipeline purposes covering all of First Tract, dated Nov. 6, 1939, executed by Moise Weil, et. al., to Magnolia Petroleum Company, of record at Vol. 252, p. 383, Deed Records of Nueces County, Texas.

14. Right-of-way easement, for oil and gas pipeline purposes, dated Jan. 4, 1940, of record at Vol. 255, page 98, Deed Records of Nueces County, Texas, covering all of First Tract. Said easement was assigned by the grantee to Sinclair Refining Company by written instrument dated Apr. 26, 1943, of record at Vol. 287, p. 492, Deed Records of Nueces County, Texas, having been originally given by Alex Weil, et. al., to Continental Pipe Line Company.

15. Right-of-way easement, for pipeline purposes, together with right to construct, maintain, and operate etc., telegraph and telephone lines in connection therewith, covering all of Second Tract, executed by D. C. Reed, et. al., to Houston Gulf Gas Company, dated Dec. 17, 1935, of record at Vol. 219, p. 134, Deed Records of Nueces County, Texas, said Company later merging with United Gas Pipe Line Company, as shown by instrument of writing of record at Vol. 299, p. 115, Deed Records of Nueces County, Texas.

16. Right-of-way easement, for oil, gas and water pipeline purposes, covering all of Second Tract, executed by D. C. Reed, et al., to Crude Oil Pipe Line Company, by instrument dated Dec. 15, 1939, of record at Vol. 255, p. 100, Deed Records of Nueces County, Texas. The grantee in such easement subsequently assigned its rights to Continental Oil Company by instrument dated Dec. 30, 1939, of record at Vol. 255, p. 1, Deed Records of Nueces County, Texas, and said Continental Oil Company assigned same by instrument dated Apr. 26, 1943, to Sinclair Refining Company, such assignment of record at Vol. 287, p. 492, Deed Records of Nueces County, Texas.

17. Right-of-way easement, dated Feb. 24, 1936, for oil and gas pipeline purposes, executed by E. H. Perry, et al., to The Texas Pipe Line Company, of record at Vol. 219, p. 624, Deed Records of Nueces County, Texas, covering Second Tract.

18. Right-of-way easement, for pipeline for oil, gas, water, or any other fluid or substance, covering Second Tract, dated Jan. 11, 1937, executed by D. C. Reed, et al., to Magnolia Pipe Line Company, of record at Vol. 228, p. 83, Deed Records of Nueces County, Texas.

19. Right-of-way easement, for pipeline for oil, gas, water, and their products, covering Second Tract, dated Sept. 4, 1937, of record at Vol. 233, p. 408, Deed Records of Nueces County, Texas, executed by D. C. Reed, et al., to Humble Pipe Line Company.

20. Right-of-way easement, for pipeline for oil, gas, water, or other fluid or substance, covering Second Tract, dated Oct. 20, 1939 of record at Vol. 252, p. 98, Deed Records of Nueces County, Texas, from D. C. Reed, et al., to Magnolia Petroleum Company.

21. Right-of-way easement, for 8-inch pipeline and 6-inch pipeline, for crude petroleum, oil, gas and water, covering 30-foot strip lying within First and Second Tracts, dated July 23, 1947, of record at Vol. 380, p. 325, Deed Records of Nueces County, Texas, executed by Corn Products Refining Company to Sinclair Refining Company.

22. Right-of-way easement, for pipeline for oil, gas and water, covering a strip of land out of First and Second Tracts, dated Aug. 4, 1948, executed by Corn Products Refining Company to Humble Pipe Line Company, of record at Vol. 409, p. 410, Deed Records of Nueces County, Texas.

23. Right-of-way easement, for oil and gas pipeline, covering a strip of land out of First Tract, dated May 24, 1949, executed by Corn Products Refining Company to Sinclair Refining Company, of record at Vol. 432, p. 206, Deed Records of Nueces County, Texas.

24. Right-of-way easement, covering a tract 70' x 450' out of First Tract, dated Oct. 5, 1950, of record at Vol. 491, p. 407, Deed Records of Nueces County, Texas, executed by Corn Products Refining Company to United Gas Pipe Line Company.

25. Right-of-way easement, for general transmission of electric power, covering First and Second Tracts, dated April 20, 1956, executed by Corn Products Refining Company to Central Power & Light Company, of record at Vol. 732, p. 531, Deed Records of Nueces County, Texas.

26. Cathodic Protection Easement, covering portion of First Tract, dated June 14, 1956, executed by Corn Products Refining Company to United Gas Pipe Line Company, of record at Vol. 739, p. 357, Deed Records of Nueces County, Texas.

27. Right-of-way easement, for pipeline for oil, gas, water, petroleum products or any other liquids, gases or substances which can be transported through a pipe line, covering strip of land out of First and Second Tracts, dated 1955, of record at Vol. 726, p. 39, Deed Records of Nueces County, Texas, from Corn Products Refining Company to Humble Oil and Refining Company.

28. Right-of-way easement, for pipeline for oil, gas, water, petroleum products and other substances, etc., covering strip of land through First and Second Tracts, dated Aug. 21, 1956, of record at Vol. 745, p. 210, Deed Records of Nueces County, Texas, executed by Corn Products Refining Company to Humble Pipe Line Company.

29. Cathodic Protection Easement, covering part of First Tract, dated Jan. 17, 1957, of record at Vol. 763, p. 331, Deed Records of Nueces County, Texas, executed by Corn Products Refining Company to United Gas Pipe Line Company.

30. Right-of-way easement for highway purposes, covering part of First Tract, dated July 3, 1963, executed by Corn Products Company to the State of Texas, of record at Vol. 1011, p. 627, Deed Records of Nueces County, Texas.

31. Cathodic Protection Easement, dated Jan. 21, 1965, of record at Vol. 1072, p. 27, Deed Records of Nueces County, Texas, covering part of Second Tract, executed by Corn Products Company to Magnolia Pipe Line Company.

32. Easement for pipe line purposes granted by Corn Products Company to Humble Pipe Line Company by instrument dated February 9, 1968, recorded in Vol. ____, Page ___ of the Deed Records of Nueces County, Texas.

33. Unrecorded Industrial Track Agreement dated August 9, 1956, between Corn Products Refining Company and Missouri Pacific Railroad Company, which Agreement is terminable by either party thereto upon six months notice.

34. Any loss or damage by reason of any titles or rights asserted by anyone, including but not limited to persons, corporations, governments, or other entities to

tidelands, or areas within tidewater limits, or accretions, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs, or oceans, or to any land extending from the line of mean low tide to the line of vegetation, or to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or to filled in lands or artificial islands or to reparian or alluvial rights, or the rights or interests of the State of Texas or the public generally in the area extending from the line of mean low tide to the line of vegetation or their right of access thereto or right of easement along and across the same.

35. Rights of CPC International, Inc. under lease of even date.

36. Reservations of the subsurface mineral estate, including oil, gas, and other minerals in and under the land above described, including royalty interests, royalties, bonuses, rental and all other rights in connection therewith, including all easements or rights of way owned or held by any lessee or mineral owner, on, over or across said lands for the purpose of producing or transporting any of said minerals.

37. Permit Agreement, dated March 15, 1962, between Corn Products Company and the United States of America.

38. Franchise, adopted October 31, 1960, between Nueces County Navigation District No. 1 and Corn Products Company.

39. Easement and right-of-way granted by Corn Products, a Unit of CPC International, Inc., to Coastal States Crude Gathering Company, by instrument dated January 18, 1978, recorded in Vol. _____, Page _____ of the Deed Records of Nueces County, Texas.

40. Easement and Right-of-Way granted by CPC International, Inc., to Central Power and Light Company by instrument dated August 4, 1978, recorded in Vol. _____, Page _____ of the Deed Records of Nueces County, Texas.

EXHIBIT "C"

LEASE AGREEMENT

THE STATE OF TEXAS §
§
COUNTY OF NUECES §

THIS LEASE AGREEMENT made and entered into on this _____ day of _____, 1979, by and between SABER REFINING COMPANY, a Texas corporation (hereinafter referred to as "Lessor"), and CPC INTERNATIONAL INC., a Delaware corporation (hereinafter referred to as "Lessee"),

W I T N E S S E T H:

I.

Leased Premises

Subject to and upon terms, provisions and conditions hereinafter set forth, and each in consideration of the duties, covenants and obligations of the other hereunder, Lessor has demised and leased, and by these presents does demise and lease, exclusively unto Lessee, and Lessee hereby rents and leases from Lessor, all that certain tract or parcel of land in Nueces County, Texas, more particularly described in Schedule I attached hereto and made a part hereof, together with all improvements in and upon said lands, said lands and all improvements located thereon hereinafter sometimes collectively called the "Leased Premises".

Lessor further hereby grants to Lessee the rights and easements for the term of this lease to use, operate and maintain the existing water treatment plant, water cooling lines, steam lines, pumps, utility facilities, storm sewers and water intakes and outtakes for the benefit of the Leased Premises over, under and across that portion of the land

conveyed by Lessee to Lessor in deed dated _____, 1979, lying between the northerly boundary of the Leased Premises and the northerly boundary of the lands covered by said deed. Such rights and easements shall include, without limitation, the right of Lessee to exclusively use, operate and maintain all such facilities. [Metes and bounds description to be inserted here at time of lease execution, if available].

TO HAVE AND TO HOLD the above described or referred to Leased Premises, together with the easements herein granted, and all rights, easements and appurtenances belonging to, or in anywise appertaining to, said Leased Premises exclusively unto Lessee, its successors and assigns, as long as this Agreement, or any extension or renewal hereof, remains in force and effect.

Whenever and as often as the words "Agreement" or "this lease", are used or appear in this instrument, same shall mean and refer to this instrument and all exhibits hereto.

II.

Term

Subject to and upon the terms, provisions and conditions hereinafter set forth, this lease shall be and continue in full force and effect for a term of one (1) year, commencing _____, 1979, and continuing up through and including _____, 1980 (hereinafter sometimes called the "initial term") unless sooner terminated in accordance with the provisions hereof. [To be dated commencing the Closing Date].

Lessee shall have and is hereby given an option to renew and extend this lease upon the terms, covenants, conditions and provisions herein contained for the initial term, including the rental provisions set forth herein, for two (2) periods of six (6) months each (hereinafter each such six-month period sometimes called a "Renewal Period"), to follow consecutively upon the initial term of this lease, and thereafter to follow consecutively upon the first Renewal Period by giving Lessor notice of its intention to exercise such renewal option not less than sixty (60) days prior to

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the expiration of the initial term or the Renewal Period, as appropriate. If at the time Lessee gives notice of its desire to renew this lease for a Renewal Period, Lessor should allege that Lessee is not then entitled to exercise such renewal option by reason of any default in the performance of Lessee's obligations hereunder existing at such time, then Lessor must, within ten (10) days after receipt by Lessor of notice from Lessee of Lessee's desire to renew and extend the term of this lease, give Lessee written notice specifying the alleged default on the part of Lessee; and Lessee shall thereupon have thirty (30) days from the receipt of such notice from Lessor (plus such additional reasonable period of time as may be required with respect to those items which, by their very nature, cannot be cured within such thirty-day period) within which to remedy such alleged default; and if Lessee shall have cured all such defaults within the said respective time periods allowed, then the previous existence of such default shall not constitute a reason for invalidating Lessee's notice of desire to exercise its renewal option but if such defaults have not been so cured, Lessee shall not be entitled to exercise such renewal option.

As used in this lease, the terms "possession", "use" and "occupancy" mean exclusive possession, exclusive use and exclusive occupancy unless otherwise provided.

III.

Rental

As consideration for the use and occupancy of, and as rental for, the Leased Premises, Lessee promises and agrees to pay Lessor, while this lease remains in force and effect during the aforesaid initial term hereof, and during each Renewal Period if Lessee exercises its option to renew and extend this lease, as and in the manner hereinafter provided, an annual lease rental in the sum of (or a six-months lease rental in the sum of .s (, as applicable, which sum shall be paid in equal monthly installments in the amount of Seventy-five Thousand and No/100 Dollars (each calendar month in advance. The first monthly rental payment shall be due on the date of delivery of possession of the Leased Premises and the succeeding payments of monthly rental shall be due and payable on or before the same day of

each succeeding calendar month thereafter during the full term of this lease.

Lessee shall pay all rental and other sums, if any, payable by Lessee to Lessor pursuant to the terms hereof to Lessor at Lessor's address hereinafter set forth without demand for such payment.

IV.

Use and Condition; Fencing

The Leased Premises are to be used and occupied by Lessee for operation of a corn wet milling facility and related operations.

Lessee is familiar with all of said Leased Premises, including buildings and improvements in and on the lands covered hereby, and accepts the same in the condition they are now in. No representations or warranties are made by Lessor as to any of said Leased Premises and Lessee releases Lessor from any and all claims and liabilities which might at any time be asserted or claimed by Lessee by reason of the condition of said buildings, improvements, or said Leased Premises.

Lessor covenants and agrees, at its own cost and expense, to construct and install a six-foot high chain link (or comparable) fence along the entire length of the northerly boundary of the Leased Premises within sixty (60) days from the date of this lease, and thereafter to maintain such fence for the term of this lease. Such fence shall include gates on the northerly boundary to permit Lessee to exercise and enjoy its easement rights set forth in Article I hereof.

V.

Maintenance and Care of Premises

Lessor agrees that Lessee has no obligation, except as otherwise expressly provided in this Article V, to return the improvements on the Leased Premises to Lessor in good repair or condition.

During the term of this lease, except as otherwise expressly provided in this Article V, Lessee shall at its

own cost, risk, expense and liability, keep and maintain said Leased Premises in such state of repair as Lessee deems necessary or appropriate for Lessee's operations. Lessee shall have no obligation, except as otherwise expressly provided in this Article V, to Lessor to repair or cause to be repaired any damage to the Leased Premises caused by the negligence of Lessee or its agents, servants, employees, customers or invitees.

Lessee shall at its own cost and expense keep and maintain the improvements ("Special Improvements") included among the assets ("Special Assets") described in Schedule II attached hereto in the same condition in which they existed at the commencement of this lease and shall return such Special Improvements to Lessor in such condition, excepting ordinary wear and tear and damage by casualty.

Lessor shall not be liable to Lessee, or to Lessee's agents, employees, guests, licensees, or invitees, for any injury, loss, death or damage to persons or property occurring on or about the Leased Premises by fire, explosion, wind, hail, water or acts of God, unavoidable accident or any other cause except the fault or negligence of the Lessor, or Lessor's employees and agents, and Lessee agrees to indemnify and save Lessor harmless from any damage, loss, injury, death or causes of action caused by negligence of Lessee, its agents or employees.

Lessee shall not be liable to Lessor, or to Lessor's agents, employees, guests, licensees, or invitees, for any injury, loss, death or damage to persons or property occurring on or about the Leased Premises by fire, explosion, wind, hail, water or acts of God, unavoidable accident or any other cause except the fault or negligence of the Lessee, or Lessee's employees and agents, and Lessor agrees to indemnify and save Lessee harmless from any damage, loss, injury, death or causes of action caused by negligence of Lessor, its agents or employees.

Lessee may make such changes or alterations in, or improvement to, the Leased Premises as Lessee deems necessary or appropriate for Lessee's operations in the ordinary course of its business without the consent of Lessor. Lessee agrees to give prior notice to Lessor of any such changes or alterations which are material. All trade fixtures, appliances, and other equipment and property placed or installed in or on said Leased Premises by Lessee shall

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remain the property of Lessee and may be removed by Lessee during the term of this lease and at any time within thirty (30) days after the expiration or termination of this lease. All other additions or improvements which might be placed upon or installed in or upon the Leased Premises by Lessee and all equipment owned and used by Lessee in connection with the Leased Premises which Lessee fails to remove or elects not to remove as aforesaid shall become the property of Lessor after such thirty (30) day period following expiration or termination of this lease, to be disposed of or used as Lessor deems appropriate; however, Lessee shall have no obligation with respect thereto after such period.

Reference is here made to that Industrial Track Agreement dated August 9, 1956, between Corn Products Refining Company, as Shipper, and Missouri Pacific Railroad Company, as Carrier. Lessee shall have the right to continue all rights and privileges of the "Shipper" under such Agreement. At the expiration or termination of this lease, Lessee agrees to assign its rights under such agreement, subject to approval of the carrier thereunder, to the Lessor, and Lessor agrees to assume all of the obligations and duties of the Shipper under such Agreement.

VI.

Personal Property

Lessee is acquainted with the personal property of Lessor located upon the Leased Premises as of the date hereof. Lessor does hereby let, lease and demise the use of such personal property, being all personal property owned by Lessor and located on the Leased Premises as of the date hereof, to Lessee for the term hereof, and any extensions hereof, for use by Lessee consistent with the permitted uses of the Leased Premises as set forth in Article IV of this lease. Lessee may make such changes or alterations in, or improvements to, such personal property as Lessee deems necessary or appropriate for Lessee's operations without the consent of Lessor. Lessee agrees to give prior notice to Lessor of any such changes or alterations which are material.

Lessee shall have no obligation to keep, or maintain or return any of such personal property (except as hereinafter expressly mentioned) in good repair or condition, and Lessee shall have no obligation to maintain, repair, insure or

replace any of such personal property for any reason whatsoever except as otherwise expressly provided in this Article VI and in Article X.

During the term of this lease, Lessee shall at its own cost, risk, expense and liability, keep and maintain Lessor's personal property listed in Schedule II hereto ("Special Equipment") and covered by this lease in the same condition in which it existed at the commencement of this lease and shall return such Special Equipment to Lessor in such condition, excepting ordinary wear and tear and damage by casualty.

VII.

Compliance with Laws; Utilities; Taxes

Lessee shall promptly execute, fulfill and comply with all valid laws, rules and regulations made by competent governmental authority which are applicable to the occupancy of the Leased Premises, and all orders and requirements imposed by the Health, Sanitation and Police Departments, for the correction, prevention and abatement of nuisances in or upon said Leased Premises because of Lessee's use thereof during the full term hereof, all at Lessee's expense.

Lessor covenants and agrees to promptly comply with all laws, rules and regulations made by competent governmental authority as to Lessor's property adjoining the Leased Premises, and Lessor further covenants and agrees to so use such adjoining property as to comply with applicable regulations, including environmental regulations, relating to use of property in the vicinity of operations conducted by Lessee on the Leased Premises.

Lessee agrees that Lessor shall have the right to apply to those entities which supply water, gas and electricity to the Leased Premises for service to that part of those certain properties purchased by Lessor from Lessee on the date hereof and not included in the Leased Premises pursuant to connections made to service lines presently servicing the Leased Premises; provided, the cost of effecting and maintaining such connections shall be borne by Lessor, no such service shall displace, impede or limit service by any such entity to Lessee and the Leased Premises and such service shall be subject to the initial consent and continuing rules and regulations of each such entity. Lessor shall indemnify and save Lessee harmless from any damage, loss, injury, death or causes of action caused by, resulting from or connected with any such service.

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Lessee shall pay all costs of water, gas, electricity, air conditioning and similar utilities used by Lessee on the Leased Premises, all maintenance costs in connection therewith and all insurance premiums for policies Lessee elects or is obligated to maintain.

Lessee agrees to discharge (either by payment or by filing of the necessary bond, or otherwise) any mechanics', materialmen's or other lien against the Leased Premises and/or the Lessor's interest therein, which liens may arise out of any payment due for, or purported to be due for, any labor, services, materials, supplies or equipment alleged to have been furnished to or for the Lessee in, upon or about the Leased Premises.

Lessor covenants and agrees to pay, prior to delinquency, all taxes and assessments imposed upon the Leased Premises during the term of this lease, except ad valorem taxes on additions and improvements hereafter constructed by Lessee thereon.

VIII.

Assignment or Subletting

Lessee shall not have the right to assign this Agreement or sublet the Leased Premises, or any part thereof, without the consent of Lessor, which consent shall not be unreasonably withheld. In no event shall any such assignment or sublease ever release Lessee from any obligation or liability hereunder.

IX.

Fire and Casualty Damage

In the event any building and/or other improvements on the Leased Premises are wholly or partially damaged or destroyed by fire, flood, storm, tornado, or other casualty and such damage or destruction renders a substantial part of the Leased Premises untenantable, Lessee shall give prompt notice to Lessor, and Lessee, at its own cost, may at Lessee's option rebuild, repair and/or restore such building and/or other improvements to substantially the condition in which they were immediately prior to the happening of any such casualty or at Lessee's option this lease may be terminated by written notice of termination given by Lessee to Lessor

or Lessee may elect to continue this lease for the remainder of the term hereof, including renewals, without any rebuilding or restoration of such damaged improvements and in the event of the continuation of this lease, no part of the rental shall be abated.

X.

Casualty Insurance

Lessee may during the term of this lease, at its expense, maintain a policy or policies of insurance naming Lessee as the only assured, insuring the Leased Premises and all improvements located thereon against loss or damage by fire, explosion, or other hazards and contingencies. Lessee shall during the term of this lease, at its expense, maintain a policy or policies of insurance naming Lessee and Lessor as the insureds, as their interests may appear, insuring the Special Assets against loss or damage by fire, explosion and other casualties insured against by Lessee immediately prior to this Lease in an aggregate face amount equal to the lesser of the aggregate actual cash value of the Special Assets as of the date of this lease or $11,800,000. Except as provided in the next preceding sentence, (i) it is expressly stipulated and agreed that Lessor shall not be named as an insured under any policy maintained by Lessee nor shall Lessor have any right or claim whatsoever as to any proceeds under such policies and (ii) it is further expressly understood and agreed that Lessee shall not be obligated to insure any improvements upon the Leased Premises, nor shall Lessee be required to insure any furniture, equipment, machinery, goods, supplies or other personal property upon the Leased Premises, whether Lessee's property or the property or equipment of the Lessor covered by this lease.

Anything in this lease to the contrary notwithstanding, the parties hereto hereby waive any and all rights of recovery, claim, action or causes of action, against each other, their agents, officers, and employees, for any loss or damage that may occur to the Leased Premises hereby demised, or any improvements thereto or any personal property thereon, by reason of fire, the elements, or any other causes which are actually insured against under the terms of standard fire and extended coverage insurance policies, regardless of cause or origin, including negligence of the parties hereto, their agents, officers, and employees; however, the foregoing waiver of subrogation shall be effective only to the extent the same may be agreed upon by Lessor and Lessee without invalidating applicable insurance policies.

XI.

Public Liability Insurance

Lessee and Lessor shall each secure and maintain in force, at their respective costs and expense, such policies of liability insurance as Lessee and Lessor, respectively, deem appropriate. Neither Lessor nor Lessee shall be obligated to name the other as assured under liability policies actually maintained by each of them.

XII.

Default by Lessee

In case Lessee neglects or fails to comply with any of the provisions of this lease and such neglect, failure or default (other than payment of rent) continues without being cured or remedied for a period of sixty (60) days (or in the case of failure to pay rent, ten days) after Lessee receives notice in writing from Lessor of such neglect, failure or default and Lessor's intention to declare this lease forfeited, such notice to be sent by the Lessor to the Lessee at the address provided for herein, this lease shall, at the option of Lessor, cease and come to an end as if it were the day originally fixed herein for the expiration of the term hereof, and Lessor, or Lessor's agent or attorney, shall have the right, without further notice or demand, to re-enter and remove all persons and Lessee's property therefrom without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of rent or breach of covenants; or Lessor may, without terminating this lease, resume possession of the Leased Premises and relet the same for the remainder of the term at the best rent Lessor may obtain, for account of the Lessee, who shall make good any deficiency.

Lessor hereby waives and releases any landlord's lien it has by law to secure the payment of rental due hereunder.

XIII.

Bankruptcy

In the event that Lessee shall be declared bankrupt according to law or Lessee shall make a voluntary assignment

for the benefit of its creditors, or in the event that a receiver of Lessee and its property shall be lawfully appointed, then, at the option of Lessor, if such condition continues without being cured or remedied for and after ninety (90) days' notice by Lessor to Lessee at the address provided for herein, this lease shall cease and come to an end and Lessor may enforce any remedy provided by law.

XIV.

Holding Over by Lessee

It is agreed that any holding over by the Lessee of the hereby Leased Premises after the expiration of this lease by lapse of time or otherwise shall operate and be construed as a tenancy from month to month at the monthly rental provided for herein and all provisions hereof except the term and options shall continue in effect. Lessee agrees that if by reason of renewals and extensions effected pursuant to Article II hereof, this lease shall expire on its second anniversary, Lessee shall make no attempt to and shall not hold over after such second anniversary.

XV.

Condemnation

If during the term hereof, all, or substantially all, of the Leased Premises shall be taken in any condemnation or eminent domain proceeding, this lease shall thereupon terminate. In such event the obligation to pay rent and the Lessee's right of possession hereunder shall terminate on the date of such taking. Any rent paid in advance shall be apportioned as of the date of such taking, and Lessee's portion thereof shall be refunded to Lessee.

If only a part of the Leased Premises be taken so as in Lessee's judgment to materially affect the operation of Lessee's business from the Leased Premises, and such effect would continue even though the premises are restored, either party hereto shall have the option to terminate this lease as of the date of ouster by giving written notice of termination within thirty (30) days after Lessee has been ousted from possession of such part, whereupon this lease shall be of no further force or effect, and Lessor and Lessee shall each be relieved of any obligations or liabilities hereunder as of said date of ouster. If this lease is not

terminated pursuant to the foregoing provisions, Lessee, at its own cost, risk, expense and liability, and without cost, risk, expense or liability to Lessor, may (but is not obligated to) make such repairs and alterations to the remaining part of the Leased Premises as Lessee determines may be necessary to restore such part not taken to a condition suitable for the uses and purposes for which the Leased Premises are being utilized by Lessee. In such event the Lessee's right of possession as to the portion so taken shall terminate on the date of such taking, and the rental payable hereunder shall be adjusted by a just and proportionate amount to be agreed to by Lessor and Lessee, taking into consideration the amount of land, and the usable space in the improvements on such land, remaining after any such taking; but, if so much is taken as to render the Leased Premises completely untenantable or unsuitable for the purposes for which Lessee has leased the Leased Premises, and neither Lessee nor Lessor exercises the option to terminate this lease as herein provided, all rental payments shall be suspended until the date of completion by Lessee of such repairs and alterations.

This condemnation clause, as it refers to, but not by way of limitation, apportionment of rent, rebuilding, and termination of the entire lease term, shall only have reference to those portions of the Leased Premises existing as of the date hereof.

Nothing herein contained shall be construed as a waiver by the Lessee of any claim which it may have against the condemnor for taking all or part of the Leased Premises or Lessee's interest and leasehold estate under this lease or any claim for a taking of Lessee's property or Lessee's loss of business, and the Lessee shall have the right to appear and file its claim for damages in any such condemnation proceedings, to participate in any and all hearings, trials and appeals thereon, and to receive the share of any such award so adjudicated to be due it.

XVI.

Warranty of Peaceful Possession

Lessor covenants and warrants that Lessee, on paying the rents herein provided and performing all of its covenants and agreements herein contained, shall and may

peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Leased Premises during the entire term hereof, and Lessor agrees to warrant and forever defend title to the Leased Premises against the claims of any and all persons whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Lessor, subject to the provisions of this lease.

XVII.

Surrender of Possession

Upon termination of this Agreement, Lessee shall surrender the Leased Premises to Lessor. As hereinabove provided in Articles V and VI of this lease, Lessee is not obligated to replace, repair or restore the Leased Premises, except the Special Improvements, nor to return same or any of Lessor's personal property, except the Special Equipment, to Lessor in any particular condition, so that the Leased Premises or any of Lessor's personal property, except the Special Improvements and Special Equipment, may be returned to Lessor subject to actual wear and tear from the use thereof, deterioration or depreciation to or attributable to the elements or lapse of time and the destruction of or damage to the Leased Premises, in whole or in part, or to any extent by fire, flood, storm, explosion, acts of God, acts of public enemy or any other event or cause or events or causes or combination of events or causes. Lessee shall return the Special Improvements and Special Equipment to Lessor in the condition in which they existed as the commencement of this lease, excepting ordinary wear and tear and damage by casualty.

XVIII.

Expenses and Performance

Irrespective of whether or not expressly so stated or not so stated, all of the duties, covenants, obligations and agreements of each party hereto, respectively, and all acts and things done or provided to be done by each party hereto, respectively, shall be fully and punctually kept, performed and complied with by such party at such party's sole risk, cost, expense and liability and without cost, risk, expense or liability to or on the part of the other party.

XIX.

No Relief by Termination

No termination of this Agreement, regardless of how such termination may be brought about or occur, by or insofar as it relates to or affects any party hereto, shall relieve any party hereto of any duties, obligations or liabilities which shall theretofore have accrued or become payable or performable by such party, but no such party shall ever be liable for special damages or consequential damages.

XX.

Transfer of Lessor's Interest

If the interest of Lessor under this lease shall be transferred by reason of foreclosure or other proceedings for enforcement of any first mortgage on the Leased Premises, such transferee shall be bound as Lessor by the terms of this lease and Lessee shall be bound to such transferee (herein sometimes called the "Purchaser") under the terms, covenants and conditions of this lease for the balance of the term hereof remaining and any extensions or renewals hereof which may be effected in accordance with the terms and provisions hereof, with the same force and effect as if the Purchaser were the Lessor under this lease, and Lessee does hereby agree to attorn to the Purchaser, including the mortgagee under any such first mortgage, if it be the Purchaser, as its Lessor, said attornment to be effective and self-operative without the execution of any further instruments by the Purchaser succeeding to the interest of the Lessor under this lease. The respective rights and obligations of Lessee and the Purchaser upon such attornment, to the extent of the then remaining balance of the term of this lease and any such extensions and renewals, shall be and are the same as set forth herein.

No assignment, transfer or conveyance of the interest of the Lessor under this lease shall release or relieve Saber Refining Company, the Lessor named herein, of its duties and obligations hereunder.

XXI.

Notice to Mortgagee

After receipt of written notice from a bank, trust company, or insurance company that it holds a first lien

Deed of Trust which includes as part of the mortgaged premises the Leased Premises, Lessee shall, so long as such Deed of Trust is outstanding, give such holder the same notice and opportunity to correct any default on the part of the Lessor as is required to be given to Lessor herein, but such notice may be given by Lessee to Lessor and such holder concurrently.

XXII.

Notice

Any notice, communication, request, reply or advice (hereinafter severally and collectively, for convenience, called "notice") in this instrument provided or permitted to be given, made or accepted by either party to the other must be in writing and may, unless otherwise in this instrument expressly provided, be given or be served by depositing the same in the United States mail, postpaid and certified and addressed to the party to be notified, with return receipt requested, or by delivering the same in person to such party, or, if the party or parties to be notified be incorporated, to an officer of such party, or by prepaid telegram, when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be effective, unless otherwise stated in this lease, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For purposes of notice the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to Lessor, to
Saber Refining Company
1700 Houston Natural Gas Building
Houston, Texas 77002
Attention: Mr. L. M. McAlister

With copy to:
Mr. Dillon Ferguson
1100 Esperson Building
Houston, Texas 77002

If to Lessee, to
CPC International Inc.
International Plaza
Englewood Cliffs, N.J. 07632
Attention: Messrs. K. L. Knief
and W. S. Wells

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With copy to: Mr. M. S. Moehlman
Baker & Botts
3000 One Shell Plaza
Houston, Texas 77002

However, the parties hereto and their respective heirs, successors, legal representatives and assigns shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address within the continental United States, by at least fifteen (15) days' notice to the other party; provided, however, except as provided in Article XXI, if at any one time more than one person or party owns an interest in the Leased Premises, nevertheless such persons or parties may not designate more than two places and addresses to receive notices pursuant to the terms hereof.

XXIII.

