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13 IN THE UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 WESTERN DIVISION

16 UNITED STATES OF AMERICA and
17 CALIFORNIA DEPARTMENT OF
18 TOXIC SUBSTANCES CONTROL

18 Plaintiffs,

19 v.

20 VALLEY- PROCTOR LLC

22 Defendant.

CV09-1331

AHM

AWX

CIVIL ACTION NO.

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of California Department of Toxic Substances Control ("DTSC"), have filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, seeking reimbursement of response costs incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Puente Valley Operable Unit ("PVOU") of the San Gabriel Valley Superfund Site, Area 4, Los Angeles County, California (the "Site").

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B. This Consent Decree provides for the reimbursement of a portion of the United States' Past Response Costs and a portion of the DTSC's Past Response Costs at this Site by Valley-Proctor LLC (f/k/a Valley Proctor Partnership) ("Settling Defendant").

C. By entering into this Consent Decree, Settling Defendant does not admit liability to or arising out of the transactions or occurrences alleged in the Complaint or to any other person related to the Site.

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

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THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action

1 pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. §§ 6973, 9606, 9607, and
2 9613(b), and also has personal jurisdiction over Settling Defendant in this action.
3 Settling Defendant consents to and shall not challenge entry of this Consent
4 Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

5 **III. PARTIES BOUND**

6 2. This Consent Decree is binding upon the United States, DTSC, and
7 upon Settling Defendant. Any change in ownership or corporate or other legal
8 status, including but not limited to, any transfer of assets or real or personal
9 property, shall in no way alter the status or responsibilities of Settling Defendant
10 under this Consent Decree.

11 **IV. DEFINITIONS**

12 3. Unless otherwise expressly provided herein, terms used in this
13 Consent Decree which are defined in CERCLA or in regulations promulgated
14 under CERCLA shall have the meaning assigned to them in CERCLA or in such
15 regulations. Whenever the terms listed below are used in this Consent Decree, the
16 following definitions shall apply:

17 a. "Basin-wide Response Costs" shall mean costs, including but
18 not limited to direct and indirect costs, including accrued Interest, that the United
19 States has paid for basin-wide (non-operable unit) response actions in connection
20 with the San Gabriel Valley Superfund Sites, Areas 1- 4.

21 b. "Carrier Consent Decree" shall mean the consent decree entered
22 on April 28, 2006 in the matter of United States v. Carrier Corporation, Civ.
23 Action No. 05-6022 ABC (FMOx)(C.D. Cal.), relevant portions of which are
24 attached hereto as Appendix A.

25 c. "CERCLA" shall mean the Comprehensive Environmental
26 Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C.
27 § 9601, et seq.
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1 d. "Consent Decree" shall mean this Consent Decree and
2 Appendix A attached hereto.

3 e. "Day" shall mean a calendar day. In computing any period of
4 time under this Consent Decree, where the last day falls on a Saturday, Sunday, or
5 federal holiday, the period shall run until the close of business of the next working
6 day.

7 f. "DOJ" shall mean the United States Department of Justice and
8 any successor departments, agencies, or instrumentalities of the United States.

9 g. "DTSC" shall mean the State of California Department of
10 Toxic Substances Control and any successor departments or agencies.

11 h. "Effective Date" shall mean the date of entry of this Consent
12 Decree.

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

16 j. "EPA Hazardous Substance Superfund" shall mean the
17 Hazardous Substance Superfund established by the Internal Revenue Code,
18 26 U.S.C. § 9507.

19 k. "ESD" shall mean the Explanation of Significant Differences
20 issued by EPA on June 14, 2005 for the Record of Decision.

21 l. "Extended Required Sale Date" shall mean a date approved by
22 EPA pursuant to Paragraph 5.c. by which Settling Defendant must effectuate a
23 Transfer of the Property, once a written request has been made by Settling
24 Defendant for an extension of the Required Sale Date.

25 m. "Facility" shall mean the Site.

26 n. "Fair Market Value," except in the event of a transfer
27 by foreclosure, shall mean the price at which the Property or any portion thereof
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1 would change hands between a willing buyer and a willing seller under actual
2 market conditions, neither being under any compulsion to buy or to sell and both
3 having reasonable knowledge of relevant facts. In the event of a transfer by
4 foreclosure, "Fair Market Value" shall mean the amount obtained at the
5 foreclosure sale.

6 o. "Future DTSC Response Costs" shall mean all costs, including
7 but not limited to Oversight Costs, direct and indirect costs, and Basin-wide
8 Response Costs allocated to the Site, including Interest, that DTSC pays or incurs
9 at or relating to the Site after the date of entry of this Consent Decree, but prior to
10 the later of (i) the date 8 years from the Operational and Functional Date of the
11 Carrier Consent Decree, or (ii) the date of issuance of a final Record of Decision
12 for the Site.

13 p. "Future Response Costs" shall mean all costs, including but not
14 limited to Oversight Costs, direct and indirect costs, and Basin-wide Response
15 Costs allocated to the Site, including Interest, that the United States or any third
16 party pays or incurs at or relating to the Site after the date of entry of this Consent
17 Decree, but prior to the later of (i) the date 8 years from the Operational and
18 Functional Date of the Carrier Consent Decree, or (ii) the date of issuance of a
19 final Record of Decision for the Site.

20 q. "Interest" shall mean interest at the applicable rate specified for
21 interest on investments of the Hazardous Substance Superfund established by
22 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance
23 with 42 U.S.C. § 9607(a).

24 r. "Net Sales Proceeds," shall mean the total value of all
25 consideration received by Settling Defendant for all Transfers of the Property,
26 combined, less (i) closing costs (including appraisal costs and real estate
27 commissions incurred by a California-licensed real estate broker other than
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1 Settling Defendant), limited to those reasonably and necessarily incurred, as
2 determined by EPA, and actually paid by Settling Defendant associated with the
3 Transfer of the Property or any portion thereof, and (ii) federal and state taxes
4 owed on the proceeds.

5 s. "Oversight Costs" shall mean all direct and indirect costs,
6 including Interest, that the United States or the DTSC incurs in connection with
7 monitoring and supervising performance of the Response Work by other persons.

8 t. "Paragraph" shall mean a portion of this Consent Decree
9 identified by an Arabic numeral or an upper or lower case letter.

10 q. "Parties" shall mean the United States, DTSC, and the Settling
11 Defendant.

12 r. "Past DTSC Response Costs" shall mean all costs, including
13 but not limited to Oversight Costs, direct and indirect costs, and Basin-wide
14 Response Costs allocated to the Site, including Interest, that DTSC has paid or
15 incurred at or relating to the Site through and including the date of entry of this
16 Consent Decree.

