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STARLINK LOGISTICS, INC.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

29 UNITED STATES OF AMERICA,  
30  
31 Plaintiff,  
32  
33 vs.  
34  
35 STARLINK LOGISTICS, INC.,  
36  
37 Defendant.

Case No: CV-09-4185-BZ

**CONSENT DECREE**

1 **I. BACKGROUND**

2 A. The United States of America (“United States”), on behalf of the United States  
3 Environmental Protection Agency (“EPA”), and the Department of Interior (“DOI”), filed a  
4 complaint in this matter against StarLink Logistics, Inc. (“Defendant” or “SLLI”) pursuant to  
5 Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of  
6 1980, 42 U.S.C. § 9607(a), as amended (“CERCLA”), seeking reimbursement of response costs  
7 incurred or to be incurred for response actions taken at or in connection with the release or  
8 threatened release of hazardous substances at the Rhône-Poulenc Inc./Zoecon Corp. Superfund  
9 Site, East Palo Alto, California (the “Site”) and the recovery of damages for injury to, destruction  
10 of, or loss of, natural resources resulting from releases of hazardous substances at and from the  
11 Site and the costs of assessing such injury, destruction, or loss.

12 B. In cooperation with Federal and State agencies with appropriate jurisdiction,  
13 including the United States Fish and Wildlife Service (“FWS”) and the California Department of  
14 Fish and Game, SLLI restored a near-by salt pond to tidal marsh in anticipation that such project  
15 would, among other things, compensate for potential natural resource damage occurring at the  
16 Site. SLLI and DOI agree that the scope of the project exceeds the amount of restoration needed  
17 to provide compensation for Natural Resource Damages (other than damage assessment costs as  
18 provided herein) resulting from the release of hazardous substances at and from the Site.

19 C. The United States and SLLI (collectively, the “Parties”) agree that the actions  
20 undertaken by SLLI in accordance with this Consent Decree, including entering into the Consent  
21 Decree, do not constitute an admission of any liability by SLLI. SLLI does not admit, and retains  
22 the right to controvert in any proceedings other than proceedings to implement or enforce this  
23 Consent Decree, the matters set forth in Section VI (Statement of Facts) and Section VII  
24 (Determinations) of this Consent Decree.

25 D. The United States and SLLI agree, and this Court by entering this Consent Decree  
26 finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of  
27 this matter will avoid prolonged and complicated litigation between the Parties, and that this  
28 Consent Decree is fair, reasonable, and in the public interest.



1 **V. DEFINITIONS**

2 4. Unless otherwise expressly provided herein, terms used in this Consent Decree  
3 that are defined in CERCLA or in regulations promulgated under CERCLA shall have the  
4 meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are  
5 used in this Consent Decree or in any appendix attached hereto, the following definitions shall  
6 apply:

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

9 b. "Consent Decree" shall mean this Consent Decree and the Appendices  
10 attached hereto. In the event of conflict between this Consent Decree and the Appendices, the  
11 Consent Decree shall control.

12 c. "Covered Parties" shall mean SLLI and affiliates Aventis Agriculture and  
13 Hoechst GmbH, and shall also include Rhône-Poulenc Inc., Aventis CropScience USA Inc. and  
14 Bayer CropScience Inc.

15 d. "Day" shall mean a calendar day. In computing any period of time under  
16 this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the  
17 period shall run until the close of business of the next working day.

18 e. "Defendant" shall mean StarLink Logistics, Inc.

19 f. "DOI" means the United States Department of the Interior and any  
20 successor departments, agencies, or instrumentalities of the United States.

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

23 h. "DTSC" shall mean the California Department of Toxic Substances  
24 Control.

25 i. "EPA" shall mean the United States Environmental Protection Agency and  
26 any successor departments, agencies, or instrumentalities of the United States.

27 j. "EPA Hazardous Substance Superfund" shall mean the Hazardous  
28 Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

1 k. "FWS" shall mean the United States Fish and Wildlife Service and any  
2 successor entity.

3 l. "Facility" shall mean the approximately 5-acre property located at 1990  
4 Bay Road in the City of East Palo Alto, California, which is depicted generally on the map(s)  
5 attached as Appendix A and Appendix B.

6 m. "Future Response Costs" shall mean all costs, including, but not limited to,  
7 direct and indirect costs, that the United States incurs in reviewing or developing plans, reports  
8 and other items, verifying implementation of the response action for the Site, or otherwise  
9 implementing, overseeing, or enforcing the response action for the Site on or after June 1, 2009.

10 n. "Interest" shall mean interest at the rate specified for interest on  
11 investments of the EPA Hazardous Substance Superfund, compounded annually on October 1 of  
12 each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the  
13 rate in effect at the time the interest accrues. The rate of interest is subject to change on October  
14 1 of each year.

15 o. "NCP" means the National Oil and Hazardous Substances Pollution  
16 Contingency Plan, 40 C.F.R. Part 300.

17 p. "NPL" shall mean the National Priorities List, set forth at 40 C.F.R. Part  
18 300, Appendix B.

19 q. "Natural Resources" shall have the meaning provided in Section 101(16) of  
20 CERCLA, 42 U.S.C. § 9601(16).

21 r. "Natural Resource Damages" means any damages recoverable by DOI on  
22 behalf of the public, for injury to, destruction of, loss of, loss of use of, or impairment of Natural  
23 Resources at the Site as a result of a release of hazardous substances including, but not limited to:  
24 (i) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to  
25 such release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost natural  
26 resources or of acquisition of equivalent natural resources; (iii) the costs of planning such  
27 restoration activities; (iv) compensation for injury, destruction, loss, loss of use, or impairment of  
28

1 natural resources; and, (v) each of the categories of recoverable damages described in 43 C.F.R.  
2 § 11.15.

3 s. “NRD Claims” shall mean the amount of natural resources damages for  
4 this Site that FWS has estimated as its current or future claim for the purposes of this Consent  
5 Decree only.

6 t. “Paragraph” shall mean a portion of this Consent Decree identified by an  
7 Arabic numeral or an upper or lower case letter.

8 u. “Parties” shall mean the United States and SLLI.

9 v. “Past Response Costs” shall mean all costs, including but not limited to  
10 direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the  
11 Site through May 31, 2009, plus accrued Interest on all such costs consistent with paragraph 34  
12 below.

13 w. “Plaintiff” shall mean the United States.

14 x. “Regional Board” or “RWQCB” shall mean the California Regional Water  
15 Quality Control Board, San Francisco Bay Region, and any successor entity.

16 y. “RCRA” shall mean the Solid Waste Disposal Act, as amended 42 U.S.C.  
17 § 60901 et seq. (also known as the Resource Conservation and Recovery Act).