Termination After Notice

Lessee shall have and is hereby expressly given the right to terminate this lease after three (3) months' prior written notice to the Lessor during the initial or any renewal or extension of this lease; provided, that if Lessee terminates this lease pursuant to such right during the initial term, Lessee shall continue to pay to Lessor the monthly installments of rental required to be paid in respect of the initial term. Lessor and Lessee acknowledge that this Agreement regarding termination of this lease has been reached by mutual agreement, and Lessor waives any requirement, if there be any, that it have a mutual termination option.

This lease shall terminate as of the date on which a rental installment would be due after three (3) months from the date Lessor receives notice of the Lessee's intention to terminate this lease, and Lessor and Lessee will be completely relieved of all further obligations or liabilities hereunder except as otherwise provided herein and such date shall be deemed the same as though such date were the date originally fixed for the expiration of the term of this lease.

XXIV.

Entire Contract

This Agreement embodies the entire contract between the parties hereto relative to the subject matter hereof.

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No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless executed by him or by it or by a duly authorized officer or a duly authorized agent of the particular party. Waiver by either party of any breach or default of the other shall not be construed to be a waiver of subsequent breaches or defaults of any kind, character or description under any circumstance.

XXV.

Personal Pronouns; Captions or Headings

All personal pronouns used in this Agreement shall include the other genders whether used in the masculine or feminine or neuter gender and the singular shall include the plural whenever and as often as may be appropriate.

The captions or headings appearing in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this lease, or any provision or provisions hereof, or in connection with the duties, obligations or liabilities of the respective parties hereto or in ascertaining intent, if any question of intent.

XXVI.

Short Form of Lease

Lessor and Lessee each agree, upon request from the other, to execute a short form or notice of this lease for purposes of recordation.

XXVII.

Covenant Running With the Land

This lease shall constitute a real right and covenant running with the Leased Premises, and this lease and all of its terms and provisions shall be binding upon and inure to the benefit of Lessor, Lessor's heirs, successors, assigns and legal representatives, and shall be binding upon and inure to the benefit of the successors, assigns and legal representatives (whether by consolidation, merger, liquidation, dissolution, assignment or otherwise pursuant to the terms hereof) of Lessee; and whenever in this lease a reference to either of the parties hereto is made, such

reference shall be deemed to include, wherever applicable, a reference to the successors, assigns and legal representatives of said parties, but this provision shall not be construed to permit assignment by Lessee without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

This Agreement has been executed and delivered in the State of Texas and shall be governed and controlled by the laws of the State of Texas.

EXECUTED IN MULTIPLE ORIGINAL COUNTERPARTS which constitute but one and the same instrument, as of the day and year first above written.

SABER REFINING COMPANY

By _____
President

ATTEST:

_____
Secretary

LESSOR

CPC INTERNATIONAL INC.

By _____
Vice President

ATTEST:

_____
Secretary

LESSEE

Attachments:

Schedule I - Description of Leased Premises
Schedule II - Special Assets

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THE STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, Vice President of SABER REFINING COMPANY, a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 1979.

_____
Notary Public in and for
_____ County, Texas

My Commission expires
_____.

THE STATE OF TEXAS §
§
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, Vice President of CPC INTERNATIONAL INC., a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this _____ day of _____, 1979.

_____
Notary Public in and for
_____ County, Texas

My Commission expires
_____.

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Schedule I

All those certain tracts or parcels of land covered by and described in Deed dated _____, 1979, from CPC International Inc. to Saber Refining Company SAVE AND EXCEPT (i) a parcel of land sixty (60) feet in width along the westerly boundary of the property covered by said Deed, (ii) a parcel of land located in the southwest corner of the property covered by said Deed, beginning at the southwest corner of such property, thence running in a northerly direction along the westerly boundary of said property a distance of approximately 900 feet, thence to the east to a point lying in the westerly boundary of the 24 foot road marked "Road C" in CPC International, Inc. drawings of the said property, thence in a southeasterly direction along the said westerly boundary of said road to a point lying in the southerly boundary of said property, thence in a southwesterly direction along said southerly boundary to the point of beginning, and (iii) a strip of land along the northerly boundary of the property covered by said Deed, extending from said northerly boundary in a southerly direction to the north line of the existing railroad right-of-way (and/or tracks) on the property covered by said Deed.

[Note: Metes and bounds description of Leased Premises to be inserted if available].

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Schedule II

[To come See Earnest Money Contract]

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EXHIBIT "D"

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF NUECES §

That CPC INTERNATIONAL INC., a Delaware corporation (hereinafter called the "Grantor"), for and in consideration of Ten Dollars ($10.00) and other good and valuable consideration in hand paid to the Grantor by Saber Refining Company, a Texas corporation (hereinafter called the "Grantee"), the sufficiency of which consideration is hereby confessed and acknowledged by the Grantor, has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY unto the Grantee all those tracts or parcels of land (herein called the "Subject Tracts") lying and being situated in Nueces County, Texas, more particularly described in Schedule I attached hereto and made a part hereof for all purposes, together with all buildings and similar improvements thereon.

This conveyance is made and accepted expressly subject to the exceptions and other matters identified or referred to in Schedule II attached hereto and made a part hereof to the extent the same relate to the Subject Tracts.

TO HAVE AND TO HOLD the Subject Tracts, subject as aforesaid, together with all and singular the rights and

appurtenances thereto in anywise belonging, unto the Grantee, its successors or assigns, forever; and Grantor does hereby bind itself, its successors and assigns, to WARRANT and FOREVER DEFEND all and singular the Subject Tracts unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, subject, however, to the lawful and validly enforceable claims of third persons, if any, under or with respect to the permitted encumbrances listed or referred to in Schedule II attached hereto.

Ad valorem taxes for the current year have been prorated as of the date of delivery of this Deed, and the Grantee by its acceptance hereof covenants and agrees to pay all ad valorem taxes upon the Subject Tracts for the year 1979.

EXECUTED this _____ day of _____, 1979.

CPC INTERNATIONAL INC.

ATTEST:

By _____
Vice-President

_____
Secretary

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THE STATE OF TEXAS §

COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, Vice-President of CPC International Inc., a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the ___ day of _____, 1979.

_____
Notary Public in and for
_____ County, Texas

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Schedule I

[To Come - See Exhibit A to Earnest Money Contract]

Schedule II

[To Come - See Exhibit B to Earnest Money Contract]

EXHIBIT "E"

BILL OF SALE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

THAT CPC INTERNATIONAL INC., a Delaware corporation (hereinafter called "Grantor"), for and in consideration of the sum of Ten Dollars ($10.00) cash and other good and valuable consideration paid to Grantor by SABER REFINING COMPANY, a Texas corporation (hereinafter called "Grantee"), the receipt and sufficiency of which is hereby acknowledged, has sold, transferred and assigned, and by these presents does sell, transfer and assign unto Grantee, its successors and assigns, all of Grantor's right, title and interest in and to the items of equipment owned by Grantor and located on those certain parcels of land more particularly described in Schedule 1 annexed hereto on the date of this Bill of Sale, save and except the equipment listed on Schedule 2 annexed hereto (said excepted equipment being hereinafter called the "Excepted Equipment") (said equipment less said Excepted Equipment being hereinafter called the "Equipment"). Grantee hereby acknowledges receipt of possession of the Equipment.

It is expressly stipulated that Grantor makes no representation or warranty with respect to the Equipment (as to merchantability, fitness for any specific use or otherwise) and makes no representation or warranty with respect to the condition, physical, operating or otherwise of the Equipment, it being understood that the Equipment is being sold, transferred and assigned to Grantee "AS IS".

IN WITNESS WHEREOF, Grantor has executed this Bill of Sale on the [dated as of the Closing Date under the Contract], 1979.

CPC INTERNATIONAL INC.

By _____

ATTEST:

_____

SABER REFINING COMPANY

By _____

ATTEST:

_____

Schedule 1

[To Come - See Exhibit A to Earnest Money Contract]

Schedule 2

Excepted Equipment

Equipment	Building or Location
8-ICM) Corn Fiber Washing	Bldg. 5-5, Bldg. 17-3
4-DSM)	Bldg. 5
1-H-30 Merco	Bldg. 5
1-BH-20 Merco	Bldg. 32
1-B-30 Merco	Bldg. 5
2-500 Ft^2 Gluten Filters	Bldg. 17
1-EVZ Vitter Press	Bldg. 17
Maint. Shop Equip.	Mech Shops Plantwide
4-1,000 Ft^2 carbon filters	Bldg. 53
1-Residue Filter	Bldg. 17
1-500 Ft^2 carbon filter	Bldg. 53
Magnetic flowmeters	Through-out plant
1-Trackmobile	
2-Fork lift trucks	Through-out plant
Plate heat exchangers	Through-out plant
1-Computer	Office
1-Fluid Bed Reactor	Bldg. 27
Feed Dryer Controls	Bldg. 17
Transformers & Switchgear	Power House
Cooling Water Pumbs	Misc. Plant Locations
4-Entoleter Mills	Bldg. 5

Equipment	Building or Location
2-High Speed bag-packers for starch & dextrose	Bldg. 36
1-BH30 Merco centrifugal for starch washing	Bldg. 5
5-B30 Merco centrifugals for starch washing	Bldg. 5
1-83" Reinveldt centrifugal for starch dewatering	Bldg. 32
2-C30 Merco centrifugals for starch washing	Bldg. 32
4-1,000 $ft.^2$ carbon filters for liquid corn sugars	Bldg. 53
5-Bauer Mills for corn misc. wastewater treatment plant items, i.e., surface aerators, submerged turbines, etc.	Bldg. 83 & 83a
All wheeled vehicles, office, drafting, copying & filing equip.	Through-out plant
All furniture & fixtures, files, office machinery, and other miscellaneous office equipment	Through-out plant
2-C144 Dorrclone units for starch washing	Bldg. 5
1-Corn starch flash dryer	Bldg. 32
1-Corn starch spray dryer	Bldg. 32
1-AST (powdered carbon reviv.)	Bldg. 53
2-Rotary carbon filters	Bldg. 53
3-Rotary dextrose, Morrex filters	Bldg. 53
38-Dextrose crystallizers	Bldg. 48

Equipment	Building or Location
1-Dextrose dryer	Bldg. 48
1-Dextrose cooler	Bldg. 48
20-Dextrose centrifuges	Bldg. 48
2-B16 Merco centrifugals	Bldg. 5
1-Rotary flash gluten dryer	Bldg. 17
4-Crude corn oil expellers	Bldg. 17
1-Corn germ dryer	Bldg. 17
1-Residue filter	Bldg. 17
2-Corn gluten feed dryers	Bldg. 17

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EXHIBIT "F"

Leased Properties

See Schedule I to Lease Agreement
(Exhibit C to Earnest Money Contract)

EXHIBIT "G"

Building and Equipment

Grain Elevator
Grain Storage
Power House
Boiler House -
Including Oil Storage Tank

Buildings

Mechanical Stores
Water Storage
Shops
Tunnels & Structures
Mfg. Supply Warehouse
Product Warehouse
Car Port
General Office
Computer Building
Underground Facilities
Locker Room
Incinerator
Old First Aid/Time Office
RR Tracks & Appurt.
Cooling Tower
Sewage Treatment
Process Waste Handling
Roadways

LEASE AGREEMENT

THE STATE OF TEXAS §
§
COUNTY OF NUECES §

THIS LEASE AGREEMENT made and entered into on this 31st day of October, 1979, by and between SABER REFINING COMPANY, a Texas corporation (hereinafter referred to as "Lessor"), and CPC INTERNATIONAL INC., a Delaware corporation (hereinafter referred to as "Lessee"),

W I T N E S S E T H:

I.

Leased Premises

Subject to and upon terms, provisions and conditions hereinafter set forth, and each in consideration of the duties, covenants and obligations of the other hereunder, Lessor has demised and leased, and by these presents does demise and lease, exclusively unto Lessee, and Lessee hereby rents and leases from Lessor, all that certain tract or parcel of land in Nueces County, Texas, more particularly described in Schedule I attached hereto and made a part hereof, together with all improvements in and upon said lands, said lands and all improvements located thereon hereinafter sometimes collectively called the "Leased Premises".

Lessor further hereby grants to Lessee the rights and easements for the term of this lease to use, operate and maintain the existing water treatment plant, water cooling lines, steam lines, pumps, utility facilities, storm sewers and water intakes and outtakes for the benefit of the Leased Premises over, under and across that portion of the land

conveyed by Lessee to Lessor in deed dated October 31, 1979, lying between the northerly boundary of the Leased Premises and the northerly boundary of the lands covered by said deed. Such rights and easements shall include, without limitation, the right of Lessee to exclusively use, operate and maintain all such facilities.

TO HAVE AND TO HOLD the above described or referred to Leased Premises, together with the easements herein granted, and all rights, easements and appurtenances belonging to, or in anywise appertaining to, said Leased Premises exclusively unto Lessee, its successors and assigns, as long as this Agreement, or any extension or renewal hereof, remains in force and effect.

Whenever and as often as the words "Agreement" or "this lease", are used or appear in this instrument, same shall mean and refer to this instrument and all exhibits hereto.

II.

Term

Subject to and upon the terms, provisions and conditions hereinafter set forth, this lease shall be and continue in full force and effect for a term of one (1) year, commencing October 31, 1979, and continuing up through and including October 30, 1980 (hereinafter sometimes called the "initial term") unless sooner terminated in accordance with the provisions hereof.

Lessee shall have and is hereby given an option to renew and extend this lease upon the terms, covenants, conditions and provisions herein contained for the initial term, including the rental provisions set forth herein, for two (2) periods of six (6) months each (hereinafter each such six-month period sometimes called a "Renewal Period"), to follow consecutively upon the initial term of this lease, and thereafter to follow consecutively upon the first Renewal Period by giving Lessor notice of its intention to exercise such renewal option not less than sixty (60) days prior to

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the expiration of the initial term or the Renewal Period, as appropriate. If at the time Lessee gives notice of its desire to renew this lease for a Renewal Period, Lessor should allege that Lessee is not then entitled to exercise such renewal option by reason of any default in the performance of Lessee's obligations hereunder existing at such time, then Lessor must, within ten (10) days after receipt by Lessor of notice from Lessee of Lessee's desire to renew and extend the term of this lease, give Lessee written notice specifying the alleged default on the part of Lessee; and Lessee shall thereupon have thirty (30) days from the receipt of such notice from Lessor (plus such additional reasonable period of time as may be required with respect to those items which, by their very nature, cannot be cured within such thirty-day period) within which to remedy such alleged default; and if Lessee shall have cured all such defaults within the said respective time periods allowed, then the previous existence of such default shall not constitute a reason for invalidating Lessee's notice of desire to exercise its renewal option but if such defaults have not been so cured, Lessee shall not be entitled to exercise such renewal option.

As used in this lease, the terms "possession", "use" and "occupancy" mean exclusive possession, exclusive use and exclusive occupancy unless otherwise provided.

III.

Rental

As consideration for the use and occupancy of, and as rental for, the Leased Premises, Lessee promises and agrees to pay Lessor, while this lease remains in force and effect during the aforesaid initial term hereof, and during each Renewal Period if Lessee exercises its option to renew and extend this lease, as and in the manner hereinafter provided, an annual lease rental in the sum of [illegible]) or a six-months lease rental in the sum of [illegible], as applicable, which sum shall be paid in [illegible] monthly installments in the amount of [illegible] each calendar month in advance. The first monthly rental payment shall be due on the date of delivery of possession of the Leased Premises and the succeeding payments of monthly rental shall be due and payable on or before the same day of

each succeeding calendar month thereafter during the full term of this lease.

Lessee shall pay all rental and other sums, if any, payable by Lessee to Lessor pursuant to the terms hereof to Lessor at Lessor's address hereinafter set forth without demand for such payment.

IV.

Use and Condition; Fencing

The Leased Premises are to be used and occupied by Lessee for operation of a corn wet milling facility and related operations.

Lessee is familiar with all of said Leased Premises, including buildings and improvements in and on the lands covered hereby, and accepts the same in the condition they are now in. No representations or warranties are made by Lessor as to any of said Leased Premises and Lessee releases Lessor from any and all claims and liabilities which might at any time be asserted or claimed by Lessee by reason of the condition of said buildings, improvements, or said Leased Premises.

Lessor covenants and agrees, at its own cost and expense, to construct and install a six-foot high chain link (or comparable) fence along the entire length of the northerly boundary of the Leased Premises within sixty (60) days from the date of this lease, and thereafter to maintain such fence for the term of this lease. Such fence shall include gates on the northerly boundary to permit Lessee to exercise and enjoy its easement rights set forth in Article I hereof.

V.

Maintenance and Care of Premises

Lessor agrees that Lessee has no obligation, except as otherwise expressly provided in this Article V, to return the improvements on the Leased Premises to Lessor in good repair or condition.

During the term of this lease, except as otherwise expressly provided in this Article V, Lessee shall at its

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own cost, risk, expense and liability, keep and maintain said Leased Premises in such state of repair as Lessee deems necessary or appropriate for Lessee's operations. Lessee shall have no obligation, except as otherwise expressly provided in this Article V, to Lessor to repair or cause to be repaired any damage to the Leased Premises caused by the negligence of Lessee or its agents, servants, employees, customers or invitees.

Lessee shall at its own cost and expense keep and maintain the improvements ("Special Improvements") included among the assets ("Special Assets") described in Schedule II attached hereto in the same condition in which they existed at the commencement of this lease and shall return such Special Improvements to Lessor in such condition, excepting ordinary wear and tear and damage by casualty.

Lessor shall not be liable to Lessee, or to Lessee's agents, employees, guests, licensees, or invitees, for any injury, loss, death or damage to persons or property occurring on or about the Leased Premises by fire, explosion, wind, hail, water or acts of God, unavoidable accident or any other cause except the fault or negligence of the Lessor, or Lessor's employees and agents, and Lessee agrees to indemnify and save Lessor harmless from any damage, loss, injury, death or causes of action caused by negligence of Lessee, its agents or employees.

Lessee shall not be liable to Lessor, or to Lessor's agents, employees, guests, licensees, or invitees, for any injury, loss, death or damage to persons or property occurring on or about the Leased Premises by fire, explosion, wind, hail, water or acts of God, unavoidable accident or any other cause except the fault or negligence of the Lessee, or Lessee's employees and agents, and Lessor agrees to indemnify and save Lessee harmless from any damage, loss, injury, death or causes of action caused by negligence of Lessor, its agents or employees.

Lessee may make such changes or alterations in, or improvement to, the Leased Premises as Lessee deems necessary or appropriate for Lessee's operations in the ordinary course of its business without the consent of Lessor. Lessee agrees to give prior notice to Lessor of any such changes or alterations which are material. All trade fixtures, appliances, and other equipment and property placed or installed in or on said Leased Premises by Lessee shall

remain the property of Lessee and may be removed by Lessee during the term of this lease and at any time within thirty (30) days after the expiration or termination of this lease. All other additions or improvements which might be placed upon or installed in or upon the Leased Premises by Lessee and all equipment owned and used by Lessee in connection with the Leased Premises which Lessee fails to remove or elects not to remove as aforesaid shall become the property of Lessor after such thirty (30) day period following expiration or termination of this lease, to be disposed of or used as Lessor deems appropriate; however, Lessee shall have no obligation with respect thereto after such period.

Reference is here made to that Industrial Track Agreement dated August 9, 1956, between Corn Products Refining Company, as Shipper, and Missouri Pacific Railroad Company, as Carrier. Lessee shall have the right to continue all rights and privileges of the "Shipper" under such Agreement. At the expiration or termination of this lease, Lessee agrees to assign its rights under such agreement, subject to approval of the carrier thereunder, to the Lessor, and Lessor agrees to assume all of the obligations and duties of the Shipper under such Agreement.

VI.

Personal Property

Lessee is acquainted with the personal property of Lessor located upon the Leased Premises as of the date hereof. Lessor does hereby let, lease and demise the use of such personal property, being all personal property owned by Lessor and located on the Leased Premises as of the date hereof, to Lessee for the term hereof, and any extensions hereof, for use by Lessee consistent with the permitted uses of the Leased Premises as set forth in Article IV of this lease. Lessee may make such changes or alterations in, or improvements to, such personal property as Lessee deems necessary or appropriate for Lessee's operations without the consent of Lessor. Lessee agrees to give prior notice to Lessor of any such changes or alterations which are material.

Lessee shall have no obligation to keep, or maintain or return any of such personal property (except as hereinafter expressly mentioned) in good repair or condition, and Lessee shall have no obligation to maintain, repair, insure or

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replace any of such personal property for any reason whatsoever except as otherwise expressly provided in this Article VI and in Article X.

During the term of this lease, Lessee shall at its own cost, risk, expense and liability, keep and maintain Lessor's personal property listed in Schedule II hereto ("Special Equipment") and covered by this lease in the same condition in which it existed at the commencement of this lease and shall return such Special Equipment to Lessor in such condition, excepting ordinary wear and tear and damage by casualty.

VII.

Compliance with Laws; Utilities; Taxes

Lessee shall promptly execute, fulfill and comply with all valid laws, rules and regulations made by competent governmental authority which are applicable to the occupancy of the Leased Premises, and all orders and requirements imposed by the Health, Sanitation and Police Departments, for the correction, prevention and abatement of nuisances in or upon said Leased Premises because of Lessee's use thereof during the full term hereof, all at Lessee's expense.

Lessor covenants and agrees to promptly comply with all laws, rules and regulations made by competent governmental authority as to Lessor's property adjoining the Leased Premises, and Lessor further covenants and agrees to so use such adjoining property as to comply with applicable regulations, including environmental regulations, relating to use of property in the vicinity of operations conducted by Lessee on the Leased Premises.

Lessee agrees that Lessor shall have the right to apply to those entities which supply water, gas and electricity to the Leased Premises for service to that part of those certain properties purchased by Lessor from Lessee on the date hereof and not included in the Leased Premises pursuant to connections made to service lines presently servicing the Leased Premises; provided, the cost of effecting and maintaining such connections shall be borne by Lessor, no such service shall displace, impede or limit service by any such entity to Lessee and the Leased Premises and such service shall be subject to the initial consent and continuing rules and regulations of each such entity. Lessor shall indemnify and save Lessee harmless from any damage, loss, injury, death or causes of action caused by, resulting from or connected with any such service.

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Lessee shall pay all costs of water, gas, electricity, air conditioning and similar utilities used by Lessee on the Leased Premises, all maintenance costs in connection therewith and all insurance premiums for policies Lessee elects or is obligated to maintain.

Lessee agrees to discharge (either by payment or by filing of the necessary bond, or otherwise) any mechanics', materialmen's or other lien against the Leased Premises and/or the Lessor's interest therein, which liens may arise out of any payment due for, or purported to be due for, any labor, services, materials, supplies or equipment alleged to have been furnished to or for the Lessee in, upon or about the Leased Premises.

Lessor covenants and agrees to pay, prior to delinquency, all taxes and assessments imposed upon the Leased Premises during the term of this lease, except ad valorem taxes on additions and improvements hereafter constructed by Lessee thereon.

VIII.

Assignment or Subletting

Lessee shall not have the right to assign this Agreement or sublet the Leased Premises, or any part thereof, without the consent of Lessor, which consent shall not be unreasonably withheld. In no event shall any such assignment or sublease ever release Lessee from any obligation or liability hereunder.

IX.

Fire and Casualty Damage

In the event any building and/or other improvements on the Leased Premises are wholly or partially damaged or destroyed by fire, flood, storm, tornado, or other casualty and such damage or destruction renders a substantial part of the Leased Premises untenantable, Lessee shall give prompt notice to Lessor, and Lessee, at its own cost, may at Lessee's option rebuild, repair and/or restore such building and/or other improvements to substantially the condition in which they were immediately prior to the happening of any such casualty or at Lessee's option this lease may be terminated by written notice of termination given by Lessee to Lessor

or Lessee may elect to continue this lease for the remainder of the term hereof, including renewals, without any rebuilding or restoration of such damaged improvements and in the event of the continuation of this lease, no part of the rental shall be abated.

X.

Casualty Insurance

Lessee may during the term of this lease, at its expense, maintain a policy or policies of insurance naming Lessee as the only assured, insuring the Leased Premises and all improvements located thereon against loss or damage by fire, explosion, or other hazards and contingencies. Lessee shall during the term of this lease, at its expense, maintain a policy or policies of insurance naming Lessee and Lessor as the insureds, as their interests may appear, insuring the Special Assets against loss or damage by fire, explosion and other casualties insured against by Lessee immediately prior to this Lease in an aggregate face amount equal to the lesser of the aggregate actual cash value of the Special Assets as of the date of this lease or $11,800,000. Except as provided in the next preceding sentence, (i) it is expressly stipulated and agreed that Lessor shall not be named as an insured under any policy maintained by Lessee nor shall Lessor have any right or claim whatsoever as to any proceeds under such policies and (ii) it is further expressly understood and agreed that Lessee shall not be obligated to insure any improvements upon the Leased Premises, nor shall Lessee be required to insure any furniture, equipment, machinery, goods, supplies or other personal property upon the Leased Premises, whether Lessee's property or the property or equipment of the Lessor covered by this lease.

Anything in this lease to the contrary notwithstanding, the parties hereto hereby waive any and all rights of recovery, claim, action or causes of action, against each other, their agents, officers, and employees, for any loss or damage that may occur to the Leased Premises hereby demised, or any improvements thereto or any personal property thereon, by reason of fire, the elements, or any other causes which are actually insured against under the terms of standard fire and extended coverage insurance policies, regardless of cause or origin, including negligence of the parties hereto, their agents, officers, and employees; however, the foregoing waiver of subrogation shall be effective only to the extent the same may be agreed upon by Lessor and Lessee without invalidating applicable insurance policies.

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XI.

Public Liability Insurance

Lessee and Lessor shall each secure and maintain in force, at their respective costs and expense, such policies of liability insurance as Lessee and Lessor, respectively, deem appropriate. Neither Lessor nor Lessee shall be obligated to name the other as assured under liability policies actually maintained by each of them.

XII.

Default by Lessee

In case Lessee neglects or fails to comply with any of the provisions of this lease and such neglect, failure or default (other than payment of rent) continues without being cured or remedied for a period of sixty (60) days (or in the case of failure to pay rent, ten days) after Lessee receives notice in writing from Lessor of such neglect, failure or default and Lessor's intention to declare this lease forfeited, such notice to be sent by the Lessor to the Lessee at the address provided for herein, this lease shall, at the option of Lessor, cease and come to an end as if it were the day originally fixed herein for the expiration of the term hereof, and Lessor, or Lessor's agent or attorney, shall have the right, without further notice or demand, to re-enter and remove all persons and Lessee's property therefrom without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of rent or breach of covenants; or Lessor may, without terminating this lease, resume possession of the Leased Premises and relet the same for the remainder of the term at the best rent Lessor may obtain, for account of the Lessee, who shall make good any deficiency.

Lessor hereby waives and releases any landlord's lien it has by law to secure the payment of rental due hereunder.

XIII.

Bankruptcy

In the event that Lessee shall be declared bankrupt according to law or Lessee shall make a voluntary assignment

for the benefit of its creditors, or in the event that a receiver of Lessee and its property shall be lawfully appointed, then, at the option of Lessor, if such condition continues without being cured or remedied for and after ninety (90) days' notice by Lessor to Lessee at the address provided for herein, this lease shall cease and come to an end and Lessor may enforce any remedy provided by law.

XIV.

Holding Over by Lessee

It is agreed that any holding over by the Lessee of the hereby Leased Premises after the expiration of this lease by lapse of time or otherwise shall operate and be construed as a tenancy from month to month at the monthly rental provided for herein and all provisions hereof except the term and options shall continue in effect. Lessee agrees that if by reason of renewals and extensions effected pursuant to Article II hereof, this lease shall expire on its second anniversary, Lessee shall make no attempt to and shall not hold over after such second anniversary.

XV.

Condemnation

If during the term hereof, all, or substantially all, of the Leased Premises shall be taken in any condemnation or eminent domain proceeding, this lease shall thereupon terminate. In such event the obligation to pay rent and the Lessee's right of possession hereunder shall terminate on the date of such taking. Any rent paid in advance shall be apportioned as of the date of such taking, and Lessee's portion thereof shall be refunded to Lessee.

If only a part of the Leased Premises be taken so as in Lessee's judgment to materially affect the operation of Lessee's business from the Leased Premises, and such effect would continue even though the premises are restored, either party hereto shall have the option to terminate this lease as of the date of ouster by giving written notice of termination within thirty (30) days after Lessee has been ousted from possession of such part, whereupon this lease shall be of no further force or effect, and Lessor and Lessee shall each be relieved of any obligations or liabilities hereunder as of said date of ouster. If this lease is not

terminated pursuant to the foregoing provisions, Lessee, at its own cost, risk, expense and liability, and without cost, risk, expense or liability to Lessor, may (but is not obligated to) make such repairs and alterations to the remaining part of the Leased Premises as Lessee determines may be necessary to restore such part not taken to a condition suitable for the uses and purposes for which the Leased Premises are being utilized by Lessee. In such event the Lessee's right of possession as to the portion so taken shall terminate on the date of such taking, and the rental payable hereunder shall be adjusted by a just and proportionate amount to be agreed to by Lessor and Lessee, taking into consideration the amount of land, and the usable space in the improvements on such land, remaining after any such taking; but, if so much is taken as to render the Leased Premises completely untenantable or unsuitable for the purposes for which Lessee has leased the Leased Premises, and neither Lessee nor Lessor exercises the option to terminate this lease as herein provided, all rental payments shall be suspended until the date of completion by Lessee of such repairs and alterations.

This condemnation clause, as it refers to, but not by way of limitation, apportionment of rent, rebuilding, and termination of the entire lease term, shall only have reference to those portions of the Leased Premises existing as of the date hereof.

Nothing herein contained shall be construed as a waiver by the Lessee of any claim which it may have against the condemnor for taking all or part of the Leased Premises or Lessee's interest and leasehold estate under this lease or any claim for a taking of Lessee's property or Lessee's loss of business, and the Lessee shall have the right to appear and file its claim for damages in any such condemnation proceedings, to participate in any and all hearings, trials and appeals thereon, and to receive the share of any such award so adjudicated to be due it.

XVI.

Warranty of Peaceful Possession

Lessor covenants and warrants that Lessee, on paying the rents herein provided and performing all of its covenants and agreements herein contained, shall and may

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peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Leased Premises during the entire term hereof, and Lessor agrees to warrant and forever defend title to the Leased Premises against the claims of any and all persons whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Lessor, subject to the provisions of this lease.

XVII.

Surrender of Possession

Upon termination of this Agreement, Lessee shall surrender the Leased Premises to Lessor. As hereinabove provided in Articles V and VI of this lease, Lessee is not obligated to replace, repair or restore the Leased Premises, except the Special Improvements, nor to return same or any of Lessor's personal property, except the Special Equipment, to Lessor in any particular condition, so that the Leased Premises or any of Lessor's personal property, except the Special Improvements and Special Equipment, may be returned to Lessor subject to actual wear and tear from the use thereof, deterioration or depreciation to or attributable to the elements or lapse of time and the destruction of or damage to the Leased Premises, in whole or in part, or to any extent by fire, flood, storm, explosion, acts of God, acts of public enemy or any other event or cause or events or causes or combination of events or causes. Lessee shall return the Special Improvements and Special Equipment to Lessor in the condition in which they existed as the commencement of this lease, excepting ordinary wear and tear and damage by casualty.

XVIII.

Expenses and Performance

Irrespective of whether or not expressly so stated or not so stated, all of the duties, covenants, obligations and agreements of each party hereto, respectively, and all acts and things done or provided to be done by each party hereto, respectively, shall be fully and punctually kept, performed and complied with by such party at such party's sole risk, cost, expense and liability and without cost, risk, expense or liability to or on the part of the other party.

XIX.

No Relief by Termination

No termination of this Agreement, regardless of how such termination may be brought about or occur, by or insofar as it relates to or affects any party hereto, shall relieve any party hereto of any duties, obligations or liabilities which shall theretofore have accrued or become payable or performable by such party, but no such party shall ever be liable for special damages or consequential damages.

