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16
17 IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
18 WESTERN DIVISION

19 UNITED STATES OF AMERICA and CALIFORNIA
20 DEPARTMENT OF TOXIC SUBSTANCES
CONTROL,

21 Plaintiffs,

22 v.
23

24 NORTHROP GRUMMAN SPACE & MISSION
SYSTEMS CORP., AND ITS CORPORATE
25 PREDECESSORS AND AFFILIATES TRW INC.
AND LUCAS WESTERN LLC (FORMERLY
26 WESTERN GEAR CORPORATION),
(COLLECTIVELY, NORTHROP GRUMMAN
27 SPACE & MISSION SYSTEMS CORP.);
ARVINMERITOR, INC., EDWARD R. KIPLING,
28 RONALD C. KIPLING, LAWSON FINANCIAL,
LLC, MAREMONT CORPORATION,

CIVIL ACTION NO.

09-0866 (ABC)x

AMENDED
CONSENT DECREE

1
2 Cont.

3 ALBERTSON LAW GROUP, P.S., SUCCESSOR TO
4 REHBERG & ALBERTSON P.S., AS TRUSTEE OF
5 THE KIPLING LIVING TRUST DATED APRIL 28,
6 1987 AND OF THE KIPLING GENERATION
7 SKIPPING TRUST DATED OCTOBER 20, 1989,
8 SOTO ASSOCIATES, JACOB SPERLING,
9 INDIVIDUALLY AND AS TRUSTEE OF THE
10 JACOB SPERLING FAMILY TRUST, ZVI
11 SPERLING, INDIVIDUALLY AND AS TRUSTEE
12 OF THE SPERLING FAMILY TRUST, GARY
13 ZAMIR, INDIVIDUALLY (COLLECTIVELY, THE
14 "825 LAWSON STREET PARTIES"); ALLFAST
15 FASTENING SYSTEMS, INC.; JAMES H.
16 RANDALL REVOCABLE TRUST DATED
17 SEPTEMBER 17, 1984; THE BIXBY RANCH
18 COMPANY; HAMILTON STANDARD CONTROLS,
19 INC.; CACIQUE, INC.; CALIFORNIA
20 HYDROFORMING COMPANY, INC.;
21 CALIFORNIA STEEL AND TUBE; CAMPBELL
22 SOUP COMPANY; THE JOSEPH CAMPBELL
23 COMPANY; CARMEX RAILROAD LLC;
24 CHEMTURA CORP.; JACK C. ECOFF FAMILY
25 TRUST; EIGHTH & PROCTOR LLC; GS
26 INVESTMENT PROPERTIES LLC; HENKEL
27 CORPORATION; INTERNATIONAL PAPER
28 COMPANY; MASONITE CORPORATION;
HITCHCOCK REAL ESTATE HOLDINGS, LLC;
INVITROGEN CORPORATION; ITT
CORPORATION; ROBIN KESSLER, AS TRUSTEE
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PRODUCTS, INC.; PHYSICIANS FORMULA, INC.;
JOSEPH POLTORAK; ARTHUR SCHULTZ;
DANIEL SAPARZEDAH; RREEF-WEST VI, INC.;
SIGMA PLATING COMPANY, INC.; OTTERBEIN
PROPERTIES, INC.; SOLO ENTERPRISES CORP.;
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1 I. BACKGROUND

2 A. The United States of America ("United States"), on behalf of the
3 Administrator of the United States Environmental Protection Agency ("EPA"),
4 filed a complaint in this matter pursuant to Sections 106, 107, and 113(g)(2) of the
5 Comprehensive Environmental Response, Compensation, and Liability Act
6 ("CERCLA"), 42 U.S.C. §§ 9606, 9607 and 9613(g)(2); and Section 7003 of the
7 Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973. The State
8 of California on behalf of the State Department of Toxic Substances Control
9 ("DTSC"), joined the complaint in this matter with respect to the claims under
10 Section 107 and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607 and 9613(g)(2).
11

12 B. The complaint seeks, *inter alia*: (1) reimbursement of costs incurred
13 by EPA, the Department of Justice, and DTSC for response actions at the Puente
14 Valley Operable Unit of the San Gabriel Valley Superfund Site, Area 4, in Los
15 Angeles County, California, as more fully defined in Section IV below (the
16 "Site"), together with accrued interest; and (2) performance of response work by
17 defendants at the Site consistent with the National Contingency Plan, 40 C.F.R.
18 Part 300 (as amended) ("NCP").
19

20 C. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. §
21 9622(j)(1), on September 28, 2000 EPA notified the federal and state natural
22 resource trustees (National Oceanic & Atmospheric Administration - U.S.
23 Department of Interior, and California Department of Fish and Game,
24
25
26
27
28

1 respectively) of negotiations with potentially responsible parties regarding the
2 release of hazardous substances that may have resulted in injury to the natural
3 resources under Federal and State trusteeship and encouraged the trustees to
4 participate in the negotiations.
5

6 D. Settling Defendants (as defined below) do not admit any liability
7 arising out of the transactions or occurrences alleged in the complaint, nor do they
8 acknowledge that a release or threatened release of hazardous substances at or
9 from the Site constitutes an imminent or substantial endangerment to the public
10 health or welfare or the environment.
11

12 E. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed
13 the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix
14 B, by publication in the Federal Register on October 15, 1984, 49 Fed. Reg.
15 19480.
16

17 F. In response to a release, or a substantial threat of a release of
18 hazardous substances at or from the Site, a group of potentially responsible parties
19 commenced in September 1993, a Remedial Investigation and Feasibility Study
20 ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430. EPA took over the
21 Feasibility Study in December 1996.
22

23 G. The group completed the Remedial Investigation Report in May 1997
24 and EPA completed the Feasibility Study Report in May 1997.
25

26 H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA
27
28

1 published notice of the completion of the FS and of the proposed plan for remedial
2 action on January 28, 1998, in a major local newspaper of general circulation.

3
4 EPA provided an opportunity for written and oral comments from the public on
5 the proposed plan for remedial action. A copy of the transcript of the public
6 meeting is available to the public as part of the administrative record upon which
7
8 the Regional Administrator based the selection of the response action.

9 I. The decision by EPA on the remedial action to be implemented at the
10 Site is embodied in a Interim Record of Decision ("Interim ROD"), executed on
11 September 30, 1998, to which DTSC has given its concurrence. The Interim ROD
12 includes summaries of EPA's response to public comments. Notice of the final
13 plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. §
14
15 9617(b).
16

17 J. On September 28, 2000, EPA issued Special Notice letters to 56
18 persons or companies it had identified as potentially responsible parties at the Site,
19 including Performing Settling Defendant's predecessor, TRW Inc., requesting that
20 the named potentially responsible parties submit a collective "good faith offer" to
21 perform the selected remedial action at the Site and to reimburse EPA for its past
22 costs in the amount of fifteen million one hundred ninety five thousand sixty-two
23 dollars and ninety cents (\$15,195,062.90). In anticipation of EPA's Special Notice
24 letters, Performing Settling Defendant had attempted to organize the potentially
25 responsible parties at the Site into a cooperative group that would be able to make
26
27
28

1 a good faith offer. Ultimately, approximately two dozen potentially responsible
2 parties reached agreement with Performing Settling Defendant to participate in a
3 collective good faith offer to EPA.
4

5 K. On December 4, 2000, Performing Settling Defendant responded to
6 EPA's Special Notice letter in its own name and in the names of the approximately
7 two dozen other named potentially responsible parties, with a collective good faith
8 offer. Because the group of parties led by Performing Settling Defendant did not
9 include many of the named potentially responsible parties at the Site, the good
10 faith offer was to perform a portion of the remedial action and to pay a portion of
11 EPA's past costs. Following several rounds of negotiations, in early 2001
12 Performing Settling Defendant agreed to perform the intermediate zone
13 component of the remedial action; certain other potentially responsible parties
14 agreed to contribute financially to the costs of the intermediate zone work; and
15 certain other potentially responsible parties agreed to pay EPA ten million dollars
16 (\$10 million) in past costs.
17
18
19
20

21 L. Pursuant to the agreement set forth in Paragraph K. above,
22 Performing Settling Defendant promptly began work to design the intermediate
23 zone remedial action. With EPA's concurrence, it was decided that the potentially
24 responsible parties paying EPA ten million dollars (\$10 million) in past costs
25 would negotiate a separate consent decree. That consent decree, *United States v.*
26 *Acorn Engineering Company et al.*, Civil Action No. 03-5470-ABC (FMOx)(C.D.
27
28

1 Cal.), was lodged with this court on July 31, 2003, and entered by the court on
2 September 8, 2005.
3

4 M. On March 21, 2002, EPA issued Unilateral Administrative Order No.
5 2002-06 ("Order") to Performing Settling Defendant formally directing the
6 company to perform the intermediate zone remedial action. On March 29, 2002,
7 Performing Settling Defendant confirmed in writing that it would continue to
8 implement the intermediate zone remedial action in compliance with the Order, in
9 its own name and in the names of numerous other potentially responsible parties
10 that had reached settlements to contribute financially to the performance of the
11 work. Performing Settling Defendant has continued to perform the intermediate
12 zone remedial action in compliance with the Order and will continue to do so until
13 the Order is superseded by this Consent Decree.
14
15
16

17 N. Performing Settling Defendant represents that between 2002 and June
18 30, 2007, it incurred costs in excess of seven million dollars (\$7 million) to
19 implement the intermediate zone remedial action in compliance with the Order,
20 pending negotiations of this Consent Decree. The work performed by Performing
21 Settling Defendant during this period included, without limitation, installation of
22 groundwater monitoring wells, collection and analysis of groundwater samples,
23 groundwater modeling to support remedial design activities, the design of the
24 extraction well network, construction of a portion of the extraction well network,
25 and related project management activities.
26
27
28

1 O. On or about April 12, 1989, the California Regional Water Quality
2 Control Board, Los Angeles Region, issued to TRW Inc. Cleanup and Abatement
3 Order No. 89-034 ("Board Order"). The Board Order remains in effect and is
4 currently applicable to Performing Settling Defendant, the corporate successor to
5 TRW Inc. The Board Order requires Performing Settling Defendant to perform
6 remedial activities in the shallow zone of the Site south of Puente Creek.
7

8
9 P. On June 14, 2005, EPA issued an Explanation of Significant
10 Differences ("ESD") modifying the Interim ROD. Pursuant to 40 C.F.R. §§
11 300.435(c)(2)(i) and 300.825(a)(2), EPA made the ESD available to the public by
12 publishing a notice summarizing the ESD in a major local newspaper of general
13 circulation, by adding the ESD to the Administrative Record, and by making the
14 Administrative Record available to the public at local depositories.
15

16
17 Q. Based on the information presently available to EPA and DTSC, EPA
18 and DTSC believe that the Work (as defined below) will be properly and promptly
19 conducted by Performing Settling Defendant if conducted in accordance with the
20 requirements of this Consent Decree and its appendices.
21

22 R. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C.
23 § 9613(j), the Remedial Action selected by the Interim ROD, as modified by the
24 ESD, and the Work to be performed by Performing Settling Defendant, shall
25 constitute a response action taken or ordered by the President.
26

27
28 S. The Parties (as defined below) recognize, and the Court by entering

1 this Consent Decree finds, that this Consent Decree has been negotiated by the
2 Parties in good faith and implementation of this Consent Decree will facilitate the
3 cleanup of the Site and will avoid prolonged and complicated litigation between
4 the Parties, and that this Consent Decree is fair, reasonable, and in the public
5 interest.
6

7
8 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

9 **II. JURISDICTION**

10 1. This Court has jurisdiction over the subject matter of this action
11 pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and
12 9613(b). This Court also has personal jurisdiction over Settling Defendants.
13 Solely for the purposes of this Consent Decree and the underlying complaint,
14 Settling Defendants waive all objections and defenses that they may have to
15 jurisdiction of the Court or to venue in this District. Settling Defendants shall not
16 challenge the terms of this Consent Decree or this Court's jurisdiction to enter and
17 enforce this Consent Decree.
18
19
20

21 **III. PARTIES BOUND**

22 2. This Consent Decree applies to and is binding upon the United States
23 and DTSC and upon Settling Defendants. Any change in ownership or corporate
24 status of a Settling Defendant including, but not limited to, any transfer of assets
25 or real or personal property, shall in no way alter such Settling Defendant's
26 responsibilities under this Consent Decree.
27
28

1 3. Performing Settling Defendant shall provide a copy of this Consent
2 Decree to each contractor hired to perform the Work (as defined below) required
3 by this Consent Decree and to each person representing Performing Settling
4 Defendant with respect to the Site or the Work and shall condition all contracts
5 entered into hereunder upon performance of the Work in conformity with the
6 terms of this Consent Decree. Performing Settling Defendant or its contractors
7 shall provide written notice of the Consent Decree to all subcontractors hired to
8 perform any portion of the Work required by this Consent Decree. Performing
9 Settling Defendant shall nonetheless be responsible for ensuring that its
10 contractors and subcontractors perform the Work contemplated herein in
11 accordance with this Consent Decree. With regard to the activities undertaken
12 pursuant to this Consent Decree, each contractor and subcontractor shall be
13 deemed to be in a contractual relationship with Performing Settling Defendant
14 within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

15
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19
20 IV. DEFINITIONS

21 4. Unless otherwise expressly provided herein, terms used in this
22 Consent Decree that are defined in CERCLA or in regulations promulgated under
23 CERCLA shall have the meaning assigned to them in CERCLA or in such
24 regulations. Whenever terms listed below are used in this Consent Decree or in
25 the appendices attached hereto and incorporated hereunder, the following
26 definitions shall apply:
27
28

1 "Affiliate" shall mean a person or entity designated as such at Appendix H,
2 but only to the extent that the potential liability of such person or entity arises with
3 regard to the Site and derives from that person's or entity's relationship to or
4 affiliation with a Settling Defendant and not from an independent basis of liability
5 under CERCLA, Section 107(a), 42 U.S.C. § 9607(a). In addition, the term
6 Affiliate shall include: (i) where the Settling Defendant is a corporate entity, its
7 corporate successors, officers, and directors acting in their capacities as such; (ii)
8 where the Settling Defendant is a partnership, its partners, acting in their
9 capacities as such; (iii) where the Settling Defendant is an individual, that
10 individual's heirs and beneficiaries; (iv) where the Settling Defendant is a trust,
11 that trust's trustees and beneficiaries, acting in their capacities as such; but only to
12 the extent that the potential liability of such person or entity derives from that
13 person's or entity's relationship to or affiliation with a Settling Defendant and not
14 from an independent basis of liability under CERCLA Section 107(a), 42 U.S.C. §
15 9607(a).
16
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21 "ARARs" shall mean the applicable or relevant and appropriate
22 requirements or "ARARs" set forth in the Interim ROD, as modified by the ESD.
23

24 "Basin-wide Response Costs" shall mean costs, including but not limited to
25 direct and indirect costs, including accrued Interest, that the United States or
26 DTSC has incurred or in the future incurs for basin-wide (non-operable unit)
27 response actions in connection with the San Gabriel Valley Superfund Sites, Areas
28

1 1 - 4.

2 "CERCLA" shall mean the Comprehensive Environmental Response,
3 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
4

5 "Consent Decree" shall mean this Consent Decree and all appendices
6 attached hereto (listed in Section XXIX). In the event of conflict between this
7 Consent Decree and any appendix, this Consent Decree shall control.
8

9 "Contributing Settling Defendants" shall mean all those Parties identified in
10 Appendix F and their Affiliates.
11

12 "Day" shall mean a calendar day unless expressly stated to be a working
13 day. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal
14 holiday. In computing any period of time under this Consent Decree, where the
15 last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run
16 until the close of business of the next working day.
17

18 "DHS" shall mean the former California Department of Health Services and
19 any successor departments or agencies.
20

21 "DOJ" shall mean the United States Department of Justice and any of its
22 successor departments, agencies, or instrumentalities.
23

24 "DTSC" shall mean the California Department of Toxic Substances Control
25 and any successor departments or agencies.

26 "Effective Date" shall be the effective date of this Consent Decree as
27 provided in Paragraph 108.
28

1 "EPA" shall mean the United States Environmental Protection Agency and
2 any of its successor departments or agencies.

3
4 "Explanation of Significant Differences" or "ESD" shall mean the
5 Explanation of Significant differences relating to the Site issued by EPA on June
6 14, 2005. The ESD is attached as Appendix B to this Consent Decree.

7
8 "Future DTSC Response Costs" shall mean all costs that are incurred by
9 DTSC for response actions with respect to the Site after the Effective Date, but
10 prior to the later of: (i) the date eight (8) years from the Operational and
11 Functional Date, or (ii) the date of issuance of a final Record of Decision for the
12 Site. Future DTSC Response Costs include, but are not limited to, Basin-wide
13 Response Costs allocated to the Site, direct and indirect costs and accrued Interest
14 that DTSC incurs in reviewing or developing plans, reports, and other items
15 pursuant to this Consent Decree, verifying the Work, or otherwise implementing,
16 overseeing, or enforcing this Consent Decree, including but not limited to payroll
17 costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to
18 Sections VII (Remedy Review) and XV (Emergency Response).

19
20
21
22 "Future Response Costs" shall mean all costs that are incurred by the United
23 States or any third party for response actions with respect to the Site after the
24 Effective Date, but prior to the later of: (i) the date eight (8) years from the
25 Operational and Functional Date, or (ii) the date of issuance of a final Record of
26 Decision for the Site. Future Response Costs include, but are not limited to,
27
28

1 Basin-wide Response Costs allocated to the Site, direct and indirect costs and
2 accrued Interest that the United States incurs in reviewing or developing plans,
3 reports, and other items pursuant to this Consent Decree, verifying the Work, or
4 otherwise implementing, overseeing, or enforcing this Consent Decree, including
5 but not limited to payroll costs, contractor costs, travel costs, laboratory costs, the
6 costs incurred pursuant to Sections VII (Remedy Review), IX (Access and
7 Institutional Controls) (including but not limited to the cost of attorney time and
8 any monies paid to secure access or to secure or implement institutional controls
9 including but not limited to the amount of just compensation), XV (Emergency
10 Response), and Paragraph 89 of Section XXI (Work Takeover).

14 "Identified Property" shall mean the real property identified for each Owner
15 Settling Defendant in Appendix G.

17 "Interest," shall mean interest at the rate specified for interest on
18 investments of the EPA Hazardous Substance Superfund established by 26 U.S.C.
19 § 9507, compounded annually on October 1 of each year, in accordance with 42
20 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the
21 time the interest accrues. The rate of interest is subject to change on October 1 of
22 each year.

25 "Interim ROD" shall mean the Interim Record of Decision relating to the
26 Puente Valley Operable Unit of the San Gabriel Valley Superfund Sites signed on
27 September 30, 1998 by the Regional Administrator, EPA Region 9, or his/her
28

1 delegate, and all attachments thereto. The Interim ROD is attached as Appendix A
2 to this Consent Decree.

3
4 "National Contingency Plan" or "NCP" shall mean the National Oil and
5 Hazardous Substances Pollution Contingency Plan promulgated pursuant to
6 Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300,
7 and any amendments thereto.
8

9 "Operational and Functional" shall mean that the Remedial Action has been
10 constructed and that it is performing in accordance with the applicable SOW and
11 the applicable final Remedial Design/ Remedial Action Work Plans and other
12 plans approved by EPA.
13

14 "Operational and Functional Date" shall mean the date that the Remedial
15 Action is Operational and Functional pursuant to Paragraph 49.
16

17 "Owner Settling Defendant" shall mean each Settling Defendant identified
18 in Appendix G with respect to the Identified Property associated with such
19 Settling Defendant in such Appendix.
20

21 "Paragraph" shall mean a portion of this Consent Decree identified by an
22 Arabic numeral or an upper case letter.
23

24 "Parties" shall mean the United States, DTSC, and Settling Defendants.

25 "Past Response Costs" shall mean all costs including but not limited to
26 Basin-wide Response Costs allocated to the Site, direct and indirect costs,
27 including Interest, that the United States or any third party has paid or incurred at
28

1 or in connection with the Site, through and including the Effective Date.

2 "Past DTSC Response Costs" shall mean all costs, including but not limited
3 to direct and indirect costs, and Basin-wide Response Costs allocated to the Site,
4 including Interest, that DTSC has paid or incurred at or in connection with the
5 Site, through and including the Effective Date.
6

7 "Performance Criteria" shall mean the prevention of groundwater in the
8 intermediate zone with contamination greater than or equal to the levels listed in
9 Table 2 of the ESD from:
10

11 1. migrating beyond its lateral extent as measured at the time the
12 intermediate zone Remedial Action containment system is Operational and
13 Functional; and
14

15 2. migrating vertically into the deep zone;
16 for a period of eight (8) years from the Operational and Functional Date.
17

18 "Performing Settling Defendant" shall mean Northrop Grumman Space &
19 Mission Systems Corp., and its corporate predecessors and affiliates TRW Inc. and
20 Lucas Western LLC (formerly, Western Gear Corporation), (collectively, Northrop
21 Grumman Space & Mission Systems Corp.)
22

23 "Plaintiffs" shall mean the United States and DTSC.
24

25 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
26 §§ 6901 *et seq.* (also known as the Resource Conservation and Recovery Act).
27

28 "Remedial Action" shall mean those activities to be undertaken by
Performing Settling Defendant to implement the intermediate zone remedy, in
accordance with the Interim ROD as modified by the ESD, the applicable SOW,

1 and the applicable RD/RA Work Plan and other plans approved by EPA.