17 s. "Past Response Costs" shall mean all costs, including but not
18 limited to Oversight Costs, direct and indirect costs, and Basin-wide Response
19 Costs allocated to the Site, including Interest, that the United States or any third
20 party has paid or incurred at or relating to the Site through and including the date
21 of entry of this Consent Decree.

22 t. "Plaintiffs" shall mean the United States and DTSC.

23 u. "Property" shall mean 334 El Encanto Road, City of
24 Industry, California 91745 (a/k/a 15430 Proctor Avenue, City of Industry,
25 California 91745) identified by Assessor's Parcel No. 8208 027 014 07 000.

26 v. "Record of Decision" or "ROD" shall mean the September 30,
27 1998 EPA Interim Record of Decision for the Puente Valley Operable Unit (Area
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1 4) of the San Gabriel Valley Superfund Sites, Areas 1-4.

2 w. "Required Sale Date" shall mean the date one year after the
3 Effective Date.

4 x. "Response Work" shall mean the design and implementation of
5 any remedial measures, including the operation and maintenance thereof,
6 encompassed within the Record of Decision as modified by the ESD.

7 y. "Section" shall mean a portion of this Consent Decree
8 identified by a Roman numeral.

9 z. "Settling Defendant" shall mean Valley-Proctor LLC (f/k/a
10 Valley Proctor Partnership).

11 aa. "Site" shall mean the facility, which consists of an area of
12 groundwater contamination in Los Angeles County, California, located in the
13 geographic area designated on the National Priorities List as the San Gabriel
14 Valley Superfund Site, Area 4 [see 49 Fed. Reg. 19480 (1984)], and identified as
15 the Puente Valley Operable Unit.

16 bb. "Transfer" shall mean the sale of the Property by Settling
17 Defendant (or its successors or heirs), or foreclosure by the United States.

18 cc. "United States" shall mean the United States of America,
19 including its departments, agencies and instrumentalities.

20
21 **V. REIMBURSEMENT OF RESPONSE COSTS**

22 4. Payment to EPA and DTSC.

23 a. Payment to DTSC. Settling Defendant shall, within thirty (30)
24 working Days after entry of this Consent Decree, remit the principal of five
25 thousand dollars (\$5,000) in reimbursement of Past Response Costs to DTSC.
26 Payment to DTSC shall be made by certified check or cashier's check, made
27 payable to "Cashier of the Department of Toxic Substances Control," Department
28 of Toxic Substances Control, State of California, Accounting Office, 1001 I Street,

1 Sacramento, California, 95812. Settling Defendant shall send a transmittal letter
2 with the check, referencing the San Gabriel Superfund Sites, Area 4 (Puente
3 Valley Operable Unit), Project Code No. 300346. Settling Defendant also shall
4 send notice, including a copy of the check and transmittal letter, to DTSC as
5 provided in Section XIV (Notices and Submissions).

6 b. Payments to EPA.

7 Settling Defendant shall pay the United States \$550,000 plus Interest as set
8 forth below. If the Net Sales Proceeds are sufficient, Settling Defendant shall
9 make such payment within five business days of the Transfer. If the Net Sales
10 Proceeds are less than \$550,000, Settling Defendant shall pay as follows:

11 1. within five business days of the Transfer, all of the Net Sales Proceeds to the
12 United States; and 2. within twenty business days of the Transfer, Settling
13 Defendant shall pay any shortfall to the United States so that the total payment to
14 the United States is \$550,000 plus Interest. Interest will begin to accrue sixty (60)
15 days from the Effective Date and run through the date of payment in full.

16 c. Payment to the United States shall be made by FedWire
17 Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in
18 accordance with current EFT procedures, referencing the USAO File Number,
19 EPA Region IX, the Site/Spill ID Number 09-8V, and DOJ Case Number 90-11-2-
20 09232. Payment shall be made in accordance with instructions provided to the
21 Settling Defendant by the Financial Litigation Unit of the United States Attorney's
22 Office for the Central District of California following lodging of the Consent
23 Decree. Any payments received by the Department of Justice after 4:00 p.m.
24 Eastern Time shall be credited on the next business Day. Settling Defendant shall
25 send notice to the EPA and the DOJ that payment has been made in accordance
26 with Section XIV (Notices and Submissions) and to David Wood, PMD-6, Section
27 Chief, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California,
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1 94105.

2 d. The five hundred fifty thousand dollars (\$550,000), plus
3 Interest, paid by Settling Defendant to the United States shall be deposited in the
4 "San Gabriel Valley Superfund Sites, Area 4, Special Account" within the EPA
5 Hazardous Substance Superfund. This Special Account shall be retained and used
6 to conduct or finance response actions at or in connection with the Site or the San
7 Gabriel Valley Superfund Sites (Areas 1- 4), or may be transferred by the EPA
8 from this Special Account to the EPA Hazardous Substance Superfund.

9 5. Sale of Property.

10 a. Settling Defendant agrees that it will not sell, assign, convey,
11 encumber, or exchange the Property, or any portion thereof, except by means of a
12 Transfer.

13 b. Settling Defendant shall sell the Property by effecting a
14 Transfer of all portions of the Property by the Required Sale Date at a price
15 sufficient to ensure that the United States will receive \$550,000, plus Interest (as
16 described in paragraph 4(b)) from the Net Sales Proceeds. If the sales price is not
17 sufficient to ensure that the United States will receive the full \$550,000, plus
18 Interest (as described in paragraph 4(b)) from the Net Sale Proceeds, then Settling
19 Defendant shall sell the Property at Fair Market Value and Settling Defendant
20 shall provide EPA with documentation sufficient to show the total value of all
21 consideration received by Settling Defendant for each Transfer at the time of each
22 Transfer, the amount of the proceeds of the Transfer, and the amounts
23 corresponding to closing costs and federal and state taxes. This documentation
24 shall include, but not be limited to, the report of an Appraisal (to be paid for by
25 Settling Defendant but deductible as part of the closing costs as set forth above).
26 The documentation shall also include, either as part of the report or separately, (1)
27 a tax statement showing the assessed valuation of the Property or any portion
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1 thereof for each of the three years immediately preceding the Transfer and (2) a
2 schedule showing all outstanding indebtedness on the Property or any portion
3 thereof.

4 c. The Settling Defendant may make a request to EPA for an
5 extension of time for the Required Sale Date to take effect. Any such request
6 shall be made in writing to EPA's Project Coordinator at least 30 days prior to the
7 Required Sale Date. If EPA agrees to the extension of time, it shall notify Settling
8 Defendant in writing of the Extended Required Sale Date. EPA's decision on the
9 extension of time shall not be subject to the dispute resolution procedures of this
10 Consent Decree or to judicial review.