18 z. “Section” shall mean a portion of this Consent Decree identified by a  
19 Roman numeral.

20 aa. “Site” shall mean the Rhône-Poulenc Inc./Zoecon Corp. Superfund Site,  
21 encompassing 26 acres located at 1990 Bay Road, East Palo Alto, California, as generally shown  
22 on the map included as Appendix B.

23 bb. “SLLI” shall mean StarLink Logistics, Inc., and its successors and  
24 assignees.

25 cc. “State Trustees” shall mean the Director of the California Department of  
26 Fish and Game as designated by the Secretary of the California Resources Agency, the Executive  
27 Officer of the California State Lands Commission, and the Executive Director of the State Water  
28

1 Resources Control Board, as designated by the Secretary of the California Environmental  
2 Protection Agency, and any successor entities.

3 dd. "United States" shall mean the United States of America, including its  
4 departments, agencies and instrumentalities.

5 ee. "Upland OU" shall mean the 9-acre portion of the Site as generally shown  
6 on Appendix B, which includes properties to the north and west of the Facility and the PG&E  
7 poleyard.

8 ff. "Wetland OU" shall mean the 2-acre portion of the tidal wetland on the  
9 eastern edge of the Site as generally shown on Appendix B.

## 10 VI. STATEMENT OF FACTS

11 5. The Site is located in the City of East Palo Alto, California along the western  
12 shore of the San Francisco Bay. See Appendix A.

13 6. The Site is defined to include areas with arsenic concentrations in soil greater  
14 than 20 milligrams per kilogram of undried (wet) soil and sediment (mg/kg) and is comprised of  
15 several individual properties. See Appendix B.

16 7. The Facility is the approximately 5 acre property located at 1990 Bay Road.  
17 The Facility was used to formulate agricultural chemicals for more than 60 years.

18 8. From approximately the 1920s until 1964, the Facility was owned by Chipman  
19 Chemical Company ("Chipman") and used for manufacturing of arsenic-based products such as  
20 weed control compounds. In 1964, Rhodia Inc. ("Rhodia"), acquired Chipman and continued  
21 operations at the Facility until the late 1960s. In 1971, Rhodia sold the Facility to Zoecon  
22 Corporation ("Zoecon"), which began operations in 1972 following expansion of site facilities.  
23 Zoecon, which later became Sandoz Agro Inc. ("Sandoz"), manufactured biorational insect  
24 controls at the agrichemical facility. In 1994, Rhône-Poulenc Inc., formerly known as Rhodia  
25 ("Rhône-Poulenc"), repurchased the real property from Sandoz. Catalytica, Inc. ("Catalytica")  
26 subsequently purchased some of the property improvements from Sandoz and leased the real  
27 property from Rhône-Poulenc for use in the manufacturing of chemicals and pharmaceutical  
28 intermediates. Catalytica ceased operations in mid-2001. The plant and office facilities were

1 demolished in the spring of 2002. The property is now vacant, except for a warehouse structure  
2 adjacent to Bay Road.

3 9. In 2000, Rhône-Poulenc became Aventis CropScience USA Inc. (“Aventis  
4 CropScience”). In 2001, the Facility was sold to SLLI. In 2002, Aventis CropScience was sold  
5 to and changed its name to Bayer CropScience Inc. (“Bayer CropScience”).

6 10. The portions of the Site aside from the Facility include partly developed  
7 commercial properties to the north, south, and west, residential and mixed-use properties to the  
8 south, a portion of an electrical substation property to the east, and a small portion of a tidal  
9 wetland located beyond a levee east of the Facility.

10 11. Remedial activities began at the Site in 1981, when an initial investigation of the  
11 extent of arsenic in soil and groundwater was conducted.

12 12. In 1985, the Site was proposed for inclusion on the NPL under CERCLA, and  
13 also in 1985, the California Department of Health Services issued Sandoz, the Facility owner and  
14 operator at the time, a permit to store and treat hazardous waste under RCRA authority (permit  
15 No. CAT000611350). In 1989, EPA formally removed the Site from consideration for the NPL.

16 13. From 1987 to 1991, the Site was under the jurisdiction of DTSC pursuant to a  
17 Consent Order between DTSC, the RWQCB, and Rhône-Poulenc. Lead agency status changed in  
18 January 1991 to the RWQCB and the provisions of the Consent Order were vacated by  
19 stipulation, except those referencing cost recovery.

20 14. The Remedial Investigation (RI) report for the Site was completed in 1989, and  
21 the Feasibility Study (FS) report was completed for a portion of the Site that encompassed  
22 approximately 9 acres, called the Upland Operable Unit, in 1991. The properties to the north and  
23 west of the Facility and the PG&E poleyard are included in the Upland Operable Unit.

24 15. A Record of Decision (“ROD”) was issued by the EPA for the Upland Operable  
25 Unit in March 1992, and the selected remedial actions were incorporated into RWQCB Order 92-  
26 022.

27 16. In 1994, RWQCB Order 94-042 addressed certain remedial actions on an  
28 additional 11.8 acres of the Site referred to as the Upland Operable Unit Annex.



1           17.     In 1997, remedial actions for an additional 3.6 acres, referred to as the South of  
2 Weeks Street Subarea, were required by RWQCB Order 97-095.

3           18.     A portion of the tidal marsh comprises the Wetland Operable Unit.

4           19.     Significant remedial activities have been conducted in the Upland Operable  
5 Unit, Upland Operable Unit Annex, South of Weeks Street Subarea, and for groundwater.

6           20.     In the Upland Operable Unit and Upland Operable Unit Annex, accessible soil  
7 containing greater than 5000 mg/kg arsenic has been disposed off site, accessible soil containing  
8 arsenic at concentrations between 500 and 5000 mg/kg has been treated, and remaining soil  
9 containing greater than 70 mg/kg arsenic has been capped and the properties deed restricted. In  
10 the South of Weeks Subarea, accessible soil with arsenic concentrations greater than 20 mg/kg  
11 has been removed. Limited additional soil removal will be conducted when structures are  
12 removed on the Bains and Wilson properties. A slurry wall and groundwater extraction system  
13 (phytoremediation) have been installed at the Site. Groundwater monitoring continues. A  
14 feasibility study was prepared for the Wetland Operable Unit in 2005 which was finalized in  
15 2007.

16           21.     RWQCB Order 92-127 required an Ecological Assessment of the tidal marsh,  
17 which was timely prepared.

18           22.     Remedial activities in the Upland Operable Unit Annex resulted in the filling of  
19 3.34 acres of seasonal wetlands.