XX.

Transfer of Lessor's Interest

If the interest of Lessor under this lease shall be transferred by reason of foreclosure or other proceedings for enforcement of any first mortgage on the Leased Premises, such transferee shall be bound as Lessor by the terms of this lease and Lessee shall be bound to such transferee (herein sometimes called the "Purchaser") under the terms, covenants and conditions of this lease for the balance of the term hereof remaining and any extensions or renewals hereof which may be effected in accordance with the terms and provisions hereof, with the same force and effect as if the Purchaser were the Lessor under this lease, and Lessee does hereby agree to attorn to the Purchaser, including the mortgagee under any such first mortgage, if it be the Purchaser, as its Lessor, said attornment to be effective and self-operative without the execution of any further instruments by the Purchaser succeeding to the interest of the Lessor under this lease. The respective rights and obligations of Lessee and the Purchaser upon such attornment, to the extent of the then remaining balance of the term of this lease and any such extensions and renewals, shall be and are the same as set forth herein.

No assignment, transfer or conveyance of the interest of the Lessor under this lease shall release or relieve Saber Refining Company, the Lessor named herein, of its duties and obligations hereunder.

XXI.

Notice to Mortgagee

After receipt of written notice from a bank, trust company, or insurance company that it holds a first lien

Deed of Trust which includes as part of the mortgaged premises the Leased Premises, Lessee shall, so long as such Deed of Trust is outstanding, give such holder the same notice and opportunity to correct any default on the part of the Lessor as is required to be given to Lessor herein, but such notice may be given by Lessee to Lessor and such holder concurrently.

XXII.

Notice

Any notice, communication, request, reply or advice (hereinafter severally and collectively, for convenience, called "notice") in this instrument provided or permitted to be given, made or accepted by either party to the other must be in writing and may, unless otherwise in this instrument expressly provided, be given or be served by depositing the same in the United States mail, postpaid and certified and addressed to the party to be notified, with return receipt requested, or by delivering the same in person to such party, or, if the party or parties to be notified be incorporated, to an officer of such party, or by prepaid telegram, when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be effective, unless otherwise stated in this lease, from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received by the party to be notified. For purposes of notice the addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to Lessor, to	Saber Refining Company 1700 Houston Natural Gas Building Houston, Texas 77002 Attention: Mr. L. M. McAlister
With copy to:	Mr. Dillon Ferguson 1100 Esperson Building Houston, Texas 77002
If to Lessee, to	CPC International Inc. International Plaza Englewood Cliffs, N.J. 07632 Attention: Messrs. K. L. Knief and W. S. Wells

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With copy to: Mr. M. S. Moehlman
Baker & Botts
3000 One Shell Plaza
Houston, Texas 77002

However, the parties hereto and their respective heirs, successors, legal representatives and assigns shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address within the continental United States, by at least fifteen (15) days' notice to the other party; provided, however, except as provided in Article XXI, if at any one time more than one person or party owns an interest in the Leased Premises, nevertheless such persons or parties may not designate more than two places and addresses to receive notices pursuant to the terms hereof.

XXIII.

Termination After Notice

Lessee shall have and is hereby expressly given the right to terminate this lease after three (3) months' prior written notice to the Lessor during the initial or any renewal or extension of this lease; provided, that if Lessee terminates this lease pursuant to such right during the initial term, Lessee shall continue to pay to Lessor the monthly installments of rental required to be paid in respect of the initial term. Lessor and Lessee acknowledge that this Agreement regarding termination of this lease has been reached by mutual agreement, and Lessor waives any requirement, if there be any, that it have a mutual termination option.

This lease shall terminate as of the date on which a rental installment would be due after three (3) months from the date Lessor receives notice of the Lessee's intention to terminate this lease, and Lessor and Lessee will be completely relieved of all further obligations or liabilities hereunder except as otherwise provided herein and such date shall be deemed the same as though such date were the date originally fixed for the expiration of the term of this lease.

XXIV.

Entire Contract

This Agreement embodies the entire contract between the parties hereto relative to the subject matter hereof.

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No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless executed by him or by it or by a duly authorized officer or a duly authorized agent of the particular party. Waiver by either party of any breach or default of the other shall not be construed to be a waiver of subsequent breaches or defaults of any kind, character or description under any circumstance.

XXV.

Personal Pronouns; Captions or Headings

All personal pronouns used in this Agreement shall include the other genders whether used in the masculine or feminine or neuter gender and the singular shall include the plural whenever and as often as may be appropriate.

The captions or headings appearing in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this lease, or any provision or provisions hereof, or in connection with the duties, obligations or liabilities of the respective parties hereto or in ascertaining intent, if any question of intent.

XXVI.

Short Form of Lease

Lessor and Lessee each agree, upon request from the other, to execute a short form or notice of this lease for purposes of recordation.

XXVII.

Covenant Running With the Land

This lease shall constitute a real right and covenant running with the Leased Premises, and this lease and all of its terms and provisions shall be binding upon and inure to the benefit of Lessor, Lessor's heirs, successors, assigns and legal representatives, and shall be binding upon and inure to the benefit of the successors, assigns and legal representatives (whether by consolidation, merger, liquidation, dissolution, assignment or otherwise pursuant to the terms hereof) of Lessee; and whenever in this lease a reference to either of the parties hereto is made, such

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reference shall be deemed to include, wherever applicable, a reference to the successors, assigns and legal representatives of said parties, but this provision shall not be construed to permit assignment by Lessee without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

This Agreement has been executed and delivered in the State of Texas and shall be governed and controlled by the laws of the State of Texas.

EXECUTED IN MULTIPLE ORIGINAL COUNTERPARTS which constitute but one and the same instrument, as of the day and year first above written.

SABER REFINING COMPANY

By _____
L. M. McAlister,
President

ATTEST:

_____
Secretary

LESSOR

CPC INTERNATIONAL INC.

By _____
Kenneth L. Knief,
Director, Division Development

ATTEST:

_____

LESSEE

Attachments:

Schedule I - Description of Leased Premises
Schedule II - Special Assets

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THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared L. M. McAlister, President of SABER REFINING COMPANY, a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 31st day of October, 1979.

Melissa C. Slator
Notary Public in and for
Harris County, Texas
Melissa C. Slator

My Commission expires
February 3, 1980.

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THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Kenneth L. Knief, Director, Division Development of CPC INTERNATIONAL INC., a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 31st day of October, 1979.

Melissa C. Slater
Notary Public in and for
Harris County, Texas

Melissa C. Slater

My Commission expires
February 3, 1980.

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Schedule I

All those certain tracts or parcels of land covered by and described in Deed dated October 31, 1979, from CPC International Inc. to Saber Refining Company SAVE AND EXCEPT (i) a parcel of land sixty (60) feet in width along the westerly boundary of the property covered by said Deed, (ii) a parcel of land located in the southwest corner of the property covered by said Deed, beginning at the southwest corner of such property, thence running in a northerly direction along the westerly boundary of said property a distance of approximately 900 feet, thence to the east to a point lying in the westerly boundary of the 24 foot road marked "Road C" in CPC International, Inc. drawings of the said property, thence in a southeasterly direction along the said westerly boundary of said road to a point lying in the southerly boundary of said property, thence in a southwesterly direction along said southerly boundary to the point of beginning, and (iii) a strip of land along the northerly boundary of the property covered by said Deed, extending from said northerly boundary in a southerly direction to the north line of the existing railroad right-of-way (and/or tracks) on the property covered by said Deed, reference being here made to said Deed dated October 31, 1979, and the record thereof in the office of the County Clerk of Nueces County, Texas.

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Schedule II

Special Assets

Building and Equipment	Buildings
Grain Elevator	Mechanical Stores
Grain Storage	Water Storage
Power House	Shops
Boiler House -	Tunnels & Structures
Including Oil Storage Tank	Mfg. Supply Warehouse
	Product Warehouse
	Car Port
	General Office
	Computer Building
	Underground Facilities
	Locker Room
	Incinerator
	Old First Aid/Time Office
	RR Tracks & Appurt.
	Cooling Tower
	Sewage Treatment
	Process Waste Handling
	Roadways

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CPC North America
a Division of CPC International Inc.
International Plaza, Englewood Cliffs, N. J. 07632

October 31, 1979

Saber Refining Company
1700 Houston Natural Gas Bldg.
1200 Travis
Houston, Texas 77002

Re: Purchase from CPC International Inc. Nueces County, Texas of equipment and properties described in Earnest Money Contract dated September 13, 1979 (the "Earnest Money Contract")

Gentlemen:

I am the attorney for CPC International Inc. (the "Company") and have been involved in the preparation or review of the various documents and instruments to be utilized in connection with the purchase by Saber Refining Company from CPC International Inc. of certain real property and improvements including equipment located in Nueces County, Texas.

It is my opinion that:

(1) The Company is a corporation duly organized, validly existing, and in good standing under the laws of Delaware.

(2) The Company has the authority to engage in the business comtemplated by this transaction.

(3) The Special Warranty Deed, the Bill of Sale, the Lease, and the three letters executed by Kenneth L. Knief have been properly executed and delivered by Mr. Knief as a duly authorized officer of the company and upon the advice and approval of counsel for CPC International Inc.

Very truly yours,

William Wells
Division General Counsel

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BILL OF SALE

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF NUECES §

THAT CPC INTERNATIONAL INC., a Delaware corporation (hereinafter called "Grantor"), for and in consideration of the sum of Ten Dollars ($10.00) cash and other good and valuable consideration paid to Grantor by SABER REFINING COMPANY, a Texas corporation (hereinafter called "Grantee"), the receipt and sufficiency of which is hereby acknowledged, has sold, transferred and assigned, and by these presents does sell, transfer and assign unto Grantee, its successors and assigns, all of Grantor's right, title and interest in and to the items of equipment owned by Grantor and located on those certain parcels of land more particularly described in Schedule 1 annexed hereto on the date of this Bill of Sale, save and except the equipment listed on Schedule 2 annexed hereto (said excepted equipment being hereinafter called the "Excepted Equipment") (said equipment less said Excepted Equipment being hereinafter called the "Equipment"). Grantee hereby acknowledges receipt of possession of the Equipment.

It is expressly stipulated that Grantor makes no representation or warranty with respect to the Equipment (as to merchantability, fitness for any specific use or otherwise) and makes no representation or warranty with respect to the condition, physical, operating or otherwise of the Equipment, it being understood that the Equipment is being sold, transferred and assigned to Grantee "AS IS".

IN WITNESS WHEREOF, Grantor has executed this Bill of Sale on the 31st day of October, 1979.

CPC INTERNATIONAL INC.

By _____
Kenneth L. Knief
Director, Division Development

ATTEST: _____

SABER REFINING COMPANY

By _____
L. J. McAlister, President

ATTEST: _____
SECRETARY

VALERO - 0683
MOAKE

Schedule 1

Being a tract of land containing 149.2026 acres out of the Rincon del Oso Grant to Enrique Villareal, Abstract 1 in Nueces County, Texas; being located about five miles west northwest of the County Court House, of Nueces County, Texas; being recently known as the Corn Products Tract; being composed of three tracts as follows: 1.) 107.30 acre Alex Weil, et al tract conveyed to Corn Products Company by deed dated December 13, 1946 and recorded in Volume 353, Pages 100-104 of the deed records of Nueces County, Texas. 2.) 32.166 acre D.C. Reed and E.H. Perry tract conveyed to Corn Products Company by deed dated December 13, 1946 and recorded in Volume 353, Pages 134-138 of deed records of Nueces County, Texas. 3.) 20.02 acre tract of land conveyed to Corn Products Company by the Nueces County Navigation District by deed and mutual conveyance dated September 10, 1947 and recorded in Volume 395, Page 13 of deed records of Nueces County, Texas; 10.2834 acres of said 20.02 acres overlapping and being included within the boundaries of the 107.30 acre tract and the 32.166 acre tract described above; and being more particularly described by metes and bounds as follows:

BEGINNING at a broken concrete monument located in the north right-of-way of Up River Road, being the southeast corner of the Saber Refining Company tract and being the southwest corner of the tract of land herein described, said corner having Lambert Grid Coordinates (South Zone) of X = 2,326,793.65, Y = 782,238.69;

THENCE N 36° 08' 20" E along the southeast boundary of the Saber Refining Company Tract, at 847.91 feet pass a concrete monument about six inches square with a pointed top and standing about three feet above the ground; at 1540.46 feet pass another similar concrete monument; at 2407.70 feet pass the centerline of the Missouri Pacific Railroad track; at approximately 2774 feet pass the shoreline of the Tule Lake Channel; in all a distance of 2803.90 feet to a point in the water at the intersection with the south bulkhead line of the Nueces County Navigation District for the northwest corner of the tract of land herein described; said corner having Lambert Grid Coordinates (South Zone) X = 2,328,447.24, Y = 784,503.09;

THENCE S 63° 46' 33.5" E along the south bulkhead line of the Nueces County Navigation District a distance of 2,277.17 feet to a point in the water at the point of curvature of a curve to the left, said curve having a radius of 4119.83 feet;

THENCE continuing along the south bulkhead line of the Nueces County Navigation District and along the curve to the left a distance of 803.36 feet to a point in the water, said point being the northwest corner of Champlin Petroleum Company's 19.192 acre tract, said point being the northeast corner of the tract of land herein described, and said corner having Lambert Grid Coordinates (South Zone) of X = 2,331,240.64, Y = 783,214.15;

THENCE S 25° 11' 06" W along the northwest boundary of the Champlin Petroleum Company's 19.192 acre tract; at approximately 265 feet pass

VALERO - 0685
MOAKE

the shoreline of the Tule Lake Channel, at 341.70 feet pass the centerline of the Missouri Pacific Railroad Track, at 1350.22 feet pass about one foot southeast of a concrete monument about six inches square with a pointed top and standing about three feet above the ground, in all a distance of 1360.29 feet to a one inch iron pipe driven flush with the ground, said one inch iron pipe being in the north right-of-way of Up River Road, being the southwest corner of the Champlin Petroleum Company's 19.192 acre tract of land, being the southeast corner of the tract of land herein described, and having Lambert Grid Coordinates (South Zone) of X = 2,330,661.78, Y = 781,983.17;

THENCE S 85° 53' 53" W along the north right-of-way line of Up River Road, at 10.50 feet pass about 0.37 feet south of the center of a concrete monument about six inches square with a pointed top and standing about three feet above the ground, in all a distance of 132.62 feet to another similar concrete monument for a corner of the tract of land herein described, said corner having Lambert Grid Coordinates (South Zone) of X = 2,330,529.50, Y = 781,973.68;

THENCE continuing along the north right-of-way line of Up River Road N 87° 55' 05" W a distance of 3052.48 feet to a point, said point having Lambert Grid Coordinates (South Zone) of X = 2,327,479.04, Y = 782,084.57;

THENCE continuing along the north right-of-way of Up River Road N 77° 19' 40" W a distance of 702.50 feet to the Point of Beginning and containing a total of 156.4754 acres.

VALERO - 0686
MOAKE

There is excepted from this tract, however, a 100 foot wide right-of-way for the Missouri Pacific Railroad Company, said right-of-way having been conveyed by quit claim deed and agreement dated October 28, 1947 between the Corn Products Company and the San Antonio, Uvalde and Gulf Railroad Company as recorded in Volume 384, Pages 150-155 of deed records of Nueces County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING at the northwest corner of the heretofore described 156.4754 acre tract;

THENCE S 36° 08' 20" W along the west line of said 156.4754 acre tract a distance of 343.62 feet to a point in the north line of the 100 foot wide right-of-way for the Point of Beginning and the northwest corner of this tract, said point lying on a curve to the right;

THENCE in a southeasterly direction along said curve to the right, whose radius is 5779.63 feet at 1.11 feet pass a 5/8" iron rod and in all a distance of 226.81 feet to the Point of Tangency of said curve;

THENCE S 60° 20' 16" E a distance of 683.90 feet to the Point of Curvature of a curve to the left;

THENCE in a southeasterly direction along said curve to the left, whose radius is 5679.63 feet a distance of 1024.34 feet to a concrete monument with a brass disc in it for the Point of Tangency of the curve;

VALERO - 0687
MOAKE

THENCE S 70° 40' 16" E a distance of 1216.91 feet to a broken concrete monument for the northwest corner of this tract, said point lying in the east line of the 156.4754 acre tract, whence the northeast corner of said tract bears N 25° 11' 06" E at 290.04 feet;

THENCE S 25° 11' 06" W along the east line of the 156.4754 acre tract a distance of 100.53 feet to a point for the southeast corner of this tract;

THENCE N 70° 40' 16" W a distance of 1206.63 feet to the Point of Curvature of a curve to the right;

THENCE in a northwesterly direction along said curve to the right, whose radius is 5779.63 feet, a distance of 1042.38 feet to the Point of Tangency of the curve;

THENCE N 60° 20' 16" W a distance of 683.90 feet to the Point of Curvature of a curve to the left;

THENCE in a northwesterly direction along said curve to the left, whose radius is 5679.63 feet, a distance of 238.24 feet to a point in the west line of the 156.4754 acre tract for the southwest corner of this tract;

THENCE N 36° 08' 20" E along said east line of the 156.4754 acre tract, a distance of 101.17 feet to the Point of Beginning forming a tract of land embracing 7.2728 acres.

VALERO - 0688
MOAKE

The net acreage of the tract of land herein described is 149.2026 acres, more or less.

Schedule 2

Excepted Equipment

Equipment	Building or Location
8-ICM) Corn Fiber Washing	Bldg. 5-5, Bldg. 17-3
4-DSM)	Bldg. 5
1-H-30 Merco	Bldg. 5
1-BH-20 Merco	Bldg. 32
1-B-30 Merco	Bldg. 5
2-500 Ft^2 Gluten Filters	Bldg. 17
1-EVZ Vitter Press	Bldg. 17
Maint. Shop Equip.	Mech Shops Plantwide
4-1,000 Ft^2 carbon filters	Bldg. 53
1-Residue Filter	Bldg. 17
1-500 Ft^2 carbon filter	Bldg. 53
Magnetic flowmeters	Through-out plant
1-Trackmobile	
2-Fork lift trucks	Through-out plant
Plate heat exchangers	Through-out plant
1-Computer	Office
1-Fluid Bed Reactor	Bldg. 27
Feed Dryer Controls	Bldg. 17
Transformers & Switchgear	Power House
Cooling Water Pumbs	Misc. Plant Locations
4-Entoleter Mills	Bldg. 5

Equipment	Building or Location
2-High Speed bag-packers for starch & dextrose	Bldg. 36
1-BH30 Merco centrifugal for starch washing	Bldg. 5
5-B30 Merco centrifugals for starch washing	Bldg. 5
1-83" Reinveldt centrifugal for starch dewatering	Bldg. 32
2-C30 Merco centrifugals for starch washing	Bldg. 32
4-1,000 ft.^{2} carbon filters for liquid corn sugars	Bldg. 53
5-Bauer Mills for corn misc. wastewater treatment plant items, i.e., surface aerators, submerged turbines, etc.	Bldg. 83 & 83a
All wheeled vehicles, office, drafting, copying & filing equip.	Through-out plant
All furniture & fixtures, files, office machinery, and other miscellaneous office equipment	Through-out plant
2-C144 Dorrclone units for starch washing	Bldg. 5
1-Corn starch flash dryer	Bldg. 32
1-Corn starch spray dryer	Bldg. 32
1-AST (powdered carbon reviv.)	Bldg. 53
2-Rotary carbon filters	Bldg. 53
3-Rotary dextrose, Morrex filters	Bldg. 53
38-Dextrose crystallizers	Bldg. 48

Equipment	Building or Location
1-Dextrose dryer	Bldg. 48
1-Dextrose cooler	Bldg. 48
20-Dextrose centrifuges	Bldg. 48
2-Bl6 Merco centrifugals	Bldg. 5
1-Rotary flash gluten dryer	Bldg. 17
4-Crude corn oil expellers	Bldg. 17
1-Corn germ dryer	Bldg. 17
1-Residue filter	Bldg. 17
2-Corn gluten feed dryers	Bldg. 17
1-Turbine/Generator	Power House

03/B

CERTIFICATE OF PASSAGE OF RESOLUTION

At a duly constituted meeting of the Board of Directors of SABER REFINING COMPANY duly held on September 10, 1979, the following resolutions were adopted:

> RESOLVED, that this Corporation enter into a contractual arrangement with CPC International, Inc. to purchase for a total sum of real property and equipment comprising approximately 159 acres, more or less, with improvements thereon, located on Up River Road, near Corpus Christi, Nueces County, Texas, and
>
> RESOLVED, that it is desirable and in the best interest of this Corporation to purchase such real property with improvements and this Corporation shall be and is hereby authorized and directed to enter into an Agreement to effect such purchase, and
>
> RESOLVED, that the officers of this Corporation, are hereby authorized and directed to execute any an all instruments and documents and take such other actions as in their judgment may be necessary or desirable to carry out the transaction contemplated by these resolutions.

I, the undersigned Secretary of SABER REFINING COMPANY do hereby certify that the foregoing is a true and complete copy of resolutions adopted at a meeting of the Board of Directors of the said Company, duly held on September 10, 1979, a quorum being present.

INCUMBENCY CERTIFICATE

I, the undersigned, a Secretary or Assistant Secretary of SABER REFINING COMPANY do hereby certify that the following named persons currently serve as officers of SABER REFINING COMPANY, a Texas corporation and in the capacity and title shown along side their respective names:

NAME	OFFICE
Dennis W. McCarthy	Chairman of the Board and Chief Executive Officer
L. M. McAlister	President
R. W. Linehan	Executive Vice President
Gary P. Brooks	Senior Vice President and Assistant Secretary
L. P. Byler	Executive Vice President
P. M. Cordell	Vice President - Crude Oil and Feed Stock
Perry E. Burkett	Secretary
Treasurer & Assistant Secretary	S. R. (Ray) Hereford
Assistant Secretary	David T. Burkett

I, the undersigned Perry E. Burkett Secretary of Saber Refining Company, do hereby certify that the above and foregoing persons are the present officers of said company. October 31, 1979

157583

VOL 610 PAGE 825

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF NUECES §

That CPC INTERNATIONAL INC., a Delaware corporation (hereinafter called the "Grantor"), for and in consideration of Ten Dollars ($10.00) and other good and valuable consideration in hand paid to the Grantor by Saber Refining Company, a Texas corporation (hereinafter called the "Grantee"), the sufficiency of which consideration is hereby confessed and acknowledged by the Grantor, has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY unto the Grantee that certain tract or parcel of land (herein called the "Subject Tract") lying and being situated in Nueces County, Texas, more particularly described in Schedule I-A attached hereto and made a part hereof for all purposes, together with all buildings and similar improvements thereon.

This conveyance is made and accepted expressly subject to the exceptions and other matters identified or referred to in Schedule II attached hereto and made a part hereof to the extent the same relate to the Subject Tract.

For the same consideration, Grantor does hereby further grant and convey unto the Grantee, its successors and assigns all rights, titles and interests owned, claimed

DEED RECORDS

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DEED REC

VOL 610 PAGE 826

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or held by the Grantor in and to any streets, roads, highways or other lands adjoining, adjacent or contiguous to the boundaries of the Subject Tract. The grant contained in this paragraph is without any warranty whatsoever (express or implied).

TO HAVE AND TO HOLD the Subject Tract, subject as aforesaid, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the Grantee, its successors or assigns, forever; and Grantor does hereby bind itself, its successors and assigns, to WARRANT and FOREVER DEFEND all and singular the Subject Tract unto the Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, subject, however, to the lawful and validly enforceable claims of third persons, if any, under or with respect to the permitted encumbrances listed or referred to in Schedule II attached hereto; provided, however, that the warranty herein by Grantor shall not extend to any of the Subject Tract which is not included within the respective boundaries of First Tract, Second Tract and Third Tract as more particularly described in Schedule I-B attached hereto.

VOL 610 PAGE 827

Ad valorem taxes for the current year have been prorated as of the date of delivery of this Deed, and the Grantor has paid or covenants and agrees to pay all ad valorem taxes upon the Subject Tract for the year 1979.

EXECUTED this 31st day of October, 1979.

CPC INTERNATIONAL INC.

ATTEST:

By _____
Kenneth L. Knief
Director, Division Development

DEED RECORDS

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VALERO - 0697
MOAKE

DEED FEE...

VOL 610 PAGE 828 VOL 1718 PAGE 686

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Kenneth L. Knief, Director, Division Development of CPC International Inc., a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 31st day of October, 1979.

Melissa C. Slater
Notary Public in and for
Harris County, Texas

Melissa C. Slator

My Commission Expires:

February 3, 1980

01/J



VOL 510 PAGE 829

JOINDER

The undersigned, Grantee under the foregoing Special Warranty Deed, joins herein to acknowledge and evidence its agreement to assume all obligations and duties of the Grantor in said Special Warranty Deed under that deed dated September 10, 1947, between Nueces County Navigation District No. 1 and Corn Products Refining Company of record at Volume 395, Page 13 et seq., Deed Records of Nueces County, Texas.

EXECUTED this 31st day of October, 1979.

SABER REFINING COMPANY

By _____
President

RECORDER'S MEMORANDUM
ALL NAMES NOT TYPED
UNDER SIGNATURES

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared L. M. McAlister, President of SABER REFINING COMPANY, a corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 31st day of October, 1979.

Melissa C. Slator
Notary Public in and for
Harris County, Texas

My Commission expires
February 3, 1980.

Melissa C. Slator

MM:02/P

STATE OF TEXAS
COUNTY OF NUECES
I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me; and was duly RECORDED, in the Volume and Page of the named RECORDS of Nueces County, Texas, as stamped hereon by me, on

NOV 1 1979

COUNTY CLERK,
NUECES COUNTY, TEXAS

DEED REC.

VOL 1718 PAGE 687

VALERO - 0699
MOAKE

DEED REC.

VOL 610 PAGE 850

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Schedule I-A

Being a tract of land containing 149.2026 acres out of the Rincon del Oso Grant to Enrique Villareal, Abstract 1 in Nueces County, Texas; being located about five miles west northwest of the County Court House, of Nueces County, Texas; being recently known as the Corn Products Tract; being composed of three tracts as follows: 1.) 107.30 acre Alex Weil, et al tract conveyed to Corn Products Company by deed dated December 13, 1946 and recorded in Volume 353, Pages 100-104 of the deed records of Nueces County, Texas. 2.) 32.166 acre D.C. Reed and E.H. Perry tract conveyed to Corn Products Company by deed dated December 13, 1946 and recorded in Volume 353, Pages 134-138 of deed records of Nueces County, Texas. 3.) 20.02 acre tract of land conveyed to Corn Products Company by the Nueces County Navigation District by deed and mutual conveyance dated September 10, 1947 and recorded in Volume 395, Page 13 of deed records of Nueces County, Texas; 10.2834 acres of said 20.02 acres overlapping and being included within the boundaries of the 107.30 acre tract and the 32.166 acre tract described above; and being more particularly described by metes and bounds as follows:

BEGINNING at a broken concrete monument located in the north right-of-way of Up River Road, being the southeast corner of the Saber Refining Company tract and being the southwest corner of the tract of land herein described, said corner having Lambert Grid Coordinates (South Zone) of X = 2,326,793.65, Y = 782,238.69;

THENCE N 36° 08' 20" E along the southeast boundary of the Saber Refining Company Tract, at 847.91 feet pass a concrete monument about six inches square with a pointed top and standing about three feet above the ground; at 1540.46 feet pass another similar concrete monument; at 2407.70 feet pass the centerline of the Missouri Pacific Railroad track; at approximately 2774 feet pass the shoreline of the Tule Lake Channel; in all a distance of 2803.90 feet to a point in the water at the intersection with the south bulkhead line of the Nueces County Navigation District for the northwest corner of the tract of land herein described; said corner having Lambert Grid Coordinates (South Zone) X = 2,328,447.24, Y = 784,503.09;

THENCE S 63° 46' 33.5" E along the south bulkhead line of the Nueces County Navigation District a distance of 2,277.17 feet to a point in the water at the point of curvature of a curve to the left, said curve having a radius of 4119.83 feet;

THENCE continuing along the south bulkhead line of the Nueces County Navigation District and along the curve to the left a distance of 803.36 feet to a point in the water, said point being the northwest corner of Champlin Petroleum Company's 19.192 acre tract, said point being the northeast corner of the tract of land herein described, and said corner having Lambert Grid Coordinates (South Zone) of X = 2,331,240.64, Y = 783,214.15;

THENCE S 25° 11' 06" W along the northwest boundary of the Champlin Petroleum Company's 19.192 acre tract; at approximately 265 feet pass

DEED REC..

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VALERO - 0701
MOAKE

the shoreline of the Tule Lake Channel, at 341.70 feet pass the centerline of the Missouri Pacific Railroad Track, at 1350.22 feet pass about one foot southeast of a concrete monument about six inches square with a pointed top and standing about three feet above the ground, in all a distance of 1360.29 feet to a one inch iron pipe driven flush with the ground, said one inch iron pipe being in the north right-of-way of Up River Road, being the southwest corner of the Champlin Petroleum Company's 19.192 acre tract of land, being the southeast corner of the tract of land herein described, and having Lambert Grid Coordinates (South Zone) of X = 2,330,661.78, Y = 781,983.17;

THENCE S 85° 53' 53" W along the north right-of-way line of Up River Road, at 10.50 feet pass about 0.37 feet south of the center of a concrete monument about six inches square with a pointed top and standing about three feet above the ground, in all a distance of 132.62 feet to another similar concrete monument for a corner of the tract of land herein described, said corner having Lambert Grid Coordinates (South Zone) of X = 2,330,529.50, Y = 781,973.68;

THENCE continuing along the north right-of-way line of Up River Road N 87° 55' 05" W a distance of 3052.48 feet to a point, said point having Lambert Grid Coordinates (South Zone) of X = 2,327,479.04, Y = 782,084.57;

THENCE continuing along the north right-of-way of Up River Road N 77° 19' 40" W a distance of 702.50 feet to the Point of Beginning and containing a total of 156.4754 acres.

There is excepted from this tract, however, a 100 foot wide right-of-way for the Missouri Pacific Railroad Company, said right-of-way having been conveyed by quit claim deed and agreement dated October 28, 1947 between the Corn Products Company and the San Antonio, Uvalde and Gulf Railroad Company as recorded in Volume 384, Pages 150-155 of deed records of Nueces County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING at the northwest corner of the heretofore described 156.4754 acre tract;

THENCE S 36° 08' 20" W along the west line of said 156.4754 acre tract a distance of 343.62 feet to a point in the north line of the 100 foot wide right-of-way for the Point of Beginning and the northwest corner of this tract, said point lying on a curve to the right;

THENCE in a southeasterly direction along said curve to the right, whose radius is 5779.63 feet at 1.11 feet pass a 5/8" iron rod and in all a distance of 226.81 feet to the Point of Tangency of said curve;

THENCE S 60° 20' 16" E a distance of 683.90 feet to the Point of Curvature of a curve to the left;

THENCE in a southeasterly direction along said curve to the left, whose radius is 5679.63 feet a distance of 1024.34 feet to a concrete monument with a brass disc in it for the Point of Tangency of the curve;

DEED REC

VALERO - 0703
MOAKE

THENCE S 70° 40' 16" E a distance of 1216.91 feet to a broken concrete monument for the northwest corner of this tract, said point lying in the east line of the 156.4754 acre tract, whence the northeast corner of said tract bears N 25° 11' 06" E at 290.04 feet;

THENCE S 25° 11' 06" W along the east line of the 156.4754 acre tract a distance of 100.53 feet to a point for the southeast corner of this tract;

THENCE N 70° 40' 16" W a distance of 1206.63 feet to the Point of Curvature of a curve to the right;

THENCE in a northwesterly direction along said curve to the right, whose radius is 5779.63 feet, a distance of 1042.38 feet to the Point of Tangency of the curve;

THENCE N 60° 20' 16" W a distance of 683.90 feet to the Point of Curvature of a curve to the left;

THENCE in a northwesterly direction along said curve to the left, whose radius is 5679.63 feet, a distance of 238.24 feet to a point in the west line of the 156.4754 acre tract for the southwest corner of this tract;

THENCE N 36° 08' 20" E along said east line of the 156.4754 acre tract, a distance of 101.17 feet to the Point of Beginning forming a tract of land embracing 7.2728 acres.