2 "Remedial Design" shall mean those activities to be undertaken by
3
4 Performing Settling Defendant to develop the final plans and specifications for the
5 Remedial Action pursuant to the RD/RA Work Plan.

6 "Remedial Design/Remedial Action Work Plan" or "RD/RA Work Plan"
7
8 shall mean the document developed pursuant to Paragraph 11 of this Consent
9 Decree and approved by EPA, and any amendments thereto.

10 "Section" shall mean a portion of this Consent Decree identified by a
11
12 Roman numeral.

13 "Settling Defendants" shall mean Performing Settling Defendant and
14
15 Contributing Settling Defendants.

16 "Site" shall mean the area of groundwater contamination in Los Angeles
17 County, California, located in the geographic area designated on the National
18 Priorities List as the San Gabriel Valley Superfund Site, Area 4 [see 49 Fed. Reg.
19 19480 (1984)], and identified as the Puente Valley Operable Unit.

20 "Statement of Work" or "SOW" shall mean the statement of work for
21
22 implementation of the Remedial Design and Remedial Action at the Site, as set
23
24 forth in Appendix D to this Consent Decree and any modifications made in
25
26 accordance with this Consent Decree.

26 "Supervising Contractor" shall mean the principal contractor retained by the
27
28 Performing Settling Defendant to supervise and direct the implementation of the

1 Work under this Consent Decree.

2 "Unilateral Administrative Order No. 2002-06" or "UAO Docket No.
3 2002-06" shall mean the order issued by EPA to TRW, Inc. on or about March 21,
4 2002, which order is currently applicable to Performing Settling Defendant as the
5 corporate successor to TRW, Inc.
6

7 "United States" shall mean the United States of America.
8

9 "Waste Material" shall mean: (i) any "hazardous substance" under Section
10 101(14) of CERCLA, 42 U.S.C. § 9601(14); (ii) any pollutant or contaminant
11 under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (iii) any "solid waste"
12 under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (iv) any "hazardous
13 substance" under the California Hazardous Substance Account Act, California
14 Health and Safety Code § 25316.
15

16 "Work" shall mean all activities Performing Settling Defendant is required
17 to perform under this Consent Decree, except those required by Section XXV
18 (Retention of Records).
19

20 V. GENERAL PROVISIONS

21 5. Objectives of the Parties. The objectives of the Parties in entering
22 into this Consent Decree are to protect public health or welfare or the environment
23 at the Site by the implementation of response actions at the Site by Performing
24 Settling Defendant, to reimburse response costs of the Plaintiffs, and to resolve the
25 claims of Plaintiffs against Settling Defendants as provided in this Consent
26
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28

1 Decree.

2 6. Commitments by Settling Defendants. Performing Settling Defendant
3 shall finance and perform the Remedial Action in accordance with this Consent
4 Decree, the Interim ROD as modified by the ESD, the SOW, and all work plans
5 and other plans, standards, specifications, and schedules set forth herein or
6 developed by Performing Settling Defendant, on behalf of all Settling Defendants,
7 and approved by EPA, after a reasonable opportunity for review and comment by
8 DTSC, pursuant to this Consent Decree. Performing Settling Defendant shall
9 reimburse the United States and DTSC for their respective costs as provided
10 herein. Settling Defendants shall provide access as provided in this Consent
11 Decree.
12

13 7. Compliance With Applicable Law. All activities undertaken by
14 Performing Settling Defendant pursuant to this Consent Decree shall be performed
15 in accordance with the requirements of all applicable federal and state laws and
16 regulations. Performing Settling Defendant must also comply with all applicable
17 or relevant and appropriate requirements of all federal and state environmental
18 laws as set forth in the Interim ROD as modified by the ESD, and the SOW. The
19 activities conducted pursuant to this Consent Decree, if approved by EPA, shall be
20 considered to be consistent with the NCP.
21

22 8. Permits.

23 a. As provided in Section 121(e) of CERCLA, 42 U.S.C. §
24
25
26
27
28

1 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any
2 portion of the Work conducted entirely on-Site (i.e., within the areal extent of
3 contamination or in very close proximity to the contamination and necessary for
4 implementation of the Work). Where any portion of the Work that is not on-Site
5 requires a federal or state permit or approval, Performing Settling Defendant shall
6 submit timely and complete applications and take all other actions necessary to
7 obtain all such permits or approvals.

10 b. Performing Settling Defendant may seek relief under the
11 provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay
12 in the performance of the Work resulting from a failure to obtain, or a delay in
13 obtaining, any permit required for the Work.

16 c. This Consent Decree is not, and shall not be construed to be, a
17 permit issued pursuant to any federal or state statute or regulation.

18 9. Notice to Successors-in-Title.

19 Each Owner Settling Defendant as to its Identified Property, shall, within
20 fifteen (15) Days after the entry of this Consent Decree, record a notice of the
21 entry of this Consent Decree, with the Recorder's Office, Los Angeles County,
22 State of California. Such notice shall provide that any person who subsequently
23 acquires any interest in the Identified Property or any portion thereof shall be
24 subject to the provisions of Sections 101(40) and 107(r) of CERCLA, 42 U.S.C. §§
25 9601(40) and 9607(r). Thereafter and continuing until EPA issues a notice of
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1 completion for the final remedy for the Site, each deed, title, or other instrument
2 conveying an interest in the Identified Property shall contain a notice stating that
3 the Identified Property is subject to this Consent Decree and shall reference the
4 location of this Consent Decree. Within ten (10) Days of recording the notice, the
5 Owner Settling Defendant shall provide to EPA and DTSC a conformed copy of
6 the recorded notice, pursuant to Paragraph 107 of this Consent Decree.
7

8
9 Notwithstanding the foregoing, the obligations under Paragraph 9 shall not apply
10 to Owner Settling Defendants who are Owner Settling Defendants solely because
11 of their leasehold interest in an Identified Property.
12

13 VI. PERFORMANCE OF THE WORK BY PERFORMING SETTLING
14 DEFENDANT

15 10. Selection of Supervising Contractor.

16 a. All aspects of the Work to be performed by Performing Settling
17 Defendant pursuant to Sections VI (Performance of the Work by Performing
18 Settling Defendant), VII (Remedy Review), VIII (Quality Assurance, Sampling
19 and Data Analysis), and XV (Emergency Response) of this Consent Decree shall
20 be under the direction and supervision of the Supervising Contractor. Performing
21 Settling Defendant has selected Camp Dresser and McKee Inc. ("CDM") as its
22 Supervising Contractor and EPA has issued an authorization to proceed to CDM.
23 If at any time Performing Settling Defendant proposes to change its Supervising
24 Contractor, Performing Settling Defendant shall give such notice to EPA and
25
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1 DTSC and must obtain an authorization to proceed from EPA before the new
2 Supervising Contractor performs, directs, or supervises any Work under this
3 Consent Decree. Performing Settling Defendant shall notify EPA and DTSC in
4 writing of the name, title, and qualifications of any contractor proposed to be the
5 new Supervising Contractor. With respect to any contractor proposed to be the
6 new Supervising Contractor, Performing Settling Defendant shall demonstrate that
7 the proposed contractor has a quality system that complies with ANSI/ASQC
8 E4-1994, "Specifications and Guidelines for Quality Systems for Environmental
9 Data Collection and Environmental Technology Programs," (American National
10 Standard, January 5, 1995), by submitting a copy of the proposed contractor's
11 Quality Management Plan ("QMP"). The QMP should be prepared in accordance
12 with "EPA Requirements for Quality Management Plans (QA/R-2)"
13 (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by
14 EPA. EPA will issue a notice of disapproval or an authorization to proceed.
15
16
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19

20 b. If EPA disapproves a proposed Supervising Contractor, EPA
21 will notify Performing Settling Defendant in writing. Performing Settling
22 Defendant shall submit to EPA and DTSC a list of contractors, including the
23 qualifications of each contractor, that would be acceptable to them within thirty
24 (30) Days of receipt of EPA's disapproval of the contractor previously proposed.
25 EPA will provide written notice of the names of any contractor(s) that it
26 disapproves and an authorization to proceed with respect to any of the other
27
28

1 contractors. Performing Settling Defendant may select any contractor from that
2 list that is not disapproved and shall notify EPA and DTSC of the name of the
3 contractor selected within twenty-one (21) Days of EPA's authorization to
4 proceed.
5

6 c. If EPA fails to provide written notice of its authorization to
7 proceed or disapproval as provided in this Paragraph and this failure prevents
8 Performing Settling Defendant from meeting one or more deadlines in a plan
9 approved by EPA pursuant to this Consent Decree, Performing Settling Defendant
10 may seek relief under the provisions of Section XVIII (Force Majeure) hereof.
11

12
13 11. Remedial Design and Remedial Action.

14 a. A Remedial Design/Remedial Action Work Plan has been
15 submitted by Performing Settling Defendant and approved by EPA.
16

17 b. Performing Settling Defendant shall implement the RD/RA
18 Work Plan in accordance with the schedule therein. Performing Settling
19 Defendant shall submit to EPA and DTSC all plans, submittals and other
20 deliverables required under the approved RD/RA Work Plan in accordance with
21 the approved schedule for review and approval pursuant to Section XI (EPA
22 Approval of Plans and Other Submissions).
23

24 c. Performing Settling Defendant shall submit to EPA and DTSC
25 a Health and Safety Plan for field activities required by the RD/RA Work Plan
26 which conforms to the applicable Occupational Safety and Health Administration
27
28

1 and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

2 d. Performing Settling Defendant shall submit to EPA and DTSC
3
4 all plans, submittals, or other deliverables required under the approved RD/RA
5 Work Plan in accordance with the approved schedule for review and approval
6 pursuant to Section XI (EPA Approval of Plans and Other Submissions).
7

8 12. Performing Settling Defendant shall continue to implement the
9 Remedial Action for a period of eight (8) years from the Operational and
10 Functional Date.
11

12 13. Modification of the SOW or Related Work Plans.

13 a. If EPA determines that modification to the Work specified in
14 the SOW or in work plans developed pursuant to the SOW is necessary to achieve
15 and maintain the Performance Criteria or to avoid exceeding applicable drinking
16 water standards (including DHS 97-005 permit limits) or discharge ARARs, as set
17 forth in the Interim ROD, as modified by the ESD, EPA may require, after a
18 reasonable opportunity for review and comment by DTSC, that such modification
19 be incorporated in the SOW or such work plans, provided, however, that a
20 modification may only be required pursuant to this Paragraph to the extent that it
21 is consistent with the scope of the intermediate zone remedy selected in the
22 Interim ROD, as modified by the ESD.
23
24

25 b. For the purposes of this Paragraph 13 only, the "scope of the
26 intermediate zone remedy selected in the Interim ROD, as modified by the ESD"
27
28

1 is: (i) the achievement of the Performance Criteria; (ii) compliance with applicable
2 drinking water standards (including DHS 97-005 permit limits) or discharge
3 ARARs; and (iii) all work necessary to bring the containment system to the point
4 of being Operational & Functional.
5

6 c. If Performing Settling Defendant objects to: (i) any
7 modification determined by EPA to be necessary pursuant to this Paragraph; (ii)
8 any response actions determined by EPA to be necessary pursuant to the SOW to
9 come back into compliance with the Performance Criteria or to meet applicable
10 drinking water standards (including DHS 97-005 permit limits) or discharge
11 ARARs; or (iii) any response actions that are necessary where EPA has
12 determined pursuant to the SOW that it is more likely than not that the
13 Performance Criteria, the applicable drinking water standards (including DHS
14 97-005 permit limits) or the treatment plant discharge ARARs, will be exceeded if
15 such actions are not undertaken, it may seek dispute resolution pursuant to Section
16 XIX (Dispute Resolution), Paragraph 67 (Record Review). The SOW or related
17 work plans shall be modified in accordance with final resolution of the dispute.
18
19

20 d. Performing Settling Defendant shall implement any work
21 required by any modifications incorporated in or added to the SOW or work plans
22 developed pursuant to the SOW in accordance with this Paragraph.
23
24

25 e. Nothing in this Paragraph shall be construed to limit EPA's or
26 DTSC's authority to require performance of further response actions as otherwise
27
28

1 provided in this Consent Decree.

2 14. Performing Settling Defendant acknowledges and agrees that nothing
3
4 in this Consent Decree, the SOW, or the RD/RA Work Plan constitutes a warranty
5 or representation of any kind by Plaintiffs that compliance with the work
6 requirements set forth in the SOW and the RD/RA Work Plan will achieve the
7
8 Performance Criteria.

9 15. Performing Settling Defendant shall, prior to any off-Site shipment of
10 Waste Material to an out-of-state waste management facility, provide written
11
12 notification to the appropriate state environmental official in the receiving
13 facility's state and to the EPA Project Coordinator and to DTSC's Project Manager
14 of such shipment of Waste Material. However, this notification requirement shall
15
16 not apply to any off-Site shipments when the total volume of all such shipments
17
18 will not exceed 10 cubic yards.

19 (1) Performing Settling Defendant shall include in the
20 written notification the following information, where available: (i) the name and
21 location of the facility to which the Waste Material is to be shipped; (ii) the type
22 and quantity of the Waste Material to be shipped; (iii) the expected schedule for
23 the shipment of the Waste Material; and (iv) the method of transportation.

24
25 Performing Settling Defendant shall notify the state in which the planned
26 receiving facility is located of major changes in the shipment plan, such as a
27
28 decision to ship the Waste Material to another facility within the same state, or to a

1 facility in another state.

2 (2) The identity of the receiving facility and state will be
3 determined by Performing Settling Defendant following the award of the contract
4 for Remedial Action construction.
5

6 Performing Settling Defendant shall provide the information required by
7 this Subparagraph as soon as practicable after the award of the contract and before
8 the Waste Material is actually shipped.
9

10 i) Before shipping any hazardous substances,
11 pollutants, or contaminants to an off-Site receiving facility, Performing Settling
12 Defendant shall obtain EPA's certification that the proposed receiving facility is
13 operating in compliance with the requirements of CERCLA Section 121(d)(3) and
14 40 C.F.R. § 300.440. Performing Settling Defendant shall only send hazardous
15 substances, pollutants, or contaminants to an off-Site receiving facility that
16 complies with the requirements of the statutory provision and regulations cited in
17 the preceding sentence.
18
19
20

21 VII. REMEDY REVIEW

22 16. Periodic Review. Until such time as EPA issues a Certification of
23 Completion of the Remedial Action pursuant to Paragraph 50, Performing Settling
24 Defendant shall conduct studies and investigations, consistent with EPA's June
25 2001 "Comprehensive Five-Year Review Guidance," OSWER No. 9355.7-03B-P,
26 as modified or amended by any subsequent guidance, as determined by EPA to be
27
28

1 necessary for EPA to conduct reviews of whether the Remedial Action is
2 protective of human health and the environment, at least every five (5) years after
3 commencement of the Remedial Action, as required by Section 121(c) of
4 CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations.

6 17. EPA Selection of Further Response Actions. If EPA determines, after
7 consultation with DTSC, at any time, that the Remedial Action is not protective of
8 human health and the environment, EPA may select further response actions for
9 the Site in accordance with the requirements of CERCLA and the NCP (including
10 any state notice and participation requirements contained therein).

13 18. Opportunity To Comment. Settling Defendants, and, if required by
14 Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an
15 opportunity to comment on any further response actions proposed by EPA as a
16 result of the review conducted pursuant to Section 121(c) of CERCLA and to
17 submit written comments for the record during the comment period.

20 VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

21 19. Performing Settling Defendant shall use quality assurance, quality
22 control, and chain of custody procedures for all treatability, design, compliance
23 and monitoring samples in accordance with "EPA Requirements for Quality
24 Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance
25 for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February
26 1998), and subsequent amendments to such guidelines upon notification by EPA
27
28

1 to Performing Settling Defendant of such amendment. Amended guidelines shall
2 apply only to procedures conducted after such notification. Prior to the
3
4 commencement of any monitoring project under this Consent Decree, Performing
5 Settling Defendant shall submit to EPA for approval, after a reasonable
6
7 opportunity for review and comment by DTSC, a Quality Assurance Project Plan
8 ("QAPP") that is consistent with the SOW, the NCP and applicable guidance
9 documents. If relevant to the proceeding, the Parties agree that validated sampling
10 data generated in accordance with the QAPP(s) and reviewed and approved by
11
12 EPA shall be admissible as evidence, without objection, in any proceeding under
13 this Consent Decree. Performing Settling Defendant shall ensure that EPA and
14
15 DTSC personnel and their authorized representatives are allowed access at
16
17 reasonable times to all laboratories utilized by Performing Settling Defendant in
18
19 implementing this Consent Decree. In addition, Performing Settling Defendant
20 shall ensure that such laboratories shall analyze all samples submitted by EPA
21
22 pursuant to the QAPP for quality assurance monitoring. Performing Settling
23
24 Defendant shall ensure that the laboratories it utilizes for the analysis of samples
25 taken pursuant to this Consent Decree perform all analyses according to accepted
26
27 EPA methods. Accepted EPA methods consist of those methods which are
28 documented in the "Contract Lab Program Statement of Work for Inorganic
Analysis" and the "Contract Lab Program Statement of Work for Organic
Analysis," dated February 1988, and any amendments made thereto during the

1 course of the implementation of this Consent Decree; however, upon approval by
2 EPA, after opportunity for review and comment by DTSC, Performing Settling
3 Defendant may use other analytical methods which are as stringent as or more
4 stringent than the CLP-approved methods. Performing Settling Defendant shall
5 ensure that all laboratories it uses for analysis of samples taken pursuant to this
6 Consent Decree participate in an EPA or EPA-equivalent QA/QC program.
7
8 Performing Settling Defendant shall only use laboratories that have a documented
9 Quality System which complies with ANSI/ASQC E4-1994, "Specifications and
10 Guidelines for Quality Systems for Environmental Data Collection and
11 Environmental Technology Programs," (American National Standard, January 5,
12 1995), and "EPA Requirements for Quality Management Plans (QA/R-2),"
13 (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by
14 EPA. EPA may consider laboratories accredited under the National
15 Environmental Laboratory Accreditation Program ("NELAP") as meeting the
16 Quality System requirements. Performing Settling Defendant shall ensure that all
17 field methodologies utilized in collecting samples for subsequent analysis
18 pursuant to this Decree will be conducted in accordance with the procedures set
19 forth in the QAPP approved by EPA.
20
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25 20. Upon request, Performing Settling Defendant shall allow split or
26 duplicate samples to be taken by EPA and DTSC or their authorized
27 representatives. Performing Settling Defendant shall notify EPA and DTSC not
28

1 less than twenty-eight (28) Days in advance of any sample collection activity
2 unless shorter notice is agreed to by EPA. In addition, EPA and DTSC shall have
3 the right to take any additional samples that EPA or DTSC deem necessary. Upon
4 request, EPA and DTSC shall allow Performing Settling Defendant to take split or
5 duplicate samples of any samples they take as part of the Plaintiffs' oversight of
6 Performing Settling Defendant's implementation of the Work. EPA will provide
7 Performing Settling Defendant copies of validated split sampling results.

8
9
10 21. Performing Settling Defendant shall submit to EPA and DTSC the
11 results of all sampling and/or tests or other data obtained or generated by or on
12 behalf of Performing Settling Defendant on or after lodging of the Consent Decree
13 with respect to the Site and/or the implementation of this Consent Decree, unless
14 EPA agrees otherwise. Performing Settling Defendant shall also provide one copy
15 of such results to any party performing work at the Site at the direction of EPA
16 who is obligated or directed to provide substantially the same reports to
17 Performing Settling Defendant, unless EPA agrees otherwise.

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19
20
21 22. Notwithstanding any provision of this Consent Decree, the United
22 States and DTSC hereby retain all of their information gathering and inspection
23 authorities and rights, including enforcement actions related thereto, under
24 CERCLA, RCRA and any other applicable statutes or regulations.