11 d. If Settling Defendant fails to sell the Property by the Required
12 Sale Date, or by any Extended Required Sale Date, EPA may take appropriate
13 action to perfect a lien on the Property pursuant to Section 107(l) of CERCLA, 42
14 U.S.C. § 9607(l). Settling Defendant hereby agrees not to object to the imposition
15 of a CERCLA 107(l) lien on the Property if the Property is not sold by the
16 Required Sale Date, or by any Extended Required Sale Date.

17 e. Once EPA has perfected its lien pursuant to Section 107(l), 42
18 U.S.C. § 9607(l), EPA may initiate action to foreclose on its lien. EPA shall
19 provide notice of its decision to take action to foreclose on its liens at least 60 days
20 before it takes such action. Settling Defendant shall not oppose such foreclosure
21 action, and shall reimburse EPA its costs of foreclosure, including attorneys' fees,
22 in addition to any amounts due pursuant to this Consent Decree. Such payments
23 shall be considered reimbursement of response costs and shall be made in the
24 manner described in Paragraph 4.c. If EPA forecloses on its liens, the United
25 States shall be entitled to the first \$550,000 of the Net Sales Proceeds, plus
26 Interest (as described in paragraph 4(b)) through the date of payment. Settling
27 Defendant shall be entitled to the remainder of the Net Sales Proceeds.
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1 **VI. FAILURE TO COMPLY WITH REQUIREMENTS**

2 6. Interest on Late Payments. In the event that any payment required
3 under Section V (Reimbursement of Response Costs) or Section VI, Paragraph 7
4 (Stipulated Penalties) is not received when due, Interest shall continue to accrue
5 on the unpaid balance through the date of payment. Settling Defendant shall be
6 liable for any such Interest pertaining to the payments required under Section V
7 (Reimbursement of Response Costs).

8 7. Stipulated Penalties.

9 a. Settling Defendant shall be liable for stipulated penalties for
10 late payments under Section V (Reimbursement of Response Costs) and for the
11 Interest on late payments for Section V, as required under Section VI. The
12 stipulated penalties shall be in the following amounts per violation per Day that
13 any such payment is late:
14

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$1500	15th through 30th Day
\$2500	31st Day and beyond

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19 Each of the payments required under Section V (Reimbursement of Response
20 Costs) shall be considered a separate violation for purposes of calculating
21 stipulated penalties under this provision.

22 b. Settling Defendant shall be liable for stipulated penalties in the
23 amount of \$1500 per Day per violation of the provisions contained in Sections VII
24 (Notice to Successors-in-Title), XII (Access To Information), and XIII (Retention
25 of Records).

26 8. All Interest and penalties set forth under this Section shall begin to
27 accrue on the Day a violation occurs, and shall continue to accrue through the final
28 Day of the correction of the noncompliance. Nothing herein shall prevent the

1 simultaneous accrual of separate penalties for separate violations of this Consent
2 Decree.

3 9. Interest and stipulated penalties shall accrue as provided in
4 Paragraphs 6 and 7, regardless of whether EPA or DTSC has notified Settling
5 Defendant of the violation or made a demand for payment, but need be paid only
6 upon demand.

7 10. Interest and stipulated penalties set forth under this Section shall be
8 due and payable within 30 Days of the date of demand for payment. All payments
9 to the United States under this Paragraph shall be made by certified or cashier's
10 check made payable to the "EPA Hazardous Substances Superfund," shall be
11 forwarded to:

12 US Environmental Protection Agency
13 Superfund Payments
14 Cincinnati Finance Center
15 PO Box 979076
St. Louis, MO 63197-9000,

16 shall indicate that payment is for Interest and/or stipulated penalties, and shall
17 reference EPA Region IX, the Site/Spill Identification Numbers 09-8V, the USAO
18 File Number, the DOJ Case Number 90-11-2-09232, and the name and address of
19 the party making payment. Copies of check(s) paid pursuant to this Paragraph,
20 and any accompanying transmittal letter(s), shall be forwarded to the DOJ and the
21 EPA as provided in Section XIV (Notices and Submissions), and to David Wood,
22 PMD-6, Section Chief, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco,
23 California, 94105. Payment to DTSC under this Paragraph shall be made by
24 certified check or cashier's check, made payable to "Cashier of the Department of
25 Toxic Substances Control," and shall be forwarded to the Department of Toxic
26 Substances Control, State of California, Accounting Office, 1001 I Street,
27 Sacramento, California, 95812. Settling Defendant shall send a transmittal letter
28 with the check, referencing the San Gabriel Superfund Sites, Area 4 (Puente

1 Valley Operable Unit), Project Code No. 300346. Settling Defendant also shall
2 send notice, including a copy of the check and transmittal letter, to DTSC as
3 provided in Section XIV (Notices and Submissions).

4 11. Notwithstanding any other provision of this Section, the United States
5 and/or DTSC may, in its unreviewable discretion, waive any portion of Interest or
6 stipulated penalties that have accrued pursuant to this Consent Decree.

7 12. Payments made under Paragraphs 4 through 10 shall be in addition to
8 any other remedies or sanctions available to Plaintiffs by virtue of Settling
9 Defendant's failure to comply with the requirements of this Consent Decree.

10 13. In addition to the Interest and Stipulated Penalty payments required
11 by this Section and any other remedies or sanctions available to the United States
12 by virtue of Settling Defendant's failure to comply with the requirements of this
13 Consent Decree, if the United States and/or DTSC brings an action against
14 Settling Defendant to enforce this Consent Decree, and the claims made by the
15 United States and/or DTSC are not arbitrary and capricious, Settling Defendant
16 shall reimburse the United States and/or DTSC for all costs of such action,
17 including but not limited to costs of attorney time.

18 **VII. NOTICE TO SUCCESSORS-IN-TITLE**

19 14. Within fifteen (15) Days after the entry of this Consent Decree,
20 Settling Defendant shall record a notice of the entry of this Consent Decree with
21 the Recorder's Office, Los Angeles County, State of California. Thereafter, each
22 deed, title, or other instrument conveying an interest in the Property included in
23 the Site shall contain a notice stating that the Property is subject to this Consent
24 Decree and shall reference the recorded location of the Consent Decree.

25 a. The obligations of Settling Defendant with respect to the
26 provisions of this Paragraph and Section XI (Site Access) shall be binding upon
27 any and all persons who subsequently acquire any such interest or portion thereof
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1 (hereinafter "Successors-in-Title"). Within fifteen (15) Days after entry of this
2 Consent Decree, Settling Defendant shall record at the Recorder's Office a notice
3 of obligation to provide access under Section XI (Site Access). Each subsequent
4 instrument conveying an interest to any such Property included in the Site shall
5 reference the recorded location of such notice.