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The net acreage of the tract of land herein described is 149.2026 acres, more or less.

FILED FOR RECORD

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VALERO - 0705
MOAKE

VOL 610 PAGE 836

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Schedule I-B

The following lands lying and being situated in Nueces County, Texas, and described as follows, to-wit:

FIRST TRACT:

The surface estate only of 107.30 acres of land out of the Rincon del Oso Grant to Enrique Villarreal, Abstract 1, being a part of a 640-acre tract conveyed to Charles and Wm. Ohler by H. L. Kinney, being the same tract conveyed by Alex, Moise and Joel Weil by A. R. Roark and wife, on August 12, 1919, by deed of record at Vol. 127, page 165, et.seq., Deed Records of Nueces County, Texas, together with accretion, said 107.30-acre tract being comprised of 112.40 acres of land LESS AND EXCEPT 5.10 acres heretofore conveyed to the San Antonio, Uvalde & Gulf Railroad Company, which 5.10 acres are described in Agreement dated October 28, 1947, by and between Corn Products Refining Company and Guy A.Thompson, Trustee, for said Railroad Company, such Agreement of record at Vol. 384, page 150, et.seq., Deed Records of Nueces County, Texas, said 112.40 acres of land described as follows, to-wit:

Beginning at an existing 1/2-inch iron pipe in the north margin of a public road known as the Up River Road, the recognized southwest corner of the 50-acre tract set aside to A. R. Roark in the partition of the Roark 206-acre tract and southeast corner of the 106-acre tract set aside to Mrs. N. J. Roark in said partition, for the southwest corner of this tract, said partition deed dated August25 , 1916, of record at Vol. 116, page 58, et. seq., Deed Records of Nueces County, Texas;

Thence N. 35° 27' E., with the northwest boundary line of said A. R. Roark 50-acre tract and southeast boundary line of said N. J. Roark 106-acre tract and along the general line of an old fence,-at 2300 feet, top of bluff; at 2533.50 feet, intersect the southern meander boundary line of State of Texas Mineral File Survey No. 691 (in Nueces Bay), this being also the southern meander boundary line of submerged lands in Nueces Bay on which the State of Texas relinquished all its right and title, with certain reservations, to Nueces County Navigation District No. 1, as shown by Patent No. 84, dated May 7, 1930, and recorded in the Deed Records of Nueces County, Texas, in Volume 192 at page 579; at 2542.40 feet, an old pointed mesquite post, the original northwest shoreline corner of said A. R. Roark 50 acre tract, and Northeast shoreline corner of said N. J. Roark 106-acre tract,-in all, 2810.00 feet to a stake on the estimated line of ordinary high water on the south shore of Nueces Bay, for the northwest corner of this tract, being a shoreline corner, subject to change in position as a result of shoreline changes;

Thence in a general easterly direction along the south shore of said Nueces Bay, following the meanders of said line of ordinary high water as same is estimated to be located at this time, being subject to changes in position as a result of shoreline changes, S 42° 54' E., 670.00 feet; S. 72 ° 01' E. 1250.00 feet; S. 57° 05' E. 335.13 feet to a stake on a northerly extension of the east boundary line of said Roark 206-acre tract and west boundary line of the Reed and Perry tract, also known as the Terrell tract, for the northeast corner of this tract, being a shoreline corner, subject to change in position as a result of shoreline changes;

Thence S. 36° 06' W., with said east boundary line of Roark 206-acre tract and west boundary line of Reed and Perry or Terrell tract, and its northerly extension,-at 154.60 feet, an old pointed mesquite post the original northeast shoreline corner of said Roark 206-acre tract, as partitioned, at 159.20 feet, intersect said southern meander boundline of Mineral File Survey No. 691 and of Nueces County Navigation District No. 1 submerged land survey; at 385 feet, top of bluff,-in all 1756.60 feet to a 1-inch iron bar, set flush with the ground at the north margin of said Up River Road, for the southeast corner of this tract and of said Roark 206-acre tract;

Thence N. 88° 39' W., with the south boundary line of said Roark 206-acre tract and north margin of Up River Road, 1834.44 feet to a 1-inch iron bar set flush with the ground, for a corner of this tract and of said Roark 206-acre tract;

Thence N. 78° 01' W., with said South boundary line of Roark 206-acre tract and north margin of the Up River Road, 702.50 feet to the place of beginning.

SECOND TRACT:

The surface estate only of 32.166 acres of land out of the Rincon del Oso Grant to Enrique Villarreal, Abstract 1,sometimes called the Terrell Tract, being the same land conveyed to D.C. Reed and E. H. Perry by W. B. Terrell, et.al., by deed dated FEb. 6, 1924, of record at Vol. 145, page 204, Deed Records of Nueces County, Texas, together with accretion, said 32.166-acre tract being comprised of 34.32 acres of land LESS AND EXCEPT 2.154 acres heretofore conveyed to the San Antonio, Uvalde & Gulf Railroad Company, which 2.154 acres are described in Agreement dated October 28, 1947, by and between Corn Products Refining Company and Guy A. Thompson, Trustee for said Railroad Company, such agreement of record at Vol. 384, page 150, et.seq., Deed Records of Nueces County, Texas said 34.32 acres of land described as follows, to-wit;

Beginning at a 1-inch iron bar set flush with the ground in the north margin of a public road known as the Up River Road for the southeast corner of the Roark 206-acre tract and for the southwest corner of this tract;

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Thence N. 36° 06' E., with the east boundary line of said Roark 206-acre tract, - at 1370 feet, top of bluff; at 1597.40 feet, intersect the southern meander boundary line of State of TExas Mineral File Survey No. 691 (in Nueces Bay), this being also the southern meander boundary line of submerged lands in Nueces Bay on which the State of Texas relinquished all its rights and title, with certain reservations, to Nueces County Navigation District No. 1, as shown by Patent No. 84, dated May 7, 1930, and recorded in the Deed Records of Nueces County, Texas, in Volume 192 at page 579; at 1602.00 feet, an old pointed mesquite post, the original northeast shoreline corner of said Roark 206-acre tract, as partitioned,-in all, 1756.60 feet to a stake on the estimated line of ordinary high water on the south shore of Nueces Bay, for the northwest corner of this tract, being a shoreline corner, subject to change in position as a result of shoreline changes;

Thence in a general easterly direction along the South shore of said Nueces Bay, following the meanders of said line of ordinary high water, as same is estimated to be located at this time, being subject to change in position as a result of shoreline changes, S. 57° 05' E. 274.87 feet; S. 67° 36' E. 500.00 feet; N. 34° 59' E. 175.00 feet; S.75 ° 56' E. 78.21 feet to a stake for the northeast corner of this tract, being a shoreline corner, subject to change in position as a result of shoreline changes;

THENce S. 24° 29' 50"W., with the general line of an old fence,-at 170.30 feet, intersect the southern meander boundary line of State of Texas Mineral File Survey No. 689 (in Nueces Bay), this being also the southern meander boundary line of said submerged lands in Nueces Bay, relinquished with reservations, to Nueces County Navigation District No. 1; at 490 feet, top of bluff; at 1350.88 feet a 1-inch iron bar set flush with the ground in the north margin of said Up River Road, as now in use, - in all, 1366.60 feet to a stake set flush with the ground on the shoulder of said Up River Road, for the southeast corner of this tract, being 16.30 feet northerly, measured at right angles, from the centerline of pavement on said Up River Road

Thence N. 88 ° 39' W., at 125.75 feet, a 1-inch iron bar set flush with the ground in the north margin of said Up River Road,-and continuing along the north margin of said Up River Road, in all 1343.00 feet to the place of beginning.

THIRD TRACT:

The surface estate only of 20.02 acres of land situated in the waters of Nueces Bay, embracing that portion of State of TExas Submerged Land Surveys No. 691, made for John D. Cochran, et al., and 689, made for D. Odem, et al., lying between a northeasterly extension of the Northwest boundary line of a 107.30 - acre tract conveyed to Corn Products Refining Company by Alex Weil et al by deed dated December 13 1946, and recorded in the Deed Records of Nueces County, Texas,

in Volume 353 at page 100, and a northeasterly extension of the southeast boundary line of a 32.17-acre tract conveyed to said Corn Products Refining Company by D. C. Reed and E. H. Perry by deed dated December 13, 1946, and recorded in the Deed Records of said Nueces County in Volume 353 at page 134, and southwest of a line crossing the waters of said Nueces Bay in a general northwesterly and Southeasterly direction and referred to as the Navigation District bulkhead line. Said survey is a part of those Nueces Bay submerged lands patented to Nueces County Navigation District No. 1 by the State of Texas on May 7, 1930, as of record in the Deed Records of Nueces County Texas, in Volume 192, at page 579, and is described by metes and bounds as surveyed, as follows:

Beginning at the point of intersection of the southeast boundary line of said 32.17-acre tract conveyed to Corn Products Refining Company by D.C. Reed and E. H. Perry, being also the southeast boundary line of the Corn Products Refining Company 139.47-acre tract, with the south boundary line of said State Submerged Land Survey No. 689 and of said tract patented by the State of Texas to Nueces County Navigatic District No. 1 for the south corner of this survey, whence the southeas corner of said 32.17-acre tract bears S. 25° 12' 20" W. 1196.30 feet;

Thence N. 76° 43' 30" W., with the south boundary line of said Survey No. 689 and of said tract patented by the State of Texas to Nueces County Navigation District No. 1, 708.60 feet to a concrete monument, five inches square on top, the southwest corner of said Survey No. 689, and southeast corner of said Survey No. 691 and a corner of said tract patented to Nueces County Navigation District No. 1, for a corne: of this survey;

Thence N. 68° 09' 10" W. with the south boundary line of said survey No. 691 and of said tract patented by the State of Texas to Nueces County Navigation District No. 1, 1022.60 feet to a concrete monument, five inches square on top, a corner of said survey No. 691 and of said tract patented to Nueces County Navigation District No. 1, for a corner of this survey;

Thence N. 60° 53'50" W., continuing with said south boundary line of Survey No. 691 and of said tract patented to Nueces County Navigation District No. 1, 1415.20 feet to a point in the northwest boundary line of said 107.30-acre tract conveyed to Corn Products Refining Company by Alex Weil et al, being also the northwest boundary line of said Corn Products Refining Company 139.47-acre tract, for the West corner of this survey, whence the southwest corner of said 107.30-acre tract bears S.36° 09' 30" W. 2533.50 feet;

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Thence N. 36 ° 09' 30" E., with said northwest boundary line of 107.30-acre tract and of Corn Products Refining Company 139.47-acre tract, and a northeasterly extension thereof into the waters of said Nueces Bay, 271.11 feet to a point in a line running in a general northwesterly and southeasterly direction, referred to as the Navigation District Bulkhead line, being located parallel with, on straight courses, and concentric with, on curved courses, and 300.00 feet southwesterly, measured, respectively, at right angles and radially from a line established as the centerline of a proposed channel, to be 200 feet wide at the bottom and 34 feet deep, for the north corner of this survey;

Thence S. 63° 46' 40" E., with said 300-foot offset line, referred to as the Navigation District bulkhead line, 2275.37 feet to the point of beginning of a circular curve to the left, for a corner point of this survey, whence the center point for the circular curve of the next succeeding course bears N. 26° 13' 20" E. 4119.83 feet;

Thence curve left along a circular curve of 4119.83 feet radius, 803.36 feet to a point in a Northeasterly extension of said southeast boundary line of 32.17-acre tract and of Corn Products Refining Company 139.47-acre tract, for the east corner of this survey, whence said center point for circular curve bears N. 15° 03' 00" E. 4119.83 feet;

Thence S. 25° 12' 20" W., with said northeasterly extension of southeast boundary line of 32.17-acre tract and of Corn Products Refining Company 139.47-acre tract, 179.49 feet to the place of beginning.

(The meridian used is that of the Texas Coordinate System, South Zone, based on points established by the U. S.Engineers Office.)

All references herein to First Tract, Second Tract and Third Tract relate to said Tracts as described in Schedule I-B to the Special Warranty Deed to which this Schedule II is attached.

1. The reservation by Moise Weil individually and as Independent Executor and Trustee of the Estate of Jos. L. Weil, deceased, Alex Weil, and Bertha Weil, a widow, of all oil, gas and other minerals in and under First Tract hereinabove described, such reservation being set forth in deed from the above parties to Corn Products Refining Company, dated Dec. 13, 1946, recorded at Vol. 353, pp. 101-104, Deed Records of Nueces County, Texas. (As to First Tract)

2. The reservation by D. C. Reed and wife, Laura Moses Reed, E. H. Perry and wife, Lutie Perry, of all oil, gas and other minerals, such reservation set forth in deed from said Reeds and Perrys to Corn Products Refining Company, recorded at Vol. 353, Page 135, Deed Records of Nueces County, Texas. (As to Second Tract)

3. The ownership by Nueces County Navigation District No. 1 of all littoral and riparian rights belonging to or appertaining to First Tract, Second Tract and Third Tract, same conveyed by Corn Products Refining Company to said District by deed of Sept. 10, 1947, of record at Vol. 395, p. 13, et. seq., Deed Records of Nueces County, Texas.

4. The ownership by Nueces County Navigation District No. 1 of a triangular tract or strip of land out of the Northwest portion of First Tract, which strip lies to the Northeast of the south bulkhead line of the ship channel of said District, as such bulkhead line is established in the deed recorded in Vol. 395, Page 13 of the Deed Records of Nueces County, Texas.

5. The possible relocation from time to time of the North boundary line of Third Tract, which, according to the terms and provision of the deed recorded in Vol. 395, Page 13 of the Deed Records of Nueces County, Texas, is and shall always remain coincident with the south bulkhead line of the ship channel of Nueces County Navigation District No. 1, as such line is established in such deed or as it might thereafter be relocated as the result of changes, alterations or further extensions of said ship channel on the part of such district.

6. The reservation by the State of Texas of all oil, gas and other minerals in and under Third Tract as set forth in its patent to Nueces County Navigation District No. 1, of submerged lands in Nueces Bay, being Patent

No. 84, Vol. 47-A, same recorded at Vol. 192, page 579, et. seq., Deed Records of Nueces County, Texas.

7. The right and easement reserved to Nueces County Navigation District No. 1 in the deed recorded in Vol. 395, Page 13 of the Deed Records of Nueces County, Texas, to deposit or dump upon Third Tract any and all dredge spoil obtained in the construction of the ship channel and turning basin mentioned in said deed, or any enlargements, extension, deepening or widening of said channel and basin.

8. Conditions imposed by both parties to the deed recorded in Vol. 395, Page 13 of the Deed Records of Nueces County, Texas, together with possibility of reverter for breach thereof.

9. Right-of-way easement, covering an unspecified 12-foot strip across First Tract, for gas pipeline and installation of private telephone line, executed by Alex Weil, et al., to O. R. Seagraves, dated May 31, 1924, of record at Vol. 27, p. 443, Bond & Mortgage Records of Nueces County, Texas, which easement was amended by instrument of writing dated Aug. 24, 1955, executed by Corn Products Refining Company and by United Gas Pipe Line Company, such latter Company having acquired such original easement, such amendment of record at Vol. 708, p. 49, Deed Records of Nueces County, Texas, and affecting Third Tract as well as First Tract.

10. Right-of-Way easement for gas pipeline purposes, providing for laying of 8-inch gas pipeline on First Tract for a distance of 2376 feet paralleling and as near the western boundary of First Tract as practical, same executed by Moise Weil, et al., to Houston Gulf Gas Company, dated September 1933, of record at Vol. 208, p. 256, Deed Records of Nueces County, Texas, such Company later merging with United Gas Pipe Line Company, as shown by instrument of record at Vol. 299, p. 115, Deed Records of Nueces County, Texas.

11. Right-of-Way easement for pipeline for transportation of oil, gas, water, or any other fluid or substance, covering all of First Tract, executed by Weil Brothers to Magnolia Pipe Line Company, dated Jan. 11, 1937, of record at Vol. 228, page 82, Deed Records of Nueces County, Texas.

12. Right-of-way easement, for pipeline for laying, maintaining and operating, a pipeline for transportation

for oil, gas, water, and their products, covering all of First Tract, executed by Weil Bros. to Humble Pipe Line Company, dated March 10, 1937, of record at Vol. 229, p. 432, Deed Records of Nueces County, Texas.

13. Right-of-way easement, for gas, oil and water pipeline purposes covering all of First Tract, dated Nov. 6, 1939, executed by Moise Weil, et. al., to Magnolia Petroleum Company, of record at Vol. 252, p. 383, Deed Records of Nueces County, Texas.

14. Right-of-way easement, for oil and gas pipeline purposes, dated Jan. 4, 1940, of record at Vol. 255, page 98, Deed Records of Nueces County, Texas, covering all of First Tract. Said easement was assigned by the grantee to Sinclair Refining Company by written instrument dated Apr. 26, 1943, of record at Vol. 287, p. 492, Deed Records of Nueces County, Texas, having been originally given by Alex Weil, et. al., to Continental Pipe Line Company.

15. Right-of-way easement, for pipeline purposes, together with right to construct, maintain, and operate etc., telegraph and telephone lines in connection therewith, covering all of Second Tract, executed by D. C. Reed, et. al., to Houston Gulf Gas Company, dated Dec. 17, 1935, of record at Vol. 219, p. 134, Deed Records of Nueces County, Texas, said Company later merging with United Gas Pipe Line Company, as shown by instrument of writing of record at Vol. 299, p. 115, Deed Records of Nueces County, Texas.

16. Right-of-way easement, for oil, gas and water pipeline purposes, covering all of Second Tract, executed by D. C. Reed, et al., to Crude Oil Pipe Line Company, by instrument dated Dec. 15, 1939, of record at Vol. 255, p. 100, Deed Records of Nueces County, Texas. The grantee in such easement subsequently assigned its rights to Continental Oil Company by instrument dated Dec. 30, 1939, of record at Vol. 255, p. 1, Deed Records of Nueces County, Texas, and said Continental Oil Company assigned same by instrument dated Apr. 26, 1943, to Sinclair Refining Company, such assignment of record at Vol. 287, p. 492, Deed Records of Nueces County, Texas.

17. Right-of-way easement, dated Feb. 24, 1936, for oil and gas pipeline purposes, executed by E. H. Perry, et al., to The Texas Pipe Line Company, of record at Vol. 219, p. 624, Deed Records of Nueces County, Texas, covering Second Tract.

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18. Right-of-way easement, for pipeline for oil, gas, water, or any other fluid or substance, covering Second Tract, dated Jan. 11, 1937, executed by D. C. Reed, et al., to Magnolia Pipe Line Company, of record at Vol. 228, p. 83, Deed Records of Nueces County, Texas.

19. Right-of-way easement, for pipeline for oil, gas, water, and their products, covering Second Tract, dated Sept. 4, 1937, of record at Vol. 233, p. 408, Deed Records of Nueces County, Texas, executed by D. C. Reed, et al., to Humble Pipe Line Company.

20. Right-of-way easement, for pipeline for oil, gas, water, or other fluid or substance, covering Second Tract, dated Oct. 20, 1939 of record at Vol. 252, p. 98, Deed Records of Nueces County, Texas, from D. C. Reed, et al., to Magnolia Petroleum Company.

21. Right-of-way easement, for 8-inch pipeline and 6-inch pipeline, for crude petroleum, oil, gas and water, covering 30-foot strip lying within First and Second Tracts, dated July 23, 1947, of record at Vol. 380, p. 325, Deed Records of Nueces County, Texas, executed by Corn Products Refining Company to Sinclair Refining Company.

22. Right-of-way easement, for pipeline for oil, gas and water, covering a strip of land out of First and Second Tracts, dated Aug. 4, 1948, executed by Corn Products Refining Company to Humble Pipe Line Company, of record at Vol. 409, p. 410, Deed Records of Nueces County, Texas.

23. Right-of-way easement, for oil and gas pipeline, covering a strip of land out of First Tract, dated May 24, 1949, executed by Corn Products Refining Company to Sinclair Refining Company, of record at Vol. 432, p. 206, Deed Records of Nueces County, Texas.

24. Right-of-way easement, covering a tract 70' x 450' out of First Tract, dated Oct. 5, 1950, of record at Vol. 491, p. 407, Deed Records of Nueces County, Texas, executed by Corn Products Refining Company to United Gas Pipe Line Company.

25. Right-of-way easement, for general transmission of electric power, covering First and Second Tracts, dated April 20, 1956, executed by Corn Products Refining Company to Central Power & Light Company, of record at Vol. 732, p. 531, Deed Records of Nueces County, Texas.

26. Cathodic Protection Easement, covering portion of First Tract, dated June 14, 1956, executed by Corn Products Refining Company to United Gas Pipe Line Company, of record at Vol. 739, p. 357, Deed Records of Nueces County, Texas.

27. Right-of-way easement, for pipeline for oil, gas, water, petroleum products or any other liquids, gases or substances which can be transported through a pipe line, covering strip of land out of First and Second Tracts, dated 1955, of record at Vol. 726, p. 39, Deed Records of Nueces County, Texas, from Corn Products Refining Company to Humble Oil and Refining Company.

28. Right-of-way easement, for pipeline for oil, gas, water, petroleum products and other substances, etc., covering strip of land through First and Second Tracts, dated Aug. 21, 1956, of record at Vol. 745, p. 210, Deed Records of Nueces County, Texas, executed by Corn Products Refining Company to Humble Pipe Line Company.

29. Cathodic Protection Easement, covering part of First Tract, dated Jan. 17, 1957, of record at Vol. 763, p. 331, Deed Records of Nueces County, Texas, executed by Corn Products Refining Company to United Gas Pipe Line Company.

30. Right-of-way easement for highway purposes, covering part of First Tract, dated July 3, 1963, executed by Corn Products Company to the State of Texas, of record at Vol. 1011, p. 627, Deed Records of Nueces County, Texas.

31. Cathodic Protection Easement, dated Jan. 21, 1965, of record at Vol. 1072, p. 27, Deed Records of Nueces County, Texas, covering part of Second Tract, executed by Corn Products Company to Magnolia Pipe Line Company.

32. Easement for pipe line purposes granted by Corn Products Company to Humble Pipe Line Company by instrument dated February 9, 1968, recorded in Vol. 1261, Page 438 of the Deed Records of Nueces County, Texas.

33. Unrecorded Industrial Track Agreement dated August 9, 1956, between Corn Products Refining Company and Missouri Pacific Railroad Company, which Agreement is terminable by either party thereto upon six months notice.

34. Any loss or damage by reason of any titles or rights asserted by anyone, including but not limited to persons, corporations, governments, or other entities to

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tidelands, or areas within tidewater limits, or accretions, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs, or oceans, or to any land extending from the line of mean low tide to the line of vegetation, or to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or to filled in lands or artificial islands or to reparian or alluvial rights, or the rights or interests of the State of Texas or the public generally in the area extending from the line of mean low tide to the line of vegetation or their right of access thereto or right of easement along and across the same.

35. Rights of CPC International, Inc. under lease of even date.

36. Reservations of the subsurface mineral estate, including oil, gas, and other minerals in and under the land above described, including royalty interests, royalties, bonuses, rental and all other rights in connection therewith, including all easements or rights of way owned or held by any lessee or mineral owner, on, over or across said lands for the purpose of producing or transporting any of said minerals.

37. Permit Agreement, dated March 15, 1962, between Corn Products Company and the United States of America.

38. Franchise, adopted October 31, 1960, between Nueces County Navigation District No. 1 and Corn Products Company.

39. Easement and right-of-way granted by Corn Products, a Unit of CPC International, Inc., to Coastal States Crude Gathering Company, by instrument dated January 18, 1978, recorded in Vol. 1638, Page 907 of the Deed Records of Nueces County, Texas.

40. Easement and Right-of-Way granted by CPC International, Inc., to Central Power and Light Company by instrument dated August 4, 1978, recorded in Vol. 1667, Page 546 of the Deed Records of Nueces County, Texas.

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WARRANTY DEED

PROOFED

CPC INTERNATIONAL, INC.

to

Saber Refining Company

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COUNTY CLERK NUECES COUNTY TEX.

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$45.00

CHARGE & RETURN TO:
C. C. TITLE CO.
P. O. BOX 7068
CORPUS CHRISTI, TEXAS 78415

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"built-in" reversible error is an "exceptional circumstance" that should not be allowed to strain the parties' resources or the Texas Courts. This conclusion is directly contrary to *Canadian Helicopters*. *See Canadian Helicopters*, 876 S.W.2d at 308 n. 11; *see also Walker*, 827 S.W.2d at 843.

C. Public Policy

This State's public policy is another reason why mandamus should not issue here to control the trial court's order determining the motion to transfer. Our Legislature, and indeed, this Court, has mandated that no interlocutory appeal lies from the trial court's determination of a motion to transfer. *See* Tex. Civ. Prac. & Rem.Code § 15.064(a); Tex.R. Civ. P. 87(6); *Ogburn v. Blackburn*, 697 S.W.2d 822, 823 (Tex. App.—Amarillo 1985, orig. proceeding); *Hendrick Med. Center v. Howell*, 690 S.W.2d 42, 45 (Tex.App.—Dallas 1985, orig. proceeding). To grant mandamus, as the majority does here, permits the very interlocutory appeal the statute was enacted and the rule was promulgated to prohibit. *Ogburn*, 697 S.W.2d at 823–824; *Hendrick Med. Center*, 690 S.W.2d at 45–46.

III. ON THE ROAD AGAIN—"OTRA VEZ CON SENTIMIENTO"[1]

The majority asserts that I view *Walker's* inadequate appellate remedy requirement as inflexible. Guilty as charged. When engaged in the judicial function of applying the law to a particular case, I am inflexible. But that inflexibility is based upon a sound judicial policy. It's called stare decisis.

Only five years ago, this Court decided *Walker* and *Canadian Helicopters*. Only four years ago, this Court stated that we adhere to our precedents for reasons of efficiency, fairness, and legitimacy. *Weiner v. Wasson*, 900 S.W.2d 316, 320 (Tex.1995). From today's opinion it is obvious that the Court continues to pay only lip service to "stare decisis as a sound policy." *Weiner*, 900 S.W.2d at 320. As the *Weiner* dissent advocates, we should not succumb to a temptation to continually revisit prior decisions as new fact situations arise. *See Weiner*, 900 S.W.2d at 332. Mandamus should not issue simply because we disagree with the trial court's ruling. *See CSR, Ltd.*, 925 S.W.2d at 604 (Baker, J., dissenting); *Buller*, 806 S.W.2d at 226.

IV. CONCLUSION

That the majority opinion mounts a collateral attack on the dissent instead of directly attacking controlling precedent exposes its weaknesses. The Court's decision here revives an overruled, more lenient standard—the appellate remedy must be "equally convenient, beneficial, and effective as mandamus." *See e.g., Jampole v. Touchy*, 673 S.W.2d 569, 576 (Tex.1984); *Crane v. Tunks*, 160 Tex. 182, 328 S.W.2d 434, 439 (1959); *Cleveland v. Ward*, 116 Tex. 1, 285 S.W. 1063, 1068 (1926). The Court expressly disapproved of this standard in *Walker*. *See Walker*, 827 S.W.2d at 842. I would hold that an appeal is adequate and deny mandamus relief. Because the Court holds to the contrary, I respectfully dissent.



1. *See In re Ford Motor Co.*, S.W.2d 988 S.W.2d 714 (Tex.1998)(Baker, J., dissenting); *Travelers Indem. Co. of Conn. v. Mayfield*, 923 S.W.2d 590, 595 (Tex.1996)(Baker, J., dissenting); *CSR*, 925 S.W.2d at 603 (Baker, J., dissenting).

VALERO - 0717
MOAKE

INGERSOLL-RAND COMPANY, et al., Petitioners,

v.

VALERO ENERGY CORPORATION, et al., Respondents.

No. 97-1168.

Supreme Court of Texas.

Argued Oct. 21, 1998.

Decided June 24, 1999.

Opinion On Rehearing Aug. 26, 1999.

Rehearing Overruled Sept. 23, 1999.

Refinery owner sued contractor and subcontractor for damages arising out of construction project. The 117th District Court, Nueces County, Robert M. Blackmon, J., granted defendants motions' for summary judgment asserting that indemnity provision barred owner's claim. Owner appealed. The Corpus Christi Court of Appeals, 866 S.W.2d 252, affirmed. Defendants sought attorney fees and costs incurred in defending against owner's claims. The District Court granted summary judgment for owner, and defendants appealed. The Court of Appeals, affirmed. Petition for review was filed. The Supreme Court, Enoch, J., held that: (1) indemnity claims for attorney fees against owner were not compulsory counterclaims at time of initial action; (2) res judicata doctrine did not bar indemnity claims for attorney fees against owner after entry of take nothing judgment against owner; (3) subcontractor's claim for attorney fees under indemnity clause did not accrue until date on which trial court signed take nothing judgment; (4) contractor's indemnity claim for attorney fees accrued, despite any anticipatory breach, when contractor made demand for indemnity and owner refused to perform; and, on rehearing, (5) refinery owner's amended petition asserting breach of contract claim in order to attack validity of indemnity agreement was barred by doctrine of res judicata.

Judgment of the Court of Appeal reversed and case remanded.

1. Judgment ⇐540, 713(2)

Res judicata prevents parties and their privies from relitigating a cause of action that has been finally adjudicated by a competent tribunal, as well as claims or defenses that, through diligence, should have been litigated in the prior suit but were not.

2. Judgment ⇐591.1

Res judicata doctrine is intended to prevent causes of action from being split, thus curbing vexatious litigation and promoting judicial economy.

3. Judgment ⇐585(4)

Res judicata does not bar a former defendant who asserted no affirmative claim for relief in an earlier action from stating a claim in a later action that could have been filed as a cross-claim or counterclaim in the earlier action, unless the claim was compulsory in the earlier action.

4. Set-Off and Counterclaim ⇐60

Counterclaim is compulsory only if: (1) it is within the jurisdiction of the court; (2) it is not at the time of filing the answer the subject of a pending action; (3) the claim is mature and owned by the defendant at the time of filing the answer; (4) it arose out of the same transaction or occurrence that is the subject matter of the opposing party's claim; (5) it is against an opposing party in the same capacity; and (6) it does not require the presence of third parties over whom the court cannot acquire jurisdiction. Vernon's Ann.Texas Rules Civ.Proc., Rule 97(a, d).

5. Set-Off and Counterclaim ⇐60

Claim is mature, for purposes of determining whether it is compulsory counterclaim, when it has accrued.

6. Indemnity ⇐11

Broad language that holds an indemnitee "harmless" against "all claims" and

"liabilities" evidences an agreement to indemnify against liability and thus entitles the indemnitee to recover when the liability becomes fixed and certain, as by rendition of a judgment, whether or not the indemnitee has yet suffered actual damages, as by payment of a judgment.

7. Set-Off and Counterclaim ⇐60

Subcontractor's liabilities from refinery owner's suit against subcontractor did not become fixed and certain until date of judgment that owner take nothing, and thus, subcontractor's claim against owner for attorney fees under indemnification clause was not mature until that date and did not have to be asserted as compulsory counterclaim at time of initial suit. Vernon's Ann.Texas Rules Civ.Proc., Rule 97(a, d).