20           23.     RWQCB Order 94-042 required an offset for any wetlands filled as the result of  
21 the remedy at a ratio of three acres of wetland created, enhanced, or restored for every acre  
22 eliminated. The RWQCB approved the restoration of the 115-acre Cooley Landing Salt Pond,  
23 located north of Bay Road to the northeast of the Facility. Ten acres of this 115-acre restoration  
24 project were committed to off-set for filling 3.34 acres of the non-tidal wetland in the late 1990s.

25           24.     The draft FS report for the Wetland Operable Unit was submitted in 2004 and  
26 the final FS was submitted in 2007.

27           25.     RWQCB Order R2-2005-0033 for the Wetland Operable Unit required an offset  
28 of 1.3 acres of the Cooley Landing Salt Pond restoration area be provided in recognition of the

1 loss of wetland habitat quality caused by the Site. The calculation of this offset is described in the  
2 final Wetland Operable Unit FS. This acreage is in addition to the ten acres that were committed  
3 to offset for filling 3.34 acres of the non-tidal wetland.

4 26. Restoration activities were performed during the Fall of 2000 and tidal  
5 circulation was restored to the Cooley Landing Salt Pond in December 2000. Hydrologic and  
6 biologic monitoring of the salt pond has been ongoing since that time. Information currently  
7 known to the United States indicates the presence of one or more Natural Resources at or near the  
8 Site which may have been, or which may be, injured by release(s) of hazardous substances or  
9 which may have been or which may be injured by response actions.

10 27. EPA has coordinated assessments, investigations and planning with the Federal  
11 and State Natural Resources Trustees pursuant to CERCLA Section 104(b)(2), 42 U.S.C.  
12 9604(b)(2) relating to these NRD Claims.

13 28. EPA has provided the Federal and State Natural Resources Trustees with proper  
14 and necessary notice under CERCLA Section 122 relating to these NRD Claims.

## 15 **VII. DETERMINATIONS**

16 29. The Site is a “facility” as that term is defined in Section 101(9) of CERCLA, 42  
17 U.S.C. § 9601(9).

18 30. SLLI is a “person” as that term is defined in Section 101(21) of CERCLA, 42  
19 U.S.C. § 9601(21).

20 31. SLLI is potentially liable pursuant to Section 107(a) of CERCLA, 42 U.S.C. §  
21 9607(a).

22 32. There has been an actual or threatened “release” of a “hazardous substance” at  
23 the Site as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. §  
24 9601(22) and (14).

25 33. The actual or threatened release of a hazardous substance at the Site has caused  
26 or may cause the incurrence of response costs and may have injured, or may injure, Natural  
27 Resources within the meaning of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

1 **VIII. PAYMENT OF RESPONSE COSTS TO EPA**

2 34. Payment of Past Response Costs to EPA. Within 30 days of entry of this  
3 Consent Decree, SLLI shall pay to EPA \$784,363.33, plus an additional sum for Interest on that  
4 amount from June 1, 2009 through the date of entry of this Decree. Payment shall be made by  
5 FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in  
6 accordance with EFT instructions provided to SLLI by the Financial Litigation Unit of the U.S.  
7 Attorney’s Office in the Northern District of California following lodging of the Consent Decree.

8 35. At the time of payment, SLLI shall also send notice that payment has been made  
9 to EPA and DOJ in accordance with Section XVII (Notices and Submissions). Such notice shall  
10 reference the EPA Region and Site/Spill Identification Number 0998, DOJ case number 90-11-3-  
11 09436, and the civil action number.

12 36. The total amount to be paid pursuant to Paragraph 34 shall be deposited in the  
13 Rhône-Poulenc Inc./Zoecon Corp. Superfund Site Special Account within the EPA Hazardous  
14 Substance Superfund to be retained and used to conduct or finance response actions at or in  
15 connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance  
16 Superfund.

17 37. Payment of Future Response Costs to EPA.

18 a. SLLI shall pay to EPA all Future Response Costs relating to the Wetland  
19 OU, and not inconsistent with the National Contingency Plan. On a periodic basis, EPA will send  
20 SLLI a bill requiring payment of any Future Response Costs incurred that includes a cost  
21 summary, setting forth direct and indirect costs incurred by EPA, DOJ, and their identified  
22 contractors, if any. SLLI shall make all payments within 30 days of SLLI’s receipt of each bill  
23 requiring payment, except as otherwise provided in Paragraph 38. SLLI shall make all payments  
24 required by this Paragraph by a certified or cashier’s check or checks made payable to “EPA  
25 Hazardous Substance Superfund,” referencing the EPA Region and Site/Spill Identification  
26 Number 0998, DOJ case number 90-11-3-09436, and the civil action number, or by transferring  
27 the payment electronically within 30 days of SLLI’s receipt of the bill requiring payment. SLLI  
28 shall send the check(s) to:

1 U.S. Environmental Protection Agency  
2 Superfund Payments  
3 Cincinnati Finance Center  
4 P.O. Box 979076  
5 St. Louis, MO 63197-9000

6 Any electronic transfer of funds shall be directed to the Federal Reserve Bank of New York, as  
7 follows:

8 Federal Reserve Bank of New York  
9 ABA = 021030004  
10 Account = 68010727  
11 SWIFT address = FRNYUS33  
12 33 Liberty Street  
13 New York NY 10045  
14 Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental  
15 Protection Agency "

16 b. At the time of payment, SLLI shall send notice that payment has been  
17 made to EPA and DOJ in accordance with Section XVII. (Notices and Submissions). Such notice  
18 shall reference the EPA Region and Site/Spill Identification Number 0998, DOJ case number 90-  
19 11-3-09436, and the civil action number.

20 c. Of the amounts to be paid pursuant to Paragraph 37.a above, \$185,000.00  
21 shall be deposited in the Rhône-Poulenc Inc./Zoecon Corp. Superfund Site Special Account  
22 within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance  
23 response actions at or in connection with the Site, or to be transferred by EPA to the EPA  
24 Hazardous Substance Superfund.

25 38. Contested Payment Procedures. SLLI may contest payment of any Future  
26 Response Costs in accordance with the provisions of this Paragraph.

27 a. Standard. SLLI may contest payment of any Future Response Costs billed  
28 by EPA if it determines that EPA has made an accounting error or has included costs outside the  
scope of this Consent Decree, or if it alleges that a cost item that is included represents costs that  
are inconsistent with the NCP.

1           b.     Procedures. The dispute resolution procedures set forth in this Paragraph  
2 shall be the exclusive mechanism for resolving disputes regarding SLLI's obligation to reimburse  
3 EPA for its Future Response Costs.