6 b. Settling Defendant and any Successor-in-Title shall, at
7 least thirty (30) Days prior to the conveyance of any such interest, give written
8 notice of this Consent Decree to the grantee and written notice to EPA of the
9 proposed conveyance, including the name and address of the grantee, and the date
10 on which notice of the Consent Decree was given to the grantee. In the event of
11 any such conveyance, Settling Defendant's obligations under this Consent Decree,
12 including its obligation to provide or secure access pursuant to Section XI (Site
13 Access), to the extent that such Settling Defendant has access rights to the
14 Property, shall continue and shall also be met by the Successor-in-Title. In no
15 event shall the conveyance of an interest in the Property release or otherwise affect
16 the liability of Settling Defendant to comply with this Consent Decree.

18 **VIII. COVENANT NOT TO SUE BY PLAINTIFFS**

19 15. Covenant Not to Sue. Except as specifically provided in Paragraph
20 16 (Reservation of Rights), Plaintiffs covenant not to sue or to take any
21 administrative action against Settling Defendant for performance of Response
22 Work, Past Response Costs, Future Response Costs, Past DTSC Response Costs,
23 and Future DTSC Response Costs ("Matters Addressed"), pursuant to Section
24 7003 of RCRA, 42 U.S.C. § 6973, or Sections 106 and 107(a) of CERCLA, 42
25 U.S.C. §§ 9606 and 9607(a). This covenant shall take effect upon receipt by
26 Plaintiffs of the payments set forth in Paragraphs 4 and 5. This covenant is
27 conditioned upon Settling Defendant's satisfactory performance of its obligations
28 under this Consent Decree. This covenant extends only to Settling Defendant and

1 does not extend to any other person.

2 16. Reservation of Rights. The covenant not to sue set forth in Paragraph
3 15 does not pertain to any matters other than the Matters Addressed. The
4 Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights
5 against Settling Defendant with respect to other matters, including but not limited
6 to:

7 a. liability for failure by Settling Defendant to meet a requirement
8 of this Consent Decree;

9 b. liability for damages for injury to, destruction of, or loss of
10 natural resources, and for the costs of any natural resource damage assessments;

11 c. criminal liability; and

12 d. liability for response actions and response costs incurred or to
13 be incurred by the United States and/or DTSC not covered as Matters Addressed
14 as set forth in Paragraph 15 of this Consent Decree, including but not limited to
15 liability for any response actions and response costs at the Site that occur after the
16 later of (i) the date 8 years from the Operational and Functional Date of the Carrier
17 Consent Decree, or (ii) the date of issuance of a final Record of Decision for the
18 Site.
19

20 **IX. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

21 17. Settling Defendant covenants not to sue and agrees not to assert any
22 claims or causes of action against Plaintiffs or their contractors or employees with
23 respect to the Matters Addressed, as set forth in this Consent Decree, including
24 but not limited to:

25 a. any direct or indirect claims for reimbursement from the
26 Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or
27 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any
28 other provision of law;

1 b. any claims arising out of costs or response actions at or in
2 connection with the Site, including any claim under the United States Constitution,
3 the California Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to
4 Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

5 c. any claims against the United States pursuant to Sections 107
6 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, related to the Site.

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

10 **X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

11 19. Nothing in this Consent Decree shall be construed to create any rights
12 in, or grant any cause of action to, any person not a Party to this Consent Decree.
13 Each of the Parties expressly reserves any and all rights (including, but not limited
14 to, any right to contribution), defenses, claims, demands, and causes of action
15 which each Party may have with respect to any matter, transaction, or occurrence
16 relating in any way to the Site against any person not a Party hereto.

17 20. The Parties agree that in consideration of the payment made by
18 Settling Defendant and the execution of this Consent Decree, Settling Defendant
19 has resolved its liability to Plaintiffs and is entitled to protection from contribution
20 actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §
21 9613(f)(2), for Matters Addressed in this Consent Decree, conditioned only upon
22 entry of this Consent Decree. The Matters Addressed in this Consent Decree are
23 listed in Paragraph 15 above. The Matters Addressed exclude those response
24 actions and response costs to which Plaintiffs have reserved their rights under this
25 Consent Decree.
26

27 21. Settling Defendant agrees that, with respect to any suit or claim for
28 contribution brought by Settling Defendant for matters related to this Consent

1 Decree, Settling Defendant will notify DOJ, EPA, and DTSC in writing not later
2 than sixty (60) Days prior to the initiation of such suit or claim. Settling
3 Defendant also agrees that, with respect to any suit or claim for contribution
4 brought against Settling Defendant for matters related to this Consent Decree,
5 Settling Defendant will notify DOJ, EPA, and DTSC in writing within ten (10)
6 Days of service of the complaint or claims upon Settling Defendant. In addition,
7 Settling Defendant shall notify DOJ, EPA, and DTSC within ten (10) Days of
8 service or receipt of any motion for summary judgment or any order from a court
9 setting a case for trial, for matters related to this Consent Decree.

10
11 22. In any subsequent administrative or judicial proceeding initiated by
12 the United States or DTSC for injunctive relief, recovery of response costs, or
13 other relief relating to the Site, Settling Defendant shall not assert, and may not
14 maintain, any defense or claims based upon the principles of waiver, res judicata,
15 collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon
16 any contention that the claims raised by the United States or DTSC in the
17 subsequent proceeding were or should have been brought in the instant case;
18 *provided, however*, that nothing in this Paragraph affects the enforceability of the
19 Covenant Not to Sue by Plaintiffs set forth in Section VIII.

20 XI. SITE ACCESS

21 23. Commencing upon the date of lodging of this Consent Decree,
22 Settling Defendant agrees to provide the United States and DTSC and their
23 representatives, including the EPA, the DTSC, and the Los Angeles Regional
24 Water Quality Control Board, and their contractors, access at all reasonable times
25 to the Property within the Site owned or controlled by Settling Defendant to which
26 access is determined by the EPA or DTSC to be required for the implementation of
27 this Consent Decree, or for the purpose of conducting any response activity related
28 to the Site, including but not limited to:

- 1 a. Monitoring of investigation, removal, remedial or other
2 activities at the Site;
- 3 b. Verifying any data or information submitted to the United
4 States or to DTSC;
- 5 c. Conducting investigations relating to contamination at or near
6 the Site;
- 7 d. Obtaining samples;
- 8 e. Assessing the need for, planning, or implementing response
9 actions at or near the Site; and
- 10 f. Inspecting and copying records, operating logs, contracts, or
11 other documents maintained or generated by Settling Defendant or its agents,
12 consistent with Section XII (Access to Information).