8. Judgment ⇐585(4)

Doctrine of res judicata did not preclude subcontractor from pursuing indemnity claim for attorney fees against refinery owner after entry of judgment in owner's initial action against subcontractor, in light of fact that subcontractor was only a defendant in initial action and made no affirmative claims, and its claim against owner for attorney fees under indemnity clause was thus permissive rather than compulsory in relation to owner's initial action.

9. Limitation of Actions ⇐56(2)

Indemnity claim does not accrue until all of the potential liabilities of the indemnitee become fixed and certain by judgment, and recovery for attorney fees component of potential liabilities need not be pursued before and separate from remaining components.

10. Limitation of Actions ⇐56(2)

Subcontractor's claim for attorney fees against refinery owner under indemnity clause did not accrue for purposes of statute of limitations until date on which trial court signed summary judgment that refinery owner take nothing in its action against subcontractor. V.T.C.A., Civil Practice & Remedies Code § 16.004(a)(3).

11. Limitation of Actions ⇐46(6)

Limitations may begin to run upon a promisor's anticipatory repudiation, but only if the repudiation is adopted by the nonrepudiating party.

12. Contracts ⇐313(1)

Effect of an anticipatory repudiation is to give the nonrepudiating party the option of treating the repudiation as a breach or ignoring the repudiation and awaiting the agreed upon time of performance.

13. Limitation of Actions ⇐66(6)

Contractor's indemnity claim against refinery owner for attorney fees accrued and statute of limitations began to run when contractor made demand for indemnity and owner refused to perform, even assuming owner's initial petition against contractor acted as unequivocal anticipatory repudiation, given that contractor was entitled to ignore any anticipatory repudiation, await time of performance, and sue after actual breach of indemnity clause when owner refused to pay.

On Rehearing.

14. Judgment ⇐593

Refinery owner's amended petition asserting breach of contract claim to attack validity of indemnity agreement was barred by doctrine of res judicata, where amended petition was attempt to recast owner's prior tort challenge to indemnity agreement, upon which adverse judgment already had been rendered, as contract claim. Restatement (Second) of Judgments §§ 24, 25(1).

John B. Shely, Houston, Audrey Mullert Vicknair, Roberta Shellum Dohse, Corpus Christi, Dimitri Zgourides, Kendall M. Gray, Joseph A. Katarincic, Houston, Paul W. Nye, Harvey Ferguson, Jr., Corpus Christi, for Petitioners.

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Thomas H. Watkins, C.A. Davis, Austin, Gilberto Hinojosa, Brownsville, James K. McClendon, Elizabeth G. Bloch, Austin, for Respondents.

Justice ENOCH delivered the opinion for a unanimous Court.

Valero [1] sued Kellogg [2] and Ingersoll-Rand [3] for damages caused by malfunctioning equipment. Kellogg and Ingersoll-Rand installed the equipment during an expansion of Valero's oil refinery. Kellogg was the general contractor on the expansion, and Ingersoll-Rand was one of Kellogg's subcontractors. Both Kellogg and Ingersoll-Rand defended by asserting that certain indemnification and hold-harmless provisions in the Valero-Kellogg contract applied. The trial court concluded that the contract's indemnification provisions were enforceable and granted interlocutory summary judgment for Kellogg and Ingersoll-Rand. The court then severed that part of the case, so that Valero could appeal the summary judgment. The court of appeals affirmed, and that judgment is now final.[4]

During that appeal, the trial court abated the remaining claims. After the abatement was lifted, Kellogg and Ingersoll-Rand moved for summary judgment, seeking attorney's fees under the indemnity provisions upheld in *Valero I*. Valero filed its own motion for summary judgment, asserting that Kellogg's and Ingersoll-Rand's claims for attorney's fees were compulsory counterclaims barred by *res judicata* and by the statute of limitations. The trial court granted Valero summary judgment. The court of appeals affirmed.[5]

The pivotal question in this case is when does an indemnitee's contractual claim for indemnification mature for purposes of the compulsory counterclaim rule. We adhere to the longstanding rule that a claim based on a contract that provides indemnification from liability does not accrue until the indemnitee's liability becomes fixed and certain. Applying this rule, we conclude that Kellogg's and Ingersoll-Rand's indemnity claims did not accrue until the trial court's rendition of summary judgment in *Valero I*. Accordingly, neither *res judicata* nor limitations bar Kellogg's and Ingersoll-Rand's claims. We reverse the court of appeals' judgment and remand to the trial court for further proceedings.

Valero I

Valero sued Kellogg in 1986 over mechanical malfunctions allegedly resulting from Kellogg's flawed installation of refinery equipment. Valero pleaded fraudulent misrepresentation, breach of contract, violations of the Texas Deceptive Trade Practices Act,[6] breach of implied and express warranties, products liability, negligence, gross negligence, and intentional misconduct. Valero added Ingersoll-Rand as a defendant in 1989, after a piece of equipment supplied by Ingersoll-Rand exploded. The suit eventually came to include a host of cross-claims, counterclaims, and third-party claims not at issue here.

Kellogg and Ingersoll-Rand answered Valero's petition, asserting that the contract's indemnity provision barred Valero's

1. Valero Energy Corp. appears individually and as parent corporation of Valero Refining & Marketing Co. Valero Refining & Marketing Co. (formerly known as Saber Energy, Inc.) appears individually and as parent corporation of Valero Refining Co. Valero Refining Co. (formerly known as Saber Refining Co.) appears individually. We refer to these respondents as "Valero."

2. We refer to petitioners, M.W. Kellogg Co., M.W. Constructors, Inc., M.W. Kellogg Constructors, Inc., Kellogg Rust Synfuels, Inc., and Henley/MWK Holdings, Inc., as "Kellogg."

3. We refer to petitioners, Ingersoll-Rand Co., and Dresser-Rand Co., as "Ingersoll-Rand."

4. *See Valero Energy Corp. v. Kellogg Constr. Co.*, 866 S.W.2d 252 (Tex.App.—Corpus Christi 1993, writ denied) (*"Valero I"*).

5. *See* 953 S.W.2d 861 (*"Valero II"*).

6. *See* TEX. BUS. & COM.CODE § 17.46.

claims. Both relied on the following contract provision:

> 6.8 OWNER [Valero] shall release, defend, indemnify and hold harmless CONTRACTOR [Kellogg], its subcontractors [Ingersoll-Rand] and affiliates and their employees performing services under this Agreement against all claims, liabilities, loss or expense, including legal fees and court costs in connection therewith, arising out of or in connection with this Agreement or the Work to be performed hereunder, including losses attributable to CONTRACTOR'S negligence, to the extent CONTRACTOR is not compensated by insurance carried under this ARTICLE....

Valero replied that the contract's indemnity provision was unenforceable as against public policy. On this issue, each side filed competing motions for summary judgment.

The trial court granted Kellogg's and Ingersoll-Rand's motions for summary judgment, denied Valero's motion, and rendered judgment that Valero take nothing on its claims against Kellogg and Ingersoll-Rand. That matter was severed, and the remaining issues were abated pending appeal. Valero appealed, and the court of appeals affirmed the trial court's judgment on June 30, 1993.[7] This Court denied Valero's application for writ of error on April 20, 1994, and overruled its motion for rehearing of the application on June 2, 1994. That judgment is final.

Valero II

One of the remaining abated claims was Kellogg's counterclaim for attorney's fees and costs incurred in defending against Valero. Kellogg filed the counterclaim between the time summary judgment was entered and the time the severance order was entered, but more than five years after Valero first sued Kellogg. After the trial court dissolved the abatement, Ingersoll-Rand initiated its own counterclaim against Valero for attorney's fees and costs. This claim was raised more than five years after Valero added Ingersoll-Rand as a defendant.

Kellogg and Ingersoll-Rand filed a joint motion for summary judgment asserting that the contract's indemnity provision, held enforceable in *Valero I*, entitled each to attorney's fees, court costs, and litigation expenses incurred in *Valero I*. Valero responded with a motion for summary judgment, asserting two affirmative defenses: (1) Kellogg and Ingersoll-Rand's counterclaims were compulsory, had not been asserted in *Valero I*, and were therefore precluded by *res judicata*; and (2) the four-year statute of limitations for breach of contract barred the claims.[8]

Without specifying grounds, the trial court granted Valero's motion for summary judgment, and denied Kellogg and Ingersoll-Rand's motion. The court of appeals affirmed, holding that Ingersoll-Rand's counterclaim was compulsory and barred by *res judicata*, and Kellogg's claim was barred by limitations.[9] Kellogg and Ingersoll-Rand each petitioned for review.

Because resolution of the issues we consider in Ingersoll-Rand's appeal disposes of issues presented by Kellogg's appeal, we consider Ingersoll-Rand's appeal first.

Ingersoll-Rand's Appeal

The court of appeals held that Ingersoll-Rand's claim for attorney's fees was a compulsory counterclaim that Ingersoll-Rand should have brought in *Valero I*; and, therefore, *res judicata* barred the claim in *Valero II*. We disagree.

[1-3] *Res judicata* prevents parties and their privies from relitigating a cause of action that has been finally adjudicated by a competent tribunal.[10] Also precluded

7. *See Valero I*, 866 S.W.2d 252.

8. *See* TEX. CIV. PRAC. & REM. CODE § 16.004(a)(3).

9. 953 S.W.2d at 866, 868.

10. *See Getty Oil Co. v. Insurance Co. of N. Am.*, 845 S.W.2d 794, 798 (Tex.1992) (citing *Barr v. Resolution Trust Corp.*, 837 S.W.2d 627, 630 (Tex.1992)), *cert denied*, 510 U.S. 820, 114 S.Ct. 76, 126 L.Ed.2d 45 (1993); *Gracia v. RC Cola-7-Up Bottling Co.*, 667 S.W.2d 517, 519 (Tex.1984); *Texas Water Rights Comm'n v. Crow Iron Works*, 582 S.W.2d 768, 771-72 (Tex.1979).

11. *See Barr*, 837 S.W.2d at 629.

12. *See id.*; *Jeanes v. Henderson*, 688 S.W.2d 100, 103 (Tex.1985).

13. *See* TEX.R. CIV. P. 97(a); *Valley Forge Ins. Co. v. Ryan*, 824 S.W.2d 236, 238-39 (Tex. App.—Fort Worth 1992, no writ); *Lesbrookton, Inc. v. Jackson*, 796 S.W.2d 276, 281 (Tex.App.—Amarillo 1990, writ denied); *Swiss Ave. Bank v. Slivka*, 724 S.W.2d 394, 396 (Tex.App.—Dallas 1986, no writ).

14. *See* TEX.R. CIV. P. 97(a) & (d); *Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 247 (Tex.1988); *see also Denbina v. City of Hurst*, 516 S.W.2d 460, 463 (Tex.Civ.App.—Tyler 1974, no writ) ("Under Sections (a) and (d) of [Rule 97] a party is not required to file a counterclaim unless the claim is mature at the time the answer is due.") (citing McDonald, *Texas Civil Practice*, § 7.49, p. 285 (1970)).

15. *See Wyatt*, 760 S.W.2d at 247.

16. *See, e.g., Ryan*, 824 S.W.2d at 239; *Stille v. Colborn*, 740 S.W.2d 42, 44 (Tex.App.—San Antonio 1987, writ denied); *Gray v. Kirkland*, 550 S.W.2d 410, 411 (Tex.Civ.App.—Corpus Christi 1977, writ ref'd n.r.e.).

17. *See Tubb v. Bartlett*, 862 S.W.2d 740, 750 (Tex.App.—El Paso 1993, writ denied); *Russell v. Lemons*, 205 S.W.2d 629, 631 (Tex.Civ. App.—Amarillo 1947, writ ref'd n.r.e.).

18. *See, e.g., Tubb*, 862 S.W.2d at 750; *Bernard v. L.S.S. Corp.*, 532 S.W.2d 409, 410 (Tex.Civ. App.—Austin 1976, writ ref'd n.r.e.).

19. *See Tubb*, 862 S.W.2d at 750; *Russell*, 205 S.W.2d at 631.

are claims or defenses that, through diligence, should have been litigated in the prior suit but were not.[11] The doctrine is intended to prevent causes of action from being split, thus curbing vexatious litigation and promoting judicial economy.[12] *Res judicata*, however, does not bar a former defendant who asserted no affirmative claim for relief in an earlier action from stating a claim in a later action that could have been filed as a cross-claim or counterclaim in the earlier action, unless the claim was compulsory in the earlier action.[13] Here, the court of appeals concluded that Ingersoll-Rand's claim was compulsory.

[4] But a counterclaim is compulsory only if: (1) it is within the jurisdiction of the court; (2) it is not at the time of filing the answer the subject of a pending action; (3) the claim is mature and owned by the defendant at the time of filing the answer; (4) it arose out of the same transaction or occurrence that is the subject matter of the opposing party's claim; (5) it is against an opposing party in the same capacity; and (6) it does not require the presence of third parties over whom the court cannot acquire jurisdiction.[14] A claim having all of these elements must be asserted in the initial action and cannot be asserted in later actions.[15]

To meet its summary judgment burden on the affirmative defense that Ingersoll-Rand's claim was compulsory and barred by *res judicata*, Valero had to prove that Ingersoll-Rand's counterclaim satisfied each element above. Ingersoll-Rand asserts that its indemnity claim for attorney's fees was not compulsory because the claim could not have become mature before the trial court's rendition of summary judgment in *Valero I*.

[5, 6] A claim is mature when it has accrued.[16] To determine the correct accrual date of an indemnity claim we look to the contract's indemnity provision. There are two types of indemnity agreements, those that indemnify against liabilities and those that indemnify against damages.[17] Broad language, like that in this contract, that holds the indemnitee "harmless" against "all claims" and "liabilities" evidences an agreement to indemnify against liability.[18] Such provisions entitle the indemnitee to recover when the liability becomes fixed and certain, as by rendition of a judgment, whether or not the indemnitee has yet suffered actual damages, as by payment of a judgment.[19]

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Valero's suit presented the rather anomalous situation of an indemnitor (Valero) acting concurrently as the plaintiff seeking damages from the indemnitee (Ingersoll–Rand). The more common scenario for an indemnification dispute involves three separate and distinct parties: plaintiff (party one), indemnitee (party two), and indemnitor (party three). Despite the unusual factual setting here, we find no persuasive reason not to apply the longstanding rule that a claim under a liability indemnification clause does not accrue, and thus is not mature, until the indemnitee's liability to the party seeking damages becomes fixed and certain.[20]

[7] When Ingersoll–Rand was added as a defendant in *Valero I*, it was entirely conceivable that Ingersoll–Rand might sustain extensive liabilities because of Valero's claims for damages. And Ingersoll–Rand, presumably, would have sought indemnification for all such liabilities under the contract's indemnity provision. Any claim Ingersoll–Rand could have asserted, however, could not have accrued until all of Ingersoll–Rand's potential liabilities to Valero became fixed and certain by rendition of a judgment.

In *Valero I*, the trial court rendered summary judgment for Ingersoll–Rand that Valero take nothing on its claims for damages. That judgment was signed on October 25, 1991. Ingersoll–Rand's liabilities became fixed and certain at zero for Valero's tort, DTPA, and contract damages plus the total amount of attorney's fees and costs incurred in defending against Valero when summary judgment was rendered in *Valero I*.[21] Because Valero demonstrated no time earlier than the date of judgment in *Valero I* by which Ingersoll–Rand's liabilities became fixed and certain, the third element of the compulsory counterclaim rule—maturity of the claim—was not satisfied.

Our reasoning is bolstered by commentary on the analogous federal rule. The Texas compulsory counterclaim rule is based on Rule 13 of the Federal Rules of Civil Procedure.[22] In commenting on Federal Rule 13(a)'s condition that a claim must be mature in order to be compulsory, Professors Wright and Miller state:

> This exception to the compulsory counterclaim requirement necessarily encompasses a claim that depends upon the outcome of some other lawsuit and thus does not come into existence until the action upon which it is based has terminated. For example, ... *a claim for contribution cannot be compulsory in the action whose judgment is the subject of the contribution suit.*[23]

Likewise, an indemnity claim cannot be compulsory in the action whose judgment is the subject of the indemnity suit. In a suit for either contribution or indemnity the injury upon which suit might be based does not arise until some liability is established. In this case, as in a contribution claim against a joint tortfeasor, liability could not have been established until judgment was rendered.

The court of appeals relied heavily on *Getty Oil v. Insurance Company of North America*[24] in reaching a different conclusion. In *Getty* we stated:

> The contingent nature of these claims, however, does not preclude the operation of res judicata. We held in *Barr* [*v. Resolution Trust Corp.*] that "[a] subsequent suit will be barred if it arises out of the same subject matter of a previous suit and which, through the exercise of diligence, could have been litigated in a prior suit." 837 S.W.2d at 631. Getty could have asserted its present claims in the [previous] suit, with their resolution being contingent on the plaintiffs' claims.[25]

In all respects, we stand by *Getty*. But *Getty's* language cannot be applied without considering the case's factual context.

In *Getty* we held that an indemnitee (Getty) was barred by *res judicata* from maintaining a claim against an indemnitor (NL Industries), because Getty had sought the same relief under a different theory in an earlier suit. In the earlier wrongful death suit Getty and NL were co-defendants, and Getty chose to file a permissive cross-claim against NL based on indemnification language in their contract. By taking this action Getty put itself in the same position, for purposes of *res judicata*, as a plaintiff filing a cause of action for damages. We specifically held this to be so in *Getty*.[26] As the plaintiff for *res judicata* purposes, Getty was subject to the general rule of *res judicata* that any cause of action that arises out of the same subject matter should, if practicable, be litigated in the same lawsuit.[27] In the second suit, Getty was the actual plaintiff. Its claim again involved asserting indemnity provisions as the basis for damages. Because Getty could have asserted those claims in the earlier action but did not, *res judicata* barred the claims.

[8] We face a different situation here. In relation to Valero, Ingersoll–Rand was a defendant only and made no affirmative claims for relief in *Valero I*. Ingersoll–Rand, like Getty, could have stated a permissive claim against Valero, but it did not. This fact is significant because of the rule we pointed out earlier: the doctrine of *res judicata* does not bar claims against the plaintiff from an earlier suit by a defendant from the earlier suit, unless the later claims were compulsory in the earlier suit. Because Ingersoll–Rand, unlike Getty, made no affirmative claims in the first suit, *res judicata* does not bar Ingersoll–Rand's later claims unless they were compulsory. But, as we explained earlier, the compulsory counterclaim elements were not met by Ingersoll–Rand's potential claims in *Valero I*. Thus, Ingersoll–Rand's claims in *Valero II* are not barred.

As the court of appeals points out, and as we said in *Getty*, we have held that an indemnitee may bring a claim against an indemnitor before the judgment is assigned against the indemnitee.[28] That is indeed what Getty did. We allow such claims to be brought, in the interest of judicial economy, as an exception to the accrual rule for indemnity claims.[29] Such claims are contingent on accrual. But we have never held that an indemnitee must state such claims in the initial suit to preserve them. As we specifically noted in *Getty*, such claims are permissive.[30] None of the cases we cited in *Getty*, for the

20. *See Humana Hosp. Corp. v. American Med. Sys., Inc.*, 785 S.W.2d 144, 145 (Tex.1990); *Pope v. Hays*, 19 Tex. 375, 379–80 (1857); *Tubb*, 862 S.W.2d at 750; *Holland v. Fidelity & Deposit Co.*, 623 S.W.2d 469, 470 (Tex. App.—Corpus Christi 1981, no writ); *Pate v. Tellepsen Constr. Co.*, 596 S.W.2d 548, 552 (Tex.Civ.App.—Houston [1st Dist.] 1980, writ ref'd n.r.e.); *Bernard*, 532 S.W.2d at 410; *Texas Auto Servs., Inc. v. Kemp*, 478 S.W.2d 646, 648 (Tex.Civ.App.—Austin 1972, no writ); *Russell*, 205 S.W.2d at 631.

21. *See, e.g., Pope*, 19 Tex. at 379; *Tubb*, 862 S.W.2d at 750; *Kemp*, 478 S.W.2d at 648; *Russell*, 205 S.W.2d at 631.

22. *See* TEX.R. CIV. P. 97, Notes and Comments.

23. 6 Charles Alan Wright and Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE § 1411, at 82–84 (2d ed.1990) (footnotes omitted) (emphasis added).

24. 845 S.W.2d 794 (Tex.1992).

25. *Id.* at 799.

26. *See id.* at 800 ("The cross-claimant [Getty] becomes a plaintiff for *res judicata* purposes, and is required to assert all claims against the cross-defendant arising from the subject matter of the original cross-claim.").

27. *See Barr*, 837 S.W.2d at 630.

28. *See Getty*, 845 S.W.2d at 799 (citing *Gulf, Colo. & Santa Fe Ry. Co. v. McBride*, 159 Tex. 442, 322 S.W.2d 492, 495 (1958); *Mitchell's, Inc. v. Friedman*, 157 Tex. 424, 303 S.W.2d 775, 779 (1957); *K & S Oil Well Serv., Inc. v. Cabot Corp.*, 491 S.W.2d 733, 739 (Tex.Civ. App.—Corpus Christi 1973, writ ref'd n.r.e.)).

29. *See id.* ("Forcing the indemnity suit to wait for judgment in the liability suit 'would contravene the policy of the courts to encourage settlements and to minimize litigation.'") (citation omitted).

30. *See id.*

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proposition that an indemnitee may file a claim for indemnification before judgment is rendered, stand for the proposition that contingent indemnity claims must be brought in the initial action. Rather, the cases cited in *Getty* hold that it is merely permissive for such claims to be brought before judgment in the initial action.[31]

The fact that attorney's fees and costs were the only liabilities for which Ingersoll–Rand was eventually entitled to seek indemnity does not change our conclusion. It is true that a counterclaim for attorney's fees will in most cases be compulsory.[32] We do not dispute the legal basis of such a statement because a claim for attorney's fees will generally satisfy the elements of the compulsory counterclaim rule. However, an indemnity claim based on an agreement to indemnify against liabilities has different characteristics than a simple claim for attorney's fees. The attorney's fees are certain to be incurred as soon as an attorney is retained, while liabilities covered by an indemnity agreement in any given case may never be incurred depending on the outcome of the case. This difference is significant.

Consider *Fidelity Mutual Life Insurance Company v. Kaminsky*,[33] another case upon which the court of appeals relied. In *Kaminsky* the court concluded that a contractual claim for attorney's fees, even though contingent on the outcome of the suit, was mature and compulsory.[34] The contractual provision on which Dr. Kaminsky relied established his contractual right to attorney's fees contingent on the result of the suit, but it did not indemnify him against other liabilities generally. It was not an indemnification agreement. Thus, the general rule that a cause of action accrues when facts come into existence that authorize the claimant to seek a judicial remedy applied in *Kaminsky*.[35] Dr. Kaminsky's claim for attorney's fees accrued when he first incurred fees.

[9] As we have explained, a specific accrual rule applies to claims for indemnification: an indemnity claim does not accrue until all of the potential liabilities of the indemnitee become fixed and certain. This specific rule is consistent with the general accrual rule. The facts that entitle an indemnitee to seek indemnification through suit come into existence when the indemnitee's liabilities become fixed and certain by judgment.

While attorney's fees will almost always be a component of an indemnitee's total liabilities, we decline to hold that recovery for the attorney's fees component of an indemnitee's potential liability must be pursued before and separate from the remaining components. An indemnification claim does not accrue until all of the indemnitee's liabilities become fixed and certain.

Because we resolve Valero's *res judicata* claim by applying the compulsory counterclaim rule, we need not consider Ingersoll–Rand's assertion that Valero waived, by Rule 11 agreement,[36] the right to assert *res judicata*.

[10] Valero also asserted in its motion for summary judgment that the four-year statute of limitations for contract claims barred Ingersoll–Rand's claims for attorney's fees.[37] To prevail on the limitations affirmative defense, Valero had the burden of conclusively proving when the cause of action accrued.[38] Ingersoll–Rand's claim did not accrue until October 25, 1991, the date that the trial court signed summary judgment in *Valero I*.[39] Because Ingersoll–Rand filed its claim for attorney's fees on September 16, 1994, less than four years after the trial court's judgment, the four-year statute of limitations does not bar Ingersoll–Rand's claim.

31. *See id.*

32. *See, e.g., Fidelity Mut. Life Ins. Co. v. Kaminsky*, 820 S.W.2d 878, 882 (Tex.App.—Texarkana 1991, writ denied).

33. *Id.*

34. *Id.*

35. *See Murray v. San Jacinto Agency, Inc.*, 800 S.W.2d 826, 828 (Tex.1990).

36. *See* TEX.R. CIV. P. 11.

37. *See* TEX. CIV. PRAC. & REM.CODE § 16.004(a)(3).

38. *See KPMG Peat Marwick v. Harrison County Hous. Fin. Corp.*, 988 S.W.2d 746, 748 (Tex.1999); *Burns v. Thomas*, 786 S.W.2d 266, 267 (Tex.1990); *Willis v. Maverick*, 760 S.W.2d 642, 646 (Tex.1988).

39. *See City of San Antonio v. Talerico*, 98 Tex. 151, 81 S.W. 518, 520 (1904); *Koonce v. Quaker Safety Prod. & Mfg. Co.*, 798 F.2d 700, 706–13 (5th Cir.1986) (discussing application of Texas law); *see also* Maurice T. Brunner, Annotation, *When Statute of Limitations Commences to Run Against Claim for Contribution or Indemnity Based on Tort*, 57 A.L.R.3d 867, 875–76 (1974).

Kellogg's Appeal

Our conclusions above largely dispose of Valero's claims against Kellogg. Like Ingersoll–Rand, Kellogg's claim for attorney's fees did not accrue until summary judgment was rendered in *Valero I*. Consequently, Kellogg's claim was not compulsory. In any event, Kellogg filed its claim one month before severance in the original action while summary judgment was still interlocutory. As such, the claim was properly preserved through the severance order for later adjudication, and *res judicata* does not bar it.

As to Valero's statute of limitations defense, limitations could not have began to run before Kellogg's indemnity claim became fixed and certain. Like Ingersoll–Rand, Kellogg's claim did not become fixed and certain until judgment was signed in *Valero I*. Kellogg filed its claim on November 20, 1991, less than a month after summary judgment was signed in *Valero I*, and well within the four-year limitations period.

[11–13] The court of appeals, however, held that limitations began to run on Kellogg's indemnification claim when Valero filed suit on July 11, 1986, because Valero's suit acted as a repudiation of the contract's indemnity provision. It is true that limitations may begin to run upon a promisor's anticipatory repudiation, but only if the repudiation is adopted by the nonrepudiating party.[40] Valero contends that its petition in *Valero I* was an unequivocal repudiation of its duty to indemnify. However, the effect of such an anticipatory repudiation is to give the nonrepudiating party the option of treating the repudiation as a breach or ignoring the repudiation and awaiting the agreed upon time of performance.[41] Thus, even if Valero's petition acted as an unequivocal repudiation, an issue we do not decide, Kellogg was still entitled to await the time of performance and sue only after an actual breach of the indemnity clause. Valero did not breach its agreement to indemnify Kellogg until Kellogg made a demand for indemnity, and Valero refused to perform. It was only at this time that the statute of limitations began to run.

The record reveals that Kellogg made its demand for attorney's fees on November 20, 1991, and filed its claims for attorney's fees on the same day. Thus, even if Valero repudiated the contract, Kellogg still satisfied the statute of limitations.

Conclusion

Kellogg and Ingersoll–Rand's claims for attorney's fees were not compulsory counterclaims and are not barred by *res judicata*. Further, the claims were filed within the applicable limitations period. Accordingly, we reverse the court of appeals' judgment and remand to the trial

40. *See Hubble v. Lone Star Contracting Corp.*, 883 S.W.2d 379, 382 (Tex.App.—Fort Worth 1994, writ denied).

41. *See Murray v. Crest Constr., Inc.*, 900 S.W.2d 342, 344 (Tex.1995); *Greenwall Theatrical Circuit Co. v. Markowitz*, 97 Tex. 479, 79 S.W. 1069, 1071 (1904); *America's Favorite Chicken Co. v. Samaras*, 929 S.W.2d 617, 626 (Tex.App.—San Antonio 1996, writ denied).

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court for further proceedings consistent with this opinion.

Justice OWEN did not participate in the decision.

ON REHEARING

[14] Like Kellogg, which filed its claim for attorney's fees in *Valero I* after judgment was rendered but before severance was granted, Valero filed an amended petition. Unlike Kellogg, which for the first time asserted a claim for affirmative relief, Valero repackaged its original tort claim upon which the adverse judgment had been rendered as a contract claim. Valero urged in the court of appeals by conditional cross-point that if *res judicata* did not bar Kellogg's claim, then likewise, *res judicata* would not bar its breach of contract claim. The court of appeals, because of its disposition of the appeal, did not consider Valero's cross-point.[1] But because we are reversing and remanding this case to the trial court, Valero, on motion for rehearing, reminds us of its cross-point and we consider it now.[2]

Valero's cross-point has no merit. Valero's late-filed amended petition circumvents the trial court's adverse ruling in *Valero I*. In *Valero I*, Valero attacked the validity of the indemnity agreement. By its late-filed amended petition, Valero recast its attack on the indemnity provision as a breach of contract claim, which is classic claim-splitting. This, Valero cannot do.[3] The subject of the judgment in *Valero I* was Valero's liability under the indemnity provision; it cannot escape the effect of that judgment through a late-filed amended petition, whether there was a severance order or not. The trial court properly concluded that Valero's "new" breach of contract claim is barred by *res judicata*.

1. *See* 953 S.W.2d at 869.

2. *See* TEX.R.APP. P. 53.4.

Our opinion and judgment of June 24, 1999 remain unchanged.



F.J. BREWERTON, Jerry Prock, and Gilberto de los Santos, Petitioners,

v.

Brent DALRYMPLE and Diane Marie Dalrymple, Respondents.

No. 97-0944.

Supreme Court of Texas.

Argued Sept. 9, 1998.

Decided June 24, 1999.

Terminated state university professor and his wife sued university and three administrators who participated in negative evaluation of professor. The District Court, Travis County, Paul R. Davis, Jr., J., granted summary judgment in favor of administrators and entered judgment on jury verdict for university. Professor appealed from grant of summary judgment. The Austin Court of Appeals, 949 S.W.2d 395, affirmed in part, reversed in part, and remanded. Administrators petitioned for review. The Supreme Court, Owen, J., held that: (1) administrators' conduct was not extreme and outrageous, as element of intentional infliction of emotional distress; (2) wife's derivative loss of consortium claim failed; and (3) professor's failure to preserve error on denial of claim for equitable relief precluded remand of claim.

Court of Appeals reversed in part; take nothing judgment rendered.

3. *See* RESTATEMENT (SECOND) OF JUDGMENTS §§ 24, 25(1); *Barr v. Resolution Trust Corp.*, 837 S.W.2d 627, 629-31 (Tex.1992).

1. Damages ⇐50.10

Negative comments reflected in professor's tenure file, repeated recommendations that professor should not continue on tenure track, restrictions of professor's speech regarding contents of his tenure folder, and assignment of professor to allegedly excessive class load did not amount to "extreme and outrageous" conduct, as element of intentional infliction of emotional distress claim, in terminated university professor's action against administrators who negatively evaluated him, even assuming administrators had retaliatory motives. Restatement (Second) of Torts § 46(1).

2. Damages ⇐50.10

Elements of intentional infliction of emotional distress are: (1) the defendant acted intentionally or recklessly; (2) the conduct was extreme and outrageous; (3) the defendant's actions caused the plaintiff emotional distress; and (4) the emotional distress that the plaintiff suffered was severe.

3. Damages ⇐50.10

Fact that an action is intentional, malicious, or even criminal does not, standing alone, mean that it is extreme or outrageous, as element of claim of intentional infliction of emotional distress. Restatement (Second) of Torts § 46 comment.

4. Damages ⇐50.10

To be extreme or outrageous, as element of claim of intentional infliction of emotional distress, conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Restatement (Second) of Torts § 46 comment.