4           c.     Dispute Resolution. The dispute resolution mechanism described in this  
5 Paragraph is only available if SLLI complies with the following conditions:

6                   (1)    Notice. Any objection to payment of EPA's Future Response Costs  
7 shall be made in writing within 30 days of receipt of the bill and must be sent to EPA and DOJ in  
8 accordance with Section XVII. (Notices and Submissions). Any such objection (hereinafter  
9 referred to as the "Notice of Objection") shall specifically identify the contested Future Response  
10 Costs and the basis for objection.

11                   (2)    Payment of Undisputed Amounts. In the event of an objection to  
12 some but not all Future Response Costs, SLLI shall within the 30 day period pay all uncontested  
13 Future Response Costs to EPA in the manner described in Paragraph 37.a above.

14                   (3)    Escrow for Disputed Amounts. Within 45 days of receipt of a bill  
15 for Future Response Costs which are disputed, SLLI shall establish an interest-bearing escrow  
16 account in a federally-insured, State chartered bank, and remit to that escrow account funds  
17 equivalent to the amount of the contested Future Response Costs. SLLI shall send to EPA and  
18 DOJ, as provided in Section XVII. (Notices and Submissions), a copy of the correspondence that  
19 establishes and funds the escrow account, including, but not limited to, information containing the  
20 identity of the bank and bank account under which the escrow account is established as well as a  
21 bank statement showing the initial balance of the escrow account.

22           d.     Informal Dispute Resolution. Any dispute with respect to Future Response  
23 Costs shall in the first instance be the subject of informal negotiations between EPA and SLLI.

24           e.     Formal Dispute Resolution.

25                   (1)    Initiation. If the dispute is not resolved by informal dispute  
26 resolution, either party may commence formal dispute resolution by sending a Notice of Formal  
27 Dispute Resolution to the other party to the dispute. The Notice of Formal Dispute Resolution  
28 shall be accompanied by a written Statement of Position by the party who serves the Notice,

1 stating the basis of that party's position and citing all factual data, analysis, opinion or other  
2 material on which that party relies to support its position. The opposing party shall have 30 days  
3 in which to serve a Response setting forth the same information supporting its position.

4 (2) Administrative Record and Decision. EPA shall maintain an  
5 administrative record of any dispute as to Future Response Costs for which formal dispute  
6 resolution has been initiated. The administrative record shall include the disputed bill and all cost  
7 documentation sent by EPA to SLLI, the Notice of Objection served by SLLI, the Notice of  
8 Formal Dispute Resolution and accompanying Statement of Position, the opposing party's  
9 Response, and any other documents or information sent to EPA by SLLI for inclusion in the  
10 record or relied on by EPA in reaching an administrative resolution of the dispute. The Director  
11 of the Superfund Division, EPA Region IX, will issue a final administrative decision determining  
12 whether the disputed Future Response Costs, or any part of them, shall be disallowed as  
13 inconsistent with the NCP, the result of an accounting error, or costs outside the scope of this  
14 Consent Decree.

15 (3) Judicial Appeal. SLLI may appeal EPA's administrative decision  
16 made pursuant to the preceding subparagraph to this Court within 30 days of its receipt of EPA's  
17 decision. The Court's review of EPA's decision shall be limited to EPA's administrative record.  
18 Judicial review of any dispute under this subparagraph shall be governed by applicable principles  
19 of administrative law.

20 f. Payment Following Dispute Resolution. Payments determined to be owing  
21 to EPA following dispute resolution shall be paid from the escrow account (including accrued  
22 Interest on the amounts owed) to EPA in the manner described in Paragraph 37.a above within 10  
23 days after receipt of the Court's decision or, if the decision is not timely appealed, within 10 days  
24 of EPA's decision. To the extent that any amounts are determined not to be owed, SLLI shall be  
25 disbursed the remainder of the escrow account.

26 39. Interest on Late Payments. In the event that the payment required by Paragraph  
27 34 is not made within 30 days of the date of entry of this Consent Decree or the payments  
28 required by Paragraph 37.a are not made within 30 days of the SLLI's receipt of the bill, SLLI

1 shall pay Interest on the unpaid balance. The Interest under this Paragraph to be paid on the  
2 amount due under Paragraph 34 shall begin to accrue on the date of entry of this Consent Decree.  
3 The Interest under this Paragraph on Future Response Costs due under Paragraph 37.a shall begin  
4 to accrue on the date of the bill. The Interest shall accrue through the date of the SLLI's payment.  
5 Payments of Interest made under this Paragraph shall be in addition to such other remedies or  
6 sanctions available to Plaintiff by virtue of SLLI's failure to make timely payments under this  
7 Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 40.  
8 SLLI shall make all payments required by this Paragraph in the manner described in Paragraph  
9 37.a.

10 40. Stipulated Penalties.

11 a. If any amounts due under Paragraph 34 are not paid by the required date,  
12 SLLI shall be deemed in violation of this Consent Decree and shall pay to EPA, as a stipulated  
13 penalty, in addition to Interest required by Paragraph 39, \$500 per day that such payment is late.  
14 Stipulated penalties are due and payable within 30 days of the date of the demand for payment of  
15 the stipulated penalties by EPA.

16 b. If any amounts due under Paragraph 37.a are not paid by the required date,  
17 SLLI may be deemed in violation of this Consent Decree and shall pay to EPA, as a stipulated  
18 penalty, in addition to the Interest required by Paragraph 39, \$100 per violation per day that such  
19 payment is late. Stipulated penalties are due and payable within 30 days of the date of the  
20 demand for payment of the stipulated penalties by EPA.

21 c. All payments to EPA under this Paragraph shall be identified as "stipulated  
22 penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous  
23 Substance Superfund," or by transferring the payment electronically within 30 days of SLLI's  
24 receipt of the bill requiring payment. The check, or a letter accompanying the check, shall  
25 reference the Site name, the EPA Region and Site/Spill Identification Number 0998, DOJ case  
26 number 90-11-3-09436, and the civil action number. SLLI shall send the check (and any  
27 accompanying letter) to:

1 U.S. Environmental Protection Agency  
2 Superfund Payments  
3 Cincinnati Finance Center  
4 P.O. Box 979077  
5 St. Louis, MO 63197-9000

6 Any electronic transfer of funds shall be directed to the Federal Reserve Bank of New York, as  
7 follows:

8 Federal Reserve Bank of New York  
9 ABA = 021030004  
10 Account = 68010727  
11 SWIFT address = FRNYUS33  
12 33 Liberty Street  
13 New York NY 10045  
14 Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental  
15 Protection Agency "

16 d. At the time of each payment, SLLI shall also send notice that payment has  
17 been made to EPA and DOJ in accordance with Section XIV. (Notices and Submissions). Such  
18 notice shall reference the Site name, the EPA Region and Site/Spill Identification Number 0998,  
19 DOJ case number 90-11-3-09436, and the civil action number.

20 e. Penalties shall accrue as provided in this Paragraph regardless of whether  
21 EPA has notified SLLI of the violation or made a demand for payment, but need only be paid  
22 upon demand. All stipulated penalties shall begin to accrue on the day after payment is due and  
23 shall continue to accrue through the date of payment. Nothing herein shall prevent the  
24 simultaneous accrual of separate penalties for separate violations of this Consent Decree.

25 41. Notwithstanding any other provision of this Section, EPA may, in its  
26 unreviewable discretion, reduce or waive the stipulated penalties that have accrued pursuant to  
27 Paragraph 40. Payment of stipulated penalties shall not excuse SLLI from payment as required  
28 by Paragraph 34 or 37 or from performance of any other requirements of this Consent Decree.

#### IX. PAYMENT OF NATURAL RESOURCE DAMAGES TO DOI

42. Within 30 days of entry of this Consent Decree, SLLI shall pay to DOI  
\$12,764.20 in reimbursement of DOI's damage assessment costs. Payment to DOI shall be made  
by Electronic Funds Transfer (EFT) to the U.S. Department of Justice lockbox, referencing DOJ



1 case number 90-11-3-09436 and the civil action number, in accordance with the EFT instructions  
2 that shall be provided by the United States Attorney's office after lodging of this Decree. Any  
3 EFT received at the United States Department of Justice lockbox after 4:00 p.m. (Eastern Time)  
4 will be credited on the next business day. SLLI shall simultaneously send a copy of the EFT  
5 transmittal notice to the Chief, Environmental Enforcement Section, U.S. Department of Justice,  
6 P.O. Box 7611, Washington D.C. 20044, Attn: DOJ No. 90-11-3-09436. Notice of the EFT also  
7 shall be sent to:

8 U.S. Department of the Interior  
9 Natural Resource Damage Assessment and Restoration Program  
10 Attention: Restoration Fund Manager  
11 1849 C Street, NW  
12 Mail Stop 4449  
13 Washington, DC 20240

14 43. Interest on Late Payments. In the event that the payment required by Paragraph  
15 42 is not made within 30 days of the entry of this Consent Decree, SLLI shall pay Interest on the  
16 unpaid balance. The Interest shall begin to accrue on the entry of this Consent Decree and shall  
17 accrue through the date of the SLLI's payment.

18 44. Stipulated Damages.

19 a. If any amounts due under Paragraph 42 are not paid by the required date,  
20 SLLI shall be in violation of this Consent Decree and shall pay to the United States, as stipulated  
21 damages, in addition to the Interest required by Paragraph 43, \$100 per day that such payment is  
22 late. Stipulated damages are due and payable within 30 days of the date of the demand for  
23 payment of the stipulated damages by DOI.

24 b. Stipulated damages shall accrue as provided in this Paragraph regardless of  
25 whether the United States has notified SLLI of the violation or made a demand for payment, but  
26 need only be paid upon demand. All stipulated damages shall begin to accrue on the day after  
27 payment is due and shall continue to accrue through the date of payment. Nothing herein shall  
28 prevent the simultaneous accrual of separate damages for separate violations of this Consent  
Decree.

1 c. At the time of each payment, SLLI shall also send notice that payment has  
2 been made to DOI and DOJ in accordance with Section XVII. (Notices and Submissions). Such  
3 notice shall reference the Site name, DOJ case number 90-11-3-09436, and the civil action  
4 number.

5 d. Stipulated damages shall accrue as provided in this Paragraph regardless of  
6 whether DOI has notified SLLI of the violation or made a demand for payment, but need only be  
7 paid upon demand. All stipulated damages shall begin to accrue on the day after payment is due  
8 and shall continue to accrue through the date of payment. Nothing herein shall prevent the  
9 simultaneous accrual of separate damages for separate violations of this Consent Decree.

10 45. Payment Procedures. All payments to the United States under Paragraphs 43 or  
11 44 shall be identified as “interest” or “stipulated damages” as applicable, and shall be made by  
12 certified or cashier’s check made payable to “The United States Treasury.” The check, or a letter  
13 accompanying the check, shall reference the Site name, DOJ case number 90-11-3-09436, and the  
14 civil action number. SLLI shall send the check (and any accompanying letter) to:

15 United States Attorney’s Office  
16 Northern District of California  
17 450 Golden Gate Avenue, Box 36055  
San Francisco, CA 94102

18 46. In any action to enforce this Consent Decree, the United States shall be entitled  
19 to its costs (including attorneys fees) necessary to collect any amounts due under but not paid by  
20 SLLI in accordance with this Consent Decree.

21 47. Payments made under this Section shall be in addition to any other remedies or  
22 sanctions available to Plaintiff by virtue of SLLI’s failure to comply with the requirements of this  
23 Consent Decree.

24 48. Notwithstanding any other provision of this Section, the United States may, in  
25 its unreviewable discretion, reduce or waive the stipulated damages that have accrued pursuant to  
26 Paragraph 44. Payment of stipulated damages shall not excuse SLLI from payment as required  
27 by Paragraph 42 or from performance of any other requirements of this Consent Decree.



1 **XII. COVENANT NOT TO SUE BY COVERED PARTIES**

2 51. The Covered Parties covenant not to sue and agree not to assert any claims or  
3 causes of action against the United States, or its contractors or employees, with respect to Past  
4 Response Costs, Future Response Costs, Natural Resource Damages, or this Consent Decree,  
5 including:

6 a. any direct or indirect claim for reimbursement from the Hazardous  
7 Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C.  
8 §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

9 b. any claim arising out of the response actions at the Site for which the Past  
10 Response Costs or Future Response Costs were incurred, including any claim under the United  
11 States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491,  
12 the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or,

13 c. any claim against the United States pursuant to Sections 107 and 113 of  
14 CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs, Future Response Costs,  
15 or Natural Resource Damages.

16 52. Nothing in this Consent Decree shall be deemed to constitute approval or  
17 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or  
18 40 C.F.R. 300.700(d).

19 53. Non-Exempt De Micromis Waiver. The Covered Parties agree not to assert any  
20 claims and to waive all claims or causes of action that they may have for all matters relating to the  
21 Site, including for contribution, against any person where the person's liability to the Covered  
22 Parties with respect to the Site is based solely on having arranged for disposal or treatment, or for  
23 transport for disposal or treatment, of hazardous substances at the Site, or having accepted for  
24 transport for disposal or treatment of hazardous substances at the Site, if all or part of the  
25 disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material  
26 containing hazardous substances contributed by such person to the Site was less than 110 gallons  
27 of liquid materials or 200 pounds of solid materials.