13
14 24. Notwithstanding any provision of this Consent Decree, the United
15 States and DTSC retain all of their access authorities and rights, including
16 enforcement authorities related thereto, under CERCLA, the Resource
17 Conservation and Recovery Act, 42 U.S.C. § 6927, and any other applicable
18 statutes or regulations.

19 **XII. ACCESS TO INFORMATION**

20 25. Settling Defendant shall provide to Plaintiffs, upon request, copies of
21 all documents and information within its possession or control or that of its
22 contractors or agents relating in any manner to response actions taken at the Site
23 or the liability of any person for response actions conducted and to be conducted
24 at the Site, including, but not limited to, sampling, analysis, chain of custody
25 records, manifests, trucking logs, receipts, reports, sample traffic routing,
26 correspondence, or other documents or information related to the Site.

27 26. Confidential Business Information and Privileged Documents.

- 28 a. Settling Defendant may assert business confidentiality claims

1 covering part or all of the documents or information submitted to Plaintiffs under
2 this Consent Decree to the extent permitted by and in accordance with Section
3 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).

4 Documents or information determined to be confidential by Plaintiffs will be
5 accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
6 confidentiality accompanies documents or information when they are submitted to
7 the Plaintiffs, or if Plaintiffs have notified Settling Defendant that the documents
8 or information are not confidential under the standards of Section 104(e)(7) of
9 CERCLA, the public may be given access to such documents or information
10 without further notice to Settling Defendant.

11 b. Settling Defendant may assert that certain documents, records
12 or other information are privileged under the attorney-client privilege or any other
13 privilege recognized by federal law. If Settling Defendant asserts such a privilege
14 in lieu of providing documents, they shall provide Plaintiffs with the following: 1)
15 the title of the document, record, or information; 2) the date of the document,
16 record, or information; 3) the name and title of the author of the document, record,
17 or information; 4) the name and title of each addressee and recipient; 5) a
18 description of the subject of the document, record or information; and 6) the
19 privilege asserted. However, no documents, reports, or other information created
20 or generated pursuant to the requirements of this or any other consent decree with
21 Plaintiffs shall be withheld on the grounds that they are privileged. If a claim of
22 privilege applies only to a portion of a document, the document shall be provided
23 to Plaintiffs in redacted form to mask the privileged information only. Settling
24 Defendant shall retain all records and documents that it claims to be privileged
25 until Plaintiffs have had a reasonable opportunity to dispute the privilege claim
26 and any such dispute has been resolved in the Settling Defendant's favor.

27
28 27. No claim of confidentiality shall be made with respect to any data,

1 including but not limited to, all sampling, analytical, monitoring, hydrogeologic,
2 scientific, chemical, or engineering data, or any other documents or information
3 evidencing conditions at or around the Site.

4 **XIII. RETENTION OF RECORDS**

5 28. Until ten (10) years after the entry of this Consent Decree, Settling
6 Defendant shall preserve and retain all records and documents now in its
7 possession or control, or which come into its possession or control thereafter, that
8 relate in any manner to response actions taken at the Site or the liability of any
9 person for response actions conducted and to be conducted at the Site, regardless
10 of any corporate retention policy to the contrary. After five (5) years, Settling
11 Defendant may contact the EPA in writing to request instructions as to whether
12 such records and documents shall be maintained for the remaining five (5) year
13 retention period, or whether such records and documents may be discarded. No
14 retained records or documents shall be disposed of prior to the ten (10) year
15 retention period, unless Settling Defendant receives instructions from the EPA
16 specifically permitting Settling Defendant to dispose of such records and
17 documents.
18

19 29. After the conclusion of the ten (10) year document retention period in
20 the preceding Paragraph, Settling Defendant shall notify the EPA and the DOJ at
21 least ninety (90) Days prior to the destruction of any such records or documents,
22 and, upon request by the EPA or the DOJ, Settling Defendant shall deliver any
23 such records or documents to EPA subject to the same privilege provisions set
24 forth in Section XII (Access To Information).

25 30. By signing this Consent Decree, Settling Defendant certifies that,
26 after thorough inquiry, to the best of its knowledge and belief, Settling Defendant
27 has not altered, mutilated, discarded, destroyed, or otherwise disposed of any
28 records, documents, or other information relating to its potential liability regarding

1 the Site, after notification of potential liability or the filing of a suit against
2 Settling Defendant regarding the Site; and that Settling Defendant has fully
3 complied with any and all EPA requests for information regarding the Site
4 pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and
5 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

6 **XIV. NOTICES AND SUBMISSIONS**

7 31. Whenever, under the terms of this Consent Decree, notice is required
8 to be given or a document is required to be forwarded by one party to another, it
9 shall be directed to the individuals at the addresses specified below, unless those
10 individuals or their successors give notice of a change to the other Parties in
11 writing. Written notice as specified herein shall constitute complete satisfaction of
12 any written notice requirement of the Consent Decree with respect to the United
13 States (the DOJ and the EPA), DTSC, and Settling Defendant, respectively.

14 As to the United States:

15 As to DOJ:

16 Bruce S. Gelber
17 Chief, Environmental Enforcement Section
18 Environment and Natural Resources Division
19 U.S. Department of Justice (DJ # 90-11-2-09232)
20 P.O. Box 7611
21 Washington, D.C. 20044-7611

22 Elise S. Feldman
23 Trial Attorney
24 Environmental Enforcement Section
25 Environment and Natural Resources Division
26 U.S. Department of Justice
27 301 Howard Street, Suite 1050
28 San Francisco, CA 94105

29 As to EPA:

30 Dustin Minor (ORC-3)
31 Acting Branch Chief
32 Hazardous Waste Branch
33 U.S. Environmental Protection Agency, Region IX
34 75 Hawthorne Street
35 San Francisco, California 94105

1 As to DTSC:

2 Ann Rushton
3 Deputy Attorney General, Environment Section
4 California Department of Justice
300 South Spring Street
Los Angeles, California 90013

5 Jacalyn Spizman
6 Project Manager, Site Mitigation Branch
7 Department of Toxic Substances Control, Region 3
5796 Corporate Avenue
Cypress, California 90630

8 As to Settling Defendant:

9 Paul D. Rasmussen
10 Dongell Lawrence Finney LLP
11 707 Wilshire Boulevard, 27th Floor
Los Angeles, CA 90017-3609
12 Telephone: (213)-943-6100
Facsimile: (213)-943-6101
e-mail:

13 Attorney for Settling Defendant Valley-Proctor LLC
14

15 Settling Defendant may change the identity or contact information for its
16 agent at any time by written notice to the Court and to the United States.

17 **XV. RETENTION OF JURISDICTION**

18 32. This Court shall retain jurisdiction over this matter for the purpose of
19 interpreting and enforcing the terms of this Consent Decree.

20 **XVI. INTEGRATION/APPENDICES**

21 33. This Consent Decree and its appendix constitute the final, complete
22 and exclusive agreement and understanding among the Parties with respect to the
23 settlement embodied in this Consent Decree. The Parties acknowledge that there
24 are no representations, agreements or understandings relating to the settlement
25 other than those expressly contained in this Consent Decree. The following
26 appendix is attached to and incorporated into this Consent Decree: "Appendix A"
27 is the relevant portions of the Carrier Consent Decree.
28

1 **XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

2 34. This Consent Decree shall be lodged with the Court for a period of
3 not less than thirty (30) Days for public notice and comment. The United States
4 reserves the right to withdraw or withhold its consent if the comments regarding
5 the Consent Decree disclose facts or considerations which indicate that this
6 Consent Decree is inappropriate, improper, or inadequate. Settling Defendant
7 consents to the entry of this Consent Decree without further notice.

8 35. If for any reason this Court should decline to approve this Consent
9 Decree in the form presented, this agreement is voidable at the sole discretion of
10 any party and the terms of the agreement may not be used as evidence in any
11 litigation between the Parties.

12 **XVIII. EFFECTIVE DATE**

13 36. The Effective Date of this Consent Decree shall be the date upon
14 which it is entered by the Court.

15 **XIX. SIGNATORIES/SERVICE**

16 37. Each undersigned representative of the Settling Defendant, the
17 Assistant Attorney General for the Environment and Natural Resources Division
18 of the United States Department of Justice, and together for DTSC, the Deputy
19 Attorney General and the Chief of Operations, Southern California Cleanup
20 Operations Branch Cypress Office, certifies that he or she is authorized to enter
21 into the terms and conditions of this Consent Decree and to execute and bind
22 legally such Party to this document.
23

24 38. Settling Defendant hereby agrees not to oppose entry of this Consent
25 Decree by this Court or to challenge any provision of this Consent Decree, unless
26 the United States has notified Settling Defendant in writing that it no longer
27 supports entry of the Consent Decree.

28 39. Settling Defendant shall identify, on the attached signature page, the

1 name and address of an agent who is authorized to accept service of process by
2 mail on behalf of that Party with respect to all matters arising under or relating to
3 this Consent Decree. If no agent is specified, the attorney for Settling Defendant
4 listed at the beginning of this document shall be deemed to be the agent authorized
5 to accept service at the address listed. Settling Defendant hereby agrees to accept
6 service in that manner and to waive the formal service requirements set forth in
7 Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of
8 this Court, including, but not limited to, service of a summons.

9 **XX. FINAL JUDGMENT**

10 40. Upon approval and entry of this Consent Decree by this Court, this
11 Consent Decree shall constitute a final judgment between and among the United
12 States, DTSC, and Settling Defendant. The Court finds that there is no just reason
13 for delay and therefore enters this judgment as the final judgment under Fed. R.
14 Civ. P. 54 and 58.
15

16
17
18 SO ORDERED THIS _____ DAY OF _____,

19
20 _____
21 Name: _____
22 United States District Judge
23
24
25
26
27
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree, relating to
2 the San Gabriel Valley Superfund Site, Area 4, and further identified as the Puente
3 Valley Operable Unit.

4 FOR THE UNITED STATES OF AMERICA

5
6
7
8 Dated: _____

~~JOHN A. CRUDEN~~
Acting Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

9
10
11
12
13 Dated: 2/20/09

14 ELISE S. FEEDMAN
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
301 Howard Street, Suite 1050
San Francisco, CA 94105
Telephone: (415) 744-6470
Telecopier: (415) 744-6476

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Dated: 9/29/08

KEITH TAKATA
Director
Superfund Division
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

Dated: 9/23/08

DUSTIN MINOR
Acting Chief
Hazardous Waste Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

1 THE UNDERSIGNED PARTY enters into this Consent Decree, relating to
2 the San Gabriel Valley Superfund Site, Area 4, and further identified as the Puente
3 Valley Operable Unit.

4 FOR THE STATE OF CALIFORNIA
5 DEPARTMENT OF TOXIC
6 SUBSTANCES CONTROL

7
8 Dated: 8/26/08

9 GREG HOLMES
10 Unit Chief
11 Brownfields and Environmental
12 Restoration Program - Cypress
13 Department of Toxic Substances Control
14 Cypress Office
15 5796 Corporate Avenue
16 Cypress, California 90630

17 Dated: Sept. 3, 2008

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

1 THE UNDERSIGNED PARTY enters into this Consent Decree, relating to
2 the San Gabriel Valley Superfund Site, Area 4, and further identified as the Puente
3 Valley Operable Unit.

4 FOR VALLEY-PROCTOR LLC
5 (f/k/a Valley Proctor Partnership)

6
7 Dated: 8/21/08

8 Phillip A. Piet, President
9 5714 N. Rudd Tank Road
10 Flagstaff, Arizona 86001
11 (928)527-0602

12 name and address of agent authorized
13 to receive service of process pursuant to
14 Paragraph 39:

15 Dongell Lawrence Finney LLP
16 707 Wilshire Boulevard, 45th Floor
17 Los Angeles, CA 90017-3609
18
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Appendix A

Relevant Portions of the Carrier Consent Decree

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ORIGINAL

SCANNED

1 SUE ELLEN WOOLDRIDGE
Assistant Attorney General
2 Environment & Natural Resources Division
United States Department of Justice

3 MATTHEW A. FOGELSON
4 Environmental Enforcement Section
Environment & Natural Resources Division
5 United States Department of Justice
301 Howard Street, Suite 1050
6 San Francisco, CA 94105
Telephone: (415) 744-6470
7 Facsimile: (415) 744-6476
E-mail: Matthew.Fogelson@usdoj.gov

FILED
CLERK, U.S. DISTRICT COURT
APR 25 2006
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

8 ELIZABETH F. KROOP
9 Environmental Enforcement Section
Environment & Natural Resources Division
10 United States Department of Justice
P.O. Box 7611
11 Ben Franklin Station
Washington, DC 20044
12 Telephone: (202) 514-5244
Facsimile: (202) 514-2583
13 E-mail: Elizabeth.Kroop@usdoj.gov

ENTERED
CLERK, U.S. DISTRICT COURT
APR 28 2006
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

- Priority
- Send
- Cisd
- Enter
- JS-5/JS-6
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14 Additional Counsel Listed on Next Page

FILED
CLERK, U.S. DISTRICT COURT
MAY 12 2006
APR 26 2006
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

18 UNITED STATES OF AMERICA,
19 Plaintiff,
20
21 v.
22 CARRIER CORPORATION,
23 Defendant.

Case No. CV-05-6022 ABC (FMOx)

AMENDED CONSENT DECREE

1 III. PARTIES BOUND

2 2. This Consent Decree applies to and is binding upon the United States
3 and upon Settling Defendants and their successors and assigns. Any change in
4 ownership or corporate status of a Settling Defendant including, but not limited to,
5 any transfer of assets or real or personal property, shall in no way alter such
6 Settling Defendant's responsibilities under this Consent Decree.

7 3. Settling Defendants shall provide a copy of this Consent Decree to
8 each contractor hired to perform the Work (as defined below) required by this
9 Consent Decree and to each person representing any Settling Defendant with
10 respect to the Site or the Work and shall condition all contracts entered into
11 hereunder upon performance of the Work in conformity with the terms of this
12 Consent Decree. Settling Defendants or their contractors shall provide written
13 notice of the Consent Decree to all subcontractors hired to perform any portion of
14 the Work required by this Consent Decree. Settling Defendants shall nonetheless
15 be responsible for ensuring that their contractors and subcontractors perform the
16 Work contemplated herein in accordance with this Consent Decree. With regard to
17 the activities undertaken pursuant to this Consent Decree, each contractor and
18 subcontractor shall be deemed to be in a contractual relationship with the Settling
19 Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C.
20 § 9607(b)(3).

21 IV. DEFINITIONS

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

28 "Basin-wide Response Costs" shall mean costs, including but not limited to

1 direct and indirect costs, including accrued Interest, that the United States has
2 incurred or in the future incurs for basin-wide (non-operable unit) response actions
3 in connection with the San Gabriel Valley Superfund Sites, Areas 1 - 4.

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4 "CERCLA" shall mean the Comprehensive Environmental Response,
5 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.
6 "Consent Decree" shall mean this Decree and all appendices attached hereto (listed
7 in Section XXX). In the event of conflict between this Decree and any appendix,
8 this Decree shall control.

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

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

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

18 "Effective Date" shall be the effective date of this Consent Decree as
19 provided in Paragraph 117.

20 "Eligible SEP Costs" shall include the costs of implementing the
21 Supplemental Environmental Project (SEP) required pursuant to Section XVIII,
22 but do not include Settling Defendants' overhead, administrative expenses or legal
23 fees. Contractor oversight costs not exceeding 5% of \$468,750 may be included as
24 Eligible SEP Costs, so long as adequate documentation is provided.

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

27 "Explanation of Significant Differences" or "ESD" shall mean the
28 Explanation of Significant differences relating to the Site issued by EPA on June

1 14, 2005. The ESD is attached as Appendix B to this Consent Decree.

2 "Future Response Costs" shall mean all costs that are incurred by the United
3 States or any third party for response actions with respect to the Site after the
4 Effective Date, but prior to the later of (i) the date 8 years from the Operational and
5 Functional Date, or (ii) the date of issuance of a final Record of Decision for the
6 Site. Future Response Costs include, but are not limited to, Basin-wide Response
7 Costs allocated to the Site, direct and indirect costs and accrued interest that the
8 United States incurs in reviewing or developing plans, reports, and other items
9 pursuant to this Consent Decree, verifying the Work, or otherwise implementing,
10 overseeing, or enforcing this Consent Decree, including but not limited to payroll
11 costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to
12 Sections VII (Remedy Review), IX (Access and Institutional Controls; including
13 but not limited to the cost of attorney time and any monies paid to secure access or
14 to secure or implement institutional controls including but not limited to the
15 amount of just compensation), XV (Emergency Response), and Paragraph 92 of
16 Section XXII (Work Takeover).

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

23 "Interim ROD" shall mean the Interim Record of Decision relating to the
24 Puente Valley Operable Unit of the San Gabriel Valley Superfund Sites signed on
25 September, 30 1998 by the Regional Administrator, EPA Region 9, or his/her
26 delegate, and all attachments thereto. The Interim ROD is attached as Appendix A
27 to this Consent Decree.

28 "Mid-Valley Monitoring" shall mean the installation and monitoring of

1 wells in the intermediate and deep groundwater zones in the mid-valley area of the
2 Site to monitor vertical and horizontal contaminant migration in such groundwater
3 zones, as set forth in the SOW. For purposes of this Consent Decree, the mid-
4 valley shall extend from Azusa Avenue to Puente Creek.

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

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

13 "Operational and Functional Date" shall mean the date that all phases of the
14 Remedial Action are Operational and Functional pursuant to Paragraph 50.

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

17 "Parties" shall mean the United States and the Settling Defendants.

18 "Past Response Costs" shall mean all costs, including but not limited to
19 Basin-wide Response Costs allocated to the Site, direct and indirect costs,
20 including Interest, that the United States or any third party has paid or incurred at
21 or in connection with the Site, through and including the Effective Date.

22 "Performance Criteria" shall mean the prevention of groundwater in the
23 shallow zone north of Puente Creek at the mouth of Puente Valley with
24 contamination greater than or equal to ten-times the levels listed in Table 2 of the
25 ESD from:

26 (1) migrating beyond its lateral extent as measured at the time the
27 shallow zone Remedial Action containment system is Operational and
28 Functional; and

SCANNED

1 (2) migrating vertically into the intermediate zone;
2 for a period of 8 years from the Operational and Functional Date.
3 "Plaintiff" shall mean the United States.
4 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
5 §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).
6 "Remedial Action" shall mean those activities to be undertaken by Settling
7 Defendants to implement the shallow zone remedy north of Puente Creek and Mid-
8 Valley Monitoring, in accordance with the Interim ROD as modified by the ESD,
9 the applicable SOW, and the applicable Remedial Design/ Remedial Action Work
10 Plans and other plans approved by EPA.
11 "Remedial Action Work Plan" shall mean the document developed pursuant
12 to Paragraph 11 of this Consent Decree and approved by EPA, and any
13 amendments thereto.
14 "Remedial Design" shall mean those activities to be undertaken by Settling
15 Defendants to develop the final plans and specifications for the Remedial Action
16 pursuant to the Remedial Design Work Plan.
17 "Remedial Design Work Plan" shall mean the document developed pursuant
18 to Paragraph 10 of this Consent Decree and approved by EPA, and any
19 amendments thereto.
20 "Section" shall mean a portion of this Consent Decree identified by a Roman
21 numeral.
22 "SEP" shall mean the Woodland Duck Farm Supplemental Environmental
23 Project as described in Paragraph 62, or any alternative Supplemental
24 Environmental Project approved by EPA pursuant to Paragraph 63.
25 "SEP Implementation Plan" shall the mean the document describing the SEP
26 and setting forth those activities required to implement the SEP.
27 "Settling Defendants" shall mean Carrier Corporation and United
28 Technologies Corporation.

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

5 "State" shall mean the California Department of Toxic Substances Control
6 ("DTSC").

7 "Statement of Work" or "SOW" shall mean the statement of work for
8 implementation of the Remedial Design and Remedial Action at the Site, as set
9 forth in Appendix D to this Consent Decree and any modifications made in
10 accordance with this Consent Decree.

11 "Supervising Contractor" shall mean the principal contractor retained by the
12 Settling Defendants to supervise and direct the implementation of the Work under
13 this Consent Decree.

14 "Unilateral Administrative Order Docket No. 2001-20" or "UAO Docket
15 No. 2001-20" shall mean the order issued by EPA to Carrier Corporation on or
16 about September 13, 2001.

17 "United States" shall mean the United States of America.

18 "Waste Material" shall mean (1) any "hazardous substance" under Section
19 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant
20 under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste"
21 under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous
22 material" under the California Hazardous Waste Control Act Section 25100 et seq.

23 "Work" shall mean all activities Settling Defendants are required to perform
24 under this Consent Decree, except those required by Section XXVI (Retention of
25 Records) and Section XVIII (Supplemental Environmental Projects).

26 V. GENERAL PROVISIONS

27 5. Objectives of the Parties. The objectives of the Parties in entering into
28 this Consent Decree are to protect public health or welfare or the environment at

1 Decree.

2 XIV. CERTIFICATION OF COMPLETION

3 50. "Operational and Functional"

4 a. Within 30 Days after Settling Defendants conclude that the
5 Remedial Action is Operational and Functional, Settling Defendants shall schedule
6 and conduct a pre-certification inspection to be attended by Settling Defendants
7 and EPA. If, after the pre-certification inspection, the Settling Defendants still
8 believe that the Remedial Action is Operational and Functional, they shall submit a
9 written report requesting certification to EPA for approval, with a copy to the
10 State, pursuant to Section XI (EPA Approval of Plans and Other Submissions)
11 within 30 Days of the inspection. In the report, a registered professional engineer
12 and the Settling Defendants' Project Coordinator shall state that the Remedial
13 Action is Operational and Functional. The written report shall include as-built
14 drawings signed and stamped by a professional engineer. The report shall contain
15 the following statement, signed by a responsible corporate official of a Settling
16 Defendant or the Settling Defendants' Project Coordinator:

17 To the best of my knowledge, after thorough investigation, I certify
18 that the information contained in or accompanying this submission is
19 true, accurate and complete. I am aware that there are significant
penalties for submitting false information, including the possibility of
fine and imprisonment for knowing violations.

20 If, after completion of the pre-certification inspection and receipt and review of the
21 written report, EPA, after reasonable opportunity to review and comment by
22 DTSC, determines that the Remedial Action is not Operational and Functional,
23 EPA will notify Settling Defendants in writing of the activities that must be
24 undertaken by Settling Defendants pursuant to this Consent Decree in order for the
25 Remedial Action to be Operational and Functional. EPA will set forth in the notice
26 a schedule for performance of such activities consistent with the Consent Decree
27 and the SOW or require the Settling Defendants to submit a schedule to EPA for
28 approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).

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1 Settling Defendants shall perform all activities described in the notice in
2 accordance with the specifications and schedules established pursuant to this
3 Paragraph, subject to their right to invoke the dispute resolution procedures set
4 forth in Section XX (Dispute Resolution).

5 b. If EPA concludes, based on the initial or any subsequent report
6 requesting certification, and after a reasonable opportunity for review and
7 comment by DTSC, that the Remedial Action is Operational and Functional, EPA
8 will so certify in writing to Settling Defendants.

9 c. If EPA fails to certify that the Remedial Action is Operational
10 and Functional within 90 Days after a request, EPA shall be deemed to have denied
11 the request, unless Settling Defendants agree to an extension of time. Settling
12 Defendants may, at any time thereafter, invoke Dispute Resolution pursuant to
13 Section XX (Dispute Resolution).

14 d. Nothing herein shall preclude Settling Defendants from
15 requesting, and EPA from granting, pursuant to the same procedures set forth in
16 Subparagraphs a-c of this Paragraph, certification that a phase of the Remedial
17 Action is Operational and Functional; provided, however, that any such
18 certification shall be conditioned on such phase remaining Operational and
19 Functional at the time Settling Defendants request certification for the final phase
20 of the Remedial Action. In the event Settling Defendants request certification that
21 a phase of the Remedial Action is Operational and Functional, and such request is
22 granted, the resulting certification shall not affect the Operational and Functional
23 Date.

24 e. Upon approval of the certification report by EPA or pursuant to
25 a ruling by the Court, the Operational and Functional Date shall be the date when
26 the last report requesting certification of the final phase of the Remedial Action
27 was submitted.

28 f. The Operational and Functional Date established pursuant to

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1 this Paragraph shall not be affected if existing contamination greater than or equal
2 to ten-times the levels listed in Table 2 of the SOW has migrated vertically into the
3 intermediate zone and this existing contamination prevents Settling Defendants
4 from meeting the Performance Criteria, provided the Settling Defendants are
5 taking the response actions determined by EPA to be necessary to reverse the trend
6 pursuant to the SOW.

7 g. Once EPA has determined that the Remedial Action is
8 Operational and Functional pursuant to this Paragraph, the Operational and
9 Functional Date shall not be affected in the event EPA subsequently determines,
10 pursuant to Paragraph 13, that modification to the Work specified in the SOW or in
11 work plans developed pursuant to the SOW is necessary to achieve and maintain
12 the Performance Criteria, to meet discharge ARARs, or to implement Mid-Valley
13 Monitoring.

14 51. Certification of Completion.

15 a. No later than 90 Days before, and no sooner than 120 Days
16 prior to, the eight-year anniversary of the Operational and Functional Date, and
17 upon Settling Defendants concluding that the Remedial Action is still Operational
18 and Functional, Settling Defendants shall schedule a pre-certification inspection to
19 be attended by Settling Defendants and EPA. The Settling Defendants shall submit
20 a Facility Status Package to EPA which shall include, but not be limited to, all
21 maintenance reports, performance reports, sampling results, and all other
22 deliverables updated as appropriate to reflect the performance and condition of the
23 containment and Mid-Valley Monitoring systems including all wells, pipelines,
24 and treatment facilities. If, after the pre-certification inspection, the Settling
25 Defendants still believe that the Remedial Action is Operational and Functional,
26 Settling Defendants shall submit a written report by a registered professional
27 engineer, in accordance with the SOW, stating that the Remedial Action is
28 Operational and Functional. The report shall contain the following statement,