5. Damages ⇐50.10

Mere fact of termination of employment, even if the termination is wrongful, is not legally sufficient evidence that the employer's conduct was extreme and outrageous, under the rigorous standard to determine whether conduct constitutes intentional infliction of emotional distress. Restatement (Second) of Torts § 46.

6. Husband and Wife ⇐209(4)

Wife's loss of consortium claim that was wholly derivative of husband's claim of intentional infliction of emotional distress failed upon failure to prove husband's claim.

7. Appeal and Error ⇐1172(3)

Court of Appeals could not, without discussion, reverse and remand claim for equitable relief along with other remanded claims, where trial court specifically denied equitable relief, and appellant did not complain of trial court's adverse ruling on appeal.

Christopher Johnsen, Blake Ol Brodersen, David P. Boyce, Austin, for Petitioners.

Mark W. Robinett, John Judge, Austin, for Respondents.

Justice OWEN delivered the opinion of the Court.

When a state university terminated one of its professors, Brent Dalrymple, he and his wife Diane sued three of his colleagues in their individual and official capacities and the University of Texas System. The trial court granted summary judgment for the three individual defendants. A jury thereafter found for the University on all remaining claims, and the trial court rendered a final judgment against the Dalrymples. They appealed only the summary judgment for the individual defendants. The court of appeals reversed and remanded Brent Dalrymple's claim for intentional infliction of emotional distress, his claim for equitable relief based on alleged violations of the Texas Constitution, and Diane Dalrymple's claim for loss of consortium. We hold, as a matter of law, that the defendants' conduct was not extreme and outrageous. We further hold that Brent

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upon the evidence presented, the jury could have determined the sheriff's department acted with ill will or evil motives when it retaliated against Strube. The jury could also find the department acted in blatant disregard for her rights and was aware that terminating Strube's employment would result in her being unemployed and be taken as a negative mark on her employment record in the law enforcement profession. We conclude that the evidence is legally and factually sufficient to support the jury's finding of malice.

[28] The County alternatively urges us to order a remittitur lowering the $1,250,000 in exemplary damages to a reasonable amount. Although the County failed to adequately brief this argument, we nevertheless will address this contention. *See* Tex.R.App. P. 38.1(h) (former Tex.R.App. P. 74(f)).

[29–32] An appellate court reviews exemplary damages awards to ensure that they are reasonable in their amount and rational in light of their purpose to punish malicious conduct and deter its repetition. *Heim*, 932 S.W.2d at 294. We may reverse an exemplary damages award or suggest a remittitur only if we determine that the evidence supporting the award is so factually insufficient or the verdict is so against the great weight and preponderance of the evidence as to be manifestly unjust. *Id.* (citing *Transportation Ins. Co. v. Moriel*, 879 S.W.2d 10, 30 (Tex.1994)). In our assessment, we consider the following factors:

> (1) the nature of the wrong; (2) the character of the conduct involved; (3) the degree of culpability of the wrongdoer; (4) the situation and sensibilities of the parties concerned; and (5) the extent to which such conduct offends a public sense of justice and propriety.

Id. (citing *Alamo Nat'l Bank v. Kraus*, 616 S.W.2d 908, 910 (Tex.1981)). When reviewing an exemplary damages verdict for excessiveness, we must detail the relevant evidence and explain why, in light of the *Kraus* factors, the evidence either supports or does not support the exemplary damages award. *Id.* (citing *Ellis County State Bank v. Keever*, 888 S.W.2d 790, 798 (Tex.1994)). We have detailed the evidence previously.

We assess the nature of the wrong in light of the purposes underlying the Whistleblower Act of 1) protecting public employees from retaliation by their employers for reporting violations of law in good faith, and 2) securing in consequence lawful conduct on the part of those who direct and conduct the affairs of public bodies. *See Travis County v. Colunga*, 753 S.W.2d 716, 718–19 (Tex.App.—Austin 1988, writ denied). Strube first attempted to alert her employers of the dangerous cleaning chemicals before turning to the Department of Health. Her employers shunned her attempts and then retaliated against her for pursuing a policy of safety in the workplace. After her report, several of Strube's superior officers notably resented the incident and purposefully made her job more difficult. She was assigned to sex offender duty and her complaints regarding these inmates were ignored. The sheriff called her at home. One officer threatened to ruin her life. These actions, as well as others detailed earlier, by this public entity are offensive to a public sense of justice and propriety. This is the type of conduct exemplary damages is meant to punish and deter. The jury found the County should pay exemplary damages nearly twice the amount of actual damages. We hold the jury did not award exemplary damages in such an amount as to be clearly wrong and unjust. Therefore, we decline to order a remittitur and overrule the County's fifth point of error.

CONCLUSION

The judgment of the trial court awarding $50,000 in damages for future mental anguish is reversed and rendered that Strube take nothing on that claim. We also reverse the portion of the judgment regarding attorneys' fees and remand it to the trial court for further proceedings consistent with *Arthur Andersen & Co. v. Perry Equipment Co.* In all other respects, the judgment of the trial court is affirmed and the motions for rehearing are overruled.

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INGERSOLL–RAND CO., et al., Appellants,

v.

VALERO ENERGY CORP., et al., Appellees.

No. 13–96–281–CV.

Court of Appeals of Texas, Corpus Christi.

Sept. 26, 1997.

Rehearing Overruled Oct. 30, 1997.

Refinery owner sued contractor and subcontractor for damages arising out of construction project. The 117th District Court, Nueces County, Robert M. Blackmon, J., granted defendants' motions for summary judgment asserting that indemnity provision barred owner's claim. Owner appealed. The Court of Appeals, 866 S.W.2d 252, affirmed. Defendants sought attorney fees and costs incurred in defending against owner's claims. The District Court granted summary judgment for owner, and defendants appealed. The Court of Appeals, Rodriguez, J., held that: (1) subcontractor's claim for attorney fees was compulsory counterclaim and was barred by res judicata; (2) contractor's claim for attorney fees was compulsory counterclaim and was properly filed; but (3) contractor's claim was barred by statute of limitations

Affirmed.

1. Judgment ⇐540

Res judicata prohibits cause of action once finally determined between parties on merits by competent tribunal from afterward being litigated in new proceeding.

2. Judgment ⇐619, 713(2), 720

Under doctrine of res judicata, judgment in first suit precludes second action by parties and their privies, not only on matters actually litigated, but also on causes of action or defenses arising out of same subject matter that might have been litigated in first suit.

3. Judgment ⇐585(4)

Subcontractor's claim for attorney fees incurred in defending project owner's damages claim was compulsory counterclaim to project owner's claim; because subcontractor asserted indemnity provision as defense to owner's suit, and because same clause provided for payment of attorney fees and court costs, subcontractor's claim for attorney fees arose out of same transaction and occurrence as its asserted defense in owner's suit. Vernon's Ann.Texas Rules Civ.Proc., Rule 97(a).

4. Stipulations ⇐7

Plaintiff's counsel's statement to the court regarding what claims and causes of action were to be severed so that summary judgments could be appealed was not an agreement granting consent for claim for affirmative relief to be filed by defendant when abatement was dissolved, since defendant did not have counterclaim or any other claim for affirmative relief against plaintiff pending before court at time statement was made, and statement did not explicitly provide consent for defendant to later file counterclaim. Vernon's Ann.Texas Rules Civ. Proc., Rule 11.

5. Appeal and Error ⇐1079

Appellee waived argument that trial abused its discretion by granting severance, where appellee failed to challenge trial court's action by cross-point. Rules App. Proc., Rule 74.

6. Limitation of Actions ⇐43

Cause of action generally accrues at time when facts come into existence which authorize claimant to seek judicial remedy.

7. Limitation of Actions ⇐56(2)

Defendant's cause of action against plaintiff for attorney fees under indemnity agreement accrued when plaintiff sued defendant, thus repudiating indemnity provision, rather than when trial court entered summary judgment on plaintiff's claim. V.T.C.A., Civil Practice & Remedies Code § 16.004(a)(3).

8. Indemnity ⇐15(3)

Where indemnity agreement did not require notice, court would not infer notice

requirement as condition precedent to right to recover.

9. Appeal and Error ⇐758.3(11)

Point of error asserting that trial court erred in granting summary judgment because there were fact issues that remained unresolved did not present anything for review, where appellant did not state what those facts issues were, or whether they were material, and if so, how.

10. Appeal and Error ⇐1079

By not asserting failure of trial court to award costs as cross-point on appeal, defendant waived its claim for costs arising out of that suit. Vernon's Ann.Texas Rules Civ. Proc., Rule 131.

John M. Calimafde, Hopgood, Calimafde, Kalil & Judowe, New York City, Taylor M. Hicks, Jr., Andrews & Kurth, Houston, Audrey Mullert Vicknair, Paul W. Nye, Chaves, Gonzales & Hoblit, Corpus Christi, Kenneth L. Salmon, David N. Wecht, Joseph A. Katarincic, Katarincic & Salmon, Pittsburgh, PA, John B. Shely, Dimitri Zgourides, Andrews & Kurth, Houston, Rudy Gonzales, Jr., Harvey Ferguson, Jr., Chaves, Gonzales & Rodriguez, Corpus Christi, for Appellants.

James K. McClendon, Thomas H. Watkins, Elizabeth G. Bloch, Hilgers & Watkins, P.C., Austin, Gilberto Hinojosa, Magallanes, Sokat & Hinojosa, Brownsville, for Appellees.

Before DORSEY, YÁNEZ and RODRIGUEZ, JJ.

OPINION

RODRIGUEZ, Justice.

This is the second appeal resulting from the application of the indemnity provision of a contract ("the Contract") entered into between appellants M.W. Kellogg Company, M.W. Constructors, Inc., M.W. Kellogg Constructors, Kellogg Rust Synfuels, Inc., and Henley/MWK Holding, Inc. (collectively referred to as "Kellogg") and Ingersoll-Rand Company and Dresser-Rand Company (collectively referred to as "Rand"), and appellees Valero Energy Corporation, Valero Refining & Marketing Company and Valero Refining Company (collectively referred to as "Valero").

In 1982, Kellogg contracted with Valero to serve as general contractor in the expansion of Valero's Corpus Christi oil refinery. Rand was hired by Kellogg as a subcontractor on the project. Valero filed suit against Kellogg in 1986, alleging various negligence and deceptive trade practices causes of action arising out of the Contract. Valero added Rand as a defendant in 1989 seeking actual and exemplary damages, as well as attorney's fees. The Contract contained the following indemnity provision:

> 6.8 OWNER [Valero] shall release, defend, indemnify and hold harmless CONTRACTOR, [Kellogg] its subcontractors and affiliates and their employees performing services under this Agreement against all claims, liabilities, loss or expense, ***including legal fees and court costs in connection therewith,*** arising out of or in connection with this Agreement or the Work to be performed hereunder, including losses attributable to CONTRACTOR'S negligence, to the extent CONTRACTOR is not compensated by insurance carried under this ARTICLE....

(Emphasis added).

Both Kellogg and Rand filed interlocutory motions for summary judgment asserting the indemnity provision barred Valero's claim. The trial court granted the motions, and, after the trial court severed Valero's claims from the remaining parties and issues in the lawsuit and Valero appealed, we affirmed.[1] The remaining claims were abated pending resolution of the appeal.[2]

After our mandate issued, the trial court dissolved the abatement and Kellogg and Rand filed motions for summary judgment seeking their attorney's fees, court costs, and litigation expenses incurred in defending Valero's claims asserted in *Valero I*. Kellogg and Rand also sought to recover their attorney's fees and costs incurred in pursuing their contractual claim for attorney's fees pursuant to the Texas Civil Practice and Remedies Code.[3]

Valero filed its own motion for summary judgment on the indemnity claims, asserting (1) the claims were compulsory counterclaims not timely urged and therefore waived when the trial court granted the summary judgments; (2) the claims were time-barred; and (3) the claims were not cognizable under § 38.001. The trial court granted Valero's motion and denied the motions of Kellogg and Rand. Kellogg and Rand independently perfected their appeals.

Standard of Review

We review summary judgment procedures according to the following standards: (1) the movant for summary judgment has the burden of showing there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law; (2) in deciding whether there is a disputed material fact issue precluding summary judgment, evidence favorable to the nonmovant will be taken as true; and (3) every reasonable inference must be indulged in favor of the nonmovant and any doubts resolved in its favor. *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 548–49 (Tex.1985).

When a movant asserts multiple grounds for summary judgment, and the order does not state the theory upon which the trial court based its judgment, the nonmovant must show on appeal the failure of at least one element of each theory asserted. *See Gibbs v. General Motors Corp.*, 450 S.W.2d 827, 828 (Tex.1970). Otherwise, we affirm the summary judgment if any one of the theories advanced is meritorious. *McDonald v. Houston Brokerage, Inc.*, 928 S.W.2d 633, 636 (Tex.App.—Corpus Christi 1996, writ denied); *Martinez v. Corpus Christi Area Teachers Credit Union*, 758 S.W.2d 946, 950 (Tex.App.—Corpus Christi 1988, writ denied).

RAND'S APPEAL

In its first point of error,[4] Rand asserts the trial court erred in granting summary judgment in this case because the summary judgment in *Valero I* did not dispose of Rand's claim for attorney's fees. The crux of Rand's argument is that because parties and issues remained after the court granted summary judgment in *Valero I*, and because the trial court severed out only the causes of action which formed the basis of the summary judgment in *Valero I*, the summary judgment in *Valero I* did not address Rand's counterclaim, which had not yet been filed.

Rand's argument, while facially persuasive, fails. The issue is not whether the summary judgment in *Valero I* addressed Rand's counterclaim for attorney's fees, but whether Rand should have asserted the counterclaim in response to Valero's claim for damages before the trial court granted summary judgment in *Valero I*. In other words, was Rand's claim for attorney's fees a compulsory counterclaim that is now barred by the application of *res judicata*?

The following dates are relevant:

08-24-89	Valero sues Rand
10-25-91	Summary judgment granted in *Valero I*
12-23-91	Severance granted and non-severed cases abated
06-30-94	Court of Appeals opinion issues
08-25-94	Abatement dissolved
09-16-94	Rand files its counterclaim for attorney's fees

Rand bases its argument on the fact that only those issues asserted in the summary judgments in *Valero I* were severed out and made final; all other issues remained. This is precisely the point made by Valero—that at the time Rand filed its claim for attorney's fees, no claims were pending between Rand and Valero. *Valero I* was concluded and the trial court's decision had been affirmed;

1. *See Valero Energy Corp. v. M.W. Kellogg Constr. Co.*, 866 S.W.2d 252 (Tex.App.—Corpus Christi 1993, writ denied) (hereinafter "*Valero I*").

2. The summary judgments were granted in the original cause number, 86-4223-B; the severed claims were given cause number 91-6592-B.

3. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 38.001 (Vernon 1986).

4. On appeal, Rand has complained only of the granting of Valero's motion for summary judgment and not the denial of its own motion.

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thus, the doctrine of *res judicata* precluded Rand from asserting its claim for attorney's fees in cause number 91-6592-B.

[1, 2] *Res judicata* prohibits a cause of action once finally determined between the parties on the merits by a competent tribunal from afterward being litigated in a new proceeding. *Gracia v. RC Cola-7-Up Bottling Co.*, 667 S.W.2d 517, 519 (Tex.1984). The judgment in the first suit precludes a second action by the parties and their privies, not only on matters actually litigated, but also on causes of action or defenses arising out of the same subject matter that might have been litigated in the first suit. *Getty Oil Co. v. Insurance Co. of N. Am.*, 845 S.W.2d 794, 798 (Tex.1992) (citing *Barr v. Resolution Trust Corp., ex rel. Sunbelt Fed. Sav.*, 837 S.W.2d 627, 630 (Tex.1992)); *Texas Water Rights Comm. v. Crow Iron Works*, 582 S.W.2d 768, 771-72 (Tex.1979). It has been held, however, that *res judicata* does not apply to cross-claims or counterclaims which the defendant might have filed, unless the compulsory counterclaim rule is applicable. *Lesbrookton, Inc. v. Jackson*, 796 S.W.2d 276, 281 (Tex.App.—Amarillo 1990, writ denied).

A counterclaim is compulsory if: (1) it is within the jurisdiction of the court, (2) it is not at the time of filing the answer the subject of a pending action, (3) the claim is mature and owned by the pleader at the time of filing the answer, (4) it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim, (5) it is against an opposing party in the same capacity, and (6) it does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction. TEX.R. CIV. P. 97(a); *Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 247 (Tex.1988). A claim satisfying all six of these elements must be asserted in the initial action and cannot be asserted in later actions. *Id.* The primary question before this Court involves the third requirement—whether Rand's claim for attorney's fees, which it asserted in cause number 91-6592-B, was mature and owned by Rand at the time it filed its answer in cause number 86-4223-B.

[3] Rand contends it had no claim for indemnity under the Contract until Valero rejected Rand's demand for attorney's fees under the Contract. This argument was squarely rejected by the supreme court in *Getty*:

> The contingent nature of these claims, however, does not preclude the operation of res judicata. We held in *Barr* that "[a] subsequent suit will be barred if it arises out of the same subject matter of a previous suit and which, through the exercise of diligence, could have been litigated in a prior suit." 837 S.W.2d at 631. Getty could have asserted its present claims in the [previous] suit, with their resolution being contingent on the plaintiffs' claims.

Getty, 845 S.W.2d at 799.

In reaching this conclusion, the *Getty* court also relied on Texas Rule of Civil Procedure 51(b), which provides:

> Joinder of Remedies. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties.

TEX.R. CIV. P. 51(b).

Recognizing that it had previously held that an indemnitee may bring a claim against an indemnitor before judgment is assigned against the indemnitee, *Gulf, Colorado & Santa Fe Ry. Co. v. McBride*, 159 Tex. 442, 446, 322 S.W.2d 492, 495 (1958), and that forcing the indemnity suit to wait for judgment in the liability suit "would contravene the policy of the courts to encourage settlements and to minimize litigation," *K & S Oil Well Serv., Inc. v. Cabot Corp.*, 491 S.W.2d 733, 739 (Tex.Civ.App.—Corpus Christi 1973, writ ref'd n.r.e.), the court held Getty's claim to be a compulsory counterclaim which it had failed to assert in the previous suit:

> The fact that Getty had no claim for indemnity against NL until the trial court rendered judgment did not preclude this cross-claim. Likewise, Getty could have brought its other contingent cross-claims against NL in the [previous] action. The fact that Getty's claims against NL were contingent on Getty incurring liability in the [previous] suit does not in and of itself preclude operation of res judicata.

Getty, 845 S.W.2d at 799.

Rand's argument was also rejected by the Texarkana Court of Appeals in *Fidelity Mut. Life Ins. Co. v. Kaminsky*, 820 S.W.2d 878 (Tex.App.—Texarkana 1991, writ denied). In that case, when Fidelity sued Kaminsky for rentals due under a lease agreement, Kaminsky claimed he had been constructively evicted. Kaminsky won a final judgment and then, relying on language in the contract, sued Fidelity in a second suit to recover its attorney's fees incurred in the defense of Fidelity's suit. As does Rand, Kaminsky argued his right to fees arose not out of the contract, but out of his having been successful in litigation under the contract. The Texarkana Court of Appeals held Kaminsky's claim was barred by *res judicata* because it was a compulsory counterclaim that should have been pursued in the first suit. *Kaminsky*, 820 S.W.2d at 882.

Rand attempts to distinguish *Kaminsky*, arguing it is not an indemnity case. Rand further disputes *Kaminsky*'s application because the present case "involves an *interlocutory summary judgment* and not a jury trial of all the issues on the merits." (Emphasis Rand's). Finally, Rand asserts *Kaminsky* is inapposite because Kaminsky filed a separate lawsuit, whereas Rand filed its claim for attorney's fees in the same case.

Rand's position is incorrect on all counts. Merely because *Kaminsky* was not an indemnity case does not diminish its applicability on the issue of *res judicata*. Second, the present case does not involve an interlocutory summary judgment. If it were interlocutory, this Court could not have acquired jurisdiction to consider the merits of Rand's appeal. *See Cherokee Water Co. v. Ross*, 698 S.W.2d 363, 365 (Tex.1985) (orig.proceeding); *Cameron County v. Alvarado*, 900 S.W.2d 874, 878 (Tex.App.—Corpus Christi 1995, writ dism'd w.o.j.) (unless a statute specifically authorizes an interlocutory appeal, Texas appellate courts have jurisdiction only over final judgments). The trial court severed all ***existing*** claims between Rand and Valero and entered a final judgment.

Finally, Rand did, in effect, file a separate lawsuit asserting its claim for fees. The original suit between the parties bore cause number 86-4223-B. After the trial court granted the summary judgments in *Valero I*, those claims were severed out, and the judgment in cause number 86-4223-B became final and appealable. All remaining claims between the parties ***that had previously been asserted*** were given cause number 91-6592-B and abated. When the trial court dissolved the abatement on August 25, 1994, Rand filed its claim for attorney's fees, not in the original case, cause number 86-4223-B, but in cause number 91-6592-B.

[4] Citing TEX.R. CIV. P. 11 and *Padilla v. LaFrance*, 907 S.W.2d 454, 461-62 (Tex. 1995), Rand next claims Valero is bound by its statement, made in open court during a November 11, 1991 hearing, that Rand could pursue its counterclaim after the trial court dissolved the abatement. The statement at issue is Valero's counsel's statement to the court regarding what claims and causes of action were to be severed so that the summary judgments in *Valero I* could be appealed:

> All right. Your Honor, Valero—several of the parties here has [sic] filed motions for severance, and I think that the parties can here can agree to the following stipulations, stipulated agreements: That is, that all of the claims between any parties, other than Valero versus Kellogg and Valero versus Ingersoll-Rand, will be severed into a new cause of action leaving pending under this cause number Valero versus Ingersoll-Rand and Valero versus Kellogg. Everything else, the Intervenor, all the cross-claims, any counterclaim by Kellogg against any other party, any counterclaim by Ingersoll-Rand, or cross-claim by Ingersoll-Rand against any other party, would be severed into a new cause of action; this judgment would become a final judgment and an appealable judgment.

As Rand did not have a counterclaim or any other claim for affirmative relief against Valero pending before the court at the time this statement was made, and because the statement did not explicitly provide consent for Rand to later file a counterclaim, we

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claim for attorney's fees under the Contract on or before August 1, 1990, four years after the date on which it filed its original answer and first incurred attorney's fees.

Relying on *Joseph Thomas, Inc. v. Graham*, 842 S.W.2d 343, 345 (Tex.App.—Tyler 1992, no writ) and *Lawyers Title Co. v. Authur*, 569 S.W.2d 578, 581 (Tex.Civ.App.—Waco 1978, no writ) (cause of action on indemnity contract does not begin to run until a final judgment is entered), Kellogg asserts its cause of action for attorney's fees did not accrue until the trial court entered summary judgment in 1991. Kellogg's reliance on these cases is misplaced. First, in both cases, the indemnity provision was asserted by a plaintiff or cross-plaintiff as a basis for recovery, rather than by a defendant such as Kellogg who asserts the indemnity agreement as a defense to preclude the plaintiff's recovery. Second, in the cited cases, the indemnity provision was being asserted against a person who was either not a party to the first action or was brought into the first action as a third party defendant. The cited cases do not involve a situation where, as here, the parties in the first action are the indemnitor and the indemnitee.

Kellogg next contends the statute of limitations did not run in this case because Kellogg did not have a cause of action until Valero failed and refused to indemnify Kellogg for its attorney's fees. In other words, Kellogg asserts its cause of action did not accrue until such time as Kellogg made presentment or demand for payment of its fees. Kellogg's position is correct only if demand is an integral part of Kellogg's cause of action or a condition precedent to its right to sue. *Ocean Transp.*, 878 S.W.2d at 267.

[8] Kellogg asserted its right to attorney's fees pursuant to the indemnity provision of the Contract. In indemnity claims, where the indemnity agreement does not require notice, courts will not infer a notice requirement as a condition precedent to a right to recover. *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1221 (5th Cir.1986) (citing *Monical & Powell, Inc. v. Bechtel Corp.*, 404 S.W.2d 911, 915 (Tex.Civ.App.—Eastland 1966, writ ref'd n.r.e.)). As in *Fontenot*, because the indemnity provision at issue does not contain a notice provision,[8] we will not infer one.

Even were Kellogg correct in its position that its cause of action did not accrue until Valero rejected its demand for payment, Valero asserts it repudiated the indemnity provision when it sued Kellogg for negligence and DTPA violations in 1986. We agree. The terms of the indemnity provision obligated Valero to indemnify Kellogg "against all claims, liabilities, loss or expense" in connection with or arising out of or in connection with the Contract. Valero's lawsuit against Kellogg was a definitive statement that it was not indemnifying Kellogg as required under the Contract. We are of the opinion that Valero's filing suit against Kellogg was an unequivocal repudiation of the Contract's indemnity provision, thus triggering the running of the statute of limitations. *See generally, Pitts v. Wetzel*, 498 S.W.2d 27, 29 (Tex. Civ.App.—Austin 1973, writ ref'd n.r.e.) (limitations begin to run upon repudiation of the obligation).

Kellogg also asserts Valero did not plead and prove its affirmative defense by proper summary judgment evidence. Our review of the transcript fails to substantiate Kellogg's claim. Valero alleged in its motion for summary judgment that if it did indeed breach the Contract, it did so by filing suit against Kellogg and that Kellogg's cause of action for attorney's fees under the indemnity agreement accrued at that time. Valero requested and the trial court agreed to take judicial notice of all pleadings and papers filed in *Valero I* as additional summary judgment evidence. This evidence demonstrated to the court the date Valero filed suit; the date Kellogg answered; and that Kellogg had hired an attorney to defend itself, thereby incurring attorney's fees.

Points of error one and six are overruled.

[9] Kellogg's third point of error asserts the trial court erred in granting summary judgment in favor of Valero because there are fact issues that remain unresolved. Kellogg does not state what those facts issues are, whether they are material to the case, and if so, how. We conclude nothing has been presented by this point of error and it is overruled.

In point of error number four, Kellogg asserts the trial court erred in granting Valero's motion for summary judgment and in denying its motion because rule 131 of the Texas Rules of Civil Procedure obligates Valero to pay its costs. Kellogg does not assert that the indemnity provision of the Contract obligates Valero to pay the costs incurred in defending *Valero I*, only that rule 131 mandates that Valero pay those costs. Thus, we will only address the applicability of rule 131.[9]

Rule 131 provides that "[t]he successful party to a suit shall recover of his adversary all costs incurred therein, except where otherwise provided." TEX.R. CIV. P. 131. As the prevailing party in *Valero I*, Kellogg was entitled to recover its costs from Valero. The judgment in *Valero I* did not, however, award Kellogg its costs.

[10] When Valero appealed the judgment in *Valero I*, Kellogg did not assert as a cross-point the trial court's failure to award it costs. By not asserting the failure of the trial court to award costs as a cross-point in the appeal of *Valero I*, Kellogg has waived its claim for costs arising out of that suit.

Kellogg's point of error number four is overruled.

In point of error number two, Kellogg complains of the trial court's denial of its motion for summary judgment. To the extent that Kellogg's assertion of its right to summary judgment is founded on the indemnity provision of the Contract, our disposition of point of error number six, that Kellogg's claim is barred by the statute of limitations, applies to this point of error as well.

Even were Kellogg's claim not barred by limitations, we would be compelled to overrule this point of error because a material fact question exists. The express language of the indemnity provision limited Valero's indemnification obligation to fees and expenses that were "not compensated by insurance." As required under the Contract, Kellogg purchased comprehensive general liability ("CGL") insurance. Under the terms of that policy, Kellogg's insurance carrier was required to defend Kellogg against Valero's lawsuit. Kellogg has not contended the claims asserted by Valero in *Valero I* were not covered by the CGL policy, or that its insurer did not provide a defense under the CGL policy. Kellogg failed to provide the trial court with any summary judgment evidence on the amount, if any, of its costs that were not covered by its CGL policy. Thus, a fact question exists concerning whether there were any costs that had not been paid by the CGL policy. The existence of this fact question prevented the trial court from granting Kellogg's motion for summary judgment. *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (Tex.1979).

Kellogg's second point of error is overruled.

Valero asserts one cross-point that is conditioned upon our reversing the trial court's judgment. As we are affirming the judgment, we do not reach Valero's crosspoint. TEX.R.APP. P. 90(a).

The judgment of the trial court is AFFIRMED.



8. The indemnity provision in the Contract is not conditioned upon Kellogg receiving a judgment against Valero; rather the requirement is to defend and pay attorney's fees and expenses in defending the suit.

9. Valero's obligation to pay Kellogg's costs was expressly included in indemnity provision of the Contract. Thus, had Kellogg asserted its entitlement to costs under the Contract as a basis for this point of error, rather than rule 131, the point would have been overruled as the claim would be barred by limitations.

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er's employer, but did not waive it against any others.

We must first determine from whom National Union sought damages in its intervention.

In its plea in intervention, National Union asserts it is the worker's compensation carrier for Four Flags Drilling Company, has paid benefits to Four Flags's employee, Pfeifer, and seeks to recover that amount from any recovery Pfeifer receives from the defendants. No defendants are named in the text of the plea in intervention, although the style of the pleading reads "David Pfeifer v. Pennzoil Producing Company, A Foreign Corporation, Et Al." The only pleading filed by Pfeifer and contained in the transcript is Plaintiff's Third Amended Original Petition, filed after the intervention was struck, in which he seeks damages from only Pennzoil Producing Company and Pennzoil Company, defendants. We have not been provided with Pfeifer's live pleading at the time the intervention was filed to determine if there were any other third-party defendants involved in the suit.

Knight and Oil Field contend in their briefs that Pfeifer non-suited them from this lawsuit before the court struck National's intervention. We can find no evidence of this in the record.

[12] The general rule in appellate practice remains that the ruling of the court below is presumed to be valid, and the appellant has the burden of presenting the reviewing court with adequate points of error, argument, and record to show that error was committed. TEX.R.APP.P. 53 & 74. From the record as requested by appellant, we have we are unable to determine the parties defendant in the underlying suit other than the two Pennzoil companies. Accordingly, we cannot say the striking of the intervention affected any party other than National Union and the Pennzoil companies. Point of error four is overruled.

The judgment of the trial court is AFFIRMED.



VALERO ENERGY CORPORATION, et al., Appellants,

v.

The M.W. KELLOGG CONSTRUCTION COMPANY, et al., Appellees.

No. 13-91-666-CV.

Court of Appeals of Texas, Corpus Christi.

June 30, 1993.

[Motion to Publish Granted, Nov. 17, 1993.]

Rehearing Denied Nov. 17, 1993.

Refinery brought action against contractor and subcontractor to recover for damages resulting from explosion during construction of expansion. Contractor and subcontractor filed defenses based on contract, and refinery filed defenses to the contract. The 117th District Court, Nueces County, Robert Blackmon, J., struck four defenses to the contract asserted by refinery and granted summary judgment in favor of contractor and subcontractor, and refinery appealed. The Court of Appeals, Dorsey, J., held that: (1) by asserting attorney-client privilege after filing affidavit of attorney in support of defenses to the contract, refinery abandoned those affirmative defenses; (2) provisions in contract waiving liability for negligence or products liability were not void as against public policy; and (3) provision of Deceptive Trade Practices Act allowing waiver of rights under the Act by large corporations which was in effect at time contract was signed was applicable.

Affirmed.

1. Appeal and Error ⇐984(1)

Propriety of sanction order is reviewed to determine whether court committed clear abuse of discretion when imposing it.

2. Appeal and Error ⇐961

Pretrial Procedure ⇐44.1

Sanctions for discovery violations must be just, and reviewing court looks to whether

direct relationship exists between the offensive conduct and the sanction imposed and whether the sanction is excessive.

3. Pretrial Procedure ⇐44.1

Sanctions are appropriate when sanctioned party's conduct justifies presumption that its claims or defenses lack merit.

