

APPENDIX III

PROPOSED OIL TRANSPORT TO
CHERRY POINT REFINERY

- Legal Considerations -

Relevant International Law

It is a well-established principle under international law that a state has a duty to prevent activities under its jurisdiction from damaging persons or property within the territory of any other state. This principle finds support in the International Arbitration between Canada and the United States over the damage caused by the Trail Smelter in British Columbia to property within the State of Washington. In this case the tribunal held that "no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequences and the injury is established by clear and convincing evidence." The tribunal also decided an indemnity was payable in the event of future damage and that the injured party was entitled to be reimbursed for reasonable costs incurred in the investigation. Similarly, in the Corfu Channel Case, the International Court of Justice declared that every state is under an obligation "not to allow knowingly its territory to be used for acts contrary to the rights of other states". Evidence of the wide recognition of this principle is also provided in the 1963 report of the IAEA panel of experts on the disposal of radioactive wastes in fresh water, in which it is stated:

"It is a general rule of international law that a state must not abuse its rights under international law by allowing alteration of the natural conditions of its own territory to the disadvantage of the natural conditions of the territory of another state."

It is important to note that the decision of the tribunal in the Trail Smelter case depended to a large extent upon earlier decisions relating to damage caused by polluted water. It is clear, therefore, that it has broader application than damage resulting from pollution of the air and may be applied in any instance where there has been a breach of duty causing extra-territorial damage. The drawback of the present juridical situation, however, is the lack of adequate means of enforcement of this obligation between states not to damage the environment of one another. Unless states involved agree to submit to the jurisdiction of an arbitral tribunal or unless the states involved are bound by a declaration of acceptance of the compulsory jurisdiction of the International Court of Justice a damaged party is powerless in seeking compensation for damage suffered nor may he even seek a discontinuation of the injurious activity. If there were agreement between states such as Canada