1           54.     The waiver in Paragraph 53 shall not apply with respect to any defense, claim,  
2 or cause of action that the Covered Parties may have against any person meeting the above  
3 criteria if such person asserts a claim or cause of action relating to the Site against the Covered  
4 Parties. This waiver also shall not apply to any claim or cause of action against any person  
5 meeting the above criteria if EPA determines:

6           a.     that such person has failed to comply with any EPA requests for  
7 information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA,  
8 42 U.S.C. §§ 9604(e) or 9622(e), or has impeded or is impeding, through action or inaction, the  
9 performance of a response action or natural resource restoration with respect to the Site, or has  
10 been convicted of a criminal violation for the conduct to which this waiver would apply and that  
11 conviction has not been vitiated on appeal or otherwise; or,

12           b.     that the materials containing hazardous substances contributed to the Site  
13 by such person have contributed significantly, or could contribute significantly, either  
14 individually or in the aggregate, to the cost of response action or natural resource restoration at  
15 the Site.

### 16                   **XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

17           55.     Except as provided in Paragraphs 49 (Covenant Not to Sue by United States)  
18 and 53 (Non-Exempt De Micromis Waiver), nothing in this Consent Decree shall be construed to  
19 create any rights in, or grant any cause of action to, any person not a party to this Consent Decree.  
20 Except as provided in Paragraphs 49 (Covenant Not to Sue by United States) and 53 (Non-  
21 Exempt De Micromis Waiver), the Parties expressly reserve any and all rights (including, but not  
22 limited to, any right to contribution), defenses, claims, demands, and causes of action that they  
23 may have with respect to any matter, transaction, or occurrence relating in any way to the Site  
24 against any person not a party hereto.

25           56.     The Parties agree, and by entering this Consent Decree this Court finds, that the  
26 Covered Parties are entitled, as of the date of entry of this Consent Decree, to protection from  
27 contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C.  
28 § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this

1 Consent Decree are Past Response Costs, Future Response Costs, and Natural Resource  
2 Damages.

3 57. SLLI agrees that, with respect to any suit or claim for contribution brought by  
4 the Covered Parties for matters related to this Consent Decree, SLLI will notify the United States  
5 in writing no later than 60 days prior to the initiation of such suit or claim. SLLI also agrees that,  
6 with respect to any suit or claim for contribution brought against the Covered Parties for matters  
7 related to this Consent Decree, SLLI will notify the United States in writing within 20 days of  
8 service of the complaint or claim upon it. In addition, SLLI shall notify the United States within  
9 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt  
10 of any order from a court setting a case for trial, for matters related to this Consent Decree.

11 58. In any subsequent administrative or judicial proceeding initiated by the United  
12 States for injunctive relief, recovery of response costs, or other relief relating to the Site, the  
13 Covered Parties shall not assert, and may not maintain, any defense or claim based upon the  
14 principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other  
15 defenses based upon any contention that the claims raised by the United States in the subsequent  
16 proceeding were or should have been brought in the instant case; provided, however, that nothing  
17 in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in  
18 Section X.

#### 19 **XIV. SITE ACCESS**

20 59. SLLI shall, commencing on the date of lodging of this Consent Decree, provide  
21 the United States and its representatives, including EPA and its identified contractors, with access  
22 at reasonable times to areas of the Site which SLLI owns or over which it has control, for the  
23 purpose of conducting any response activity related to the Site, including, but not limited to, the  
24 following activities:

- 25 a. Monitoring, investigation, removal, remedial or other activities at the Site;
- 26 b. Verifying any data or information submitted to the United States;
- 27 c. Conducting investigations relating to contamination at or near the Site;
- 28 d. Obtaining samples;

1 e. Assessing the need for, planning, or implementing response actions at or  
2 near the Site;

3 f. Inspecting and copying records, operating logs, contracts, or other  
4 documents maintained or generated by SLLI or its agents, consistent with Section XV. (Access to  
5 Information); and,

6 g. Assessing SLLI's compliance with this Agreement.

7 60. Notwithstanding any provision of this Agreement, EPA retains all of its access  
8 authorities and rights, as well as all of its rights to require land/water use restrictions, including  
9 enforcement authorities related thereto, under CERCLA and any other applicable statute or  
10 regulations.

#### 11 **XV. ACCESS TO INFORMATION**

12 61. SLLI shall provide to EPA, upon request, copies of all records, reports, or  
13 information (hereinafter referred to as "records") within its possession or control or that of its  
14 contractors or agents relating to activities at the Site, including, but not limited to, sampling,  
15 analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic  
16 routing, correspondence, or other documents or information related to the Site.

17 62. Confidential Business Information and Privileged Documents.

18 a. SLLI may assert business confidentiality claims covering part or all of the  
19 records submitted to Plaintiff under this Consent Decree to the extent permitted by and in  
20 accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b).  
21 Records determined to be confidential by EPA will be accorded the protection specified in 40  
22 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are  
23 submitted to EPA, or if EPA has notified SLLI that the records are not confidential under the  
24 standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be  
25 given access to such records without further notice to SLLI.

26 b. SLLI may assert that certain records are privileged under the attorney-  
27 client privilege or any other privilege recognized by federal law. If SLLI asserts such a privilege  
28 in lieu of providing records, it shall provide Plaintiff with the following: 1) the title of the record;

1 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the  
2 author of the record; 4) the name and title of each addressee and recipient; 5) a description of the  
3 subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a  
4 portion of a record, the record shall be provided to Plaintiff in redacted form to mask the  
5 privileged information only. SLLI shall retain all records that it claims to be privileged until the  
6 United States has had a reasonable opportunity to dispute the privilege claim and any such dispute  
7 has been resolved in the SLLI's favor.

8 63. No claim of confidentiality shall be made with respect to any Site data,  
9 including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific,  
10 chemical, or engineering data, evidencing conditions at the Site.

#### 11 **XVI. RETENTION OF RECORDS**

12 64. Until 5 years after the entry of this Consent Decree, SLLI shall preserve and  
13 retain all records now in its possession or control, or which come into its possession or control,  
14 that relate in any manner to response actions taken at the Site or the liability of any person under  
15 CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

16 65. After the immediate conclusion of the 5-year document retention period in the  
17 preceding Paragraph, SLLI shall notify the United States at least 90 days prior to the destruction  
18 of any such records, and, upon request by the United States, SLLI shall deliver any such records  
19 to EPA. SLLI may assert that certain records are privileged under the attorney-client privilege or  
20 any other privilege recognized by federal law. If SLLI asserts such a privilege, it shall provide  
21 Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title,  
22 affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of  
23 each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege  
24 asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided  
25 to Plaintiff in redacted form to mask the privileged information only. SLLI shall retain all records  
26 that it claims to be privileged until the United States has had a reasonable opportunity to dispute  
27 the privilege claim and any such dispute has been resolved in the SLLI's favor. SLLI may also  
28 assert business confidentiality claims consistent with Paragraph 62.a.





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As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-3-09436)  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to EPA:

Steve Berninger, ORC-3  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Rose Marie Caraway, SFD-7-2  
Remedial Project Manager  
United States Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

David Wood, MTS-4-2  
Regional Financial Management Officer  
United States Environmental Protection Agency  
Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

As to DOI:

Charles McKinley  
Office of the Solicitor  
U.S. Department of the Interior  
Office of the Solicitor  
600 Harrison St., Suite 545  
San Francisco, CA 94197-1373

As to SLLI:

Stuart Dearden  
Senior Director  
sanofi-aventis U.S.  
P.O. Box 6800  
Bridgewater, NJ 08807

Michelle Bruno  
Senior Corporate Counsel  
sanofi-aventis U.S.  
55 Corporate Drive (Mail Stop: 55A-525A)



1 States Department of Justice, certifies that he or she is authorized to enter into the terms and  
2 conditions of this Consent Decree and to execute and bind legally such Party to this document.

3 73. SLLI hereby agrees not to oppose entry of this Consent Decree by this Court or  
4 to challenge any provision of this Consent Decree, unless the United States has notified SLLI in  
5 writing that it no longer supports entry of the Consent Decree.

6 74. SLLI shall identify, on the attached signature page, the name and address of an  
7 agent who is authorized to accept service of process by mail on behalf of that Party with respect  
8 to all matters arising under or relating to this Consent Decree. SLLI hereby agrees to accept  
9 service in that manner and to waive the formal service requirements set forth in Rule 4 of the  
10 Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not  
11 limited to, service of a summons. The Parties agree that SLLI need not file an answer or  
12 otherwise respond to the complaint in this action unless or until the Court expressly declines to  
13 enter this Consent Decree.

14 **XXII. FINAL JUDGMENT**

15 75. Upon approval and entry of this Consent Decree by the Court, this Consent  
16 Decree shall constitute the final judgment between and among the Parties. The Court finds that  
17 there is no just reason for delay and therefore enters this judgment as a final judgment under Fed.  
18 R. Civ. P. 54 and 58.

19  
20 SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2009.

21  
22 \_\_\_\_\_  
United States District Judge

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *U.S. v.*  
2 *StarLink Logistics, Inc.*, relating to the *Rhône-Poulenc Inc./Zoecon Corp. Superfund Site.*

3 FOR PLAINTIFF UNITED STATES OF AMERICA:

4 Date: September 10, 2009

5 Deputy Chief  
6 Environmental Enforcement Section  
7 Environment and Natural Resources Division  
8 United States Department of Justice

9 Date: September 10, 2009

10 THOMAS P. CARROLL  
11 Senior Attorney  
12 Environmental Enforcement Section  
13 Environment and Natural Resources Division  
14 Department of Justice  
15 P.O. Box 7611  
16 Washington, D.C. 20044-7611  
17 (202) 514-4051 (Tel.)  
18 (202) 514-2583 (Fax)

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *U.S. v.*  
2 *StarLink Logistics, Inc.*, relating to the *Rhône-Poulenc Inc./Zoecon Corp. Superfund Site.*

3 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

4 Date: 9/2/09

5 \_\_\_\_\_  
6 KEITH TAKATA  
7 Director, Superfund Division  
8 U.S. Environmental Protection  
9 Region 9  
10 75 Hawthorne Street  
11 San Francisco, CA 94105

12 Date: August 7, 2009

13 \_\_\_\_\_  
14 STEPHEN BERNINGER  
15 Assistant Regional Counsel  
16 U.S. Environmental Protection Agency  
17 Region 9  
18 75 Hawthorne Street  
19 San Francisco, CA 94105

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *U.S. v.*  
2 *StarLink Logistics, Inc.*, relating to the *Rhône-Poulenc Inc./Zoecon Corp. Superfund Site.*

3 FOR DEFENDANT STARLINK LOGISTICS, INC.:

4 Date: July 22, 2009

5 \_\_\_\_\_  
6 RICHARD M. THOMSON  
7 Treasurer  
8 55 Corporate Drive  
9 Bridgewater, NJ 08807-2854

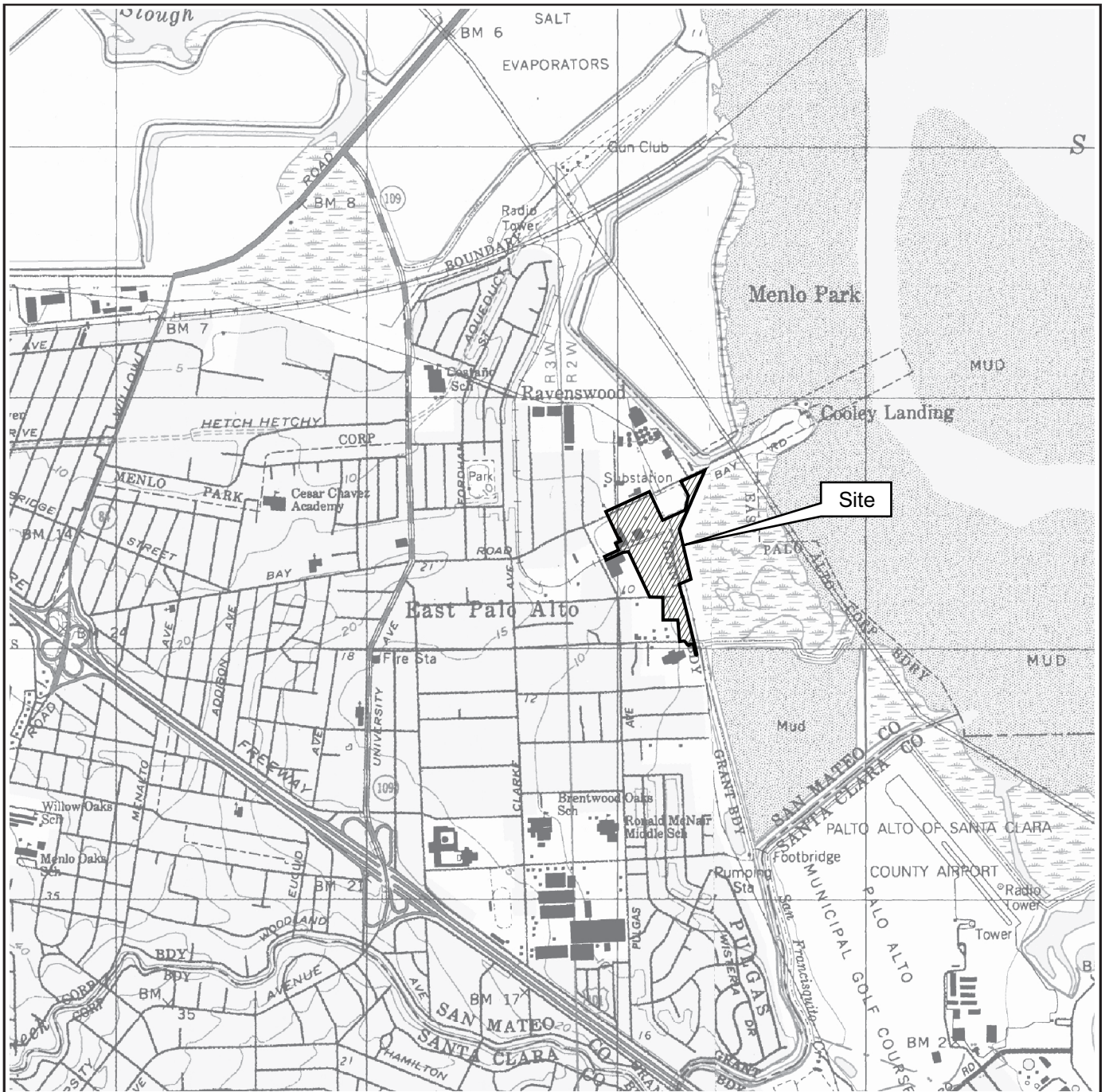
10 Agent Authorized to Accept Service on Behalf of Above-signed Party:  
11 Corporation Service Department  
12 2711 Centerville Road, Suite 400  
13 Wilmington, Delaware 19808

14 18590\1961656.1

**APPENDIX A**

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Basemap from USGS Quadrangle Map  
Palo Alto, California 1991



0 1000 2000



SCALE IN FEET



S.S. Papadopoulos & Associates, Inc.

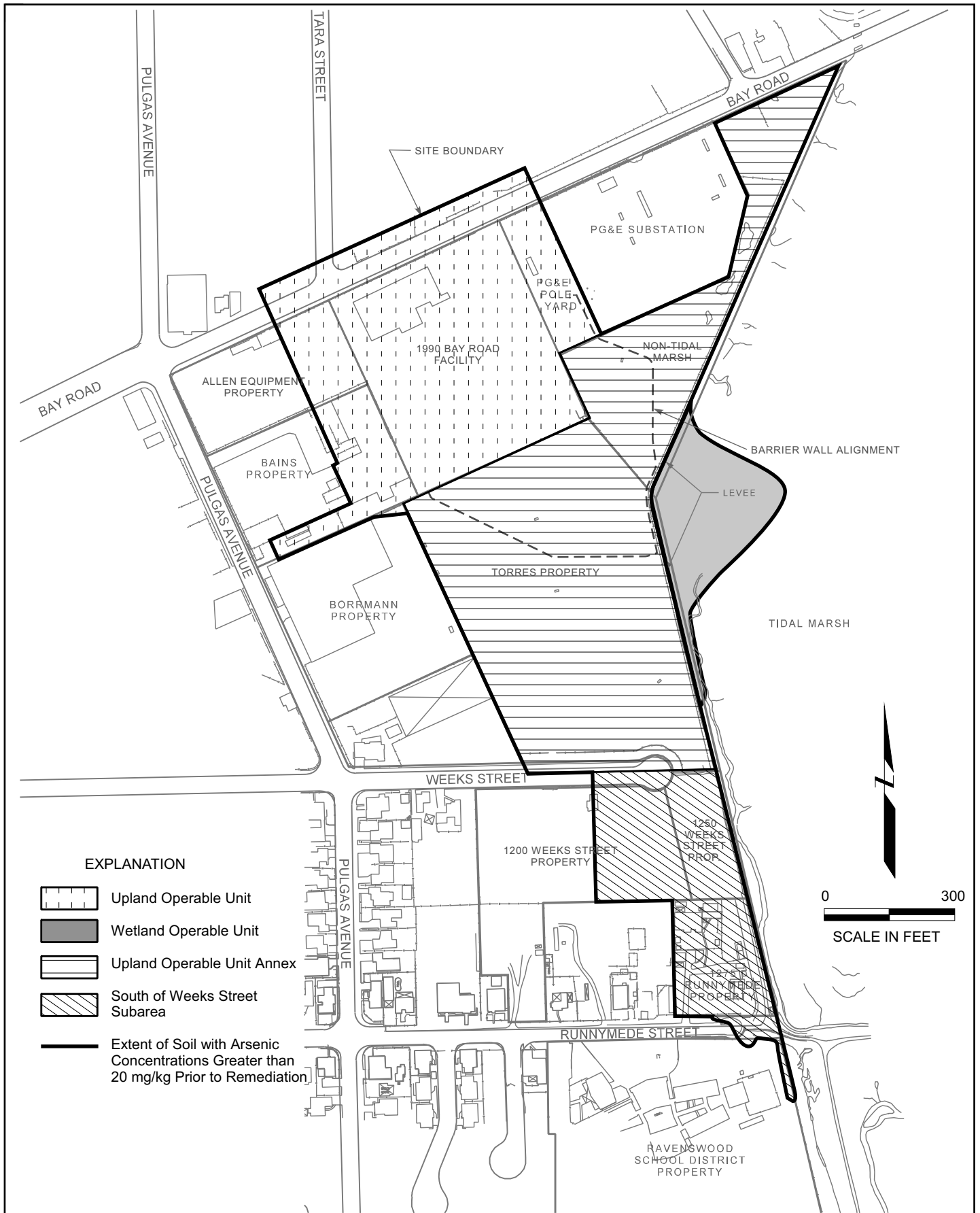
**SITE LOCATION MAP**

1990 Bay Road  
East Palo Alto, California

**Appendix A**

**APPENDIX B**

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SIGNATURE ATTESTATION

I hereby attest that I have on file all holograph signatures for any signature indicated by a "conformed" signature (/s/) within this electronic document.

\_\_\_\_\_  
Thomas P. Carroll  
Senior Attorney  
Environmental Enforcement Section