4. Pretrial Procedure ⇐33

Party is not permitted to raise a claim or defense in a lawsuit and then attempt to stave off discovery related to that allegation through the use of privilege.

5. Witnesses ⇐219(3)

Refinery owner waived its attorney-client privilege by filing affirmatives defense of unconscionability, fraud, duress, and adhesion and affidavit of attorney in support of those allegations and, by electing to stand firmly on the attorney-client privilege, refinery abandoned affirmative defenses.

6. Contracts ⇐206

General contract disclaimer and waiver of liability can permit party from suing on products liability theory.

7. Appeal and Error ⇐863, 934(1)

When determining whether trial court properly granted one party's motion for summary judgment and denied another's, reviewing court examines the record to determine whether summary judgment proof establishes matter of law that no genuine issue of material fact existed on one or more essential elements of the cause of action, taking all evidence favorable to the losing party as true and indulging all reasonable inferences in that party's favor.

8. Contracts ⇐114

Parties may agree to exempt one another from future liability for negligence so long as the agreement does not violate the Constitution, a statute, or public policy.

9. Contracts ⇐114

When parties to contract are private entities bargaining from positions of substantially equal strength, agreement to exempt each other from future liability for negligence is usually enforced but, if one party is so disadvantaged that it is essentially forced to agree to an exculpatory provision, that provision will be declared void.

10. Contracts ⇐114
Indemnity ⇐3

Waiver and indemnity provision absolving contractor of all liability sounding in products liability and gross negligence in connection with construction of addition to refinery did not offend public policy where both owner and contractor were sophisticated entities replete with learned counsel and familiarity with oil refinery industry and they negotiated their working relationship over the course of almost three years.

11. Contracts ⇐187(1)

Subcontractor was entitled to protection under waiver and hold-harmless clauses in construction contract between owner and contractor.

12. Trade Regulation ⇐862.1

Date that oil refinery signed contract for construction of expansion, which it later sought to repudiate on the grounds of unconscionability and economic duress, was the relevant date of inquiry for determining whether the contract was covered by Deceptive Trade Practices Act (DTPA) prohibition on waiver of rights under the Act. V.T.C.A., Bus. & C. § 17.42; § 17.42 (1980).

William R. Edwards, Edwards & Terry, Corpus Christi, Mike A. Hatchell, Molly H. Anderson, Tom Henson, Gregory D. Smith, Ramey & Flock, Tyler, Thomas H. Watkins, Hilgers & Watkins, P.C., Austin, David M. Waterson, Jr., San Antonio, for appellants.

Christopher Langen, David H. Kagan, John M. Calimafde, Hopgood, Calimafde, Kalil, Blaustein & Judlowe, New York City, John B. Shely, Taylor M. Hicks, Jr., Andrews & Kurth, Houston, Joseph Katarincic, Kenneth L. Salmon, Terrence J. O'Rourke, Katarincic & Salmon, Pittsburgh, Rudy Gonzales, Jr., Harvey Ferguson, Jr., Chaves, Gonzales & Rodriguez, Corpus Christi, David Healey, Michael J. Stanley, Charles S. Kelley, Weil, Gotshal & Manges, Houston, for appellees.

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Before DORSEY, SEERDEN and FEDERICO G. HINOJOSA, Jr., JJ.

OPINION

DORSEY, Justice.

Valero Energy Corporation [1] appeals from a summary judgment entered in a negligence and deceptive trade practices case. The trial court found that a waiver provision in the parties' goods and services contract was valid and therefore Valero had no cause of action against appellees Kellogg and Ingersoll–Rand. By eighteen points of error, Valero complains of the judgment as well as a sanction striking its defenses to the contract. We affirm.

In July, 1979, Saber Energy, Inc. (now Valero) [2] sought Kellogg's construction, engineering, and design services for a $500 million expansion of its Corpus Christi oil refinery. The parties negotiated an agreement until May 28, 1982, and signed a contract on that date. During the negotiations period, Kellogg tendered bargained-for services to Valero, which were included in the final contract; on the date of the signing of the contract, Kellogg had delivered some $15 million in goods and services to Valero.

Valero hired appellee Ingersoll–Rand, who would become a Kellogg subcontractor, in early 1981 to supply machinery for the refinery expansion. This machinery, called a Power Recovery Unit, consists of an expander, a compressor, a motor generator, and a steam turbine. The expander, which is used to derive mechanical energy from the hot gases emitted from the refining process, was delivered to the Valero refinery in September, 1982. That piece of equipment forms the basis of this suit, as it failed and exploded on May 3, 1988, causing damages to the Valero plant. Appellant maintains that flying shrapnel from the explosion damaged structural I-beams, a pipe rack, and several tons of catalyst.

Valero brought suit against Kellogg and Ingersoll–Rand alleging, among other actions, products liability, gross negligence, and violations of the Deceptive Trade Practices–Consumer Protection Act.[3] Both defendants filed motions for summary judgment based upon certain provisions of the contract, the most important of which were waiver, indemnity, and hold-harmless clauses. Ingersoll–Rand also alleged that Valero's suit was barred by limitations and that the appellant failed to properly allege actions sounding in tort, having suffered only economic damage.

Five years later, Valero filed a fifth amended original petition alleging for the first time defenses to the contract including, among others, fraud, unconscionability, duress, unenforceability of the waiver and indemnity provisions, and public policy. Valero filed a motion for partial summary judgment based upon that amended petition. The trial court ultimately struck, as a sanction, all pleadings, affidavits, and exhibits filed by Valero in connection with four of its defenses to the contract: unconscionability, fraud, duress, and adhesion.

Valero filed several subsequent amended petitions alleging essentially the same defenses. The trial court granted summary judgment in favor of Kellogg and Ingersoll–Rand. It is from those judgments that Valero appeals.

[1–3] By point of error 18, appellant maintains that the trial court erred by imposing the sanction against it. We review the propriety of the sanction order to determine whether the court committed a clear abuse of discretion when imposing it. *TransAmerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913, 916–17 (Tex.1991); *Bodnow Corp. v.*

1. Valero Energy Corp. appears individually and as the parent corporation of Valero Refining and Marketing Co. Valero Refining and Marketing Co. appears for itself and as the parent corporation of Valero Refining Co. Valero Refining Co. appears individually. The parties will be collectively referred to here as "Valero."

2. Valero Energy Corp. is Saber's successor in interest, having purchased 50% of Saber's corporate stock in October 1980 and the remainder in the fall of 1984. Saber Energy, Inc. then changed its name to Valero Refining & Marketing Co. and Saber Refining Co. became Valero Refining Co.

3. *See* TEX.BUS. & COM.CODE ANN. § 17.41 *et seq.* (Vernon 1977).

City of Hondo, 721 S.W.2d 839, 840 (Tex. 1986); *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241 (Tex.1985), *cert. denied*, 476 U.S. 1159, 106 S.Ct. 2279, 90 L.Ed.2d 721 (1986). Sanctions must be just; we look to whether a direct relationship exists between the offensive conduct and the sanction imposed, and to whether the sanction is excessive. *Remington Arms Co., Inc. v. Caldwell*, 850 S.W.2d 167, 170 (1993); *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844 (Tex.1992); *TransAmerican*, 811 S.W.2d at 916–17. Sanctions are appropriate when the sanctioned party's conduct " 'justifies a presumption that its claims or defenses lack merit.' " *Caldwell*, 850 S.W.2d at 171 (quoting *Chrysler*, 841 S.W.2d at 849).

Valero submitted only the affidavit of its in-house counsel, Mr. Cantrell, to support its unconscionability, fraud, duress, and adhesion defenses. In his affidavit, Cantrell averred that

> I was concerned about article 6.8 and 6.9 of the contract relating to liability and indemnity and throughout the negotiations attempted to seek a better position for Valero. By May of 1982, however, it was apparent to me that Valero had no choice but to agree to the indemnity and release clauses required by Kellogg. * * * *
>
> Additionally, throughout the contract negotiations, when we raised the issues of the exculpatory, indemnification, and liability limitations language in the draft contract, Kellogg told us not to worry about those provisions, because Kellogg had the expertise to make the project work, and was going to do the job right.

Appellees sought to depose Cantrell to inquire about his concerns and the advice he gave to Valero executives during negotiations. Valero agreed. During the deposition, however, Cantrell was instructed not to respond to any questions related to information or beliefs he submitted to Valero executives during the negotiation of this contract. Counsel asserted attorney/client privilege in support.

Some two weeks after the deposition adjourned, Valero sent letters to all parties, stating that it would waive the attorney/client privilege as to Cantrell, contingent upon a later determination by the court about whether the information obtained from him was in fact privileged, and whether the information was relevant. Valero refused to waive the privilege with regard to any additional depositions focusing upon unconscionability and related defenses, however.

Kellogg and Ingersoll–Rand filed motions to strike Valero's pleadings. They contended that both discovery abuse and abuse of the litigation process justified a sanction order. The parties highlighted Valero's failure to file affirmative defenses to the enforcement of the contract until five years after the defendants first asserted waiver as a defense to that contract. The parties also asserted that Valero had, by its actions, chosen to go forward with its attorney/client privilege assertion, thereby abandoning its affirmative defense allegations.

[4] Texas law will not permit a party to raise a claim or defense in a lawsuit, then attempt to stave off discovery related to that allegation through the use of privilege. In *Ginsberg v. Fifth Court of Appeals*,[4] a mandamus proceeding, the underlying action concerned the validity of a ratification deed executed between the parties. The plaintiff contended that the defendant fraudulently induced her to sign the deed, and that she did not remember signing it. She stated during a deposition that she was being treated by a psychiatrist at the time she signed the deed. Defendant attempted to discover plaintiff's medical records, but she refused, citing psychiatrist/patient privilege. The supreme court found that plaintiff "has invoked the jurisdiction of the courts in search of affirmative relief against [defendant]; yet she would attempt, on the basis of privilege, to deny [defendant] that benefit of evidence which would materially weaken or defeat her claims against him." *Id.* at 107. The court refused to condone this offensive use of a privilege. *Id.*

> A plaintiff cannot use one hand to seek affirmative relief in court and with the other lower an iron curtain of silence

4. 686 S.W.2d 105 (Tex.1985).

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years after the completion of the project. The contract was deemed retroactive, relating back to October 14, 1980, the inception of Kellogg's performance under the agreement.

[6] Valero essentially argues that a waiver of liability for gross negligence offends public policy and that a general contract disclaimer or waiver of liability will not prevent a party from suing on a products liability theory. We disagree.

[7] When determining whether the trial court properly granted one party's motion for summary judgment and denied another's, we examine the record to discern whether the summary judgment proof established as a matter of law that no genuine issue of material fact existed on one or more essential elements of the plaintiff's cause of action. *Gibbs v. General Motors Corp.*, 450 S.W.2d 827, 828 (Tex.1970). We take all evidence favorable to the losing party as true and indulge all reasonable inferences in that party's favor. *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 548–49 (Tex.1985).

The Kellogg/Valero contract contains a section expressly devoted to liability and insurance, preliminarily setting out the property and bodily injury insurance to be provided by both Valero and Kellogg. Several waiver provisions follow these insurance stipulations, allocating liability between the parties. The provisions at issue provide:

> 6.8 OWNER shall release, defend, indemnify and hold harmless CONTRACTOR, its subcontractors and affiliates and their employees performing services under this Agreement against all claims, liabilities, loss or expense ... arising out of or in connection with this Agreement or the Work to be performed hereunder, including losses attributable to CONTRACTOR'S negligence, to the extent CONTRACTOR is not compensated by insurance carried under this ARTICLE.
> * * * *
> 6.9 Neither CONTRACTOR nor its affiliates nor its subcontractors or vendors, either individually or jointly shall be liable to OWNER or its affiliates, irrespective of whether alleged to be due to negligence or otherwise, for loss of anticipated profits or interest, for loss by reason of Plant shutdown or non-operation of the Plant or other equipment, for loss of catalysts or chemicals or for any consequential or special loss or damage arising from any reason whatsoever.

The contract provides similar release and indemnification clauses stating that Kellogg and its subcontractors will hold Valero harmless for property damage or bodily injury they sustain as a result of Valero's actions, to the extent the injuries are covered by the insurance required by the agreement.

[8, 9] Parties may agree to exempt one another from future liability for negligence so long as the agreement does not violate the constitution, a statute, or public policy. *Allright, Inc. v. Elledge*, 515 S.W.2d 266, 267 (Tex.1974); *Crowell v. Housing Auth. of the City of Dallas*, 495 S.W.2d 887, 889 (Tex. 1973); *Derr Constr. Co. v. City of Houston*, 846 S.W.2d 854, 859 (Tex.App.—Houston [14th Dist.] 1992, no writ); *Interstate Fire Ins. Co. v. First Tape, Inc.*, 817 S.W.2d 142, 145 (Tex.App.—Houston [1st Dist.] 1991, writ denied). When the parties to the contract are private entities bargaining from positions of substantially equal strength, the agreement is usually enforced. *Elledge*, 515 S.W.2d at 267; *Crowell*, 495 S.W.2d at 889; *First Tape*, 817 S.W.2d at 145. If one party is so disadvantaged that it is essentially forced to agree to an exculpatory provision, that provision will be declared void. *Elledge*, 515 S.W.2d at 267–68; *Crowell*, 495 S.W.2d at 889.

[10] Valero and Kellogg are sophisticated entities, replete with learned counsel and a familiarity with the oil refinery industry. They negotiated their working relationship over the course of almost three years, with Kellogg submitting several proposals for Valero's review. During the negotiations process, Kellogg began performing services ultimately included under the retroactive contract. Work was begun on October 14, 1980; the contract was signed, after some $15 million worth of goods and services had been conveyed to Valero, on May 28, 1982. Valero, having a bargaining power equal to Kellogg's, agreed to the exculpatory clause in this contract. Valero possessed the re-

sources necessary to ascertain and understand the rights it held on the date of the signing of the contract, and those it would hold in the future. Nevertheless, Valero, of its own accord, negotiated those rights away.

The waiver and indemnity provision absolving Kellogg of all liability sounding in products liability and gross negligence does not offend public policy.

[11] Similarly, Ingersoll–Rand, as one of Kellogg's subcontractors, is also addressed in the Valero/Kellogg contract as an entity entitled to protection under the waiver and hold-harmless clauses. As such, it, too is held harmless and is indemnified under the contract fairly negotiated between Kellogg and Valero. Points ten through seventeen are overruled.

By points five through eight, appellant maintains that the trial court erred by granting appellees' motions for summary judgment and denying its own on the grounds that Valero waived its DTPA claims against Kellogg and Ingersoll–Rand. The issue is which version of the DTPA applies in this case. Appellant contends that the 1977 version applies, the one in effect at the time the parties began negotiating this contract (1979) and at the time Kellogg began performing under it (1980). Appellees allege that the 1981 version, the one in effect at the time the contract was signed (1982), is the applicable provision.

The crux of the dispute remains whether the waiver and hold-harmless provisions in the contract are valid under the DTPA. Prior to August 31, 1981, the DTPA mandated that "any waiver by a consumer of the provisions of this subchapter is contrary to public policy and is unenforceable and void." TEX. BUS. & COM.CODE ANN. § 17.42 (Vernon 1977). On August 31, 1981, section 17.42 was amended to allow that "a consumer ... with assets of $25,000,000 or more at the time of such transactions, acts or practices, may by written contract waive the provisions of this subchapter...." TEX.BUS. & COM.CODE ANN. § 17.42 (Vernon 1981).

Appellant argues that the 1981 amendment to the DTPA is to be applied prospectively only and that any cause of action arising in whole or in part prior to August 31, 1981, will not be affected by the provision allowing waivers by sophisticated corporations. *Citing* Acts 1981, 67th Leg., p. 863, ch. 307, § 1. Valero asserts that because it began negotiations with Kellogg in July, 1979, and with Ingersoll–Rand in early 1981, the pre–1981 version of the DTPA must apply.

Valero maintains that Kellogg and Ingersoll–Rand made false representations during their respective negotiating periods, representing that the services and goods they would tender had characteristics that they did not have, and were of a particular standard, quality, or grade when they were of another. Valero complains of representations made by Kellogg such as "(i) its ability to design the project ... (ii) its ability to evaluate technology ... (iii) its ability to develop an 'engineering plan' ... and to ensure engineering being continuously applied in a professional manner ... and (iv) its ability to supply project managers 'who would be accountable for the performance [of Kellogg].'" Valero complains of similar representations made by Ingersoll–Rand regarding the merits of its expander and related services.

These allegedly false representations having been made during the negotiating periods, Valero asserts that its DTPA causes of action arose at least in part at those times, and therefore the pre–1981 version of the Act must apply to Kellogg and Ingersoll–Rand.[7] Citing *American Petrofina, Inc. v. PPG Indus., Inc.*, 679 S.W.2d 740, 747 (Tex.App.—Fort Worth 1984, writ dism'd by agr.).

Kellogg counters that the version of the DTPA in effect at the time the relevant contract is signed provides the controlling law. It quotes, "a contract executed before the effective date of this Act is governed by the law in effect when the contract was executed." Amendatory Act of 1983, 68th Leg., R.S., ch. 883, § 4, 1983 Tex.Gen.Laws 4943 (amended 1991). Ingersoll–Rand maintains that the provision in effect on the date the product at issue was delivered is the appropriate directive.

7. For purposes of Valero's argument regarding the validity of the DTPA waivers, the 1977 and 1979 versions are identical.

[12] We hold the date Valero signed the contract, which it now wishes to repudiate on the grounds of unconscionability and economic duress, is the relevant date of inquiry. Kellogg and Valero negotiated this contract for almost three years. The final agreement contains a concluding article, Article 20, entitled "Entire Agreement; Representations; Warranties; Etc." The Article provides, in pertinent part,

> 20.1 This Agreement ... sets forth the entire understanding of the parties and supersedes any and all previous agreements and representations made prior to the date of execution of this Agreement.
>
> 20.2 The making, execution and delivery of the Agreement by OWNER and by CONTRACTOR have been induced by no representations, statements, warranties or agreements other than those herein expressed....

At the time of the signing of the contract, both parties were presumed to know the laws affecting their contract. They were presumed to know their rights, duties, and obligations under that contract.

On May 28, 1982, the date Valero and Kellogg signed this agreement, Valero waived any claims that may have vested against Kellogg and against Ingersoll–Rand, its subcontractor, for deceptive trade practices. At that time, the August 31, 1981, DTPA amendment allowing large corporations to waive their rights under the Act had been in effect for almost a year. Valero, a sophisticated corporation, is charged with knowing the law affecting the contract on the date that it was signed. Notwithstanding when the causes of action at issue here accrued, whether in 1979, early 1981, or much later, in 1982, the law allowed large corporations to waive their DTPA causes of action. This Valero did when it signed this contract. Points five through eight are overruled.

We have addressed every issue raised and necessary to the final disposition of this appeal. TEX.R.APP.P. 90(a).

The trial court's judgment is AFFIRMED.



Edward Garner ROBERSON, Appellant,

v.

The STATE of Texas, State.

No. 2-91-246-CR.

Court of Appeals of Texas,
Fort Worth.

July 14, 1993.

Rehearing Overruled Dec. 21, 1993.

Defendant was convicted in the 211th District Court, Denton County, Sam Houston, J., of murder. Defendant appealed. The Court of Appeals, Farris, J., held that: (1) peremptory strike of black venireperson was justified by race-neutral basis that venireperson appeared to be sleeping during voir dire; (2) refusal to allow defendant to question witnesses on pending felony charges to show bias and motive to testify violated defendant's constitutional right to confront witnesses against him; and (3) error in denying opportunity to question witnesses about pending felony charges was harmless and did not disrupt jury's orderly evaluation of evidence.

Affirmed.

1. Criminal Law ⇐1158(3)

Standard for reviewing *Batson* challenge is clearly erroneous standard which prohibits disturbing trial court's findings if they are supported by record.

2. Jury ⇐33(2.10), 83(1)

Litigant clearly is entitled to jurors who will pay attention to trial.

3. Criminal Law ⇐1086.10

State's peremptory strike of juror on basis that cannot easily or objectively be determined by reviewing court in response to *Batson* challenge requires basis to have been

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WORK AGREEMENT

This Agreement, made and entered into this 16th day of November, 198 3, by and between THORPE INSULATION COMPANY, 4780 WESTWAY DRIVE CORPUS CHRISTI, TEXAS 78469 (hereinafter referred to as "Contractor") and Saber Refining Company, a Delaware Corporation, having its principal office at Houston, Texas, (hereinafter referred to as "Company");

WITNESSETH:

That Company and Contractor, for the consideration set forth below and subject to all of the following terms and conditions, hereby agree as follows:

1. Contractor will perform diligently, carefully and in a good, substantial and workmanlike manner, all work called for in this Agreement. This Agreement shall include the General Conditions, Contractor's Proposal, Certificate of Insurance, any Company Work Orders, Drawings, Plans, Specifications and Exhibits attached hereto and by this reference incorporated and made a part hereof for all intents and purposes. In the event of a conflict between this Agreement and the General Conditions attached hereto, the Agreement shall govern; and in the event of a conflict between Drawings and Specifications, the Drawings shall prevail. All Drawings, Plans and Specifications remain the property of Company and shall be returned upon completion of the work.

2. Contractor agrees to commence any work to be performed hereunder on or before the 1st day of December, 198 3, and to diligently prosecute and complete the work on or before the 31st day of March, 198 3, it being understood that time and quality of work or services shall be of the essence of this Agreement.

3. Contractor agrees to perform the following work:

   A. Install insulation on piping as specified on project drawings as listed in Addendum 2 of this contract.

4. Contractor agrees to have available at all times and to furnish at its expense, all labor, supervision, insurance, machinery, equipment, materials and

supplies, tools and transportation necessary for performance of the above described work except for the items, if any, to be furnished by Company as specified below:

All required insulating materials.

5. Contractor shall submit weekly invoices for work completed under this Contract. Invoices for work performed shall be subject to audit and prior approval by Company, and shall reflect the job number, and:

(a) for labor: Dates and hours labor employed and used in performing work along with time sheets properly approved by the Company, billed in accordance with Company approved rate schedule, dated September 27, 1983, and attached as Addendum 1 to this contract.

(b) for materials: Type and quantity furnished by Contractor and entered into work, invoiced at cost plus ten percent (10%).

(c) for equipment: Dates and hours equipment employed and used in performing work in accordance with Company approved rate schedule, Addendum 1.

Any changes to Contractor supplied rate schedules must be approved by Company prior to use for Contractor invoicing. Company may at its option make partial payments to Contractor in an amount equal to 90% of the amount due for the work completed from time to time, less any previous payments. The retained 10% shall be paid at Company's option upon acceptance of the work and expiration of all applicable lien filing periods, whichever is longer.

6. Upon completion of the work contractor agrees to submit proper proof to Company that Contractor and all Subcontractors have paid all bills and claims for labor, material, equipment and supplies, and that there are no liens or claims outstanding, or which could become liens. Company agrees, subject to inspection of the work and subject to the right to make any necessary corrections, and satisfy itself as to outstanding bills or claims, to pay the same promptly.

7. Contractor shall maintain at all times the following insurance coverages, with insurers satisfactory to Company and with limits not less than those specified:

A.	1. Worker's Compensation	Statutory: (Coverage satisfactory to state in which work is performed)
	2. Employer's Liability	$100,000 each accident
B.	Comprehensive General Liability endorsed to cover (i) contractural liability assumed under this Agreement' (ii) Property damage arising from losses resulting from explosion, collapse or underground damage; and (iii) products liability, and completed operations	$500,000 combined single limit
C.	Comprehensive Automobile Liability endorsed to cover allowed, non-owned and hired vehicles	$500,000 combined single limit
D.	Umbrella Liability excess of A, A.2., B & C	$5,000,000 combined single limit

Prior to commencing any work, Contractor shall furnish Company with a Certificate of Insurance evidencing that the above minimum coverages are in effect, and replacement certificates shall be furnished for all renewals of such insurance. Such insurance shall name Company, its directors, officers, employees, agents and representatives as additional insureds, shall contain a Breach of Warranty clause in favor of the additional insureds, a waiver of subrogation clause in favor of the additional insureds, a standard cross liability clause, and a provision requiring the insurer to provide Company with a written notice of cancellation or adverse material change in such insurance. Such notice shall not be effective for thirty (30) days after receipt by Company. In the event Contractor fails to procure or maintain in force the insurance specified herein, Company may secure such insurance and the cost thereof shall be borne by Contractor.

The limits of liability shown for each type of insurance coverage to be provided by Contractor pursuant hereto shall not be deemed to constitute a limitation of Contractor's liability for claims hereunder.

In the event Contractor engages subcontractors for all or a portion of any work required by this Agreement, Contractor shall receive prior written approval of Company, and shall require any and all subcontractors to also assume all of the duties, obligations and requirements of this Contract. Contractor shall require such subcontractors to provide Company with Certificates of Insurance evidencing compliance with such insurance requirements and naming Company as an additional insured, prior to performing any work.

8. This Agreement may be cancelled by Company at any time by written notice to Contractor and the payment to Contractor of the reasonable value of any work theretofore completed.

9. Contractor shall obtain and maintain all building and other permits and licenses required by public authorities in connection with performance of any work covered under this Agreement.

IN WITNESS WHEREOF, this Agreement is executed in multiple counterparts by the above named parties, each counterpart to have the force and effect of an original.

CONTRACTOR:

BY W. R. Moake - VP

(Signature and Title)

COMPANY:

BY John M. Caldwell MANAGER OF ENGINEERING

(Signature and Title)

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16.03.07/4

GENERAL CONDITIONS

Independent Contractor: In the performance of work, Contractor shall at all times be an independent contractor, and the relationship of the parties hereunder shall in no event be construed as constituting any other relationship. The detailed manner, means and method of performing the work are under the sole control of the Contractor; Company being interested only in the results of the work and Contractor complying with this Agreement. The work specified in this Contract is subject to Company's inspection and approval, and all refinery specifications, scheduling requirements and safety and security regulations.

Representatives: Company shall designate one of its employees to act as Company representative. The Company representative may from time to time through Contractor direct the methods by which the Work is accomplished in order to safeguard the operation of the Company's facilities and insure that the Work conforms to the requirements of the Contract. Compliance by the Contractor, subcontractor or any employee with the direction of the Company's representative shall not release the Contractor from the obligations assumed by the Contractor under this Contract.

Contractor shall assign to the Work a project representative who shall be responsible for the project supervision and have the authority to act for Contractor. The designated project representative shall not be removed without the mutual consent of the Company and Contractor, and shall be in attendance at the project site during Contractor's working hours. Contractor shall advise Company in writing of the name, address, and telephone number (day and night) of such designated representative and of any change in such designation.

Work: The "work" of Contractor includes all services to be performed and things to be furnished hereunder, including but not limited to competent supervision, all labor, material, insurance, supplies, water, tools, equipment, light, fuel, power, heat, transportation or other facilities necessary or desirable for the completion of a project in accordance with this Agreement and to the final satisfaction of Company.

Quality and Inspection of Work: All articles, materials and work furnished shall be of good quality and free from any defects, and shall at all times be subject to Company's inspection and approval, but neither Company's inspection nor failure to inspect shall relieve Contractor of any obligation hereunder. If in Company's opinion any article, material or work fails to conform to specifications or is otherwise defective or unsatisfactory, Contractor shall promptly replace the same at Contractor's expense. No acceptance or payment by Company shall constitute a waiver of the foregoing and nothing herein shall exclude or limit any warranties implied by law.

Changes in Work: Without invalidating this Agreement, Company may at any time order extra work, alterations, additions to or deductions from the work and the Agreement sum shall be adjusted accordingly, provided any change or extra work resulting in additional cost must be approved in advance in writing by Company. All such extra work shall be executed in accordance with the terms and conditions of this Agreement.

Liens: Contractor shall pay promptly, and see that any subcontractor pays promptly, all indebtedness for labor, materials, equipment or other work used in the performance of the work. Contractor shall not permit any lien or charge to attach to the work or Company's premises; if any does so attach, Contractor shall promptly procure its release and indemnify Company against all damage and expense incident thereto. Upon completion of the work and before any final settlement, Contractor shall show evidence satisfactory to Company of payment and release of all debts, taxes, liens, charges, obligations and claims for labor, materials, or subcontractors or for injuries to persons or property arising out of or connected with the performance of this Agreement. Contractor waives any rights it may now have, or which it may acquire during the operation of this Agreement to file liens or encumbrances against Company or Company's property.

Taxes: Contractor shall be liable for all Federal, State, local sales, use, gross receipts or similar taxes incurred in connection with this contract unless otherwise provided herein or by law.

Any materials Contractor purchases on a reimbursable cost plus basis, which materials become an integral part of the completed facility, shall be purchased tax free by the Contractor and resold to Company. Company will accrue and pay all Texas use tax on such materials under its Direct Payment Permit Number 300054088256. Contractor understands and agrees that Company's responsibility for accruing sales or use tax is limited to materials which become a permanent part of the facility. Contractor shall be responsible for sale or use tax on all other materials and supplies consumed (e.g., consumable supplies and small tools, etc.) and including tax on any materials purchased by Contractor as required in performing the lump sum units of work (e.g., fixed price, fixed rates, and unit prices which include both labor and material in the unit).

Compliance with Laws: In performing its obligations hereunder, Contractor shall comply fully with all applicable laws, ordinances, rules, regulations, orders and decrees of constituted authority and when requested shall furnish evidence satisfactory to Company of such compliance. Contractor agrees to indemnify and hold harmless Company, its officers, agents and employees from and against any and all claims or liabilities from or based upon the violation of any such laws, ordinances, regulations, orders or decrees.

Use and Protection of Work and Property: Contractor shall perform all work in such a manner as to cause minimum interference with the operations of Company and of other contractors on the premises, and shall take, and cause Contractor's and every subcontractor's employees, agents, licensees and permittees to take all necessary precautions (including those required by Company's safety and security regulations) to protect the work and the premises and all persons and property thereon from damage or injury. Contractor shall maintain good order among its employees and those of its subcontractors, and shall confine its employees to such work area, roads and gates as directed by Company. Upon completion of the work, Contractor shall leave premises clean and free of all equipment, waste materials and rubbish.

Patents: Contractor agrees to indemnify and hold Company harmless from and against all suits, legal proceedings, claims, demands, damages, costs, and attorney's fees incident to any infringement or to any claims of infringement of any patent or patents in the manufacture, sale or use of any material or apparatus furnished by Contractor hereunder.

Payments Withheld: Notwithstanding anything herein to the contrary, Company may withhold at any time such amounts as may be necessary to protect Company from loss on account of defective work, liens or probable liens, damage or loss of Company for which Contractor is or may be liable, and probable claims by Company for indemnity from the Contractor under this Agreement.

Responsibility for Work: Prior to written acceptance of the work by Company, all work shall remain the risk of Contractor. Contractor shall be responsible for all loss, deterioration, damage or destruction and shall repair, renew and make good at its own expense, all such loss, damage or destruction however caused.

Permits and Licenses: Contractor shall familiarize itself with all surveys, road, railroad, drainage, or other necessary permits (including environmental and Coast Guard rules) procured by Company, and shall comply with all requirements thereof in any way relative to the performance of the work. Contractor shall procure all hauling and other operating permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.

Audit: Contractor agrees to keep records and books of account in accordance with generally accepted accounting principals and practices in the industry. Company shall have the right at all reasonable times to inspect and audit the books of Contractor and its subcontractors which pertain to the work and this Agreement. Contractor shall preserve such records for a period of three years after termination of the Agreement.