25
26 IX. ACCESS AND INSTITUTIONAL CONTROLS

27
28 23. If access or land or water use restrictions are needed to implement

1 response actions at the Site on any Identified Property, each Owner Settling
2 Defendant as to its Identified Property shall:

3
4 a. Provide: (i) the United States; (ii) DTSC; (iii) Performing
5 Settling Defendant; and (iv) persons performing response actions under EPA's
6 direction, together with their respective representatives and contractors, with
7 access at all reasonable times to the Identified Property, for the purpose of
8 conducting any activity related to the Site including, but not limited to, the
9 following activities:

- 10
11
- 12 (1) Monitoring the Work;
 - 13 (2) Verifying any data or information submitted to the
14 United States or DTSC;
 - 15 (3) Conducting investigations relating to contamination at or
16 near the Site;
 - 17 (4) Obtaining samples;
 - 18 (5) Assessing the need for planning or implementing
19 additional response actions at or near the Site;
 - 20 (6) Assessing implementation of quality assurance and
21 quality control practices as defined in the approved Quality Assurance Project
22 Plans;
 - 23 (7) Implementing the Work including implementation
24 pursuant to conditions set forth in Paragraph 89 of this Consent Decree;
 - 25
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1 (8) Inspecting and copying records, operating logs,
2 contracts, or other documents maintained or generated by Settling Defendants or
3 their agents, consistent with Section XXIV (Access to Information);
4

5 (9) Assessing Performing Settling Defendant's compliance
6 with this Consent Decree; and
7

8 (10) To the extent not otherwise authorized pursuant to (1)
9 through (9) above, (a) installing, maintaining and sampling monitoring wells and
10 conducting activities related to the installation, maintenance and sampling of such
11 wells; (b) installing and maintaining pipelines and conducting activities related to
12 the installation and maintenance of such pipelines; and (c) conducting source
13 remediation.
14

15 b. An Owner Settling Defendant's obligations under this
16 Paragraph 23, as to an Identified Property, shall terminate when such Owner
17 Settling Defendant no longer has an interest in the Identified Property or when
18 EPA issues a notice of completion for the final remedy for the Site, whichever
19 occurs first.
20
21

22 24. For any property where access and/or land/water use restrictions are
23 needed to implement this Consent Decree, Performing Settling Defendant shall use
24 best efforts to secure from such persons with respect to such property:
25

26 a. an agreement to provide access thereto for the following
27 entities and for their respective representatives and contractors: (i) the United
28

1 States; including EPA; (ii) DTSC; (iii) Performing Settling Defendant; and (iv)
2 persons performing response actions under EPA's direction, all for the purpose of
3 conducting any activity related to any response action at the Site, including, but
4 not limited to, those activities listed in Paragraph 23.a of this Consent Decree;
5

6 b. an agreement, enforceable by Performing Settling Defendant
7 and the United States, to refrain from using such other property, in any manner
8 that would interfere with or adversely affect the implementation, integrity, or
9 protectiveness of remedial measures taken at the Site; and
10

11 c. the execution and recordation in the Recorder's Office of Los
12 Angeles County, State of California, of an easement, running with the land, that:
13

14 (i) grants a right of access for the purpose of conducting any activity related to the
15 Site including, but not limited to, all treatment facilities, pipelines, and wells used
16 to implement the Work as well as those activities listed in Paragraph 23.a of this
17 Consent Decree, and (ii) grants the right to enforce the land/water use restrictions
18 listed in Paragraph 23.b of this Consent Decree, or other restrictions that EPA
19 determines are necessary to implement, ensure non-interference with, or ensure the
20 protectiveness of remedial measures taken at the Site. The access rights and/or
21 rights to enforce land/water use restrictions shall be granted to one or more of the
22 following entities and to their respective representatives and contractors, as
23 determined by EPA after a reasonable opportunity for review and comment by
24 DTSC: (i) the United States, including EPA; (ii) DTSC; (iii) Performing Settling
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1 Defendant; (iv) persons performing response actions under EPA's direction; and/or
2 (v) other appropriate grantees, as determined by EPA. Within forty-five (45) Days
3 of approval of the final Remedial Design, Performing Settling Defendant shall
4 submit to EPA for review and approval with respect to such property:
5

6 (1) A draft easement, in substantially the form attached
7 hereto as Appendix E, that is enforceable under the laws of the State of California,
8 and
9

10 (2) A current title insurance commitment, or some other
11 evidence of title acceptable to EPA, which shows title to the land described in the
12 easement to be free and clear of all prior liens and encumbrances that could impact
13 the implementation of the Work (except when those liens or encumbrances are
14 approved by EPA or when, despite best efforts, Performing Settling Defendant is
15 unable to obtain release or subordination of such prior liens or encumbrances).
16
17

18
19 Within fifteen (15) Days of EPA's approval and acceptance of the easement and
20 the title evidence, Performing Settling Defendant shall update the title search and,
21 if it is determined that nothing has occurred since the effective date of the
22 commitment to affect the title adversely, the easement shall be recorded with the
23 Recorder's Office of Los Angeles County. Within thirty (30) Days of the
24 recording of the easement, Performing Settling Defendant shall provide EPA with
25 a final title insurance policy, or other final evidence of title acceptable to EPA, and
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1 if applicable DTSC, and a certified copy of the original recorded easement
2 showing the clerk's recording stamps, with copies of such documents to DTSC. If
3 an easement is to be conveyed to the United States, the easement and title evidence
4 (including final title evidence) shall be prepared in accordance with the U.S.
5 Department of Justice Title Standards 2001, and approval of the sufficiency of title
6 must be obtained as required by 40 U.S.C. § 255. Nothing in this Paragraph
7 commits or requires DTSC to accept an interest in real property for which it must
8 record a certificate of acceptance pursuant to California Government Code Section
9 27281.
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12

13 25. After a reasonable opportunity for review and comment by DTSC,
14 EPA may determine, in its unreviewable discretion, that the requirements of
15 Paragraph 24 are not necessary because an existing administrative order,
16 agreement or consent decree provides adequate access to address future response
17 actions anticipated at the Site.
18
19

20 26. For purposes of Paragraph 24 of this Consent Decree, "best efforts"
21 includes the payment of reasonable sums of money in consideration of access,
22 access easements, land or water use restrictions, restrictive easements, or an
23 agreement to release or subordinate a prior lien or encumbrance. If: (a) any
24 access or land or water use restriction agreements required by Paragraphs 24.a or
25 24.b of this Consent Decree are not obtained within forty-five (45) Days of the
26 date of approval of the final Remedial Design; (b) any access easements or
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1 restrictive easements required by Paragraph 24.c of this Consent Decree are not
2 submitted to EPA in draft form within forty-five (45) Days of the Effective Date of
3 this Consent Decree or approval of the final Remedial Design, whichever is later;
4 or (c) Performing Settling Defendant is unable to obtain an agreement required
5 pursuant to Paragraph 24.c from the holder of a prior lien or encumbrance to
6 release or subordinate such lien or encumbrance to the easement being created
7 pursuant to this Consent Decree within forty-five (45) Days of the Effective Date
8 of this Consent Decree or approval of the final Remedial Design, whichever is
9 later, Performing Settling Defendant shall promptly notify the United States in
10 writing, and shall include in that notification a summary of the steps that
11 Performing Settling Defendant has taken to attempt to comply with Paragraph 24
12 of this Consent Decree. The United States or DTSC may, as they deem
13 appropriate, assist Performing Settling Defendant in obtaining access or
14 land/water use restrictions, either in the form of contractual agreements or in the
15 form of easements running with the land, or in obtaining the release or
16 subordination of a prior lien or encumbrance. Performing Settling Defendant shall
17 reimburse the United States or DTSC in accordance with the procedures in Section
18 XVI (Payments for Response Costs), for all costs incurred, direct or indirect, by
19 the United States or DTSC in obtaining such access, land/water use restrictions,
20 and/or the release/subordination of prior liens or encumbrances including, but not
21 limited to, the cost of attorney time and the amount of monetary consideration paid
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1 or just compensation.

2 27. If EPA determines that land or water use restrictions in the form of
3 state or local laws, regulations, ordinances or other governmental controls are
4 needed to implement the Remedial Action, or ensure non-interference therewith,
5 Performing Settling Defendant shall cooperate with EPA's and DTSC's efforts to
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7
8 secure such governmental controls.

9 28. Notwithstanding any provision of this Consent Decree, the United
10 States and DTSC retain all of their access authorities and rights, as well as all of
11 their rights to require land or water use restrictions, including enforcement
12 authorities related thereto, under CERCLA, RCRA and any other applicable
13 statute or regulations.
14

15
16 X. REPORTING REQUIREMENTS

17 29. In addition to any other requirement of this Consent Decree,
18 Performing Settling Defendant shall submit to EPA, DTSC, and any party
19 performing work at the Site at the direction of EPA, written bi-monthly progress
20 reports that: (a) describe the actions which have been taken toward achieving
21 compliance with this Consent Decree during the previous two months; (b) include
22 a summary of all results of sampling and tests and all other data received or
23 generated by Performing Settling Defendant or its contractors or agents in the
24 previous two months; (c) identify all work plans, plans and other deliverables
25 required by this Consent Decree completed and submitted during the previous two
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1 months; (d) describe all actions, including, but not limited to, data collection and
2 implementation of work plans, which are scheduled for the next six weeks and
3 provide other information relating to the progress of construction, including but
4 not limited to critical path diagrams, Gantt charts and Pert charts; (e) include
5 information regarding the percentage of completion, unresolved delays
6 encountered or anticipated that may affect the future schedule for implementation
7 of the Work, and a description of efforts made to mitigate those delays or
8 anticipated delays; (f) include any modifications to the work plans or other
9 schedules that Performing Settling Defendant has proposed to EPA or that have
10 been approved by EPA; and (g) describe all activities undertaken in support of the
11 Community Relations Plan during the previous two months and those to be
12 undertaken in the next six weeks. Performing Settling Defendant shall submit
13 these progress reports to EPA, DTSC and any party performing work at the Site at
14 the direction of EPA, by the tenth (10th) Day of every second month following the
15 lodging of this Consent Decree until EPA approves the Final Construction
16 Inspection Report. If requested by EPA or DTSC, Performing Settling Defendant
17 shall also provide briefings for EPA and DTSC to discuss the progress of the
18 Work. After EPA approves the Final Construction Inspection Report, Performing
19 Settling Defendant shall submit Quarterly Compliance Monitoring Reports and
20 Annual Performance Evaluation Reports pursuant to the SOW. Performing
21 Settling Defendant shall provide one copy of the bi-monthly progress reports and
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1 one copy of the Quarterly Compliance Monitoring Reports and the Annual
2 Performance Evaluation Reports to any party performing work at the Site under
3 the direction of EPA who is obligated or directed to provide substantially the same
4 reports to Performing Settling Defendant.
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6 30. Performing Settling Defendant shall notify EPA and DTSC of any
7 significant change in the schedule described in the bi-monthly progress reports,
8 Quarterly Compliance Monitoring Reports and Annual Performance Evaluation
9 Reports for the performance of any activity, including, but not limited to, data
10 collection and implementation of work plans, no later than seven (7) Days prior to
11 the performance of the activity.
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13

14 31. Upon the occurrence of any event during performance of the Work
15 that Performing Settling Defendant is required to report pursuant to Section 103
16 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and
17 Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004, Performing
18 Settling Defendant shall within twenty-four (24) hours of the onset of such event
19 orally notify the EPA Project Coordinator or the Alternate EPA Project
20 Coordinator (in the event of the unavailability of the EPA Project Coordinator), or,
21 in the event that neither the EPA Project Coordinator or Alternate EPA Project
22 Coordinator is available, the Emergency Response Section, Region 9, United
23 States Environmental Protection Agency. Immediately following notice to EPA,
24 the Performing Settling Defendant shall orally notify the DTSC Project Manager.
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1 These reporting requirements are in addition to the reporting required by Section
2 103 of CERCLA or Section 304 of EPCRA.

3
4 32. Within twenty (20) Days of the onset of such an event, Performing
5 Settling Defendant shall furnish to Plaintiffs a written report, signed by the
6 Performing Settling Defendant's Project Coordinator, setting forth the events
7 which occurred and the measures taken, and to be taken, in response thereto.

8
9 Within thirty (30) Days of the conclusion of such an event, Performing Settling
10 Defendant shall submit a report to EPA and DTSC setting forth all actions taken in
11 response thereto.
12

13 33. Performing Settling Defendant shall submit four (4) copies of all
14 plans, reports, and data required by the SOW, the RD/RA Work Plan, or any other
15 approved plans to EPA in accordance with the schedules set forth in such plans.
16 Performing Settling Defendant shall simultaneously submit three (3) copies of all
17 such plans, reports and data to DTSC. Performing Settling Defendant shall also
18 submit in electronic form (e.g., on compact disc) all portions of any report or other
19 deliverable Performing Settling Defendant is required to submit pursuant to the
20 provisions of this Consent Decree.
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23
24 34. All reports and other documents submitted by Performing Settling
25 Defendant to EPA and DTSC (other than the bi-monthly progress reports referred
26 to above) which purport to document Performing Settling Defendant's compliance
27 with the terms of this Consent Decree shall be signed by an authorized
28

1 representative of Performing Settling Defendant.

2 XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

3
4 35. After review of any plan, report or other item that is required to be
5 submitted for approval pursuant to this Consent Decree, EPA, after reasonable
6 opportunity for review and comment by DTSC, shall: (a) approve, in whole or in
7 part, the submission; (b) approve the submission upon specified conditions; (c)
8 modify the submission to cure the deficiencies; (d) disapprove, in whole or in part,
9 the submission, directing that the Performing Settling Defendant modify the
10 submission; or (e) any combination of the above. However, EPA shall not modify
11 a submission without first providing Performing Settling Defendant at least one
12 (1) notice of deficiency and an opportunity to cure within twenty-one (21) Days or
13 such longer period as EPA determines to be reasonable, except where to do so
14 would cause serious disruption to the Work or where a previous submission or
15 submissions have been disapproved due to material defects, and the deficiencies in
16 the submission or submissions under consideration are due to a bad faith lack of
17 effort to submit an acceptable deliverable.

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22 36. In the event of approval, approval upon conditions, or modification
23 by EPA, pursuant to Paragraph 35(a), (b), or (c), Performing Settling Defendant
24 shall proceed to take any action required by the plan, report, or other item as
25 approved or modified by EPA, subject only to its right to invoke dispute resolution
26 procedures set forth in Section XIX (Dispute Resolution) with respect to the
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1 modifications or conditions made by EPA. In the event that EPA modifies the
2 submission to cure deficiencies pursuant to Paragraph 35(c) and the submission
3 had a material defect, EPA retains its right to seek Stipulated Penalties, as
4 provided in Section XX (Stipulated Penalties).
5

6 37. Resubmission of Plans.
7

8 a. Upon receipt of a notice of disapproval pursuant to Paragraph
9 35(d), Performing Settling Defendant shall, within twenty-one (21) Days or such
10 longer time as specified by EPA in such notice, correct the deficiencies and
11 resubmit the plan, report, or other item for approval, with copies to DTSC. Any
12 Stipulated Penalties applicable to the submission, as provided in Section XX
13 (Stipulated Penalties), shall accrue during the 21-day period or otherwise specified
14 period but shall not be payable unless the resubmission is disapproved or modified
15 due to a material defect as provided in Paragraphs 38 and 39.
16
17

18 b. Notwithstanding the receipt of a notice of disapproval pursuant
19 to Paragraph 35(d), Performing Settling Defendant shall proceed, at the direction
20 of EPA, to take any action required by any non-deficient portion of the
21 submission. Implementation of any non-deficient portion of a submission shall
22 not relieve Performing Settling Defendant of any liability for Stipulated Penalties
23 under Section XX (Stipulated Penalties).
24
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26 38. In the event that a resubmitted plan, report, or other item, or portion
27 thereof, is disapproved by EPA, EPA may again require Performing Settling
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1 Defendant to correct the deficiencies, in accordance with the preceding
2 Paragraphs. EPA also retains the right to modify or develop the plan, report, or
3 other item. Performing Settling Defendant shall implement any such plan, report,
4 or item as modified or developed by EPA, subject only to their right to invoke the
5 procedures set forth in Section XIX (Dispute Resolution).
6

7
8 39. If upon resubmission, a plan, report, or item is disapproved or
9 modified by EPA due to a material defect, Performing Settling Defendant shall be
10 deemed to have failed to submit such plan, report, or item timely and adequately,
11 unless Performing Settling Defendant invokes the dispute resolution procedures
12 set forth in Section XIX (Dispute Resolution), and EPA's action is overturned
13 pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and
14 Section XX (Stipulated Penalties) shall govern the implementation of the Work
15 and accrual and payment of any Stipulated Penalties during Dispute Resolution. If
16 EPA's disapproval or modification is upheld, Stipulated Penalties shall accrue for
17 such violation from the date on which the initial submission was originally
18 required, as provided in Section XX (Stipulated Penalties).
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22 40. All plans, reports, and other items required to be submitted to EPA
23 under this Consent Decree shall simultaneously be submitted to DTSC. Upon
24 approval or modification by EPA, all such plans, reports, and other items shall be
25 enforceable under this Consent Decree. In the event EPA approves or modifies a
26 portion of a plan, report, or other item required to be submitted to EPA under this
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1 Consent Decree, the approved or modified portion shall be enforceable under this
2 Consent Decree.

3
4 XII. PROJECT COORDINATORS

5 41. Within twenty (20) Days of lodging this Consent Decree, Performing
6 Settling Defendant, EPA and DTSC will notify each other, in writing, of the name,
7 address and telephone number of their respective designated Project Coordinators
8 and Alternate Project Coordinators. If a Project Coordinator or Alternate Project
9 Coordinator initially designated is changed, the identity of the successor will be
10 given to the other Parties at least five (5) Working Days before the changes occur,
11 unless impracticable, but in no event later than the actual day the change is made.
12 Performing Settling Defendant's Project Coordinator shall be subject to
13 disapproval by EPA and shall have the technical expertise sufficient to adequately
14 oversee all aspects of the Work. Performing Settling Defendant's Project
15 Coordinator shall not be an attorney for the Performing Settling Defendant in this
16 matter. He or she may assign other representatives, including other contractors, to
17 serve as a Site representative for oversight of performance of daily operations
18 during remedial activities.

19 42. Plaintiffs may designate other representatives, including, but not
20 limited to, EPA and DTSC employees, and federal and state contractors and
21 consultants, to observe and monitor the progress of the Work undertaken pursuant
22 to this Consent Decree. EPA's Project Coordinator and Alternate Project
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1 Coordinator shall have the authority lawfully vested in a Remedial Project
2 Manager ("RPM") and an On-Scene Coordinator ("OSC") by the National
3 Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or
4 Alternate Project Coordinator shall have authority, consistent with the National
5 Contingency Plan, to halt any Work required by this Consent Decree and to take
6 any necessary response action when s/he determines that conditions at the Site
7 constitute an emergency situation or may present an immediate threat to public
8 health or welfare or the environment due to release or threatened release of Waste
9 Material.
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13 43. EPA's Project Coordinator and Performing Settling Defendant's
14 Project Coordinator will meet in person or confer telephonically on a monthly
15 basis unless EPA determines that less frequent meetings or conferences are
16 required. Performing Settling Defendant shall give advance notice to DTSC, and
17 upon DTSC's request, DTSC may participate in such meetings and conferences.
18
19

20 XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

21 44. Within thirty (30) Days of entry of this Consent Decree, Performing
22 Settling Defendant shall establish and maintain financial security in the amount of
23 twenty-one million dollars (\$21 million) in one or more of the following forms:
24

- 25 a. A surety bond guaranteeing performance of the Work;
- 26 b. One or more irrevocable letters of credit equaling twenty-one
27 million dollars (\$21 million);
28

1 c. A trust fund;

2 d. A guarantee to perform the Work by one or more parent
3 corporations or subsidiaries, or by one or more unrelated corporations that have a
4 substantial business relationship with Performing Settling Defendant;

5 e. A demonstration that Performing Settling Defendant satisfies
6 the requirements of 40 C.F.R. Part 264.143(f). For purposes of this Paragraph,
7 references in 40 C.F.R Part 264.143(f) to the "sum of current closure and
8 post-closure costs estimates and the current plugging and abandonment costs
9 estimates" shall mean the amount of financial security specified above; or

10 f. An insurance policy in form and substance satisfactory to EPA.

11 45. If Performing Settling Defendant seeks to demonstrate the ability to
12 complete the Work through a guarantee by a third party pursuant to Paragraph
13 44.d of this Consent Decree, Performing Settling Defendant shall demonstrate that
14 the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If
15 Performing Settling Defendant seeks to demonstrate its ability to complete the
16 Work by means of the corporate guarantee or the financial test pursuant to
17 Paragraphs 44.d or 44.e, respectively, it shall resubmit sworn statements
18 conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the
19 first (1st) day of April in each year after Performing Settling Defendant establishes
20 such guarantee. In the event that EPA, after a reasonable opportunity for review
21 and comment by the DTSC, determines at any time that the financial assurances
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1 provided pursuant to this Section are inadequate, Performing Settling Defendant
2 shall, within thirty (30) Days of receipt of notice of EPA's determination, obtain
3 and present to EPA for approval one of the other forms of financial assurance
4 listed in Paragraph 44 of this Consent Decree. Performing Settling Defendant's
5 inability to demonstrate financial ability to complete the Work shall not excuse
6 performance of any activities required under this Consent Decree.
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9 46. If Performing Settling Defendant can show that the estimated cost to
10 complete the remaining Work has diminished below the amount set forth in
11 Paragraph 44 above after entry of this Consent Decree, Performing Settling
12 Defendant may, on the first (1st) day of April in each year after Performing
13 Settling Defendant establishes financial security pursuant to Paragraph 44 of this
14 Consent Decree, or at any other time agreed to by EPA after discussion with
15 DTSC, reduce the amount of the financial security provided under this Section to
16 the estimated cost of the remaining Work to be performed. Performing Settling
17 Defendant shall submit a proposal for such reduction to EPA with a copy to
18 DTSC, in accordance with the requirements of this Section, and may reduce the
19 amount of the security upon approval by EPA after a reasonable opportunity for
20 review and comment by DTSC. In the event of a dispute under Section XIX
21 (Dispute Resolution), Performing Settling Defendant may reduce the amount of
22 the security in accordance with the final administrative or judicial decision
23 resolving the dispute.
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1 47. Performing Settling Defendant may change the form of financial
2 assurance provided under this Section at any time, upon notice to EPA and DTSC
3 and approval by EPA, provided that the new form of assurance meets the
4 requirements of this Section. In the event of a dispute under Section XIX (Dispute
5 Resolution), Performing Settling Defendant may change the form of the financial
6 assurance only in accordance with the final administrative or judicial decision
7 resolving the dispute.
8

9
10 48. Performing Settling Defendant's obligation to establish and maintain
11 financial security under this Section shall terminate upon EPA's issuance of a
12 Certification of Completion of the Remedial Action pursuant to Paragraph 50.b of
13 this Consent Decree.
14

15 XIV. CERTIFICATION OF COMPLETION
16

17 49. "Operational and Functional."
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19 a. Within thirty (30) Days after Performing Settling Defendant
20 concludes that the Remedial Action is Operational and Functional, Performing
21 Settling Defendant shall schedule and conduct a pre-certification inspection to be
22 attended by Performing Settling Defendant, EPA and DTSC. If, after the
23 pre-certification inspection, Performing Settling Defendant still believes that the
24 Remedial Action is Operational and Functional, it shall submit a written report
25 requesting certification to EPA for approval, with a copy to DTSC, pursuant to
26 Section XI (EPA Approval of Plans and Other Submissions) within thirty (30)
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1 Days of the inspection. In the report, a registered professional engineer and the
2 Performing Settling Defendant's Project Coordinator shall state that the Remedial
3 Action is Operational and Functional. The written report shall include as-built
4 drawings signed and stamped by a professional engineer. The report shall contain
5 the following statement, signed by a responsible corporate official of the
6 Performing Settling Defendant or the Performing Settling Defendant's Project
7 Coordinator:
8
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10 To the best of my knowledge, after thorough investigation, I certify
11 that the information contained in or accompanying this submission is
12 true, accurate and complete. I am aware that there are significant
13 penalties for submitting false information, including the possibility of
14 fine and imprisonment for knowing violations.

15 If, after completion of the pre-certification inspection and receipt and review of
16 the written report, EPA, after reasonable opportunity to review and comment by
17 DTSC, determines that the Remedial Action is not Operational and Functional,
18 EPA will notify Performing Settling Defendant in writing of the activities that
19 must be undertaken by Performing Settling Defendant pursuant to this Consent
20 Decree in order for the Remedial Action to be Operational and Functional. EPA
21 will set forth in the notice a schedule for performance of such activities consistent
22 with the Consent Decree and the SOW or require the Performing Settling
23 Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA
24 Approval of Plans and Other Submissions). Performing Settling Defendant shall
25 perform all activities described in the notice in accordance with the specifications
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1 and schedules established pursuant to this Paragraph, subject to its right to invoke
2 the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

3
4 b. EPA has determined that the intermediate zone Remedial
5 Action to be performed by Performing Settling Defendant must be coordinated
6 with the shallow zone remedy being performed by Carrier Corporation and United
7 Technologies Corporation pursuant to a consent decree entered on April 28, 2006
8 in the matter of *United States v. Carrier Corporation*, Civil Action No. 05-6022
9 ABC (FMOx)(C.D. Cal.)("Carrier Decree"), and that such coordination may
10 require that the Operational and Functional date for the intermediate zone
11 Remedial Action be no earlier than the operational and functional date for the
12 shallow zone remedy. Therefore, notwithstanding Performing Settling
13 Defendant's satisfaction of the requirements in Paragraph 49.a, EPA reserves the
14 right to defer the Operational and Functional certification of the Remedial Action
15 until the date the shallow zone remedy is certified as operational and functional
16 pursuant to the Carrier Decree.

17
18 c. If EPA concludes, based on the initial or any subsequent report
19 requesting certification, and after a reasonable opportunity for review and
20 comment by DTSC, that the Remedial Action is Operational and Functional, EPA
21 will so certify in writing to Performing Settling Defendant. However, if the
22 shallow zone remedy is not operational and functional at the time of this
23 certification, the Operational and Functional Date shall be the date EPA certifies
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1 the shallow zone remedy to be operational and functional pursuant to the Carrier
2 Decree, unless EPA agrees to an earlier Operational and Functional Date.

3
4 d. If EPA fails to certify that the Remedial Action is Operational
5 and Functional within ninety (90) Days after a request, EPA shall be deemed to
6 have denied the request, unless Performing Settling Defendant agrees to an
7 extension of time. Performing Settling Defendant may, at any time thereafter,
8 invoke Dispute Resolution pursuant to Section XIX (Dispute Resolution) to
9 contest EPA's denial of the certification request.
10

11
12 e. Except in the case of a delayed certification as provided in
13 Paragraph 49.c., upon approval of the certification report by EPA or pursuant to a
14 ruling by the Court, the Operational and Functional Date shall be the date when
15 the last report requesting certification of the Remedial Action was submitted.
16

17 f. The Operational and Functional Date shall not be affected in
18 the event EPA subsequently determines, pursuant to Paragraph 13, that
19 modification to the Work specified in the SOW or in work plans developed
20 pursuant to the SOW is necessary to achieve and maintain the Performance
21 Criteria or to meet discharge ARARs.
22

23
24 50. Certification of Completion.

25 a. No later than ninety (90) Days before, and no sooner than one
26 hundred twenty (120) Days prior to, the eight (8) year anniversary of the
27 Operational and Functional Date, and upon Performing Settling Defendant
28

1 concluding that the Remedial Action is still Operational and Functional,
2 Performing Settling Defendant shall schedule a pre-certification inspection to be
3 attended by Performing Settling Defendant, EPA, and DTSC. Performing Settling
4 Defendant shall submit a Facility Status Package to EPA and DTSC which shall
5 include, but not be limited to, all maintenance reports, performance reports,
6 sampling results, and all other deliverables updated as appropriate to reflect the
7 performance and condition of the containment system including all wells,
8 pipelines, and treatment facilities. If, after the pre-certification inspection,
9 Performing Settling Defendant still believes that the Remedial Action is
10 Operational and Functional, Performing Settling Defendant shall submit a written
11 report by a registered professional engineer, in accordance with the SOW, stating
12 that the Remedial Action is Operational and Functional. The report shall contain
13 the following statement, signed by a responsible corporate official of the
14 Performing Settling Defendant or by the Performing Settling Defendant's Project
15 Coordinator:
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21 To the best of my knowledge, after thorough investigation, I certify
22 that the information contained in or accompanying this submission is
23 true, accurate and complete. I am aware that there are significant
24 penalties for submitting false information, including the possibility of
fine and imprisonment for knowing violations.

25 If, after review of the written report, EPA, after reasonable opportunity to review
26 and comment by DTSC, determines that repairs to the containment system are
27 needed, and/or additional documentation regarding access is needed, EPA will
28

1 notify Performing Settling Defendant in writing of the activities that must be
2 undertaken by Performing Settling Defendant to effect such repairs and/or to
3 provide the necessary documentation. EPA will set forth in the notice a schedule
4 for performance of such activities consistent with the Consent Decree and the
5 SOW or require Performing Settling Defendant to submit a schedule to EPA for
6 approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).
7 Performing Settling Defendant shall perform all activities described in the notice
8 in accordance with the specifications and schedules established therein, subject to
9 their right to invoke the dispute resolution procedures set forth in Section XIX
10 (Dispute Resolution).
11

12
13
14 b. If EPA concludes, based on the initial or any subsequent
15 request for Certification of Completion by Performing Settling Defendant that the
16 Remedial Action is still Operational and Functional, EPA will so notify
17 Performing Settling Defendant in writing. This notification shall constitute the
18 Certification of Completion of the Remedial Action for purposes of this Consent
19 Decree, including, but not limited to, Section XXI (Covenants Not to Sue by
20 Plaintiffs). Performing Settling Defendant shall within thirty (30) days from
21 EPA's Certification of Completion of the Remedial Action send each Settling
22 Defendant written notice of such certification.
23
24
25

26 XV. EMERGENCY RESPONSE

27
28 51. In the event of any action or occurrence caused by or related to the

1 performance of the Work which causes or threatens a release of Waste Material
2 from the Site that constitutes an emergency situation or may present an immediate
3 threat to public health or welfare or the environment, Performing Settling
4 Defendant shall, subject to Paragraph 52, immediately take all appropriate action
5 to prevent, abate, or minimize such release or threat of release, and shall
6 immediately notify EPA's Project Coordinator, or, if the Project Coordinator is
7 unavailable, EPA's Alternate Project Coordinator. If neither of these persons is
8 available, Performing Settling Defendant shall notify the EPA Emergency
9 Response Unit, Region 9. Immediately following notice to EPA, Performing
10 Settling Defendant shall orally notify the DTSC Project Manager. Performing
11 Settling Defendant shall take such actions in consultation with EPA's Project
12 Coordinator or other available authorized EPA officer and in accordance with all
13 applicable provisions of the Health and Safety Plans, the Contingency Plans, and
14 any other applicable plans or documents developed pursuant to the SOW. In the
15 event that Performing Settling Defendant fails to take appropriate response action
16 as required by this Section, and EPA, or as appropriate DTSC, takes such action
17 instead, Performing Settling Defendant shall reimburse EPA and DTSC all costs
18 of the response action not inconsistent with the NCP pursuant to Section XVI
19 (Payments for Response Costs).

26 52. Nothing in the preceding Paragraph or in this Consent Decree shall be
27 deemed to limit any authority of the United States or DTSC: (i) to take all
28

1 appropriate action to protect human health and the environment or to prevent,
2 abate, respond to, or minimize an actual or threatened release of Waste Material
3 on, at, or from the Site, or (ii) to direct or order such action, or seek an order from
4 the Court, to protect human health and the environment or to prevent, abate,
5 respond to, or minimize an actual or threatened release of Waste Material on, at, or
6 from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiffs).
7
8

9 XVI. PAYMENTS FOR RESPONSE COSTS

10 53. Payments for Past Response Costs and Past DTSC Response Costs.

11 a. Within fifteen (15) Working Days of the Effective Date,
12 Performing Settling Defendant shall pay to EPA, on behalf of all Settling
13 Defendants, four hundred sixty-five thousand four hundred twenty dollars and
14 ninety cents (\$465,420.90) in payment for Past Response Costs.
15
16

17 b. Payment by Performing Settling Defendant shall be made by
18 FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice
19 account in accordance with current EFT procedures, referencing EPA Site/Spill ID
20 Number 098V, DOJ Case Number 90-11-2-354/16, and the civil action number of
21 this case. Payment shall be made in accordance with instructions provided to
22 Performing Settling Defendant by the Financial Litigation Unit of the United
23 States Attorney's Office for the Central District of California following lodging of
24 the Consent Decree. Any payments received by DOJ after 4:00 p.m. (Eastern
25 Time) will be credited on the next Working Day.
26
27
28

1 d. At the time of payment, Performing Settling Defendant shall
2 send notice that payment has been made to the United States, to EPA and to the
3 Regional Accounting Contact, in accordance with Section XXVI (Notices and
4 Submissions).

5
6 e. The total amount to be paid by Performing Settling Defendant
7 pursuant to this Paragraph (including accrued Interest) shall be deposited in the
8 Puente Valley Operable Unit Special Account within the EPA Hazardous
9 Substance Superfund. This Special Account shall be retained and used to conduct
10 or finance response actions at or in connection with the Site, or the San Gabriel
11 Valley Superfund Sites (Areas 1- 4), or may be transferred by EPA to the EPA
12 Hazardous Substance Superfund.

13 f. Payment of Past DTSC Response Costs. Within thirty (30)
14 days of entry of this Consent Decree, Performing Settling Defendant shall pay to
15 DTSC, on behalf of all Settling Defendants, ninety thousand dollars (\$90,000) in
16 the form of a certified check or cashier's check, in reimbursement of Past DTSC
17 Response Costs. Performing Settling Defendant's check shall be made payable to
18 Cashier, Department of Toxic Substances Control, and shall be forwarded to:
19
20
21
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23

24 Cashier, Department of Toxic Substances Control
25 Accounting Office
26 1001 "I" Street, 21st Floor
27 P.O. Box 806
28 Sacramento, California 95812-0806

Performing Settling Defendant shall send a transmittal letter with the check

1 referencing the San Gabriel Valley Superfund Sites, Puente Valley Operable Unit,
2 Project Code No. 300346. Performing Settling Defendant shall also send a copy
3 of its check(s) and transmittal letter(s) to DTSC, as specified in Section XXVI
4 (Notices and Submissions).
5

6 54. Payments for Future Response Costs and Future DTSC Response
7 Costs.

8 a. Performing Settling Defendant shall pay to EPA, on behalf of all
9 Settling Defendants, that portion of Future Response Costs that the United States
10 incurs pertaining to the Work, incurred in a manner not inconsistent with the
11 National Contingency Plan, and incurred prior to the date eight (8) years from the
12 Operational and Functional Date.
13

14 b. On approximately an annual basis, the United States will send
15 Performing Settling Defendant a bill requiring payment that includes a certified
16 cost summary, consisting of direct and indirect costs incurred by EPA and its
17 contractors, and a DOJ-prepared cost summary which reflects Future Response
18 Costs incurred by DOJ and its contractors, if any. Performing Settling Defendant
19 shall make all payments within forty-five (45) Days of its receipt of each bill
20 requiring payment, except as otherwise provided in the following Paragraph.
21 Performing Settling Defendant shall make all payments required by this Paragraph
22 by FedWire EFT, pursuant to the instructions set forth in Paragraph 53.c, or by a
23 certified check or cashier's check made payable to "EPA Hazardous Substance
24 Superfund," referencing the name and address of the party making the payment,
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1 EPA Site/Spill ID Number 098V, DOJ Number 90-11-2-354/16, and the civil
2 action number of this case. Performing Settling Defendant shall send the check(s)
3
4 to:

5 US Environmental Protection Agency
6 Superfund Payments
7 Cincinnati Finance Center
8 PO Box 979076
9 St. Louis, Missouri 63197-9000

10 c. At the time of payment, Performing Settling Defendant shall
11 send notice that payment has been made to the United States, to EPA and to the
12 Regional Accounting Contact, in accordance with Section XXVI (Notices and
13 Submissions).

14 d. Performing Settling Defendant's payments pursuant to this
15 Paragraph shall be deposited in the Puente Valley Operable Unit Special Account.
16 This Special Account shall to be retained and used to conduct or finance response
17 actions at or in connection with the Site, or the San Gabriel Valley Superfund Sites
18 (Areas 1- 4), or may be transferred by EPA from this Special Account to the EPA
19 Hazardous Substance Superfund.
20

21 e. Payment of Future DTSC Response Costs. Performing Settling
22 Defendant shall pay to DTSC all Future DTSC Response Costs that DTSC incurs
23 with respect to the Work not inconsistent with the National Contingency Plan and
24 incurred prior to the date eight (8) years from the date the Remedial Action is
25 certified by EPA to be Operational and Functional. On a periodic basis DTSC will
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1 send Performing Settling Defendant a bill requiring payment that includes a
2 standard DTSC cost summary, which includes direct and indirect costs incurred by
3 DTSC and its contractors. Performing Settling Defendant shall make all payments
4 within forty-five (45) days of Performing Settling Defendant's receipt of each bill
5 requiring payment, except as otherwise provided in the following Paragraph.
6

7 Performing Settling Defendant shall make all payments required by this Paragraph
8 in the form of a certified check or cashier's check made payable to Cashier,
9 Department of Toxic Substances Control, and shall be forwarded to:
10

11
12 Department of Toxic Substances Control
13 State of California
14 Accounting Office
15 1001 "I" Street, 21st Floor
16 P.O. Box 806
17 Sacramento, California 95812-0806

18 Performing Settling Defendant shall send a transmittal letter with the check
19 referencing the San Gabriel Valley Superfund Sites, Puente Valley Operable Unit,
20 and billing code 301404. Performing Settling Defendant shall also send a copy of
21 its check and transmittal letter to DTSC, as specified in Section XXVI (Notices
22 and Submissions).

23 55. Performing Settling Defendant may request reasonable supporting
24 documentation for any Future Response Costs or Future DTSC Response Costs
25 within fifteen (15) Days of receipt of a bill. Performing Settling Defendant may
26 contest payment of any Future Response Costs or Future DTSC Response Costs
27
28

1 under Paragraph 54 if it determines that the United States or DTSC has made an
2 accounting error or if it alleges that a cost item that is included represents costs
3 that are inconsistent with the NCP or are outside the scope of Paragraph 54. Such
4 objection shall be made in writing within thirty (30) Days of receipt of the
5 contested bill, or, if supporting documentation is requested, within fifteen (15)
6 Days of receipt of the supporting documentation, and must be sent to the United
7 States (if the United States' accounting is being disputed) or DTSC (if DTSC's
8 accounting is being disputed) pursuant to Section XXVI (Notices and
9 Submissions). Any such objection shall specifically identify the contested Future
10 Response Costs or Future DTSC Response Costs and the basis for objection. In
11 the event of an objection, Performing Settling Defendant shall, simultaneously
12 with submitting the objection, pay all uncontested Future Response Costs or
13 Future DTSC Response Costs in the manner described in Paragraph 54.
14 Simultaneously, Performing Settling Defendant shall establish an interest-bearing
15 escrow account in a federally-insured bank duly chartered in the State of
16 California and remit to that escrow account funds equivalent to the amount of the
17 contested Future Response Costs or Future DTSC Response Costs. Performing
18 Settling Defendant shall send to the United States or DTSC, as provided in Section
19 XXVI (Notices and Submissions), a copy of the transmittal letter and the check
20 remitting the uncontested Future Response Costs or Future DTSC Response Costs,
21 together with a copy of the correspondence that establishes and funds the escrow
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1 account, which shall include information containing the identity of the bank and
2 bank account under which the escrow account is established, as well as a bank
3 statement showing the initial balance of the escrow account. Simultaneously with
4 establishment of the escrow account, Performing Settling Defendant shall initiate
5 the dispute resolution procedures in Section XIX (Dispute Resolution). If the
6 United States or DTSC prevails in the dispute, within five (5) Days of the
7 resolution of the dispute, Performing Settling Defendant shall pay the sums due
8 (with accrued interest) to the United States or DTSC in the manner described in
9 Paragraph 54. If Performing Settling Defendant prevails concerning any aspect of
10 the contested costs, Performing Settling Defendant shall pay all contested costs
11 (plus associated accrued Interest) as to which they did not prevail to the United
12 States or DTSC in the manner described in Paragraph 54; Performing Settling
13 Defendant shall be disbursed any balance of the escrow account. The dispute
14 resolution procedures set forth in this Paragraph in conjunction with the
15 procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive
16 mechanisms for resolving disputes regarding Performing Settling Defendant's
17 obligation to reimburse the United States for its Future Response Costs and DTSC
18 for Future DTSC Response Costs.

25 56. In the event that the payments required by Paragraph 53 are not made
26 within fifteen (15) Working Days of the Effective Date, Performing Settling
27 Defendant shall pay Interest on the unpaid balance through the date of payment.
28

1 The Interest to be paid on Past Response Costs under this Paragraph shall begin to
2 accrue on the Effective Date. In the event that the payments of Future Response
3 Costs or Future DTSC Response Costs required by Paragraph 54 are not made
4 within forty-five (45) Days of Performing Settling Defendant's receipt of the bill
5 requiring payment, and the payments are not contested pursuant to the procedure
6 set forth in Paragraph 55, Performing Settling Defendant shall pay Interest on the
7 unpaid balance. Future Response Costs and Future DTSC Response Costs Interest
8 shall begin to accrue on the date of the bill for those costs and shall accrue through
9 the date of payment. Payments of Interest made under this Paragraph shall be in
10 addition to such other remedies or sanctions available to Plaintiffs by virtue of a
11 failure to make timely payments under this Section, including but not limited to
12 payment of Stipulated Penalties pursuant to Paragraph 71. Performing Settling
13 Defendant shall make all payments required by this Paragraph in the manner
14 described in Paragraph 54.

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20 XVII. INDEMNIFICATION AND INSURANCE

21 57. Settling Defendants' Indemnification of the United States and DTSC.

22 a. The United States and DTSC do not assume any liability by
23 entering into this agreement or by virtue of any designation of Performing Settling
24 Defendant as EPA's authorized representative under Section 104(e) of CERCLA,
25 42 U.S.C. § 9604(e). Each Settling Defendant shall indemnify, save, and hold
26 harmless the United States, DTSC, and their officials, agents, employees,
27
28

1 contractors, subcontractors, or representatives for or from any and all claims or
2 causes of action arising from, or on account of, negligent or other wrongful acts or
3 omissions of said Settling Defendant, its officers, directors, employees, agents,
4 contractors, subcontractors, and any persons acting on its behalf or under its
5 control, in carrying out activities of said Settling Defendant pursuant to this
6 Consent Decree, including, but not limited to, any claims arising from any
7 designation of Performing Settling Defendant as EPA's authorized representative
8 under Section 104(e) of CERCLA. Further, each Settling Defendant agrees to pay
9 the United States and DTSC all costs they incur including, but not limited to,
10 attorneys' fees and other expenses of litigation and settlement arising from, or on
11 account of, claims made against the United States or DTSC based on negligent or
12 other wrongful acts or omissions of said Settling Defendant, its officers, directors,
13 employees, agents, contractors, subcontractors, and any persons acting on its
14 behalf or under its control, in carrying out activities required of said Settling
15 Defendant pursuant to this Consent Decree. Neither the United States nor DTSC
16 shall be held out as a party to any contract entered into by or on behalf of
17 Performing Settling Defendant in carrying out activities pursuant to this Consent
18 Decree. Neither Performing Settling Defendant nor any such contractor of
19 Performing Settling Defendant shall be considered an agent of the United States or
20 DTSC. For purposes of this Paragraph, neither Performing Settling Defendant nor
21 any such contractor of Performing Settling Defendant shall be considered a person

1 acting on behalf of Contributing Settling Defendants.

2 b. The United States and/or DTSC shall give any Settling
3 Defendant notice of any claim for which the United States and/or DTSC plan to
4 seek indemnification pursuant to Paragraph 57, to the Settling Defendant from
5 which it plans to seek indemnity, and shall consult with said Settling Defendant
6 prior to settling such claim.
7

8
9 58. Performing Settling Defendant waives all claims against the United
10 States and DTSC for damages or reimbursement or for set-off of any payments
11 made or to be made to the United States or DTSC arising from or on account of
12 any contract, agreement, or arrangement between Performing Settling Defendant
13 and any person for performance of Work on or relating to the Site, including, but
14 not limited to, claims on account of construction delays. In addition, Performing
15 Settling Defendant shall indemnify and hold harmless the United States and DTSC
16 with respect to any and all claims for damages or reimbursement arising from or
17 on account of any contract, agreement, or arrangement between Performing
18 Settling Defendant and any person for performance of Work on or relating to the
19 Site, including, but not limited to, claims on account of construction delays.
20

21
22 59. No later than the Effective Date, Performing Settling Defendant shall
23 secure, and shall maintain comprehensive general liability insurance with limits of
24 five million dollars (\$5 million), combined single limit, and automobile liability
25 insurance with limits of two million dollars (\$2 million), combined single limit,
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1 naming the United States and DTSC as additional insureds. In addition, for the
2 duration of this Consent Decree, Performing Settling Defendant shall satisfy, or
3 shall ensure that their contractors or subcontractors satisfy, all applicable laws and
4 regulations regarding the provision of worker's compensation insurance for all
5 persons performing the Work on behalf of Performing Settling Defendant in
6 furtherance of this Consent Decree. No later than the Effective Date of this
7 Consent Decree, Performing Settling Defendant shall provide to EPA and DTSC
8 certificates of such insurance and a copy of each insurance policy. Performing
9 Settling Defendant shall resubmit such certificates and copies of policies each year
10 on the anniversary of the Effective Date. If Performing Settling Defendant
11 demonstrates by evidence satisfactory to EPA that any contractor or subcontractor
12 maintains insurance equivalent to that described above, or insurance covering the
13 same risks but in a lesser amount, then, with respect to that contractor or
14 subcontractor, Performing Settling Defendant need provide only that portion of the
15 insurance described above which is not maintained by the contractor or
16 subcontractor.

22 XVIII. FORCE MAJEURE

23
24 60. "Force majeure," for purposes of this Consent Decree, is defined as
25 any event arising from causes beyond the control of a Settling Defendant, of any
26 entity controlled by a Settling Defendant, or of a Settling Defendants' contractors,
27 that delays or prevents the performance of any obligation under this Consent
28

1 Decree despite said Settling Defendant's best efforts to fulfill the obligation. The
2 requirement that a Settling Defendant exercise "best efforts to fulfill the
3 obligation" includes using best efforts to anticipate any potential force majeure
4 event and best efforts to address the effects of any potential force majeure event:
5 (1) as it is occurring, and (2) following the potential force majeure event, such that
6 the delay is minimized to the greatest extent possible. With respect to Performing
7 Settling Defendant, "Force Majeure" does not include financial inability to
8 complete the Work or a failure to attain the Performance Criteria.
9
10

11
12 61. If any event occurs or has occurred that may delay the performance
13 by a Settling Defendant of any obligation under this Consent Decree, whether or
14 not caused by a force majeure event, such Settling Defendant shall notify orally
15 EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project
16 Coordinator or, in the event both of EPA's designated representatives are
17 unavailable, the Director of the Superfund Division, EPA Region 9, within
18 forty-eight (48) hours of when Settling Defendant first knew that the event might
19 cause a delay. Immediately following notice to EPA, such Settling Defendant
20 shall orally notify the DTSC Project Manager. Within fourteen (14) Days
21 thereafter, such Settling Defendant shall provide in writing to EPA and DTSC an
22 explanation and description of the reasons for the delay; the anticipated duration
23 of the delay; all actions taken or to be taken to prevent or minimize the delay; a
24 schedule for implementation of any measures to be taken to prevent or mitigate the
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1 delay or the effect of the delay; such Settling Defendant's rationale for attributing
2 such delay to a force majeure event if it intends to assert such a claim; and a
3 statement as to whether, in the opinion of such Settling Defendant, such event may
4 cause or contribute to an endangerment to public health, welfare or the
5 environment. A Settling Defendant shall include with any notice all available
6 documentation supporting their claim that the delay was attributable to a force
7 majeure. Failure to comply with the above requirements shall preclude a Settling
8 Defendant from asserting any claim of force majeure for that event for the period
9 of time of such failure to comply, and for any additional delay caused by such
10 failure. Each Settling Defendant shall be deemed to know of any circumstance of
11 which it, any entity controlled by it, or its contractors knew or should have known.

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16 62. If EPA, after a reasonable opportunity for review and comment by the
17 DTSC, agrees that the delay or anticipated delay is attributable to a force majeure
18 event, the time for performance of the obligations under this Consent Decree that
19 are affected by the force majeure event will be extended by EPA, after a
20 reasonable opportunity for review and comment by the DTSC, for such time as is
21 necessary to complete those obligations. An extension of the time for performance
22 of the obligations affected by the force majeure event shall not, of itself, extend
23 the time for performance of any other obligation. If EPA, after a reasonable
24 opportunity for review and comment by the DTSC, does not agree that the delay or
25 anticipated delay has been or will be caused by a force majeure event, EPA will
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1 notify the affected Settling Defendant in writing of its decision. If EPA, after a
2 reasonable opportunity for review and comment by the DTSC, agrees that the
3 delay is attributable to a force majeure event, EPA will notify the affected Settling
4 Defendant in writing of the length of the extension, if any, for performance of the
5 obligations affected by the force majeure event.
6

7
8 63. If a Settling Defendant elects to invoke the dispute resolution
9 procedures set forth in Section XIX (Dispute Resolution), it shall do so no later
10 than fifteen (15) Days after receipt of EPA's notice. In any such proceeding, the
11 Settling Defendant shall have the burden of demonstrating by a preponderance of
12 the evidence that the delay or anticipated delay has been or will be caused by a
13 force majeure event, that the duration of the delay or the extension sought was or
14 will be warranted under the circumstances, that best efforts were exercised to
15 avoid and mitigate the effects of the delay, and that the Settling Defendant
16 complied with the requirements of Paragraphs 60 and 61, above. If the affected
17 Settling Defendant carries this burden, the delay at issue shall be deemed not to be
18 a violation by such Settling Defendant of the affected obligation of this Consent
19 Decree identified to EPA and the Court.
20
21
22

23 XIX. DISPUTE RESOLUTION

24
25 64. Unless otherwise expressly provided for in this Consent Decree, the
26 dispute resolution procedures of this Section shall be the exclusive mechanism to
27 resolve disputes between Settling Defendant(s) and the United States or DTSC
28

1 arising under or with respect to this Consent Decree. However, the procedures set
2 forth in this Section shall not apply to actions by the United States or DTSC to
3 enforce obligations of Settling Defendants that have not been disputed in
4 accordance with this Section. Procedures in this Section do not apply to disputes
5 among the Settling Defendants that do not involve the United States or DTSC.
6

7
8 65. Any dispute that arises under or with respect to this Consent Decree
9 shall in the first instance be the subject of informal negotiations between the
10 parties to the dispute. The period for informal negotiations shall not exceed
11 twenty (20) Days from the time the dispute arises, unless it is modified by written
12 agreement of the parties to the dispute. The dispute shall be considered to have
13 arisen when one party sends the other parties a written Notice of Dispute.
14

15
16 66. Statements of Position.

17 a. In the event that the parties cannot resolve a dispute by
18 informal negotiations under the preceding Paragraph, then the position advanced
19 by EPA shall be considered binding unless, within twenty-one (21) Days after the
20 conclusion of the informal negotiation period, the Settling Defendant involved in
21 the dispute invokes the formal dispute resolution procedures of this Section by
22 serving on the United States, with a copy to DTSC, a written Statement of Position
23 on the matter in dispute, including but not limited to any factual data, analysis, or
24 opinion supporting that position and any supporting documentation relied upon by
25 that Settling Defendant. The Statement of Position shall specify that Settling
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1 Defendant's position as to whether formal dispute resolution should proceed under
2 Paragraph 67 or Paragraph 68.

3
4 b. Within twenty-one (21) Days after receipt of a Settling
5 Defendant's Statement of Position, EPA will serve on that Settling Defendant its
6 Statement of Position, including, but not limited to, any factual data, analysis, or
7 opinion supporting that position and all supporting documentation relied upon by
8 EPA with a copy to DTSC. EPA's Statement of Position shall include a statement
9 as to whether formal dispute resolution should proceed under Paragraph 67 or 68.

10
11 Within ten (10) Days after receipt of EPA's Statement of Position, the Settling
12 Defendant(s) involved in the dispute may submit a Reply. In the event of a
13 dispute between EPA and the Settling Defendant(s) under Paragraph 67, DTSC
14 shall have the option to submit a Statement of Position within ten (10) days of
15 receipt of EPA's Statement of Position, and DTSC's Statement of Position shall be
16 part of the administrative record.
17
18

19
20 c. If there is disagreement between the parties as to whether
21 dispute resolution should proceed under Paragraph 67 or 68, the procedures set
22 forth in the Paragraph determined by EPA to be applicable shall be followed.
23 However, if the Settling Defendant in the dispute ultimately appeals to the Court
24 to resolve the dispute, the Court shall determine which Paragraph is applicable in
25 accordance with the standards of applicability set forth in Paragraphs 67 and 68.
26
27

28 67. Formal dispute resolution for disputes pertaining to the selection or

1 adequacy of any response action and all other disputes that are accorded review on
2 the administrative record under applicable principles of administrative law shall be
3 conducted pursuant to the procedures set forth in this Paragraph. For purposes of
4 this Paragraph, the adequacy of any response action includes, without limitation:
5 (a) the adequacy or appropriateness of plans, procedures to implement plans, or
6 any other items requiring approval by EPA under this Consent Decree; and (b) the
7 adequacy of the performance of response actions taken pursuant to this Consent
8 Decree. Nothing in this Consent Decree shall be construed to allow any dispute
9 by Settling Defendants regarding the validity of the Interim ROD's or the ESD's
10 provisions.
11

12
13
14 a. An administrative record of the dispute shall be maintained by
15 EPA and shall contain all statements of position, including supporting
16 documentation, submitted pursuant to this Section. Where appropriate, EPA may
17 allow submission of supplemental statements of position by the parties to the
18 dispute.
19

20
21 b. The Director of the Superfund Division, EPA Region 9, will
22 issue a final administrative decision resolving the dispute based on the
23 administrative record described in Paragraph 67.a. This decision shall be binding
24 upon the Settling Defendant(s) that is/are party(ies) to the dispute, subject only to
25 the right to seek judicial review pursuant to Paragraph 67.c and d.
26

27
28 c. Any administrative decision made by EPA pursuant to

1 Paragraph 67.b. shall be reviewable by this Court, provided that a motion for
2 judicial review of the decision is filed by the Settling Defendant(s) in the dispute
3 with the Court and served on all parties to the dispute within ten (10) Days of
4 receipt of EPA's decision, with a copy to DTSC. The motion shall include a
5 description of the matter in dispute, the efforts made by the parties to resolve it,
6 the relief requested, and the schedule, if any, within which the dispute must be
7 resolved to ensure orderly implementation of this Consent Decree. The United
8 States may file a response to a Settling Defendant's motion.
9
10

11
12 d. In proceedings on any dispute governed by this Paragraph,
13 Settling Defendant(s) in the dispute shall have the burden of demonstrating that
14 the decision of the Superfund Division Director is arbitrary and capricious or
15 otherwise not in accordance with law. Judicial review of EPA's decision shall be
16 on the administrative record compiled pursuant to Paragraph 67.a.
17

18
19 68. Formal dispute resolution for disputes that neither pertain to the
20 selection or adequacy of any response action nor are otherwise accorded review on
21 the administrative record under applicable principles of administrative law, shall
22 be governed by this Paragraph.
23

24 a. Following receipt of a Settling Defendant's Statement of
25 Position submitted pursuant to Paragraph 66, the Director of the Superfund
26 Division, EPA Region 9, will issue a final decision resolving the dispute. The
27 Superfund Division Director's decision shall be binding unless, within ten (10)
28

1 Days of receipt of the decision, a Settling Defendant involved in the dispute files
2 with the Court and serves on the parties a motion for judicial review of the
3 decision, setting forth the matter in dispute, the efforts made by the parties to
4 resolve it, the relief requested, and the schedule, if any, within which the dispute
5 must be resolved to ensure orderly implementation of the Consent Decree. The
6 United States may file a response to a Settling Defendant's motion.
7
8

9 b. If Performing Settling Defendant contests payment of any
10 Future DTSC Response Costs, Performing Settling Defendant shall comply with
11 the procedures set forth in this Subparagraph. Prior to requesting formal dispute
12 resolution pursuant to this Subparagraph, Performing Settling Defendant shall
13 notify DTSC's assigned Project Manager and attempt to informally resolve the
14 dispute with DTSC's Project Manager and branch chief.
15
16

17 (i) If the dispute can not be resolved informally within
18 twenty (20) days, then Performing Settling Defendant shall provide a written
19 request for formal dispute resolution which shall describe all issues in dispute and
20 shall set forth the reasons for the dispute, both factual and legal. The written
21 request for formal dispute resolution and any supporting documentation shall be
22 sent to:
23
24

25 Special Assistant for Cost Recovery and Reimbursement Policy
26 Department of Toxic Substances Control
27 P.O. Box 806
28 Sacramento, California 95812-0806

1 Copies of the written request for formal dispute resolution and any supporting
2 documentation shall also be sent to those persons designated by DTSC to receive
3 notices and submissions in Section XXVI of this Consent Decree. A decision on
4 the billing dispute will be rendered by the Special Assistant for Cost Recovery and
5 Reimbursement Policy or other DTSC designee.
6

7
8 (ii) The decision by the Special Assistant for Cost Recovery
9 and Reimbursement Policy shall be binding on the Performing Settling Defendant
10 unless, within fifteen (15) Days of the receipt of the decision, the Performing
11 Settling Defendant files with the Court and serves on DTSC a motion for judicial
12 review of the decision setting forth the matter in dispute, the efforts made by the
13 Parties to resolve it, the relief requested, and the schedule, if any, within which the
14 dispute must be resolved to ensure orderly implementation of the Consent Decree.
15 DTSC may file a response within thirty (30) days of such motion.
16
17

18 c. Notwithstanding Paragraph R of Section I (Background) of this
19 Consent Decree, judicial review of any dispute governed by this Paragraph shall
20 be governed by applicable principles of law.
21

22 69. The invocation of formal dispute resolution procedures under this
23 Section shall not extend, postpone, or affect in any way any obligation of Settling
24 Defendants under this Consent Decree, not directly in dispute, unless EPA, or
25 DTSC as applicable, or the Court agrees otherwise. Stipulated Penalties with
26 respect to the disputed matter shall continue to accrue but payment shall be stayed
27
28

1 pending resolution of the dispute as provided in Paragraph 78. Notwithstanding
2 the stay of payment, Stipulated Penalties shall accrue from the first (1st) Day of
3 noncompliance with any applicable provision of this Consent Decree. In the event
4 that the Settling Defendant(s) in the dispute do not prevail on the disputed issue,
5 Stipulated Penalties shall be assessed and paid as provided in Section XX
6 (Stipulated Penalties).
7
8

9 **XX. STIPULATED PENALTIES**

10 70. Liability for Stipulated Penalties

11 a. Performing Settling Defendant shall be liable for stipulated
12 penalties in the amounts set forth in Paragraphs 71 and 72 to the United States for
13 failure to comply with the requirements of this Consent Decree specified below,
14 unless excused under Section XVIII (Force Majeure). "Compliance" by
15 Performing Settling Defendant shall include completion of the activities under this
16 Consent Decree or any work plan or other plan approved under this Consent
17 Decree identified below in accordance with all applicable requirements of law, this
18 Consent Decree, the SOW, and any plans or other documents approved by EPA
19 pursuant to this Consent Decree and within the specified time schedules
20 established by and approved under this Consent Decree.
21

22 b. An Owner Settling Defendant shall be liable for stipulated
23 penalties in the amounts set forth in Paragraph 71 for said Settling Defendant's
24 failure to comply with the requirements of Paragraph 23.
25
26
27
28

1 71. Stipulated Penalty Amounts - Work.

2 a. The following Stipulated Penalties shall accrue per violation
3
4 per Day for any noncompliance identified in Subparagraph 71.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$2,000	15th through 30th Day
\$3,000	31st Day and beyond

5
6
7
8
9
10 b. Compliance Milestones. Failure to perform any of the
11 following within the specified time schedule provided for in this Consent Decree,
12 SOW, or work plans shall result in stipulated penalties in the amounts set forth in
13 Subparagraph a:
14

- 15 (i) Initiation of construction of Remedial Action;
16 (ii) Completion of construction of Remedial Action;
17 (iii) Achievement of Operational and Functional Status;
18 (iv) Compliance with actions required pursuant to the SOW
19 to come back into compliance with the Performance Criteria or applicable drinking
20 water standards (including DHS 97-005 permit limits) or discharge ARARs;
21 (v) Compliance with actions required by EPA pursuant to
22 the SOW where EPA has determined it is more likely than not that the
23 Performance Criteria or applicable drinking water standards (including DHS
24 97-005 permit limits) or discharge ARARs will be exceeded if such actions are not
25
26
27
28

1 undertaken;

2 (vi) Provide access pursuant to Paragraph 23;

3
4 (vii) Timely payments for Future Response Costs and Future
5 DTSC Response Costs; and

6 (viii) Timely payments for Past Response Costs and Past
7 DTSC Response Costs.
8

9 72. Stipulated Penalty Amounts - Reports.

10 a. The following Stipulated Penalties shall accrue per violation
11 per Day for any non-compliance identified in Subparagraph 72.b:
12

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th Day
\$2,000	15th through 30th Day
\$3,000	31st Day and beyond

13
14
15
16
17
18 b. Failure to submit the following reports in a timely or adequate
19 manner as set forth in Section XI (EPA Approval of Plans and Other Submissions)
20 shall result in stipulated penalties in the amounts set forth in Subparagraph a:
21

22 (i) Draft and Final RD/RA Work Plans;

23 (ii) Preliminary Remedial Design;

24 (iii) Final Remedial Design;

25 (iv) Remedial Action Construction Completion Report; and

26 (v) Performance Evaluation Reports
27
28

1 c. The following stipulated penalties shall accrue per violation per
2 Day for failure to submit any other reports or written documents in a timely or
3 adequate manner as set forth in Section XI (EPA Approval of Plans and Other
4 Submissions).
5

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th Day
\$500	15th through 30th Day
\$1,000	31st Day and beyond

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11
12 73. In the event that EPA assumes performance of a portion or all of the
13 Work pursuant to Paragraph 89 of Section XXI (Covenants Not to Sue by
14 Plaintiffs), Performing Settling Defendant shall be liable for a stipulated penalty in
15 the amount of one million five hundred thousand dollars (\$1.5 million). In the
16 event that EPA assumes performance of a portion or all of the Work pursuant to
17 Paragraph 89 of Section XXI (Covenants Not to Sue by Plaintiffs), and Performing
18 Settling Defendant pays in full the penalty set forth in this Paragraph, Performing
19 Settling Defendant shall not be liable for additional stipulated penalties for failure
20 to perform or complete the Work that EPA assumes.
21
22

23
24 74. All penalties shall begin to accrue on the Day after the complete
25 performance is due or the Day a violation occurs, and shall continue to accrue
26 through the final Day of the correction of the noncompliance or completion of the
27 activity. However, Stipulated Penalties shall not accrue: (a) with respect to a
28

1 deficient submission under Section XI (EPA Approval of Plans and Other
2 Submissions), during the period, if any, beginning on the thirty-first (31st) Day
3 after EPA's receipt of such submission until the date that EPA notifies Performing
4 Settling Defendant of any deficiency; (b) with respect to a decision by the Director
5 of the Superfund Division, EPA Region 9, under Paragraph 67.b or 68.a of Section
6 XIX (Dispute Resolution), during the period, if any, beginning on the twenty-first
7 (21st) Day after the date that the affected Settling Defendant's reply to EPA's
8 Statement of Position is received until the date that the Director issues a final
9 decision regarding such dispute; or (c) with respect to judicial review by this Court
10 of any dispute under Section XIX (Dispute Resolution), during the period, if any,
11 beginning on the thirty-first (31st) Day after the Court's receipt of the final
12 submission regarding the dispute until the date that the Court issues a final
13 decision regarding such dispute. Nothing herein shall prevent the simultaneous
14 accrual of separate penalties for separate violations of this Consent Decree.

19
20 75. Following a determination by EPA or DTSC that a Settling
21 Defendant has failed to comply with a requirement of this Consent Decree, EPA or
22 DTSC may give written notification of the same and describe the noncompliance.
23 EPA or DTSC may send a Settling Defendant a written demand for the payment of
24 the penalties. However, penalties shall accrue as provided in the preceding
25 Paragraph regardless of whether EPA or DTSC has provided notice of a violation.

26
27
28 76. All penalties accruing under this Section shall be due and payable

1 within thirty (30) Days of receipt from EPA or DTSC of a written demand for
2 payment of the penalties, except where a Settling Defendant invokes the dispute
3 resolution procedures under Section XIX (Dispute Resolution). All payments to
4 the United States under this Section shall be paid by FedWire EFT pursuant to the
5 instructions set forth in Paragraph 53.c, or by certified check(s) or cashier's
6 check(s) made payable to "EPA Hazardous Substances Superfund." Checks shall
7 be mailed to:
8
9

10
11 EPA - Cincinnati Accounting Operations
12 Attn: Region 9 Superfund Receivables
13 P.O. Box 371099M
14 Pittsburgh, Pennsylvania 15251

15 and shall indicate that the payment is for stipulated penalties, and shall reference
16 the EPA Region and Site/Spill ID # 098V, the DOJ Case Number 90-11-2-354/16,
17 the civil action number of this case, and the name and address of the Party making
18 payment. Copies of check(s) paid pursuant to this Section, and any accompanying
19 transmittal letter(s), shall be sent to the United States as provided in Section XXVI
20 (Notices and Submissions). However, any Stipulated Penalties accruing under this
21 Section for Performing Settling Defendant's failure to pay Past DTSC Response
22 Costs or Future DTSC Response Costs shall be due and payable to DTSC,
23 pursuant to the payment terms set forth in Paragraph 54.e.
24
25

26 77. Except in the event of EPA's assumption of performance of a portion
27 or all of the Work pursuant to Paragraph 89 of Section XXI (Covenants Not to Sue
28

1 by Plaintiffs) and the associated payment of penalties pursuant to Paragraph 73,
2 the payment of penalties shall not alter in any way Performing Settling
3 Defendant's obligation to complete the performance of the Work required under
4 this Consent Decree.
5

6 78. Stipulated Penalties shall continue to accrue as provided in Paragraph
7 74 during any dispute resolution period, but need not be paid until the following:
8

9 a. If the dispute is resolved by agreement or by a decision of EPA
10 or DTSC that is not appealed to this Court, accrued penalties determined to be
11 owing shall be paid within fifteen (15) Days of the agreement or the receipt of
12 EPA's or DTSC's decision or order;
13

14 b. If the dispute is appealed to this Court and the United States or
15 DTSC prevails in whole or in part, the affected Settling Defendant shall pay all
16 accrued penalties determined by the Court to be owed to EPA or DTSC within
17 sixty (60) Days of receipt of the Court's decision or order, except as provided in
18 Subparagraph c below;
19

20 c. If the District Court's decision is appealed by any Party, the
21 affected Settling Defendant shall pay all accrued penalties determined by the
22 District Court to be owing to the United States or DTSC into an interest-bearing
23 escrow account within sixty (60) Days of receipt of the Court's decision or order.
24 Penalties shall be paid into this account as they continue to accrue, at least every
25 sixty (60) Days. Within fifteen (15) Days of receipt of the final appellate court
26
27
28

1 decision, the escrow agent shall pay the balance of the account to EPA or DTSC or
2 to the affected Settling Defendant in accordance with the Court's mandate.

3
4 79. If Settling Defendants fail to pay Stipulated Penalties when due, the
5 United States or DTSC may institute proceedings to collect the penalties, as well
6 as Interest. Interest shall be paid on the unpaid balance, which shall begin to
7 accrue on the date of demand made pursuant to Paragraph 76.
8

9 80. Nothing in this Consent Decree shall be construed as prohibiting,
10 altering, or in any way limiting the ability of the United States or DTSC to seek
11 any other remedies or sanctions available by virtue of a Settling Defendant's
12 violation of this Consent Decree or of the statutes and regulations upon which it is
13 based, including but not limited to penalties pursuant to Section 122(l) of
14 CERCLA, 42 U.S.C. § 9622(l); provided, however, that the United States or
15 DTSC shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any
16 violation for which a stipulated penalty is provided herein, except in the case of a
17 willful violation of the Consent Decree.
18
19
20

21 81. Notwithstanding any other provision of this Section, the United States
22 or DSTC may, in their unreviewable discretion, waive any portion of Stipulated
23 Penalties that have accrued pursuant to this Consent Decree.
24

25 XXI. COVENANTS NOT TO SUE BY PLAINTIFFS

26 82. United States' Covenant Not To Sue. In consideration of the actions
27 that will be performed and the payments that have been and will be made by
28

1 Settling Defendants under the terms of this Consent Decree, and except as
2 specifically provided in Paragraphs 84 and 88 of this Section, the United States
3
4 covenants not to sue or to take administrative action against Settling Defendants
5 pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), and
6
7 Section 7003 of RCRA, 42 U.S.C. § 6973, for claims relating to the Interim ROD
8
9 for the Site, as modified by the ESD, and for recovery of Past Response Costs,
10
11 Future Response Costs, and UAO Oversight Costs. Except with respect to future
12
13 liability, these covenants not to sue shall take effect upon the receipt by EPA of
14
15 the payments required by Paragraph 53 of Section XVI (Payments for Response
16
17 Costs). With respect to future liability, these covenants not to sue shall take effect
18
19 upon Certification of Completion of Remedial Action by EPA pursuant to
20
21 Paragraph 50.b of Section XIV (Certification of Completion). These covenants
22
23 not to sue are conditioned upon the satisfactory performance by Performing
24
25 Settling Defendant and Contributing Settling Defendants of their respective
26
27 obligations under this Consent Decree. These covenants not to sue extend only to
28
Settling Defendants and do not extend to any other person.

83. Covenant Not to Sue by DTSC. Except as specifically provided in
Paragraphs 86 and 88 (General Reservations of Rights) of this Section, DTSC
covenants not to sue or to take administrative action against Settling Defendants
pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and Cal. Health &
Safety Code Sections 25323.5, 25355.5, 25358.3, and 25360 for claims relating to

1 the Interim ROD for the Site, as modified by the ESD, and for recovery of Past
2 DTSC Response Costs and Future DTSC Response Costs. With respect to
3
4 Contributing Settling Defendants, this covenant not to sue shall take effect upon
5 the payment of Past DTSC Response Costs by Performing Settling Defendant
6 pursuant to Paragraph 53.f. With respect to Performing Settling Defendant, this
7
8 covenant not to sue shall take effect upon payment to DTSC of all payments
9 required from Performing Settling Defendant by Paragraph 53.f (Payment of Past
10 DTSC Response Costs), 54.e (Payment of Future DTSC Response Costs) and any
11
12 Interest or Stipulated Penalties owed under this Consent Decree. Each Settling
13 Defendant's covenant not to sue is conditioned upon the satisfactory performance
14 by that Settling Defendant of its obligations under this Consent Decree. This
15
16 covenant not to sue extends only to Settling Defendants and does not extend to
17 any other person.

18 84. United States' Pre-certification Reservations. Notwithstanding any
19
20 other provision of this Consent Decree, the United States reserves, and this
21 Consent Decree is without prejudice to, the right to institute proceedings in this
22
23 action or in a new action, or to issue an administrative order seeking to compel
24 Performing Settling Defendant:

- 25 a. to perform further response actions relating to the intermediate
26 zone remedy at the Site; or
27
28 b. to reimburse the United States for additional costs of response

1 for the intermediate zone remedy at the Site, if, prior to Certification of
2 Completion of the Remedial Action:

3
4 (1) conditions at the Site, previously unknown to EPA, are
5 discovered, or

6 (2) information, previously unknown to EPA, is received, in
7 whole or in part,

8 and EPA determines that these previously unknown conditions or information,
9 together with any other relevant information, indicate that the Remedial Action is
10 not protective of human health or the environment. If EPA makes such a
11 determination, DTSC reserves, and this Consent Decree is without prejudice to,
12 the right to institute proceedings in this action or in a new action, or to issue an
13 administrative order seeking to compel Performing Settling Defendant to
14 reimburse DTSC for additional costs of response.

15
16
17
18 85. For purposes of Paragraph 84, the information and the conditions
19 known to EPA shall include only that information known to EPA as of the date
20 this Consent Decree is lodged with the Court, and those conditions which are set
21 forth in the Interim ROD, as modified by the ESD, and the administrative record
22 supporting the Interim ROD and the ESD.
23

24
25 86. DTSC's Pre-certification Reservations. Notwithstanding any other
26 provision of this Consent Decree, subject to federal preemption law, DTSC
27 reserves, and this Consent Decree is without prejudice to, any rights that DTSC
28

1 may have under applicable law to institute proceedings in this action or in a new
2 action, or to issue an administrative order seeking to compel Performing Settling
3 Defendant:
4

5 a. to perform further response actions not inconsistent with the
6 NCP relating to the Site, or
7

8 b. to reimburse DTSC for additional costs of response if, prior to
9 Certification of Completion of the Remedial Action

10 (1) conditions at the Site, previously unknown to DTSC, are
11 discovered, or
12

13 (2) information previously unknown to DTSC, is received,
14 in whole or in part,
15

16 and DTSC determines that these previously unknown conditions or information,
17 together with any other relevant information, indicate that further response actions
18 are necessary to protect human health or the environment.
19

20 87. a. For purposes of Paragraph 86, the information and the
21 conditions known to DTSC shall include only that information known to DTSC as
22 of the date this Consent Decree is lodged with the Court, and those conditions
23 which are set forth in the Interim ROD, as modified by the ESD, and the
24 administrative record supporting the Interim ROD and the ESD.
25

26 b. This Consent Decree does not waive any rights or authority
27 EPA may have with respect to the Site, including, but not limited to, EPA's right to
28

1 claim that DTSC actions taken pursuant to this Consent Decree are in conflict with
2 CERCLA or other federal law, or would interfere with the remedy selected by
3 EPA, would stand as an obstacle to the purpose or objectives of CERCLA, or are
4 otherwise preempted by law.
5

6 88. General reservations of rights. The United States and DTSC reserve,
7 and this Consent Decree is without prejudice to, all rights against Settling
8 Defendants with respect to all matters not expressly included within Plaintiffs'
9 covenant not to sue. Notwithstanding any other provision of this Consent Decree,
10 the United States and DTSC reserve all rights against Settling Defendants with
11 respect to:
12

13
14 a. as to Performing Settling Defendant only, claims based on a
15 failure by Performing Settling Defendant to meet a requirement applicable to it
16 under this Consent Decree;
17

18 b. liability arising from the past, present, or future disposal,
19 release, or threat of release of Waste Material outside of the Site;
20

21 c. liability based upon Settling Defendants' transportation,
22 treatment, storage, or disposal, or the arrangement for the transportation,
23 treatment, storage, or disposal of Waste Material at or in connection with the Site,
24 other than as provided in the Interim ROD as modified by the ESD, the Work, or
25 otherwise ordered by EPA, after signature of this Consent Decree by Settling
26 Defendants;
27
28

1 d. liability for damages for injury to, destruction of, or loss of
2 natural resources, and for the costs of any natural resource damage assessments;
3

4 e. criminal liability;

5 f. liability for violations of federal or state law which occur
6 during or after implementation of the Remedial Action;
7

8 g. as to Performing Settling Defendant only, liability, prior to
9 Certification of Completion of the Remedial Action, for additional response
10 actions that EPA determines are necessary to achieve the Performance Criteria, but
11 that cannot be required pursuant to Paragraph 13 (Modification of the SOW or
12 Related Work Plans);
13

14 h. liability for any other operable units of the San Gabriel Valley
15 Superfund Site;
16

17 i. liability for any response actions or response costs at the Site
18 that occur after the later of: (i) the date eight (8) years from the Operational and
19 Functional Date, or (ii) the date of issuance of a final Record of Decision for the
20 Site; and
21

22 j. as to Performing Settling Defendant only, liability for
23 implementation of the shallow zone remedy South of Puente Creek, which remedy
24 is currently being implemented by Performing Settling Defendant pursuant to the
25 Board Order.
26

27
28 89. Work Takeover. In the event EPA determines that Performing

1 Settling Defendant has ceased implementation of any portion of the Work, is
2 seriously or repeatedly deficient or late in its performance of the Work, or is
3 implementing the Work in a manner that may cause an endangerment to human
4 health or the environment, EPA may assume the performance of all or any portions
5 of the Work as EPA determines necessary. Performing Settling Defendant may
6 invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph
7 67, to dispute EPA's determination that takeover of the Work is warranted under
8 this Paragraph. Costs incurred by the United States in performing the Work
9 pursuant to this Paragraph during the period eight (8) years from the Operational
10 and Functional Date, shall be considered Future Response Costs that Performing
11 Settling Defendant shall pay pursuant to Section XVI (Payments for Response
12 Costs).

13
14
15
16
17 90. Notwithstanding any other provision of this Consent Decree, the
18 United States and DTSC retain all authority and reserve all rights to take any and
19 all response actions authorized by law.
20

21 XXII. COVENANTS BY SETTLING DEFENDANTS

22 91. Covenant Not to Sue. Subject to the reservations in Paragraph 92,
23 Settling Defendants hereby covenant not to sue and agree not to assert any claims
24 or causes of action against the United States or DTSC relating to the Interim ROD,
25 as modified by the ESD, past response actions, Past Response Costs, Future
26 Response Costs, Past DTSC Response Costs, Future DTSC Response Costs, or
27
28

1 this Consent Decree, including, but not limited to:

2 a. any direct or indirect claim for reimbursement from the
3 Hazardous Substance Superfund (established pursuant to the Internal Revenue
4 Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112,
5 113, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, 9613, or any other provision of
6 law;
7

8
9 b. any claims against the United States or DTSC, including any
10 department, agency or instrumentality of the United States under CERCLA
11 Sections 107 or 113 related to the Site;
12

13 c. any claims arising out of response actions at or in connection
14 with the Site, including any claim under the United States Constitution; the
15 California Constitution; the Tucker Act, 28 U.S.C. § 1491; the Equal Access to
16 Justice Act, 28 U.S.C. § 2412, as amended; or at common law; or
17

18 d. any direct or indirect claim for disbursement from the Puente
19 Valley Operable Unit Special Account.
20

21 Except as provided in Paragraph 100 (Waiver of Claim-Splitting Defenses),
22 these covenants not to sue shall not apply in the event that the United States or
23 DTSC bring a cause of action or issues an order pursuant to the reservations set
24 forth in Paragraphs 84, 86, 88(b) - (d) or 88 (g) - (i) but only to the extent that
25 Settling Defendants' claims arise from the same response action, response costs, or
26 damages that the United States or DTSC is seeking pursuant to the applicable
27
28

1 reservation.

2 92. Settling Defendants reserve, and this Consent Decree is without
3
4 prejudice to, claims against the United States, subject to the provisions of Chapter
5 171 of Title 28 of the United States Code, for money damages for injury or loss of
6 property or personal injury or death caused by the negligent or wrongful act or
7 omission of any employee of the United States while acting within the scope of his
8 office or employment under circumstances where the United States, if a private
9 person, would be liable to the claimant in accordance with the law of the place
10 where the act or omission occurred. However, any such claim shall not include a
11 claim for any damages caused, in whole or in part, by the act or omission of any
12 person, including any contractor, who is not a federal employee as that term is
13 defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on
14 EPA's selection of response actions, or the oversight or approval of the Settling
15 Defendants' plans or activities. The foregoing applies only to claims which are
16 brought pursuant to any statute other than CERCLA and for which the waiver of
17 sovereign immunity is found in a statute other than CERCLA. The covenant in
18 Paragraph 91 shall not extend to any claims relating to any response actions at the
19 Site that occur after the later of: (i) the date eight (8) years from the Operational
20 and Functional Date; or (ii) the date of issuance of a final Record of Decision for
21 the Site.

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27 93. Nothing in this Consent Decree shall be deemed to constitute
28

1 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42
2 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).
3

4 94. Treatment of Costs Incurred In Implementing Consent Decree For
5 Purposes Of Government Contract Costing Or Pricing. Nothing in this Consent
6 Decree shall be construed as a waiver by the Performing Settling Defendant of any
7 right it may have to include costs incurred in implementation of this Consent
8 Decree or any other work at or in connection with the Site in its proposal of
9 allowable costs for purposes of costing or pricing pursuant to contracts with the
10 United States. Nothing in this Consent Decree shall be construed to create or
11 recognize any such right. The incurrence or payment of any costs by the
12 Performing Settling Defendant pursuant to this Consent Decree, or inclusion of
13 such costs in the Performing Settling Defendant's proposal for purposes of costing
14 or pricing of contracts with the United States, does not, in and of itself, render
15 such costs allocable or allowable for Government contracting purposes. For
16 Government contracting purposes, the costs incurred in implementing this Consent
17 Decree remain subject to applicable provisions of: (a) the Federal Acquisition
18 Regulation ("FAR") and Cost Accounting Standards ("CAS"); (b) agency
19 implementing regulations of FAR; (c) the contract(s) between the Performing
20 Settling Defendant and the United States pursuant to which such costing or pricing
21 proposals are submitted; and (d) any determination by the cognizant Contracting
22 Officer concerning allocability and allowability of such costs, subject to any right
23
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1 of appeal Performing Settling Defendant may have under the applicable
2 contract(s) or the FAR.

3
4 95. Treatment of Penalties For Purposes Of Government Contract

5 Costing Or Pricing. Notwithstanding any other provision of this Consent Decree,
6 Northrop Grumman agrees that it will not claim or include as allowable costs for
7 purposes of costing or pricing pursuant to contracts with the United States any
8 amounts it may pay as Stipulated Penalties pursuant to Paragraphs 71-73 of this
9 Consent Decree, and that any Stipulated Penalties imposed under this Consent
10 Decree shall be treated as unallowable costs.
11

12
13 XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

14 96. Nothing in this Consent Decree shall be construed to create any rights
15 in, or grant any cause of action to, any person not a Party to this Consent Decree.
16 The preceding sentence shall not be construed to waive or nullify any rights that
17 any person not a signatory to this Decree may have under applicable law. Each of
18 the Parties expressly reserves any and all rights (including, but not limited to, any
19 right to contribution), defenses, claims, demands, and causes of action that each
20 Party may have with respect to any matter, transaction, or occurrence relating in
21 any way to the Site against any person not a Party hereto.
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25 97. Scope of Contribution Protection

26 The Parties agree, and by entering this Consent Decree this Court finds that
27 Settling Defendants are entitled, as of the Effective Date, to protection from
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1 contribution actions or claims as provided by CERCLA Section 113(f)(2), 42
2 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. The "matters
3 addressed" in this Consent Decree with respect to the Settling Defendants are Past
4 Response Costs; Future Response Costs; all Work required by this Consent Decree
5 and the SOW; Past DTSC Response Costs, Future DTSC Response Costs, and all
6 other costs incurred by any person related to the Interim ROD, as modified by the
7 ESD; provided, however, and notwithstanding the preceding, Contributing
8 Settling Defendants shall not be entitled to protection from contribution actions or
9 claims asserted by Performing Settling Defendant for additional Work or Future
10 Response Costs related to response actions necessary for the work under the ESD.
11 And provided further, that if Performing Settling Defendant asserts any claims
12 against Contributing Settling Defendants for recovery or contribution of such
13 costs, neither Performing Settling Defendant nor Contributing Settling Defendants
14 shall be entitled to protection from contribution actions or claims asserted by any
15 Contributing Settling Defendant for additional Work or Future Response Costs
16 related to response actions necessary for the Work under the ESD. Nothing in this
17 Consent Decree is intended or shall be construed to alter or amend any rights or
18 obligations arising out of any agreements previously entered into between
19 Performing Settling Defendant and a Contributing Settling Defendant.
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26 98. Settling Defendants agree that with respect to any suit or claim for
27 contribution brought by them for matters related to this Consent Decree they will
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1 notify the United States and DTSC in writing no later than sixty (60) Days prior to
2 the initiation of such suit or claim.

3
4 99. Settling Defendants also agree that with respect to any suit or claim
5 for contribution brought against them for matters related to this Consent Decree
6 they will notify in writing the United States and DTSC within ten (10) Days of
7 service of the complaint on them. In addition, Settling Defendants shall notify the
8 United States and DTSC within ten (10) Days of service or receipt of any Motion
9 for Summary Judgment and within ten (10) Days of receipt of any order from a
10 court setting a case for trial.
11

12
13 100. In any subsequent administrative or judicial proceeding initiated by
14 any Party for injunctive relief, recovery of response costs, or other appropriate
15 relief relating to the Site, the Parties shall not assert, and may not maintain, any
16 defense or claim based upon the principles of waiver, res judicata, collateral
17 estoppel, issue preclusion, claim-splitting, or other defenses based upon any
18 contention that the claims raised in the subsequent proceeding were or should have
19 been brought in the instant case; provided, however, that nothing in this Paragraph
20 affects the enforceability of the covenants not to sue set forth in Section XXI
21 (Covenants Not to Sue by Plaintiffs) or in Section XXII (Covenants by Settling
22 Defendants).
23
24
25

26 XXIV. ACCESS TO INFORMATION

27 101. Each Settling Defendant shall provide to EPA and DTSC, upon
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1 request, copies of all documents and information within such Settling Defendant's
2 possession or control or that of its contractors or agents relating to activities at the
3 Site or to the implementation of this Consent Decree, including, but not limited to,
4 sampling, analysis, chain of custody records, manifests, trucking logs, receipts,
5 reports, sample traffic routing, correspondence, or other documents or information
6 related to the Work. Performing Settling Defendant shall also make available to
7 EPA and DTSC, for purposes of investigation, information gathering, or
8 testimony, their employees, agents, or representatives with knowledge of relevant
9 facts concerning the performance of the Work.
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13 102. Business Confidential and Privileged Documents.

14 a. A Settling Defendant may assert business confidentiality claims
15 covering part or all of the documents or information submitted to Plaintiffs under
16 this Consent Decree to the extent permitted by and in accordance with Section
17 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
18 Documents or information determined to be confidential by EPA will be afforded
19 the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
20 confidentiality accompanies documents or information when they are submitted to
21 EPA and DTSC, or if EPA has notified a Settling Defendant that the documents or
22 information are not confidential under the standards of Section 104(e)(7) of
23 CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such
24 documents or information without further notice to such Settling Defendant.
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1 b. A Settling Defendant may assert that certain documents,
2 records and other information are privileged under the attorney-client privilege or
3 any other privilege recognized by federal or California law. If a Settling
4 Defendant asserts such a privilege in lieu of providing documents, it shall provide
5 the Plaintiffs with the following: (i) the title of the document, record, or
6 information; (ii) the date of the document, record, or information; (iii) the name
7 and title of the author of the document, record, or information; (iv) the name and
8 title of each addressee and recipient; (v) a description of the contents of the
9 document, record, or information; and (vi) the privilege asserted. However, no
10 documents, reports or other information created or generated pursuant to the
11 requirements of the Consent Decree shall be withheld on the grounds that they are
12 privileged.

13 103. No claim of confidentiality shall be made with respect to any data,
14 including but not limited to all sampling, analytical, monitoring, hydrogeologic,
15 scientific, chemical, or engineering data, or any other documents or information
16 evidencing conditions at or around the Site.

22 XXV. RETENTION OF RECORDS

23 104. Until sixteen (16) years from the Effective Date of this Consent
24 Decree, each Settling Defendant shall preserve and retain all non-identical copies
25 of records and documents (including records or documents in electronic form)
26 now in its possession or control or which come into its possession or control that
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1 relate to its liability under CERCLA with respect to the Site, provided, however,
2 that Settling Defendants who are potentially liable as owners or operators of the
3 Site must retain, in addition, all documents and records now in its possession or
4 control which relate to the liability of any other person under CERCLA with
5 respect to the Site. Performing Settling Defendant must also retain, and instruct its
6 contractors and agents to preserve, for the same period of time specified above, all
7 non-identical copies of the last draft or final version of any documents or records
8 (including documents or records in electronic form) now in its possession or
9 control or which come into its possession or control that relate in any manner to
10 the performance of the Work, provided, however, that Performing Settling
11 Defendant (and its contractors and agents) must retain, in addition, copies of all
12 data generated during the performance of the Work and not contained in the
13 aforementioned documents required to be retained. Each of the above record
14 retention requirements shall apply regardless of any corporate retention policy to
15 the contrary.

21 105. At the conclusion of this document retention period, each Settling
22 Defendant shall notify the United States and DTSC at least ninety (90) Days prior
23 to the destruction of any such records or documents, and, upon request by the
24 United States or DTSC, the Settling Defendant shall deliver any such records or
25 documents to EPA and/or DTSC. Settling Defendants may assert that certain
26 documents, records and other information are privileged under the attorney-client
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1 privilege or any other privilege recognized by federal law. If a Settling Defendant
2 asserts such a privilege, it shall provide EPA and DTSC with the following: (a)
3 the title of the document, record, or information; (b) the date of the document,
4 record, or information; (c) the name and title of the author of the document,
5 record, or information; (d) the name and title of each addressee and recipient; (e) a
6 description of the subject of the document, record, or information; and (f) the
7 privilege asserted by the Settling Defendant. However, no documents, reports or
8 other information created or generated pursuant to the requirements of the Consent
9 Decree shall be withheld on the grounds that they are privileged.

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13 106. Each Settling Defendant hereby certifies individually that, to the best
14 of its knowledge and belief, after thorough inquiry, it has not since notification of
15 potential liability by the United States or DTSC or the filing of suit against it
16 regarding the Site, altered, mutilated, discarded, destroyed or otherwise disposed
17 of any records, documents, or other information (other than identical copies)
18 relating to its potential liability regarding the Site, except as such documents were
19 destroyed or altered in the ordinary course of said Settling Defendant's business
20 and in compliance with State and federal law, and certifies no such records have
21 been destroyed for an improper purpose. Each Settling Defendant further certifies
22 that it has fully complied with any and all EPA requests for information pursuant
23 to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e), 9622(e), and
24 Section 3007 of RCRA, 42 U.S.C. § 6927.
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1 XXVI. NOTICES AND SUBMISSIONS

2 107. Whenever under the terms of this Consent Decree written notice is
3 required to be given or a report or other document is required to be sent by one
4 Party to another, it shall be directed to the individuals at the addresses specified
5 below, unless those individuals or their successors give notice of a change to the
6 other Parties in writing. All notices and submissions shall be considered effective
7 upon receipt, unless otherwise provided. Written notice as specified herein shall
8 constitute complete satisfaction of any written notice requirement of the Consent
9 Decree with respect to the United States, EPA, DTSC, and the Settling
10 Defendants, respectively.
11

12 As to the United States:

13 Chief, Environmental Enforcement Section
14 Environment and Natural Resources Division
15 U.S. Department of Justice
16 P.O. Box 7611
17 Washington, D.C. 20044-7611
18 Re: DJ # 90-11-2-354/16

19 Elise S. Feldman
20 Environmental Enforcement Section
21 Environment and Natural Resources Division
22 U.S. Department of Justice
23 301 Howard Street, Suite 1050
24 San Francisco, California 94105

25 As to EPA:

26 Dana Barton
27 EPA Project Manager
28 United States Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105

1 As to the Regional
2 Accounting Contact:

David Wood, PMD-6
Section Chief
Superfund Accounting Program
Policy and Management Division
75 Hawthorne Street
San Francisco, California 94105

5
6 As to DTSC:

Jacalyn Spizman
DTSC Project Manager
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

9
10 Ann Rushton
11 Deputy Attorney General
12 300 South Spring Street
Los Angeles, California 90013

13 As to Performing
14 Settling Defendant:

Christian Volz
McKenna Long & Aldridge LLP
101 California Street, 41st Floor
San Francisco, California 94111

16 Elizabeth C. Brown
17 Senior Counsel
18 Northrop Grumman Corporation
19 1840 Century Park East
20 M/S 90/110/CC
Century City, California 90067-2199

21 As to Contributing
22 Settling Defendants:

Counsel as listed on caption for
notices applicable to a particular
Contributing Settling Defendant.

23
24 XXVII. EFFECTIVE DATE

25
26 108. The effective date of this Consent Decree shall be the date upon
27 which this Consent Decree is entered by the Court, except as otherwise provided
28

1 herein.

2
3 XXVIII. RETENTION OF JURISDICTION

4 109. This Court retains jurisdiction over both the subject matter of this
5 action and Consent Decree and the Parties for the duration of the performance of
6 the terms and provisions of this Consent Decree for the purpose of enabling any of
7 the Parties to apply to the Court at any time for such further order, direction, and
8 relief as may be necessary or appropriate for the construction or modification of
9 this Consent Decree, or to effectuate or enforce compliance with its terms, or to
10 resolve disputes in accordance with Section XIX (Dispute Resolution) hereof or
11 for any other purpose as may be just and proper.
12
13

14 XXIX. APPENDICES

15
16 110. The following appendices are attached to and incorporated into this
17 Consent Decree:

18 "Appendix A" is the Interim ROD.

19 "Appendix B" is the ESD.

20 "Appendix C" is a map of the Site.

21 "Appendix D" is the SOW.

22 "Appendix E" is a draft easement.

23 "Appendix F" is the list of Contributing Settling Defendants.

24 "Appendix G" is the list of the Owner Settling Defendants and the
25 Identified Properties.
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1 "Appendix H" is the list of Affiliates.

2 XXX. COMMUNITY RELATIONS

3
4 111. Performing Settling Defendant agrees to participate in the community
5 relations plan to be developed by EPA. Performing Settling Defendant shall also
6 cooperate with EPA in providing information regarding the Work to the public.
7
8 As requested by EPA, Performing Settling Defendant shall participate in the
9 preparation of such information for dissemination to the public and in public
10 meetings which may be held or sponsored by EPA to explain activities at or
11 relating to the Site.
12

13 XXXI. MODIFICATION

14 112. Schedules specified in this Consent Decree for completion of the
15 Work may be modified by agreement of EPA and Performing Settling Defendant.
16 All such modifications shall be made in writing.
17

18 113. Except as provided in Paragraph 13 (Modification of the SOW or
19 Related Work Plans), no material modifications shall be made to the SOW without
20 written notification to and written approval of the United States, Performing
21 Settling Defendant, and the Court, if such modifications fundamentally alter the
22 basic features of the selected remedy within the meaning of 40 C.F.R. §
23 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the
24 United States will provide DTSC with a reasonable opportunity to review and
25 comment on the proposed modification. Modifications to the SOW that do not
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1 materially alter that document, or material modifications to the SOW that do not
2 fundamentally alter the basic features of the selected remedy within the meaning
3 of 40 C.F.R. § 300.435(c)(2)(B)(ii), may be made by written agreement between
4 EPA, after providing DTSC with a reasonable opportunity to review and comment
5 on the proposed modification, and Performing Settling Defendant.
6

7
8 114. Nothing in this Consent Decree shall be deemed to alter the Court's
9 power to enforce, supervise or approve modifications to this Consent Decree.

10 XXXII. LODGING, OPPORTUNITY FOR PUBLIC COMMENT
11

12 115. This Consent Decree shall be lodged with the Court for a period of
13 not less than thirty (30) Days for public notice and comment in accordance with
14 Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The
15 United States reserves the right to withdraw or withhold its consent if the
16 comments regarding the Consent Decree disclose facts or considerations which
17 indicate that the Consent Decree is inappropriate, improper, or inadequate.
18 Settling Defendants consent to the entry of this Consent Decree without further
19 notice.
20
21

22 116. If for any reason the Court should decline to approve this Consent
23 Decree in the form presented, this agreement is voidable at the sole discretion of
24 any Party and the terms of the agreement may not be used as evidence in any
25 litigation between the Parties.
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1 XXXIII. SIGNATORIES/SERVICE

2 117. Each undersigned representative of a Settling Defendant to this
3 Consent Decree, the undersigned representative of DTSC and the California
4 Deputy Attorney General representing DTSC, and the Assistant Attorney General
5 for the Environment and Natural Resources Division of the Department of Justice
6 certifies that they are fully authorized to enter into the terms and conditions of this
7 Consent Decree and to execute and legally bind the Party they represent to this
8 document.
9

10
11 118. Each Settling Defendant hereby agrees not to oppose entry of this
12 Consent Decree by this Court or to challenge any provision of this Consent Decree
13 unless the United States has notified Settling Defendants in writing that it no
14 longer supports entry of the Consent Decree.
15
16

17 119. Each Settling Defendant shall identify, on the attached signature
18 page, the name, title, address and telephone number of an agent who is authorized
19 to accept service of process by mail on its behalf with respect to all matters arising
20 under or relating to this Consent Decree. If no agent is specified, the attorneys for
21 Settling Defendants listed at the beginning of this document shall be deemed to be
22 the agent authorized to accept service at the address listed. Settling Defendants
23 hereby agree to accept service in that manner and to waive the formal service
24 requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any
25 applicable local rules of this Court, including but not limited to service of a
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1 summons. The Parties agree that Settling Defendants need not file an answer to
2 the complaint in this action unless or until the court expressly declines to enter this
3 Consent Decree.
4

5 XXXIV. REVOCATION OF UAO

6 120. On or about March 21, 2002, EPA issued UAO Docket No. 2002-06
7 to Performing Settling Defendant's corporate predecessor, TRW, Inc. UAO
8 Docket No. 2002-06 presently requires Performing Settling Defendant, among
9 other things, to perform the interim remedial design and remedial action for the
10 intermediate groundwater zone at the Site pursuant to the Interim ROD. EPA shall
11 revoke UAO Docket No. 2002-06 within two weeks after entry of this Consent
12 Decree. However, if the Court declines to enter the Consent Decree, or the United
13 States withdraws or withholds its consent to the Consent Decree because
14 comments received disclose facts or considerations which indicate that the
15 Consent Decree is inappropriate, improper, or inadequate, then EPA reserves all of
16 its rights against Performing Settling Defendant, and UAO Docket No. 2002-06
17 shall remain in effect.
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22 XXXV. FINAL JUDGMENT

23 121. This Consent Decree and its appendices constitute the final, complete,
24 and exclusive agreement and understanding between the Plaintiffs and the Settling
25 Defendants with respect to the settlement embodied in the Consent Decree. The
26 Plaintiffs and Settling Defendants acknowledge that there are no representations,
27
28

1 agreements or understandings between the Plaintiffs and Settling Defendants
2 relating to the settlement other than those expressly contained in this Consent
3 Decree. As noted above, nothing in this Consent Decree is intended or shall be
4 construed to alter or amend any rights or obligations arising out of any agreements
5 previously entered into between Performing Settling Defendant and a Contributing
6 Settling Defendant.
7
8

9 122. Upon approval and entry of this Consent Decree by the Court, this
10 Consent Decree shall constitute a final judgment between the United States, DTSC
11 and Settling Defendants. The Court finds that there is no just reason for delay and
12 therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.
13
14


15
16 SO ORDERED THIS __ DAY OF _____, 20__.

17
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19 _____
20 United States District Judge
21
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1 **FOR THE UNITED STATES OF AMERICA:**

2
3 **U.S. Department of Justice**

4
5
6 Dated: _____

7 
8 **JOHN C. CRUDEN**
9 Acting Assistant Attorney General
10 Environment and Natural Resources
11 Division
12 U.S. Department of Justice
13 Washington, D.C. 20530

14 Dated: 5/18/09

15 **ELISE S. FELDMAN**
16 **ELIZABETH F. KROOP**
17 Environmental Enforcement Section
18 Environment and Natural Resources
19 Division
20 U.S. Department of Justice
21 301 Howard Street, Suite 1050
22 San Francisco, California 94105
23 Telephone: (415)744-6470
24 Facsimile: (415) 744-6476
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27
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1 **FOR THE UNITED STATES OF AMERICA:**

2
3 **U.S. Environmental Protection Agency**

4
5
6 Dated: 4/17/09

7
8 KEITH TAKATA
9 Director of the Superfund Division
10 U.S. Environmental Protection Agency
11 Region 9
12 75 Hawthorne Street
13 San Francisco, California 94105

14 Dated: 4/17/2009

15 DUSTIN MINOR
16 Acting Branch Chief
17 Hazardous Waste Branch
18 Office of Regional Counsel
19 U.S. Environmental Protection Agency
20 Region 9
21 75 Hawthorne Street
22 San Francisco, California 94105

1
2
3 **FOR THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES**
4 **CONTROL:**
5

6
7 Dated: 5/13/2009

8 J. T. LIU
9 Supervising Hazardous Substance
10 Engineer I
11 Department of Toxic Substances Control
12 Cypress Office
13 5796 Corporate Avenue
14 Cypress, California 90630

15 Dated: 5-14-09

16 _____
17 ANN RUSHTON
18 Deputy Attorney General
19 Environment Section
20 California Department of Justice
21 300 South Spring Street
22 Los Angeles, California 90013

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FOR PERFORMING SETTLING DEFENDANT

**NORTHROP GRUMMAN SPACE & MISSION SYSTEMS CORP., AND
ITS CORPORATE PREDECESSORS AND AFFILIATES TRW INC. AND
LUCAS WESTERN LLC (FORMERLY WESTERN GEAR
CORPORATION), (COLLECTIVELY, NORTHROP GRUMMAN SPACE
& MISSION SYSTEMS CORP.):**

Dated: March 12, 2009

Signature: _____

Name: Kraig Scheyer

Title: VP, Administrative Services

Address: 1840 Century Park East
Los Angeles, CA 90067

Agent Authorized to Accept Service on Behalf of Above-signed Party

Name (Print): Elizabeth Brown

Title: Senior Counsel

Address: 1840 Century Park East
Los Angeles, CA 90067

Phone Number: (310) 201-3278

1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **ARVINMERITOR, INC. (Part of the "825 Lawson Street Parties")**

3
4 Dated: March 27, 2009

Signature

5
6 Name: Vernon G. Baker, II
7 Senior Vice President &
8 Title: General Counsel
2135 W. Maple Rd.
Address: Troy, MI 48084

9 Agent Authorized to Accept Service on Behalf of Above-signed Party

10 Name (Print): _____

11 Title: _____

12 Address: _____

13 Phone Number: _____

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FOR CONTRIBUTING SETTLING DEFENDANT:

EDWARD R. KIPLING (Part of the "825 Lawson Street Parties")

Dated: 3-20-07

Signature: _____

Name: EDWARD R. KIPLING

Title: _____

Address: 7 WILDWOOD VALLEY SANDY SPRINGS, GA. 30350

Agent Authorized to Accept Service on Behalf of Above-signed Party

Name (Print): _____

Title: _____

Address: _____

Phone Number: _____

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FOR CONTRIBUTING SETTLING DEFENDANT:

RONALD C. KILPING (Part of the "825 Lawson Street Parties")

Dated: 3-26-09

Signature

Name: R.C. Kilping

Title: _____

Address: 12411 SE 282nd St

Agent Authorized to Accept Service on Behalf of Above-signed Party *Arthur N. Lee*

Name (Print): _____

Title: _____

Address: _____

Phone Number: _____

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FOR CONTRIBUTING SETTling DEFENDANT:

LAWSON FINANCIAL, LLC (Part of the "825 Lawson Street Parties")

Dated: 3/26/09

Signature: _____

Name: _____

Title: _____

Address: _____

Agent Authorized to Accept Service on Behalf of Above-signed Party

Name (Print): _____

Title: _____

Address: _____

Phone Number: _____

1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **MAREMONT CORPORATION (Part of the "825 Lawson Street Parties")**

3
4 Dated: March 27, 2009

Signature: _____

5
6 Name: Vernon G. Baker, II
Chairman, President

7 Title: & CEO

8 Address: 2135 W. Maple Rd.
Troy, MI 48084

9 **Agent Authorized to Accept Service on Behalf of Above-signed Party**

10 Name (Print): _____

11 Title: _____

12 Address: _____

13 Phone Number: _____

1 FOR CONTRIBUTING SETTLING DEFENDANT:

2 ALBERTSON LAW GROUP, P.S., successor to REHBERG & ALBERTSON
3 P.S., as Trustee of the KIPLING LIVING TRUST dated April 28, 1987 and of
4 the KIPLING GENERATION SKIPPING TRUST dated October 20, 1989
(Part of the "825 Lawson Street Parties")

5
6 Dated: 3-26-09

Signature: _____

7 Name: Mark D. Albertson

8 Title: Trustee

9 Address: 124 4th Ave S., Kent, WA 98032

10 Agent Authorized to Accept Service on Behalf of Above-signed Party

11 Name (Print): Mark D. ALBERTSON

12 Title: TRUSTEE

13 Address: 124 4th Ave S. Kent, WA 98032

14 Phone Number: (253) 852-0772

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**FOR CONTRIBUTING SETTLING DEFENDANT:
SOTO ASSOCIATES (Part of the "825 Lawson Street Parties")**

Dated: 3/26/09

Signature: _____

Name: GARY ZAMIR

Title: GENERAL PARTNER

Address: 16133 VENTURA BL STE 1175
ENCINO CA 91436

Agent Authorized to Accept Service on Behalf of Above-signed Party

Name (Print): _____

Title: _____

Address: _____

Phone Number: _____

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FOR CONTRIBUTING SETTLING DEFENDANT:

JACOB SPERLING, individually and as Trustee of the JACOB SPERLING FAMILY TRUST (Part of the "825 Lawson Street Parties")

Dated: 3-26-09

Signature: _____

Name: Jacob Sperling

Title: _____

Address: 253 N. VILLANOVA AVE

Agent Authorized to Accept Service on Behalf of Above-signed Party

Name (Print): _____

Title: _____

Address: _____

Phone Number: _____

1 FOR CONTRIBUTING SETTLING DEFENDANT:

2 ZVI SPERLING, individually and as Trustee of the SPERLING FAMILY
3 TRUST (Part of the "825 Lawson Street Parties")

4 Dated: 3-20-09

Signature: _____

5 Name: ZVI SPERLING

6 Title: _____

7
8 253 N. VINLAND AV Address: 11769 CHENAVANT ST CA CA
9 CITY OF FARMUSTON CA

Agent Authorized to Accept Service on Behalf of Above-signed Party

10 Name (Print): _____

11 Title: _____

12 Address: 11769 CHENAVANT ST CA

13 Phone Number: 310 496 4888

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1 **FOR CONTRIBUTING SETTLING DEFENDANT:**
 2 **GARY ZAMIR, individually (Part of the "825 Lawson Street Parties")**

3
 4 Dated: 3/26/09

Signature: _____
 Name: _____
 Title: _____
 Address: _____

8 Agent Authorized to Accept Service on Behalf of Above-signed Party

9 Name (Print): _____
 10 Title: _____
 11 Address: _____
 12 Phone Number: _____
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1 FOR CONTRIBUTING SETTLING DEFENDANT:

2 ALLFAST FASTENING SYSTEMS, INC.

3
4
5 Dated: 3/10/09

Signature: _____

6 Name: James Randall

7 Title: President

8 Address: 15200 Don Julian Rd, Industry
9 CA, 91745

10 Agent Authorized to Accept Service on Behalf of Above-signed Party

11 Name (Print): James Randall


12 Title: President

13 Address: 15200 Don Julian Rd, Industry,
14 CA, 91745

15 Phone Number: 626-968-9388

1 FOR CONTRIBUTING SETTLING DEFENDANT:
2 THE JAMES H. RANDALL REVOCABLE TRUST DATED
3 SEPTEMBER 17, 1984:
4

5 Dated: 3/10/09

Signature 

6 Name: James Randall

7 Title: Trustee

8 Address: 15200 Don Julian Rd, Industry
9 CA, 91745

10 Agent Authorized to Accept Service on Behalf of Above-signed Party

11 Name (Print): James Randall

12 Title: Trustee


13 Address: 15200 Don Julian Rd, Industry
14 CA, 91745

15 Phone Number: 626-968-9388
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1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **THE BIXBY RANCH COMPANY:**

3
4
5 Dated: March 13, 2009

Signature: 

6 Name: An-Ping Hsieh

7 President, Hamilton Standard Controls, Inc.,

8 Title: Indemnitor of The Bixby Ranch Company

c/o United Technologies Corporation

9 Address: One Financial Plaza, M/S 524-Legal

Hartford, CT 06101

10 Agent Authorized to Accept Service on Behalf of Above-signed Party

11 Name (Print): Kathleen M. McFadden

12 Title: Counsel

United Technologies Corporation

13 Address: One Financial Plaza, M/S 524-Legal

Hartford, CT 06101

14 Phone Number: 860-728-7895

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1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **HAMILTON STANDARD CONTROLS, INC.**

3
4
5 Dated: March 13, 2009

Signature: _____

6

Name: An-Ping Hsieh

7

Title: President, Hamilton Standard Controls, Inc.
c/o United Technologies Corporation

8

Address: One Financial Plaza, M/S 524-Legal
Hartford, CT 06101

9

Agent Authorized to Accept Service on Behalf of Above-signed Party

10

Name (Print): Kathleen M. McFadden

11

Title: Counsel

12

United Technologies Corporation

13

Address: One Financial Plaza, M/S 524-Legal
Hartford, CT 06101

14

Phone Number: 860-728-7895

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1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **CACIQUE, INC.**

3
4
5 Dated: 4/1/09

Signature: _____

6 Name: Gilbert L. de Cardenas

7 Title: President, Cacique, Inc.

8 14940 Proctor Ave.
9 Address: City of Industry, CA 91744

10 Agent Authorized to Accept Service on Behalf of Above-signed Party

11 Name (Print): George C. Salmas

12 Title: Attorney at Law

13 1880 Century Park East, #420
Address: Los Angeles, CA 90067

14 Phone Number: (310) 556-0721

1 **FOR CONTRIBUTING SETTLING DEFENDANT:**
2 **CALIFORNIA HYDROFORMING COMPANY, INC.**

3
4
5 Dated: 3/17/09

Signature: [Handwritten Signature]
Name: DAVID BONAFEDE
Title: PRESIDENT
Address: 850 S. LAWSON ST.
CITY OF INDUSTRY, CA
91748

9 Agent Authorized to Accept Service on Behalf of Above-signed Party

10 Name (Print): _____
11 Title: _____
12 Address: _____
13 Phone Number: _____
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1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **CALIFORNIA STEEL AND TUBE BY ITS SUCCESSOR IN INTEREST**
3 **CALIFORNIA STEEL AND TUBE LLC**

4
5 Dated: 3/16/09

6 Signature: [Signature]
7 Name: R. charo HIRSCH
8 Title: President
9 Address: 16049 STEPHENS STREET
CITY OF INDUSTRY CA
91745

10 Agent Authorized to Accept Service on Behalf of Above-signed Party

11 Name (Print): _____
12 Title: _____
13 Address: _____
14 Phone Number: _____
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1 FOR CONTRIBUTING SETTLING DEFENDANT:

2 CAMPBELL SOUP COMPANY

3
4
5 Dated: 3/11/2009

Signature: _____

6 Name: JOHN J. FUREY

7 Title: VICE PRESIDENT & CORP. SECRETARY

8 Address: 1 CAMPBELL PL. CAMDEN, N.J. 08103

9
10 Agent Authorized to Accept Service on Behalf of Above-signed Party

11 Name (Print): Faith Greenfield

12 Title: Vice-President - Legal

13 Address: One Campbell Place
Camden, NJ 08103

14 Phone Number: (856) 342-6121

1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **THE JOSEPH CAMPBELL COMPANY**

3
4
5 Dated: 3/12/09

Signature: _____

6 Name: John J. Forely

7 Title: Vice President & Corporate Secretary

8 Address: 1 Campbell Place, Camden, NJ 08103

9
10 Agent Authorized to Accept Service on Behalf of Above-signed Party

11 Name (Print): Faith Greenfield

12 Title: Vice-President - Legal

13 Address: One Campbell Place
Camden, NJ 08103

14 Phone Number: (856) 342-6121

15
16
17
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1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **CARMEX RAILROAD LLC**

3
4
5 Dated: 3/14/09

Signature: _____

6 Name: COLIN KRUGER

7 Title: MANAGER

8 Address: 375 BRISTOL ST. #50
9 COSTA MESA, 92626

10 Agent Authorized to Accept Service on Behalf of Above-signed Party

11 Name (Print): ROBERT RUSSELL ESA

12 Title: ATTORNEY, PROCOPIO CORY

13 Address: 530 B ST. SUITE 2100
14 SAN DIEGO CA 92101

15 Phone Number: 619 238 1900.

1 FOR CONTRIBUTING SETTLING DEFENDANT:

2 CHEMTURA CORP.

3
4 Dated: March 20, 2009

5 Signature _____

6 Name: _____

7 Title: _____

8 Address: _____

9 Agent Authorized to Accept Service on Behalf of Above-signed Party

10 Name (Print): Margaret Rosegay

11 Title: Partner, Pillsbury Winthrop Shaw Pittman

12 50 Fremont Street
13 Address: San Francisco, CA 94105

14 Phone Number: (415) 983-1305

1 **FOR CONTRIBUTING SETTling DEFENDANT:**

2 **JACK ECOFF FAMILY TRUST**

3
4 Dated: 3-10-09

Signature: _____

5 Name: Steven Eco^Wff

6 Title: Trustee

7 442 Glenwood Dr.
8 Address: Oxnard, CA 93030

9 Agent Authorized to Accept Service on Behalf of Above-signed Party

10 Name (Print): same

11 Title: _____

12 Address: _____

13 Phone Number: 805-983-1223

1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **EIGHTH & PROCTOR LLC**

3
4
5 Dated: March 18, 2009

Signature

6 Name: Nancy J. Rich

7 Title: Attorney

Katten Muchin Rosenman, LLP

8 Address: 525 W. Monroe, Suite 1900

Chicago, IL 60661

9 Agent Authorized to Accept Service on Behalf of Above-signed Party

10 Name (Print): Nancy J. Rich

11 Title: Attorney

Katten Muchin Rosenman, LLP

12 Address: 525 W. Monroe, Suite 1900

Chicago, IL 60661

13 Phone Number: 312-902-5536

1 FOR CONTRIBUTING SETTLING DEFENDANT:

2 GS INVESTMENT PROPERTIES LLC

3

4

5 Dated: 4/7/09

Signature: L

6

Name: G. Joseph Scatoloni

7

Title: President

8

Address: 12145 MORA DR #7

9

Agent Authorized to Accept Service on Behalf of Above-signed Party
SANTA FE SPRINGS, CA 90670

10

Name (Print): John H. Caballero

11

Title: Attorney

12

Address: 12070 Telegraph Rd. Suite 106, Santa Fe Springs, CA

13

Phone Number: (562) 941-7488

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1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **HENKEL CORPORATION**

3
4
5 Dated: April 8, 2009

Signature _____

6 Name: Jeffrey Piccolomini

7 Title: President, Henkel of America, Inc.

8 Address: 1001 Trout Brook Crossing
9 Rocky Hill, CT 06067

10 Agent Authorized to Accept Service on Behalf of Above-signed Party

11 Name (Print): Paul R. Berry
12 Senior Vice President,

Title: Chief Legal Officer & Secretary
13 1001 Trout Brook Crossing

14 Address: Rocky Hill, CT 06067

15 Phone Number: 860-571-5228

1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **INTERNATIONAL PAPER COMPANY**

3
4
5 Dated: March 13, 2009

Signature: _____

6 Name: Steven J. Ginski

7 Title: Chief Counsel, EHS & Sustainability

8 Address: 6400 Poplar Avenue
9 Memphis, TN 38197

10 **Agent Authorized to Accept Service on Behalf of Above-signed Party**

11 Name (Print): John Cermak

12 Title: ATTNY. FOR:

13 Address: BAKER + HOSTETLER LLP
12100 WILSHIRE BLVD, 15TH F.

14 Phone Number: LOS ANGELES, CA. 91025
15 310-442-8899

1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **MASONITE CORPORATION**

3
4
5 Dated: 3/13/09

Signature: _____

6 Name: Rose Murphy

7 Title: Associate General Counsel

8 Address: 1 N. Dale Mabry Hwy., Ste. 950
Tampa, FL 33609

9 Agent Authorized to Accept Service on Behalf of Above-signed Party

10 Name (Print): _____

11 Title: _____

12 Address: _____

13 Phone Number: _____

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1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **HITCHCOCK REAL ESTATE HOLDINGS, LLC**

3
4
5 Dated: 3-17-2009

Signature: _____

6 Name: Penny L. Reeves

7 Title: Attorney

8 Address: 5750 Wilshire Blvd., Suite 655
Los Angeles, CA 90036

9 Agent Authorized to Accept Service on Behalf of Above-signed Party

10 Name (Print): _____

11 Title: _____

12 Address: _____

13 Phone Number: _____

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1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **LIFE TECHNOLOGIES CORPORATE SUCCESSOR TO INVITROGEN**
3 **CORPORATION, CORPORATE SUCCESSOR TO DEXTER**
4 **CORPORATION**

5
6 Dated: 13/ March/ 2009

Signature: _____

7 Name: Joseph W. Secondine, Jr.

8 Title: Associate General Counsel & Asst

9 Address: 5791 Van Allen Way Secretary
Geyserville, CA 95528

10 Agent Authorized to Accept Service on Behalf of Above-signed Party

11 Name (Print): _____

12 Title: _____

13 Address: _____

14 Phone Number: _____

1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **ITT CORPORATION**

3
4
5 Dated: 3/16/09

Signature: _____

6 Name: DONALD E. FOLLY

7 Title: SENIOR VICE PRESIDENT - TREASURER

8 Address: 1133 WESTCHESTER AVENUE
9 WHITE PLAINS, NY 10604

10 Agent Authorized to Accept Service on Behalf of Above-signed Party

11 Name (Print): Fern Fleischer Daves

12 Title: Senior Counsel ITT Corp

13 Address: 1133 Westchester Ave
White Plains NY 10604

14 Phone Number: 914 641 2148

1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **ROBIN KESSLER, AS TRUSTEE OF THE ROBERT SAGER TRUST**

3
4
5 Dated: 4/11/09

Signature: A

6 Name: ROBIN KESSLER

7 Title: TRUSTEE

8 Address: 40924 KNOLL DRIVE
9 PALMDALE CA 93551

Agent Authorized to Accept Service on Behalf of Above-signed Party

10 Name (Print): DON GORDON

11 Title: ATTORNEY AT LAW

12 Address: 12100 WILSHIRE BL #800
13 LOS ANGELES CA 90025
14 Phone Number: (310) 806-9205

1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **OAKITE PRODUCTS, INC.**

3
4
5 Dated: 4/13/09

Signature: _____

6 Name: Kathy Robb

7 Title: Counsel for Oakite

8 Address: Hunton & Williams
200 Park Ave, NY, NY 10166

9 Agent Authorized to Accept Service on Behalf of Above-signed Party

10 Name (Print): Kathy Robb

11 Title: Counsel for Oakite

12 Address: Hunton & Williams
200 Park Ave, NY, NY 10166

13 Phone Number: 212.309.1128

1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **PHYSICIANS FORMULA, INC.**

3
4
5 Dated: 3/24/09

Signature: _____

6 Name: Joseph T. Faeger

7 Title: Chief Financial Officer

8 Address: 1255 W 8th St, Azusa, CA
9 91702

10 Agent Authorized to Accept Service on Behalf of Above-signed Party

11 Name (Print): John R. Zebrowski

12 Title: Legal Counsel

13 Address: 6 Prairie Grass, Irvine, CA
14 92603

15 Phone Number: 949-861-4581

1 FOR CONTRIBUTING SETTLING DEFENDANT:

2 JOSEPH POLTORAK

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Dated: 3/20/09

Signature: Joseph Poltorak (deceased)

Name: DAPHNE POLTORAK

Title: Mrs.

Address: 34300 Lantern Bay Dr. #14
Dana Point, CA 92629

Agent Authorized to Accept Service on Behalf of Above-signed Party

Name (Print): DAPHNE POLTORAK

Title: Mrs.

Address: 34300 Lantern Bay Dr. #14
Dana Point, CA 92629

Phone Number: (949) 493-1045

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FOR CONTRIBUTING SETTLING DEFENDANT:

ARTHUR SCHULTZ

Dated: 3/19/09

Signature: _____

Name: _____

Title: ARTHUR B. SCHULTZ
P.O. Box 7275

Address: Incline Village, NV 89450

Agent Authorized to Accept Service on Behalf of Above-signed Party

Name (Print): _____

Title: _____

Address: _____

Phone Number: _____

1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **DANIEL SAPARZEDAH**

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Dated: 3/23/09

Signature: C

Name: Daniel Saparzedah

Title: _____

Address: 11950 San Vicente Blvd #200
LA CA 90649

Agent Authorized to Accept Service on Behalf of Above-signed Party

Name (Print): _____

Title: _____

Address: _____

Phone Number: _____

1 **FOR CONTRIBUTING SETTling DEFENDANT:**

2 **RREEF-WEST VI, INC.**

3
4
5 Dated: 4-14-09

Signature: _____

6 Name: Timothy E. Ellsworth

7 Title: President

8 875 N. Michigan Ave.
9 Address: Chicago, IL 60611

10 Agent Authorized to Accept Service on Behalf of Above-signed Party

11 Name (Print): Maria Pilar Hoye

12 Title: Attorney
Latham & Watkins

13 Address: 355 South Grand Avenue
Los Angeles, CA 90071-1560

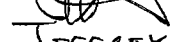
14 Phone Number: (213) 485-1234

1 FOR CONTRIBUTING SETTLING DEFENDANT:

2 SIGMA PLATING COMPANY, INC.

3
4 Dated: 3/16/09

Signature _____

5 Name:  JEFFREY SHARP

6 Title: PRESIDENT

7 Address: 1040 S. OTTERBEIN, LA PUENTE
8 CA 91748

9 Agent Authorized to Accept Service on Behalf of Above-signed Party

10 Name (Print): DAVID W. BURHENN, Burhenn & Gest LLP

11 Title: Attorney

12 Address: 624 S. GRAND AVE, SUITE 2200
13 Los Angeles, CA 90017

14 Phone Number: 213-629-8788

1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **OTTERBEIN PROPERTIES, INC.**

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Dated: 3/16/09

Signature: _____

Name: JEFFREY SHARP

Title: PRESIDENT

Address: 1040 S. OTTERBEIN, LA PUENTE
CA 91748

Agent Authorized to Accept Service on Behalf of Above-signed Party

Name (Print): DAVID W. BURHENN, BURHENN & GEST LLP

Title: Attorney

Address: 624 S. GRAND AVE., SUITE 2000

L.A. CA.
90017

Phone Number: 213-629-8788

1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **SOLO ENTERPRISES CORP.**

3

4

5 Dated: 3/27/09

Signature: _____

6

Name: Margaret B. Múgica

7

Title: President

8

Address: 220 N. California Ave.
City of Industry, CA 91744

9 Agent Authorized to Accept Service on Behalf of Above-signed Party

10

Signature: _____

11

Name: Michael A. Francis, Esq.

12

Attorney for Solo Enterprises Corp.

13

Address: 801 South Grand Avenue, 10th Floor

14

Los Angeles, California 90017

15

Phone Number: (213) 624-8407

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1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **M-BRO CORP.**

3

4

5 Dated: 3/27/09

Signature

6

Name: Margaret B. Mugica

7

Title: President

8

Address: 220 N. California Ave.
City of Industry, CA 91744

9 Agent Authorized to Accept Service on Behalf of Above-signed Party

10

Signature: _____

11

Name: Michael A. Francis, Esq.

12

Attorney for M-Bro Corp.

13

Address: 801 South Grand Avenue, 10th Floor

14

Los Angeles, California 90017

15

Phone Number: (213) 624-8407

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1 **FOR CONTRIBUTING SETTLING DEFENDANT:**

2 **THE MUGICA FAMILY TRUST; RICHARD MUGICA JR., AS TRUSTEE OF THE**
3 **MUGICA FAMILY TRUST; EDWARD MUGICA, AS TRUSTEE OF THE MUGICA**
4 **FAMILY TRUST; MARGARET MUGICA, AS TRUSTEE OF THE MUGICA FAMILY**
5 **TRUST.**

5 Dated: 3/27/09

Signature

Name: Margaret B. Mugica

Title: Trustee

Address: 220 N. California Ave
City of Industry, CA 91744

9 Agent Authorized to Accept Service on Behalf of Above-signed Party

Signature: _____

Name: Michael A. Francis, Esq.

Attorney for Mugica Family Trust

Address: 801 South Grand Avenue, 10th Floor

Los Angeles, California 90017

Phone Number: (213) 624-8407

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**FOR CONTRIBUTING SETTLING DEFENDANT:
THE ADAMS-CAMPBELL CO., LTD.**

Dated: March 10, 2009

Signature:

Name: MARSHALL A. RUTTER

Title: ATTORNEY-AT-LAW

Address: 1901 AVE OF THE STARS
SUITE 1700 LOS ANGELES,
CA 90067

Agent Authorized to Accept Service on Behalf of Above-signed Party

Name (Print): MARSHALL A. RUTTER

Title: ATTORNEY-AT-LAW

Address: SEE ABOVE

Phone Number: 310-286-1700

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**FOR CONTRIBUTING SETTLING DEFENDANT:
MBH HOLDINGS, LLC**

Dated: MARCH 10, 2019

Signature: _____

Name: MARSHALL A. BUTTER

Title: ATTORNEY-AT-LAW

Address: 1901 AVE. OF THE STARS
SUITE 1700, LOS ANGELES, CA
90067

Agent Authorized to Accept Service on Behalf of Above-signed Party

Name (Print): MARSHALL A. BUTTER

Title: ATTORNEY-AT-LAW

Address: SEE ABOVE

Phone Number: 310-286-1700