Default: If Contractor or any subcontractor shall at any time fail to perform or default in any obligation hereunder, or becomes insolvent, enters bankruptcy, receivership or other like proceeding (voluntarily or involuntarily), or makes an assignment for the benefit of creditors, Company shall have the right, in addition to any other rights it may have hereunder or by law, to terminate this Agreement by giving Contractor written notice; whereupon (a) Company shall be relieved of all further obligation hereunder, except to pay the

reasonable value of Contractor's prior performance, but not more than the contract price and (b) Company may, at its option, complete performance of the work through its own employees or by separate independent contract, and in such event (1) title to any product(s) or Contractor's work, whether completed or partially completed, as well as all materials prepared, procured or set aside by Contractor for use in the work, shall at Company's option upon giving written notice to Contractor, vest in Company, and Company may enter Contractor's premises and remove the same therefrom and (2) Contractor shall be liable to Company for all cost incurred by Company in completing such performance, in excess of the contract price [whether or not Company exercises its option in clause (1)]. No election hereunder shall be construed as a waiver of any rights or remedies of Company for any breach hereof. Company's right to require strict performance of Contractor's obligations shall not be affected by any previous waiver, forbearance, or course of dealing.

Liability and Indemnity: Contractor shall be solely responsible for tools, equipment, and other personal property owned, rented or leased by Contractor or any subcontractor or employees of either which are not to be incorporated in the work. Contractor agrees to indemnify, defend and hold harmless Company, its directors, officers, employees, representatives and agents from and against all loss, cost and expense (including legal fees and court costs) which Company or Contractor may suffer or sustain or be liable for, and against any and all claims, demands and suits arising out of injury to or death of any person whomsoever (including but not limited to employees of Company, Contractor or any subcontractor) or damage to property (whether of the parties hereto or of others), including loss of use thereof, caused by, resulting from, arising out of or occurring in connection with the execution of the work or terms provided for in this Agreement, even though such loss, cost, damage, injury or expense may be attributable to the sole, joint, concurrent, comparative or contributory negligence of Company, its agents, servants or employees. The liability of Contractor, its agents, servants, employees or subcontractors for claims hereunder shall not be limited to the minimum insurance limits set forth in the Agreement. Company may participate in the defense of any such claim or suit without relieving Contractor of any obligation hereunder.

Bonds: Contractor agrees to obtain whatever bonds, including performance bonds, which may be requested by Company. Costs for such bond shall be reimbursed by Company upon Contractor's submission of invoice for same.

Assignment or Subcontracting: Neither this Agreement nor any claim for payment of sums due or to become due shall be assignable in whole or in part by Contractor or by operation of law without the written consent of Company, nor shall Contractor subcontract the work or any part thereof without the prior written consent of Company.

Disposal of Surplus Materials: All sales of surplus materials, equipment, supplies, and scrap furnished by Company or furnished by Contractor and reimbursed by Company, must have the prior written approval of the Company Engineer. All returns from such sales shall belong to Company. Title to all items furnished by Contractor under a lump sum Contract shall remain with the Contractor.

Force Majeure: It is agreed that in the event of either party being rendered unable wholly or in part by Force Majeure to carry out its obligations under this Contract, other than its obligations to make payments of money due hereunder, then on the effected party giving notice and full particulars of such Force Majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, the obligation of the party giving such notice so far as it is affected by such Force Majeure, shall be suspended during the continuance of any inability to perform so caused, but for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch.

Entirety: The Agreement comprises the entire agreement between Company and Contractor and there are no conversions, understandings, agreements, conditions or representations, express or implied with reference to the subject matter hereof that are not merged herein or superseded hereby. This agreement shall be binding on the parties hereto, their respective heirs, successors and assigns.

AFE 83-05; TERMINAL 2A
ADDENDUM 1 - CONTRACT WITH THORPE INSULATION CO.

THORPE INSULATION COMPANY

September 27, 1983

Saber Refining Company
Post Office Box 9370
Corpus Christi, Texas 78469

Attention: Mr. Max Berry

Subject: WAGE RATES FOR ASBESTOS WORKERS
Corpus Christi, Texas

Please see below for wage rates effective July 1, 1983 through June 30, 1984.

FOREMAN	$24.84/HR.
MECHANIC	23.51/HR.
4TH YEAR APPRENTICE	19.30/HR.
3RD YEAR APPRENTICE	17.19/HR.
2ND YEAR APPRENTICE	15.05/HR.
1ST YEAR APPRENTICE	13.01/HR.

The above wage rates include all taxes, insurance, fringe benefits, overhead and profit.

If we can be of further assistance in this matter, please feel free to call us.

THORPE INSULATION COMPANY

W. R. Moake

W. R. Moake
Vice President

WRM/sgs

VALERO - 0742
MOAKE

9785

69

AFE 83-05; TERMINAL 2A

ADDENDUM 2 - CONTRACT WITH THORPE INSULATION CO.

PROJECT DRAWING

73-30-500-SH. 14 - Rev. 4
73-30-500-SH. 15 - Rev. 1
73-30-500-SH. 16 - Rev. 4
73-30-500-SH. 17 - Rev. 4
73-793-500-SH. 1 - Rev. 14
73-793-500-SH. 2 - Rev. 11
100-900-500-SH. 14 - Rev. 9
00-000-700-SH. 4 - Rev. 4
00-000-700-SH. 5 - Rev. 3
10-900-700-SH. 11 - Rev. 4
10-900-700-SH. 12 - Rev. 5
10-900-700-SH. 37 - Rev. 0
10-900-700-SH. 38 - Rev. 1
10-900-700-SH. 39 - Rev. 2
10-900-700-SH. 40 - Rev. 0
24-900-700-SH. 14 - Rev. 3
24-900-700-SH. 15 - Rev. 4
24-900-700-SH. 16 - Rev. 3
24-900-700-SH. 25 - Rev. 2
51-900-700-SH. 1 - Rev. 2
51-900-700-SH. 4 - Rev. 4
51-900-700-SH. 29 - Rev. 6
71-793-700-SH. 2 - Rev. 2
71-793-700-SH. 5 - Rev. 3
71-900-700-SH. 11 - Rev. 0
71-900-700-SH. 12 - Rev. 1
71-900-700-SH. 13 - Rev. 1
73-30-700-SH. 2 - Rev. 0
73-30-700-SH. 11 - Rev. 0
73-30-700-SH. 12 - Rev. 2
73-30-700-SH. 13 - Rev. 1
73-30-700-SH. 14 - Rev. 2
73-30-700-SH. 15 - Rev. 2
73-30-700-SH. 16 - Rev. 2
73-30-700-SH. 17 - Rev. 0
73-793-700-SH. 1 - Rev. 5
73-793-700-SH. 2 - Rev. 3
73-793-700-SH. 4 - Rev. 4
99-900-700-SH. 11 - Rev. 0
99-900-700-SH. 12 - Rev. 0

SABER

REFINING COMPANY

6560 UP RIVER ROAD • P. O. BOX 9370 • CORPUS CHRISTI, TEXAS 78408-1370
TELEPHONE (512) 289-6000

TO ALL CONTRACTORS

Saber Refining Company security procedures for contractors are listed below for your information:

1) Contractor company vehicles will be allowed to enter the refinery only

   A) After vehicle permit has been obtained from Saber Security and is properly displayed as instructed.

   B) Vehicle is properly marked by display of company logo or name on outside of vehicle.

2) Employees of a contractor working at Saber Refining Company may park their private vehicles outside the plant in either of the following locations:

   A) The parking lot located across Up River Road from the main security gate.

   B) The parking lot by the West Gate in unrestricted spaces.

3) Prior to the start of the contract job, the Contractor will:

   A) Provide Saber Security with a list of their employees who will work in the plant.

   B) Obtain Saber Contractor badges from Security that are to be distributed to Contract employees.

4) The Contractor's employees may enter the plant through the pedestrian gate west of the main security gate or through the west plant security gate. The Contractor employee list and Saber badges will provide the necessary verification of authorization to enter the plant.

5) Contractor will be responsible for Contractor's employees abiding by the security regulations and procedures established by Saber Refining Company.

6) All vehicle permits and badges assigned to the contractor must be accounted for at all times. Lost or damaged badges must be reported to the Security Department immediately. A fee of $10 per badge and/or vehicle permit will be charged to the contractor for replacement.

7) All vehicle permits and Saber contractor badges must be returned to the Security Supervisor upon completion of the project.

W. R. Moake — 11-15-83

Contractor — Date

Saber Representative — Date

VALERO - 0745
MOAKE

J T THORPE COMPANY

ENGINEERS-CONSTRUCTORS

REFRACTORY, INSULATED AND ACID PROOF STRUCTURES

P.O. BOX 33399 (713) 644-1247 HOUSTON, TEXAS 77233

J T THORPE COMPANY PROGRAM FOR EMPLOYEE SAFETY/HEALTH EDUCATION AND TRAINING (ES/HET)

Thorpe is vitally interested in the safety, health, education and training of our employees. We accept fully the responsibility for providing safeguards required to ensure a safe working environment at all Thorpe locations and in our clients' facilities.

In brief, our ES/HET Program is composed of the following:

1. Corporate Safety Committee, meeting at regular intervals, to serve as review board.

2. A full-time Risk and Safety Administrator responsible for coordination of the program.

3. Workplace inspection by our Safety Administrator to assist in proper compliance with safety rules as outlined by Thorpe, our clients, and O.S.H.A.

4. Environmental monitoring equipment.

5. Personal protective equipment - Our charge per manhour also covers furnishing of hard hats, hearing protection, eye protection, air purifying respirators, and gloves. We occasionally remove asbestos-containing materials, work in hazardous atmospheres, high-temperature conditions, acid-saturated vessels, etc., which requires unique equipment and procedures. These latter items are priced as individual circumstances warrant.

6. Safety training and education for all employees through the use of:

   a. Supervisory training meetings.
   b. Safety film program.
   c. Onsite hazard recognition program with supervisors.
   d. Red Cross first-aid training.
   e. C.P.R. classes.
   f. Defensive Driving classes.

7. Safety Awards Program

VALERO-0229-
MOAKE

The cost of administering the program will be adjusted on an annual basis as governmental, customer requirements, and O.S.H.A conditions dictate. For the period of 1982/83, our charges to maintain this vital program will be $0.25 per manhour worked.

SABER
REFINING COMPANY

6560 UP RIVER ROAD • P. O. BOX 9370 • CORPUS CHRISTI, TEXAS 78408-1370
TELEPHONE (512) 289-6000

March 1, 1984

Mr. W. R. Moake
Thorpe Insulation Company
4780 Westway Dr.
Corpus Christi, Texas 78469

Dear Mr. Moake:

I enclose a duly executed original of our Work Agreement, Contract No. WA-84-013, for your files. Please reference the Contract No. on all correspondence and invoices in connection with work performed under this Agreement.

I appreciate the assistance which you extended to me in this matter, and look forward to working with you in the future.

Very truly yours,

SABER REFINING COMPANY

Steve Sawyer

Stephen L. Sawyer
Manager, Refinery Administration

SLS/pm

Enclosure

VALERO-0230-
MOAKE

Contract No. WA - 84-0013

WORK AGREEMENT

This Agreement, made and entered into this 27TH day of FEBRUARY, 198 4, by and between THORPE INSULATION COMPANY of, CORPUS CHRISTI, TEXAS (hereinafter referred to as "Contractor") and Saber Refining Company, a Delaware Corporation, having its principal office at Houston, Texas, (hereinafter referred to as "Company");

WITNESSETH:

That Company and Contractor, for the consideration set forth below and subject to all of the following terms and conditions, hereby agree as follows:

1. Contractor will perform diligently, carefully and in a good, substantial and workmanlike manner, all work called for in this Agreement. This Agreement shall include the General Conditions, Contractor's Proposal, Certificate of Insurance, any Company Work Orders, Drawings, Plans, Specifications and Exhibits attached hereto and by this reference incorporated and made a part hereof for all intents and purposes. In the event of a conflict between this Agreement and the General Conditions attached hereto, the Agreement shall govern; and in the event of a conflict between Drawings and Specifications, the Drawings shall prevail. All Drawings, Plans and Specifications remain the property of Company and shall be returned upon completion of the work.

2. The term of this Agreement shall be one year, beginning January 1, 1984 and ending December 31, 1984, it being understood that time and quality of work or services shall be of the essence of this Agreement.

3. Contractor agrees to perform the following work:

Insulation and/or refractory work, as required and directed by Company's representative.

VALERO-0231-
MOAKE

4. Contractor agrees to have available at all times and to furnish at its expense, all labor, supervision, insurance, machinery, equipment, materials and supplies, tools and transportation necessary for performance of the above described work, except that Company, at its sole option, may furnish any of the following items upon five (5) days notice to Contractor:

Equipment
Materials
Supplies
Tools

5. Contractor shall submit weekly invoices for work completed under this Contract. Invoices for work performed shall be subject to audit and prior approval by Company, and shall reflect the job number, and:

(a) for labor: Dates and hours labor employed and used in performing work along with time sheets properly approved by the Company, billed in accordance with Company approved rate schedule (attached hereto).

(b) for materials: Type and quantity furnished by Contractor and entered into work,

(c) for equipment: Dates and hours equipment employed and used in performing work in accordance with Company approved rate schedule (attached hereto).

Any changes to Contractor supplied rate schedules must be approved by Company prior to use for Contractor invoicing. Company may at its option make partial payments to Contractor in an amount equal to 90% of the amount due for the work completed from time to time, less any previous payments. The retained 10% shall be paid at Company's option upon acceptance of the work and expiration of all applicable lien filing periods, whichever is longer.

6. Upon completion of the work contractor agrees to submit proper proof to Company that Contractor and all Subcontractors have paid all bills and claims for labor, material, equipment and supplies, and that there are no liens or claims outstanding, or which could become liens. Company agrees, subject to inspection of the work and subject to the right to make any necessary corrections, and satisfy itself as to outstanding bills or claims, to pay the same promptly.

7. Contractor shall maintain at all times the following insurance coverages, with insurers satisfactory to Company and with limits not less than those specified:

A. 1. Worker's Compensation	Statutory: (Coverage satisfactory to state in which work is performed)
2. Employer's Liability	$100,000 each accident
B. Comprehensive General Liability endorsed to cover (i) contractural liability assumed under this Agreement' (ii) Property damage arising from losses resulting from explosion, collapse or underground damage; and (iii) products liability, and completed operations	$500,000 combined single limit
C. Comprehensive Automobile Liability endorsed to cover allowed, non-owned and hired vehicles	$500,000 combined single limit
D. Umbrella Liability excess of A, A.2., B & C	$5,000,000 combined single limit

Prior to commencing any work, Contractor shall furnish Company with a Certificate of Insurance evidencing that the above minimum coverages are in effect, and replacement certificates shall be furnished for all renewals of such insurance. Such insurance shall name Company, its directors, officers, employees, agents and representatives as additional insureds, shall contain a Breach of Warranty clause in favor of the additional insureds, a waiver of subrogation clause in favor of the additional insureds, a standard cross liability clause, and a provision requiring the insurer to provide Company with a written notice of cancellation or adverse material change in such insurance. Such notice shall not be effective for thirty (30) days after receipt by Company. In the event Contractor fails to procure or maintain in force the insurance specified herein, Company may secure such insurance and the cost thereof shall be borne by Contractor.

The limits of liability shown for each type of insurance coverage to be provided by Contractor pursuant hereto shall not be deemed to constitute a limitation of Contractor's liability for claims hereunder.

In the event Contractor engages subcontractors for all or a portion of any work required by this Agreement, Contractor shall receive prior written approval of Company, and shall require any and all subcontractors to also assume all of the duties, obligations and requirements of this Contract. Contractor shall require such subcontractors to provide Company with Certificates of Insurance evidencing compliance with such insurance requirements and naming Company as an additional insured, prior to performing any work.

8. This Agreement may be cancelled by Company at any time by written notice to Contractor and the payment to Contractor of the reasonable value of any work theretofore completed.

9. Contractor shall obtain and maintain all building and other permits and licenses required by public authorities in connection with performance of any work covered under this Agreement.

IN WITNESS WHEREOF, this Agreement is executed in multiple counterparts by the above named parties, each counterpart to have the force and effect of an original.

CONTRACTOR:

BY W. R. Moake - VP

(Signature and Title)

COMPANY:

BY George E Kain Pur Mgr

(Signature and Title)

GENERAL CONDITIONS

Independent Contractor: In the performance of work, Contractor shall at all times be an independent contractor, and the relationship of the parties hereunder shall in no event be construed as constituting any other relationship. The detailed manner, means and method of performing the work are under the sole control of the Contractor; Company being interested only in the results of the work and Contractor complying with the Agreement. The work specified in this Contract is subject to Company's inspection and approval, and all refinery specifications, scheduling requirements and safety and security regulations.

Representatives: Company shall designate one of its employees to act as Company representative. The Company representative may from time to time through Contractor direct the methods by which the Work is accomplished in order to safeguard the operation of the Company's facilities and insure that the Work conforms to the requirements of the Contract. Compliance by the Contractor, subcontractor or any employee with the direction of the Company's representative shall not release the Contractor from the obligations assumed by the Contractor under this Contract.

Contractor shall assign to the Work a project representative who shall be responsible for the project supervision and have the authority to act for Contractor. The designated project representative shall not be removed without the mutual consent of the Company and Contractor, and shall be in attendance at the project site during Contractor's working hours. Contractor shall advise Company in writing of the name, address, and telephone number (day and night) of such designated representative and of any change in such designation.

Work: The "work" of Contractor includes all services to be performed and things to be furnished hereunder, including but not limited to competent supervision, all labor, material, insurance, supplies, water, tools, equipment, light, fuel, power, heat, transportation or other facilities necessary or desirable for the completion of a project in accordance with this Agreement and to the final satisfaction of Company.

Quality and Inspection of Work: All articles, materials and work furnished shall be of good quality and free from any defects, and shall at all times be subject to Company's inspection and approval, but neither Company's inspection nor failure to inspect shall relieve Contractor of any obligation hereunder. If in Company's opinion any article, material or work fails to conform to specifications or is otherwise defective or unsatisfactory, Contractor shall promptly replace the same at Contractor's expense. No acceptance or payment by Company shall constitute a waiver of the foregoing and nothing herein shall exclude or limit any warranties implied by law.

Changes in Work: Without invalidating this Agreement, Company may at any time order extra work, alterations, additions to or deductions from the work and the Agreement sum shall be adjusted accordingly, provided any change or extra work resulting in additional cost must be approved in advance in writing by Company. All such extra work shall be executed in accordance with the terms and conditions of this Agreement.

Liens: Contractor shall pay promptly, and see that any subcontractor pays promptly, all indebtedness for labor, materials, equipment or other work used in the performance of the work. Contractor shall not permit any lien or charge to attach to the work or Company's premises; if any does so attach, Contractor shall promptly procure its release and indemnify Company against all damage and expense incident thereto. Upon completion of the work and before any final settlement, Contractor shall show evidence satisfactory to Company of payment and release of all debts, taxes, liens, charges, obligations and claims for labor, materials, or subcontractors or for injuries to persons or property arising out of or connected with the performance of this Agreement. Contractor waives any rights it may now have, or which it may acquire during the operation of this Agreement to file liens or encumbrances against Company or Company's property.

Taxes: Contractor shall be liable for all Federal, State, local sales, use, gross receipts or similar taxes incurred in connection with this contract unless otherwise provided herein or by law.

Any materials Contractor purchases on a reimbursable cost plus basis, which materials become an integral part of the completed facility, shall be purchased tax free by the Contractor and resold to Company. Company will accrue and pay all Texas use tax on such materials under its Direct Payment Permit Number 300054088256. Contractor understands and agrees that Company's responsibility for accruing sales or use tax is limited to materials which become a permanent part of the facility. Contractor shall be responsible for sale or use tax on all other materials and supplies consumed (e.g., consumable supplies and small tools, etc.) and including tax on any materials purchased by Contractor as required in performing the lump sum units of work (e.g., fixed price, fixed rates, and unit prices which include both labor and material in the unit).

Compliance with Laws: In performing its obligations hereunder, Contractor shall comply fully with all applicable laws, ordinances, rules, regulations, orders and decrees of constituted authority and when requested shall furnish evidence satisfactory to Company of such compliance. Contractor agrees to indemnify and hold harmless Company, its officers, agents and employees from and against any and all claims or liabilities from or based upon the violation of any such laws, ordinances, regulations, orders or decrees.

Use and Protection of Work and Property: Contractor shall perform all work in such a manner as to cause minimum interference with the operations of Company and of other contractors on the premises, and shall take, and cause Contractor's and every subcontractor's employees, agents, licensees and permittees to take all necessary precautions (including those required by Company's safety and security regulations) to protect the work and the premises and all persons and property thereon from damage or injury. Contractor shall maintain good order among its employees and those of its subcontractors, and shall confine its employees to such work area, roads and gates as directed by Company. Upon completion of the work, Contractor shall leave premises clean and free of all equipment, waste materials and rubbish.

Patents: Contractor agrees to indemnify and hold Company harmless from and against all suits, legal proceedings, claims, demands, damages, costs, and attorney's fees incident to any infringement or to any claims of infringement of any patent or patents in the manufacture, sale or use of any material or apparatus furnished by Contractor hereunder.

Payments Withheld: Notwithstanding anything herein to the contrary, Company may withhold at any time such amounts as may be necessary to protect Company from loss on account of defective work, liens or probable liens, damage or loss of Company for which Contractor is or may be liable, and probable claims by Company for indemnity from the Contractor under this Agreement.

Responsibility for Work: Prior to written acceptance of the work by Company, all work shall remain the risk of Contractor. Contractor shall be responsible for all loss, deterioration, damage or destruction and shall repair, renew and make good at its own expense, all such loss, damage or destruction however caused.

Permits and Licenses: Contractor shall familiarize itself with all surveys, road, railroad, drainage, or other necessary permits (including environmental and Coast Guard rules) procured by Company, and shall comply with all requirements thereof in any way relative to the performance of the work. Contractor shall procure all hauling and other operating permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.

Audit: Contractor agrees to keep records and books of account in accordance with generally accepted accounting principals and practices in the industry. Company shall have the right at all reasonable times to inspect and audit the books of Contractor and its subcontractors which pertain to the work and this Agreement. Contractor shall preserve such records for a period of three years after termination of the Agreement.

Default: If Contractor or any subcontractor shall at any time fail to perform or default in any obligation hereunder, or becomes insolvent, enters bankruptcy, receivership or other like proceeding (voluntarily or involuntarily), or makes an assignment for the benefit of creditors, Company shall have the right, in addition to any other rights it may have hereunder or by law, to terminate this Agreement by giving Contractor written

notice; whereupon (a) Company shall be relieved of all further obligation hereunder, except to pay the reasonable value of Contractor's prior performance, but not more than the contract price and (b) Company may, at its option, complete performance of the work through its own employees or by separate independent contract, and in such event (1) title to any product(s) or Contractor's work, whether completed or partially completed, as well as all materials prepared, procured or set aside by Contractor for use in the work, shall at Company's option upon giving written notice to Contractor, vest in Company, and Company may enter Contractor's premises and remove the same therefrom and (2) Contractor shall be liable to Company for all cost incurred by Company in completing such performance, in excess of the contract price [whether or not Company exercises its option in clause (1)]. No election hereunder shall be construed as a waiver of any rights or remedies of Company for any breach hereof. Company's right to require strict performance of Contractor's obligations shall not be affected by any previous waiver, forbearance, or course of dealing.

Liability and Indemnity: Contractor shall be solely responsible for tools, equipment, and other personal property owned, rented or leased by Contractor or any subcontractor or employees of either which are not to be incorporated in the work. Contractor agrees to indemnify, defend and hold harmless Company, its directors, officers, employees, representatives and agents from and against all loss, cost and expense (including legal fees and court costs) which Company or Contractor may suffer or sustain or be liable for, and against any and all claims, demands and suits arising out of injury to or death of any person whomsoever (including but not limited to employees of Company, Contractor or any subcontractor) or damage to property (whether of the parties hereto or of others), including loss of use thereof, caused by, resulting from, arising out of or occurring in connection with the execution of the work or terms provided for in this Agreement, even though such loss, cost, damage, injury or expense may be attributable to the sole, joint, concurrent, comparative or contributory negligence of Company, its agents, servants or employees. The liability of Contractor, its agents, servants, employees or subcontractors for claims hereunder shall not be limited to the minimum insurance limits set forth in the Agreement. Company may participate in the defense of any such claim or suit without relieving Contractor of any obligation hereunder.

Bonds: Contractor agrees to obtain whatever bonds, including performance bonds, which may be requested by Company. Costs for such bond shall be reimbursed by Company upon Contractor's submission of invoice for same.

Assignment or Subcontracting: Neither this Agreement nor any claim for payment of sums due or to become due shall be assignable in whole or in part by Contractor or by operation of law without the written consent of Company, nor shall Contractor subcontract the work or any part thereof without the prior written consent of Company.

Disposal of Surplus Materials: All sales of surplus materials, equipment, supplies, and scrap furnished by Company or furnished by Contractor and reimbursed by Company, must have the prior written approval of the Company Engineer. All returns from such sales shall belong to Company. Title to all items furnished by Contractor under a lump sum Contract shall remain with the Contractor.

Force Majeure: It is agreed that in the event of either party being rendered unable wholly or in part by Force Majeure to carry out its obligations under this Contract, other than its obligations to make payments of money due hereunder, then on the effected party giving notice and full particulars of such Force Majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, the obligation of the party giving such notice so far as it is affected by such Force Majeure, shall be suspended during the continuance of any inability to perform so caused, but for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch.

Entirety: The Agreement comprises the entire agreement between Company and Contractor and there are no conversions, understandings, agreements, conditions or representations, express or implied with reference to the subject matter hereof that are not merged herein or superseded hereby. This agreement shall be binding on the parties hereto, their respective heirs, successors and assigns.

SABER

REFINING COMPANY

6560 UP RIVER ROAD • P. O. BOX 9370 • CORPUS CHRISTI, TEXAS 78408-1370
TELEPHONE (512) 289-6000

TO ALL CONTRACTORS

Saber Refining Company security procedures for contractors are listed below for your information:

1) Contractor company vehicles will be allowed to enter the refinery only

   A) After vehicle permit has been obtained from Saber Security and is properly displayed as instructed.

   B) Vehicle is properly marked by display of company logo or name on outside of vehicle.

2) Employees of a contractor working at Saber Refining Company may park their private vehicles outside the plant in either of the following locations:

   A) The parking lot located across Up River Road from the main security gate.

   B) The parking lot by the West Gate in unrestricted spaces.

3) Prior to the start of the contract job, the Contractor will:

   A) Provide Saber Security with a list of their employees who will work in the plant.

   B) Obtain Saber Contractor badges from Security that are to be distributed to Contract employees.

4) The Contractor's employees may enter the plant through the pedestrian gate west of the main security gate or through the west plant security gate. The Contractor employee list and Saber badges will provide the necessary verification of authorization to enter the plant.

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5) Contractor will be responsible for Contractor's employees abiding by the security regulations and procedures established by Saber Refining Company.

6) All vehicle permits and badges assigned to the contractor must be accounted for at all times. Lost or damaged badges must be reported to the Security Department immediately. A fee of $10 per badge and/or vehicle permit will be charged to the contractor for replacement.

7) All vehicle permits and Saber contractor badges must be returned to the Security Supervisor upon completion of the project.

W. R. Moake — Contractor

2-27-84 — Date

George E. Kam — Saber Representative

2-27-84 — Date

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SABER

REFINING COMPANY

8580 UP RIVER ROAD • P.O. BOX 9370 • CORPUS CHRISTI, TEXAS 78408
(512) 289-6000

SUBJECT: **CONTRACTOR SAFETY REGULATIONS**

TO:

Accident and fire prevention are essential elements in the operation of the Saber Refinery. All personnel, independent contractors, and visitors, while within the confines of our plant, are required to wear certain protective equipment and comply with established safety regulations. Independent contractors, performing work or services at the Saber Refinery are expected to perform all work or services in a safe and efficient manner, so as to prevent injury to their employees or damage to their equipment and to protect Saber's employees and property.

All independent contractors, under their contract with Saber, have agreed to adhere to and abide by the General Fire and Safety Regulations promulgated by Saber with respect to contractor work. The purpose of this memorandum and the Regulations attached hereto is to familiarize the contractor with these Regulations so he may become aware of the requirements expected of him and take steps to educate his employees with respect to their on-the-job conduct.

To promote safe work and to develop safety awareness in the workpeople, we feel that safety meetings are important. A short "tailgate" meeting each morning will contribute greatly to this. Naturally, follow-up by supervisors during daily contact should be done.

After you have had an opportunity to review the attached Regulations, Saber representatives will be happy to discuss with you any questions you may have concerning your particular work or service.

CONTRACTOR: SIGN HERE RETURN LOOSE COPY OF LETTER

I have read and understand the Contractor Safety Regulations cited above.

W. R. Moake
SIGNED FOR CONTRACTOR BY

VICE PRESIDENT
TITLE

THORPE INSULATION COMPANY
NAME OF CONTRACTING FIRM

FEBRUARY 27, 1984
DATE ACCEPTED

George E Lam
ISSUED FOR SABER BY

Safety Manager
TITLE

February 29, 1984
DATE ISSUED

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ACCOUNTING REQUIREMENTS

Labor: Labor will be in accordance with published rate sheets. Time sheets will indicate the employee name, craft position, and work order reference on a daily basis. Time sheets will be approved daily by an authorized Saber Refining Company representative.

Material: SRC purchasing should handle all material puchases, and warehouse all receiving. If this procedure is not possible, then prior signature approval must be obtained. All material receivers must be signed by an assigned employee.

Equipment: Rental equipment should agree with published rate sheets. Equipment usage reports (tickets) indicating the equipment description and usage are required on a daily basis. The equipment usage reports (tickets) must be approved daily by a representative of SRC.

Equipment repairs not covered by the equipment rental rate will follow the same procedure of reimbursable material.

Invoicing: Invoicing will be submitted within three working days of the end of each work week. The terms of payment will be fifteen (15) days from receipt of the invoice. All reimbursable costs will be supported and summarized by work order number distribution. Supporting documents are required for invoicing:

1. Labor by daily time sheets
2. Material and equipment repairs by signature authorization and receiving reports
3. Equipment rental by daily usage reports (tickets)

Audit: Contractor agrees to keep records and books of account in accordance with the generally accepted accounting principles and practices of the industry. The Company should have the right at all reasonable times to inspect and audit the books of the contractor which pertain to the work of this agreement. The contractor shall preserve such records for a period of three years after termination of the agreement.

SABER REFINING COMPANY
P.O. Box 9370
Corpus Christi, Texas 78469

(512) 289-6000

Attention: Personnel Director

Gentlemen:

Being subject to the provisions of Executive Order 11246, as amended relating to equal employment opportunity, as well as Executive Orders 11598, 11625, 11701, 11758 and 11914, Saber Refining Company is required to obtain an Equal Employment Opportunity Compliance Certificate from its Contractors or Vendors, unless otherwise exempt, as follows:

A. file, on or before May 31 of each year, or within 30 days of accepting a new order, complete and accurate reports on Standard Form 100 (EEO-1) with the appropriate Government agency. (41 C.F.R. Part 60-1.7)

B. develop and maintain currently a written affirmative action compliance program to identify, correct and improve problem areas in the employment and utilization of minority group personnel; and that if such a program has not been developed, that it will be within 120 days of the date of this letter; and that the program will include each establishment under the control of the supplier. (41 C.F.R. Part 60-1.40)

C. confirm and agree that the Equal Opportunity Clause provisions contained in Section 202 of Executive Order 11246, unless exempt by federal law or regulation, shall be considered an amendment to all applicable contracts and/or purchase orders now or which may in the future be in effect between you and Saber Refining Company. (41 C.F.R. Part 60-1.4)

(1) The Contractor or Vendor will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex or national origin. The Contractor or Vendor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, religion, color, age, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination, rates or pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor or Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor or Vendor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor or Vendor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, age, sex, or national origin.

(3) The Contractor or Vendor will, send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or worker's representative of the Contractor or Vendor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor or Vendor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor or Vendor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor or Vendor's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor