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 CLERK, U.S. DISTRICT COURT
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 CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

10 CALIFORNIA DEPARTMENT OF
 11 TOXIC SUBSTANCES CONTROL and
 12 the CALIFORNIA TOXIC
 13 SUBSTANCES CONTROL ACCOUNT,
 14
 15 Plaintiffs,

v.

16 AMERICAN HONDA MOTOR CO.,
 17 INC.; ANADARKO E&P COMPANY
 18 LP; ATLANTIC RICHFIELD
 19 COMPANY; BAYER CROPSCIENCE
 20 INC.; CHEMICAL WASTE
 21 MANAGEMENT, INC.; CHEVRON
 22 ENVIRONMENTAL MANAGEMENT
 23 COMPANY; CITY OF LOS ANGELES,
 24 ACTING BY AND THROUGH THE
 25 LOS ANGELES DEPARTMENT OF
 26 WATER AND POWER;
 27 CONOCOPHILLIPS COMPANY;
 28 DUCOMMUN AEROSTRUCTURES,
 INC.; EXXON MOBIL CORPORATION;
 GENERAL MOTORS CORPORATION;
 HONEYWELL INTERNATIONAL INC.;
 HUNTINGTON BEACH COMPANY;
 MCFARLAND ENERGY, INC.
 NATIONAL STEEL AND
 SHIPBUILDING COMPANY;
 NORTHROP GRUMMAN
 CORPORATION; QUEMETCO, INC.;

No. CV05-7746 CAS(JWJx)

AMENDED CONSENT DECREE

ENTERED
 CLERK, U.S. DISTRICT COURT
 MAR - 9 2006
 CENTRAL DISTRICT OF CALIFORNIA
 BY *[Signature]* DEPUTY

THIS CONSTITUTES NOTICE OF ENTRY
 AS REQUIRED BY FRCP, RULE 77(d).

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 BY *[Signature]* 003

AMENDED CONSENT DECREE

1 ROHR, INC.; SHELL OIL COMPANY;
 2 SOUTHERN CALIFORNIA EDISON
 3 COMPANY; THUMS LONG BEACH
 4 COMPANY; UNION CARBIDE
 5 CORPORATION; UNION OIL
 6 COMPANY OF CALIFORNIA;
 7 WASHINGTON MUTUAL BANK;
 8 WASTE MANAGEMENT
 9 COLLECTION AND RECYCLING,
 10 INC.; WESTERN WASTE
 11 INDUSTRIES; and XEROX
 12 CORPORATION,

Defendants.

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13 This Amended Consent Decree ("Consent Decree") is made and entered into
 14 by and among the Plaintiffs and the Settling Defendants, as defined in Paragraphs
 15 3.16 and 3.17 herein (collectively, the "Parties"). This Consent Decree resolves
 16 the liability of the Settling Defendants for Past Response Costs, Future Interim
 17 Response Costs and Future DTSC Oversight Costs as defined herein incurred by
 18 the Plaintiff Department of Toxic Substances Control ("DTSC") at the Facility, as
 19 defined herein, and obligates the Settling Defendants to do certain work at the
 20 Subject Property as specified herein. This Consent Decree does not affect in any
 21 way the Plaintiffs' claims against any persons or entities other than those bound by
 22 the Consent Decree (as defined in Paragraph 10.20), nor does it resolve any claims
 23 against the parties bound unless expressly addressed in this Consent Decree.

INTRODUCTION

24 Concurrent with the lodging of this Consent Decree, the Plaintiffs are filing
 25 a complaint against the Settling Defendants for recovery of Past Response Costs as
 26 defined herein and the performance of certain injunctive relief pursuant to Section
 27 107 of the Comprehensive Environmental Response, Compensation and Liability
 28 Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), and California Health
 and Safety Code section 25358.3(e) in connection with alleged releases of

1 hazardous substances into the environment at and from a closed hazardous waste
2 landfill in West Covina, California, as described herein ("Complaint").

3 Subject to the covenants, conditions and reservations of rights in this
4 Consent Decree, this Consent Decree resolves the claims asserted in the
5 Complaint.

6 The Plaintiffs and Settling Defendants agree, and this Court by entering this
7 Consent Decree finds, that this Consent Decree has been negotiated by the Parties
8 in good faith and that settlement of this matter and entry of this Consent Decree is
9 intended to avoid prolonged and complicated litigation between the Parties, is the
10 most appropriate means to resolve the matters covered herein, and is fair,
11 reasonable and in the public interest.

12 **NOW, THEREFORE**, with the consent of the Parties to this Consent
13 Decree, it is hereby **ORDERED, ADJUDGED AND DECREED**:

14 I. JURISDICTION

15 1.1 This Consent Decree is entered into by the Parties pursuant to the
16 Plaintiffs' authority under Section 107 of CERCLA, 42 U.S.C. § 9607, and
17 California Health and Safety Code Section 25358.3(e). The Court has jurisdiction
18 over the subject matter of this action pursuant to 28 U.S.C. § 1331 and CERCLA,
19 42 U.S.C. § 9601 *et seq.*, and supplemental jurisdiction over claims arising under
20 the laws of the State of California pursuant to 28 U.S.C. § 1367(a). Solely for
21 purposes of this Consent Decree, the Settling Defendants waive all objections and
22 defenses they may have to the jurisdiction of the Court or to venue in this district
23 or to the Plaintiffs' rights to enforce this Consent Decree.

24 II. BACKGROUND

25 2.1 This Consent Decree relates to a 583-acre landfill facility located at
26 2210 South Azusa Avenue, West Covina, Los Angeles County, California 91792
27 ("Facility"). The Facility contains a closed Class I hazardous waste landfill, an
28 inactive Class III municipal landfill and related facilities. A map and a legal

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1 description of the 583-acre Facility are attached as Exhibits A-1 and A-2,
2 respectively. Non-party BKK Corporation (BKK) owns the portion of the Facility
3 that is commonly described as Parcel 3, which includes the Class I and Class III
4 landfills. Non-party City of West Covina owns the balance of the 583-acre
5 property, which is commonly described as Parcels 1 and 2.

6 2.2 Regulatory Status. On Parcel 3, BKK is the owner and operator of the
7 following: (a) the closed "Class I Landfill"; (b) the inactive Class III municipal
8 landfill that is in the process of closing; (c) an operating leachate treatment plant
9 (LTP); and (d) the inactive "Area D" disposal area. Post-closure operation,
10 maintenance and monitoring of the Class I Landfill, and operation of the LTP, are
11 primarily regulated by DTSC pursuant to the Health and Safety Code and the
12 California Code of Regulations, title 22.

13 2.3 On October 18 and 20, 2004, BKK notified DTSC that for financial
14 reasons BKK would no longer be able to perform required post-closure care of the
15 Class I Landfill, or operate the LTP, after November 17, 2004. As a result, DTSC
16 hired a contractor to conduct emergency response activities at the Facility
17 beginning on November 18, 2004. These activities were and continue to be
18 necessary to ensure continuous maintenance and operation of systems that are
19 essential to protect public health, safety and the environment.

20 2.4 On December 2, 2004, DTSC issued an Imminent and Substantial
21 Endangerment Determination and Order and Remedial Action Order Docket No.
22 I/SE-D-04/05-004 ("ISE Order"), to BKK and 50 other respondents who are
23 alleged to have disposed of waste at the Class I Landfill or to be prior owners or
24 operators of the Facility (as defined in Paragraph 3.7 herein) that includes the Class
25 I Landfill. The ISE Order required the respondents to that Order to perform certain
26 response actions and to reimburse DTSC for certain response costs. All of the
27 Settling Defendants, except ConocoPhillips Company, Northrop Grumman
28 Corporation, Waste Management Collection and Recycling, Inc, Huntington Beach

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1 Company, McFarland Energy, Inc., and Union Carbide Corporation are named as
2 respondents in the ISE Order.

3 2.5 Interim Settlement Agreements. On March 14, 2005, April 15, 2005,
4 May 16, 2005, June 15, 2005, July 12, 2005 and August 15, 2005, DTSC and
5 Settling Defendants entered into six interim settlement agreements, whereby
6 Settling Defendants paid to DTSC \$3 million to partially reimburse DTSC for the
7 Past Response Costs that it has incurred with respect to the Facility. In
8 consideration for these interim payments, and the promises by Settling Defendants
9 contained in this Consent Decree, DTSC agreed to this Consent Decree and has
10 deemed the Settling Defendants to be in compliance with the ISE Order as set forth
11 herein. The Interim Settlement Agreements are incorporated herein by reference.

12 2.6 The Past Response Costs, Future Interim Response Costs and Future
13 DTSC Oversight Costs incurred by DTSC relating to the performance and
14 oversight of work relating to the Facility and paid to DTSC by the Settling
15 Defendants pursuant to this Consent Decree constitute necessary costs of response
16 as that term is defined in 42 U.S.C. § 9601(25). These costs were incurred by
17 DTSC in a manner not inconsistent with the National Contingency Plan.

18 2.7 Consent Decree. This Consent Decree provides for the performance
19 of certain operation, maintenance and monitoring activities at the Subject Property
20 until March 15, 2008, or two years from the date the Settling Defendants fully
21 commence the Essential Activities and Critical Tasks and other work pursuant to
22 Section IV herein, whichever is later, for the reimbursement of certain DTSC
23 response costs with respect to the Facility, and the dismissal, without prejudice, of
24 the ISE Order against the Settling Defendants. This Consent Decree also provides
25 covenants not to sue and contribution protection, standstill agreements and a
26 tolling agreement with respect to enforcement activity and litigation among the
27 Parties concerning the Facility, to enable the Parties to work collaboratively to
28 identify additional entities to participate in the performance and/or funding of

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1 activities at the Subject Property and to work towards a long-term program to
2 address conditions at the Subject Property.

3 2.8 No Admissions. By entering into this Consent Decree or by taking
4 any action in accordance with its provisions, each Settling Defendant does not
5 admit any allegations, findings, determinations or conclusions contained in the ISE
6 Order, the Complaint or this Consent Decree, including without limitation that it
7 sent, transported or arranged for disposal of any hazardous substances to or at the
8 Class I Landfill, or that it owned or operated the Facility that includes the Class I
9 Landfill, and does not admit any liability with respect to the Facility. Nothing in
10 this Consent Decree shall be construed as an admission by any Settling Defendant
11 of any issue of law or fact. Except as specifically provided for herein, nothing in
12 this Consent Decree shall prejudice, waive, or impair any right, remedy, or defense
13 that each Settling Defendant may have against any entity. Each Settling Defendant
14 agrees to comply with and be bound by the terms of this Consent Decree and
15 further agrees that it will not contest the basis or validity of this Consent Decree in
16 any action to enforce it.

17 III. DEFINITIONS

18 3.1 Unless otherwise expressly provided herein, terms used in this
19 Consent Decree that are defined in CERCLA or in regulations promulgated under
20 CERCLA shall have the meaning assigned to them therein. Whenever terms listed
21 below are used in this Consent Decree or in any attachments or exhibits hereto, the
22 following definitions shall apply:

23 3.2 "Class I Landfill" means the closed hazardous waste landfill located at
24 2210 South Azusa Avenue, West Covina, Los Angeles County, California 91792
25 that is shown on the map that is attached as Exhibit A-1. Together, the Class I
26 Landfill and the Leachate Treatment Plant are also referred to in this Consent
27 Decree as part of the "Subject Property."

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1 3.3 "Class III Landfill" shall mean that municipal landfill also located at
2 2210 South Azusa Avenue, West Covina, Los Angeles County, California 91792,
3 which is shown on the map in Exhibit A-1.

4 3.4 "Day" shall mean a calendar day unless expressly stated to be a
5 working day. "Working day" shall mean a day other than a Saturday, Sunday, or
6 Federal holiday. In computing any period of time under this Consent Decree,
7 where the last day would fall on a Saturday, Sunday, or Federal holiday, the period
8 shall run until the close of business of the next working day.

9 3.5 "Effective Date" shall mean the date that this Consent Decree is
10 entered by the Court.

11 3.6 "Excluded Work" shall mean (a) an assessment of the storm drain
12 system and repair/replacement of storm drain components as described in
13 Paragraph 5.1.3 of the ISE Order; and (b) improvement of the upper drainage basin
14 as described in Item 2 of Exhibit C of the same ISE Order.

15 3.7 "Facility" shall mean the 583-acre landfill facility located at 2210
16 South Azusa Avenue, West Covina, California and described in Exhibits A-1 and
17 A-2. The Facility contains a closed Class I hazardous waste landfill, an inactive
18 Class III municipal landfill that is in the process of closing, the Leachate Treatment
19 Plant as defined herein and related facilities. For purposes of Paragraphs 2.8, 3.15,
20 4.7, 7.5, and 8.5, Facility shall also include contiguous areas to the Facility where
21 hazardous substances emanating from the Landfills have come to be located.

22 3.8 "Future DTSC Oversight Costs" shall mean all direct and indirect
23 costs of overseeing this Consent Decree, including but not limited to payroll costs,
24 travel costs, and laboratory costs, incurred by DTSC in reviewing, revising,
25 modifying, commenting on or approving plans, reports and other items pursuant to
26 this Consent Decree, and verifying the Work to Be Performed after a) the Effective
27 Date of this Consent Decree or b) the date upon which the Settling Defendants

28

1 fully commence the Essential Activities and Critical Task and other work pursuant
2 to Section IV herein, whichever is earlier.

3 3.9 "Future Interim Response Costs" shall mean all costs incurred by
4 DTSC in response to conditions at the Facility from the date of lodging of this
5 Consent Decree through March 15, 2006 or the date that the Settling Defendants
6 fully commence the Essential Activities and Critical Tasks and other work
7 pursuant to Section IV herein, whichever is later.

8 3.10 "Hazardous Substances" shall have the meaning set forth in CERCLA
9 Section 101(14), 42 U.S.C. § 9601(14).

10 3.11 "Interim Settlement Agreements" shall mean the six interim
11 agreements entered into by DTSC and Settling Defendants on March 14, 2005,
12 April 15, 2005, May 16, 2005, June 15, 2005, July 12, 2005, and August 15, 2005,
13 referred to in Paragraph 2.5.

14 3.12 "Leachate Treatment Plant" (or "LTP") means the leachate treatment
15 plant that is located on the Class I Landfill. Together, the Class I Landfill and the
16 LTP are also referred to in this Consent Decree as part of the "Subject Property".

17 3.13 "National Contingency Plan" or "NCP" shall refer to the National Oil
18 and Hazardous Substances Pollution Contingency Plan promulgated pursuant to
19 Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300.

20 3.14 "Parties" shall mean Plaintiffs and the Settling Defendants.

21 3.15 "Past Response Costs" shall mean all costs incurred by DTSC in
22 response to conditions at the Facility through the date of lodging of the Consent
23 Decree, including costs for which DTSC has been reimbursed pursuant to the
24 Interim Settlement Agreements and this Consent Decree.

25 3.16 "Plaintiffs" or "DTSC" shall mean the California Department of
26 Toxic Substances Control and the following state accounts, to the extent that funds
27 from those accounts have been, or will be expended on behalf of DTSC at the
28 Facility:

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- 1 (a) The California Hazardous Substance Account;
- 2 (b) The California Hazardous Waste Control Account;
- 3 (c) The California Toxic Substances Control Account; and
- 4 (d) The California Site Remediation Account.

5 3.17 "Settling Defendants" shall mean the parties identified as Defendants
 6 in the caption above. For purposes of Paragraph 2.8, Section VII, and Section
 7 VIII, "Settling Defendants" also shall mean Defendants' corporate predecessors-in-
 8 interest, successors-in-interest and affiliated companies identified in Exhibit G.

9 3.18 "Subject Property" shall mean the Class I Landfill, the LTP, service
 10 roads and related pollution control equipment located at 2210 South Azusa
 11 Avenue, West Covina, Los Angeles County, California 91792.

12 3.19 "Tolling Termination Date" shall mean the date upon which the
 13 Tolling Agreement provided for in Paragraph 7.11 terminates. The Tolling
 14 Termination Date shall be the earlier of: (a) four (4) years from the Effective Date;
 15 or (b) sixty (60) days after a complaint is served on the Settling Defendants
 16 requiring the performance of work, reimbursement of cleanup costs, or
 17 contribution towards costs associated with cleanup of the Facility.

18 **IV. SETTLING DEFENDANTS' WORK TO BE PERFORMED AND OTHER**
 19 **OBLIGATIONS**

20 4.1 Work to Be Performed. Settling Defendants shall undertake the
 21 following response actions (Work to Be Performed) set forth below.

22 4.1.1 Essential Activities. No later than thirty (30) days after the date
 23 of lodging of this Consent Decree, Settling Defendants shall submit to DTSC a
 24 Quality Assurance Project Plan and Health and Safety Plan developed in
 25 accordance with Exhibit E concerning performance of the operation, maintenance
 26 and monitoring activities at the Subject Property referred to as Essential Activities
 27 and described in Exhibit C. No later than thirty (30) days after lodging of this
 28 Consent Decree, Settling Defendants shall commence preparations for undertaking

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1 the Essential Activities (Exhibit C) on a day-to-day basis. On or before fourteen
 2 (14) days after the Effective Date of this Consent Decree, Settling Defendants shall
 3 commence the Essential Activities described in Exhibit C. Settling Defendants
 4 shall perform this work until March 15, 2008, or two years from the date the
 5 Settling Defendants fully commence the Essential Activities and Critical Tasks and
 6 other work pursuant to Section IV herein, whichever is later.

7 4.1.2 Critical Tasks. Within five (5) days of the date of the lodging
 8 of this Consent Decree, Settling Defendants shall submit to DTSC a workplan and
 9 implementation schedule that outlines how and when Settling Defendants will
 10 perform and complete the primary activities within the tasks identified in Exhibit D
 11 (the Critical Tasks Workplan). Settling Defendants will perform and complete the
 12 primary activities within the tasks identified in Exhibit D (the Critical Tasks) in
 13 accordance with the schedule in the DTSC-approved workplan and shall
 14 commence conducting the primary activities on or before 14 days after the
 15 Effective Date of this Consent Decree, provided that DTSC approves the workplan
 16 on or before the Effective Date. The Critical Tasks Workplan shall include
 17 detailed descriptions of the task to be performed, the information or data needed
 18 for the task, and the deliverables that will be submitted to DTSC. A Quality
 19 Assurance Project Plan and Health and Safety Plan developed in accordance with
 20 Exhibit E of this Consent Decree shall be included with the Critical Tasks
 21 Workplan. The Critical Tasks Workplan shall identify each activity within the
 22 Critical Tasks to be performed in order of priority.

23 4.1.3 Work Consistent with Requirements. Subject to Paragraph 4.6
 24 herein, all Work to Be Performed pursuant to this Consent Decree shall be
 25 consistent with the requirements of all DTSC-approved workplans, Chapter 6.8
 26 (commencing with Section 25300), Division 20 of the Health and Safety Code, and
 27 any other applicable state or federal statutes and regulations, including without
 28

1 limitation, the NCP, and applicable DTSC and U.S. Environmental Protection
2 Agency (U.S. EPA) guidance documents.

3 4.1.4 To the extent that there is a conflict between the language in
4 any Exhibit and the terms of this Consent Decree, the terms of this Consent Decree
5 shall control.

6 4.1.5 Upon approval by DTSC of the work performed by Settling
7 Defendants under this Consent Decree and if all payments required to be made
8 pursuant to this Consent Decree have been paid, said work will be deemed
9 consistent, and in accordance with the NCP.

10 4.1.6 Public Participation Activities (Community Relations). Settling
11 Defendants shall cooperate with and support DTSC in its efforts to provide
12 meaningful public participation in response actions pursuant to Health and Safety
13 Code Sections 25356.1 and 25358.7, DTSC's most current Public Participation and
14 Policy Guidance Manual and the Public Participation Plan. These activities shall
15 include, but are not limited to, assisting in the development and distribution of fact
16 sheets; public meetings; and the development and publishing of public notices.

17 4.2 California Environmental Quality Act (CEQA). Upon DTSC request,
18 Settling Defendants shall submit any non-privileged information deemed necessary
19 by DTSC to facilitate DTSC's compliance with the California Environmental
20 Quality Act (CEQA).

21 4.3 Stop Work Order. In the event that DTSC determines that any
22 activity (whether or not pursued in compliance with this Consent Decree)
23 conducted by Settling Defendants may pose an imminent or substantial
24 endangerment to the health or safety of people or to the environment, DTSC may
25 order Settling Defendants to stop further implementation of this Consent Decree
26 for such period of time needed to abate the endangerment. In addition, in the event
27 that DTSC determines that any of Settling Defendants' activities (whether or not
28 pursued in compliance with this Consent Decree) is proceeding without DTSC

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1 authorization, DTSC may order Settling Defendants to stop further implementation
2 of such activity for such period of time needed to obtain DTSC authorization, if
3 such authorization is appropriate. Any deadline in this Consent Decree directly
4 affected by a Stop Work Order, issued pursuant to this Paragraph, shall be
5 extended for the term of the Stop Work Order.

6 4.4 Emergency Response Action/Notification. In the event of any
7 occurrence, event, or condition that arises at the Subject Property after a) the
8 Effective Date of this Consent Decree or b) the date upon which the Settling
9 Defendants fully commence the Essential Activities and Critical Task and other
10 work pursuant to Section IV herein, whichever is earlier, that constitutes a material
11 change, that represents an emergency (including, but not limited to, fire,
12 earthquake, explosion, landslide, or imminent or immediate human exposure to a
13 hazardous substance caused by the release or threatened release of a hazardous
14 substance) and that presents a risk to public health, and safety or the environment,
15 Settling Defendants shall immediately take all appropriate actions to respond to
16 that emergency. The Settling Defendants shall also immediately notify the DTSC
17 Project Coordinator of the occurrence, event, or condition and of the steps the
18 Settling Defendants have taken and propose to take in response thereto. Any
19 action taken by the Settling Defendants shall be performed in consultation with the
20 DTSC Project Coordinator and in accordance with all applicable provisions of this
21 Consent Decree. Within seven (7) days of the onset of such an occurrence, event,
22 or condition, Settling Defendants shall furnish a report to DTSC, signed by Settling
23 Defendants' Project Coordinator, setting forth the occurrence, event, or condition
24 that occurred and the measures taken in the response thereto. In the event that
25 Settling Defendants fail to take appropriate response and DTSC takes the action
26 instead, Settling Defendants shall be subject to liability to DTSC for all costs of the
27 response action. Nothing in this Paragraph shall be deemed to limit any other
28 notification requirement to which Settling Defendants may be subject, nor any

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1 defenses that the Settling Defendants may have with respect to any action brought
 2 by DTSC to recover the costs of the response action taken by it pursuant to this
 3 Paragraph. Nothing in this Paragraph shall require the Settling Defendants to
 4 perform or complete the performance of Excluded Work.

5 4.5 Settling Defendants' Insurance. At least seven (7) days prior to
 6 commencement of any work under this Consent Decree, Settling Defendants shall
 7 provide copies of insurance policies or other evidence satisfactory to DTSC that
 8 demonstrates that any contractor or subcontractor hired by the Settling Defendants
 9 to implement the Work to be Performed pursuant to this Consent Decree maintains
 10 in force for the duration of this Consent Decree insurance equivalent to the
 11 following:

12 (a) commercial general liability (CGL) insurance with a combined
 13 single limit of at least \$1 million per occurrence;

14 (b) automotive liability insurance with combined single limits of at
 15 least \$2 million per accident;

16 (c) workers' compensation and employers' liability coverage of at
 17 least \$1 million for employees engaged in the implementation of this Consent
 18 Decree;

19 (d) pollution liability insurance with a combined single limit of at
 20 least \$1 million per occurrence; and

21 (e) excess/umbrella liability coverage in the aggregate amount of
 22 \$10 million.

23 4.6 Owner/Operator Status. The Plaintiffs agree, and by entering this
 24 Consent Decree the Court finds, that the Settling Defendants shall not be
 25 considered owners or operators of the Facility, or arrangers for disposal or
 26 treatment of waste at the Facility solely as a result of their performance of the
 27 Work to Be Performed under this Consent Decree. BKK is the current owner and
 28 operator of the Subject Property and operator of the Facility. Nothing in this

1 Consent Decree shall relieve BKK of its statutory and regulatory obligations as the
2 owner/operator of the Subject Property and operator of the Facility, or require
3 Settling Defendants to assume those obligations, including compliance with all
4 applicable laws and permits with respect to the landfills, signing manifests for
5 waste generated at the LTP, public notices under California Health and Safety
6 Code Sections 25249.5-25249.13 and other reporting obligations that are the
7 responsibility of BKK as the owner and operator of the Subject Property, and
8 operator of the Facility.

9 4.7 Future Interim Response Costs. The Settling Defendants shall pay
10 DTSC \$500,000 per calendar month (prorated as appropriate) in partial
11 reimbursement to DTSC for response costs incurred by DTSC with respect to the
12 Facility after the lodging of and prior to the Effective Date of this Consent Decree.
13 The first of these payments shall be made within thirty (30) days of the lodging of
14 this Consent Decree and each subsequent payment shall be made on the 15th of
15 each month. However, Settling Defendants' obligation to make these payments
16 shall terminate on December 15, 2005.

17 4.8 Payment of Future DTSC Oversight Costs. The Settling Defendants
18 shall reimburse DTSC for Future DTSC Oversight Costs incurred after a) the
19 Effective Date of this Consent Decree or b) the date upon which the Settling
20 Defendants fully commence the Essential Activities and Critical Task and other
21 work pursuant to Section IV herein, whichever is earlier, to oversee the activities
22 of Settling Defendants and their agents under this Consent Decree, in the sum of
23 \$50,000 per month until March 15, 2008 or two years from the date the Settling
24 Defendants fully commence the Essential Activities and Critical Tasks and other
25 work pursuant to Section IV herein, whichever is later. Such payments shall begin
26 30 days after a) the Effective Date of this Consent Decree or b) the date upon
27 which the Settling Defendants fully commence the Essential Activities and Critical
28 Task and other work pursuant to Section IV₁₄ herein, whichever is earlier, and each

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1 subsequent payment shall be made on the 15th of each month thereafter. In the
2 event that the payments required by this Paragraph are not made on a timely or
3 complete basis, Settling Defendants shall pay interest on the unpaid balance,
4 calculated at the rate of return earned on investment in the Surplus Money
5 Investment Fund pursuant to section 16475 of the Government Code. The interest
6 shall accrue from the date the payment was due, through the date of Settling
7 Defendants' payment. Payments of interest under this Paragraph shall be in
8 addition to such other remedies or sanctions available to Plaintiffs by virtue of
9 Settling Defendants' failure to make timely payments under this Section. Settling
10 Defendants shall make all payments required by this Consent Decree in the manner
11 described in Paragraph 10.15.

12 4.8.1 Documentation of Future DTSC Oversight Costs. After a) the
13 Effective Date of this Consent Decree or b) the date upon which the Settling
14 Defendants fully commence the Essential Activities and Critical Task and other
15 work pursuant to Section IV herein, whichever is earlier, DTSC shall provide
16 Settling Defendants with a Summary by Activity Report on a quarterly basis,
17 documenting the Future DTSC Oversight Costs that have been incurred by DTSC.
18 In the event that DTSC incurs less than \$50,000 per month in Future DTSC
19 Oversight Costs during the previous quarter, Settling Defendants shall receive a
20 credit for any overpayment against future payments to be made pursuant to
21 Paragraph 4.8.

22 4.9 Reimbursement of Past Response Costs. As described in Paragraph
23 2.5, the Settling Defendants have reimbursed DTSC for certain of its Past
24 Response Costs incurred through the lodging of this Consent Decree in the amount
25 of three million dollars (\$3,000,000.00). The Settling Defendants shall pay DTSC
26 an additional \$ 750,000 in reimbursement of certain of DTSC's Past Response
27 Costs within three (3) working days of the lodging of this Consent Decree.

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1 V. AGREEMENTS BY DTSC

2 5.1 Postclosure Insurance Reimbursement.

3 5.1.1 For purposes of California Code of Regulations, title 22,
4 sections 66264.145 and 66265.145, DTSC authorizes Settling Defendants to
5 perform certain postclosure care of the Class I Landfill by conducting the Work to
6 Be Performed that is related to postclosure care of the Class I Landfill under this
7 Consent Decree until March 15, 2008 or two years from the date the Settling
8 Defendants fully commence the Essential Activities and Critical Tasks and other
9 work pursuant to Section IV herein, whichever is later. As persons authorized to
10 perform postclosure care of the Class I Landfill, Settling Defendants shall be
11 entitled to submit a claim for reimbursement of costs incurred in performing the
12 work pursuant to this Consent Decree from Steadfast Insurance Company Policy
13 No. PLC 7969053-04 for postclosure care expenditures by submitting itemized
14 bills to DTSC pursuant to California Code of Regulations, title 22, sections
15 66264.145 (e) and 66265.145 (d) as applicable and Exhibit F of this Consent
16 Decree. Settling Defendants shall submit the reimbursement request at the close of
17 each annual coverage cycle (May 31) and shall submit only one reimbursement
18 request for each reimbursement cycle during the period covered by this Consent
19 Decree. Provided that Settling Defendants perform the work specified in this
20 Consent Decree, they shall be entitled to the entire insurance proceeds for each
21 reimbursement cycle (approximately \$1,340,000) minus up to \$120,000, on a first
22 priority basis, for the 2005 (June 1, 2005 through May 31, 2006) and the 2006
23 (June 1, 2006 through May 31, 2007) cycles. For work performed by the Settling
24 Defendants after May 31, 2007, Settling Defendants shall be entitled on a first
25 priority basis to a monthly pro-rata share of an amount equal to the entire insurance
26 proceeds for the 2007-2008 reimbursement cycle minus up to \$120,000 based on
27 the duration of work performed by the Settling Defendants pursuant to this
28 Consent Decree. Settling Defendants shall be entitled to those costs that qualify

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1 for reimbursement under California Code of Regulations, title 22, sections
2 66264.145 or 66265.145 as applicable. After Settling Defendants submit their
3 request, DTSC agrees to review each reimbursement request within sixty (60) days
4 of submission and, pursuant to the California Code of Regulations, title 22,
5 sections 66264.145 (e) or 66265.145 (d) as applicable, approve the reimbursement
6 request if it meets the requirements of the regulations and the costs are eligible
7 postclosure expenditures. Exhibit F provides the protocol for submittal of said
8 requests for reimbursement.

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9 5.1.2 If all or part of the remaining \$120,000 of the insurance
10 proceeds (per reimbursement cycle) is not approved for reimbursement to BKK by
11 DTSC, such proceeds shall be made available to reimburse the Settling Defendants
12 pursuant to the terms of Paragraph 5.1.1.

13 5.1.3 DTSC shall not be liable for any denial of reimbursement by
14 Steadfast Insurance Company or its successor or by a court. DTSC agrees to
15 provide non-privileged information in its possession to the Settling Defendants
16 necessary for securing reimbursement from Steadfast as authorized pursuant to
17 Paragraph 5.1.

18 5.2 Site Coordination. DTSC agrees to work with Settling Defendants
19 and other relevant entities to achieve a coordinated approach for all of the activities
20 to be conducted at the Facility during the term of this Consent Decree.

21 5.3 Termination of ISE Order. Within 7 (seven) days of entry of this
22 Consent Decree, DTSC will dismiss without prejudice the ISE Order, as against
23 the Settling Defendants. DTSC reserves the right to issue any other administrative
24 order against Settling Defendants with respect to the Facility, after the termination
25 of this Consent Decree.

26 VI. DUE CARE/COOPERATION

27 6.1 Subject to Paragraph 4.6 above, the Settling Defendants shall exercise
28 due care in performing work under this Consent Decree, and shall perform the

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1 work required by this Consent Decree in compliance with all applicable local,
 2 state, and federal laws and regulations. Nothing in this Paragraph shall be deemed
 3 to (a) relieve BKK of the obligation to comply with any local, state, and federal
 4 laws and regulations applicable to it or permits issued to it with respect to the
 5 Subject Property or the Class III Landfill, or (b) require Settling Defendants to
 6 perform the obligations of BKK as owner and operator of the Facility to comply
 7 with any such laws, regulations or permits.

8 **VII. COVENANTS NOT TO SUE AND RESERVATIONS OF RIGHTS**

9 7.1 DTSC's Covenant Not to Sue. In consideration of the actions that
 10 will be performed and the payments that have been and will be made by Settling
 11 Defendants under the terms of this Consent Decree and subject to Paragraph 7.6
 12 (DTSC's Reservation of Rights) of this Consent Decree, DTSC covenants not to
 13 sue or take administrative action against Settling Defendants: 1) for the
 14 obligations set forth in the ISE Order from December 9, 2004 through the date the
 15 ISE Order is dismissed with respect to the Settling Defendants; 2) for the
 16 obligation to conduct the Work to Be Performed pursuant to this Consent Decree
 17 and described in Exhibits C and D; 3) for Excluded Work as described herein; 4)
 18 for recovery of Future DTSC Oversight Costs incurred by DTSC as described
 19 herein; 5) for DTSC Past Response Costs as described herein; and 6) for Future
 20 Interim Response Costs as described herein.

21 7.2 Nothing in this Consent Decree shall preclude DTSC from seeking the
 22 recovery of any response cost not recovered under this Consent Decree from any
 23 entity not a party to this Consent Decree, including but not limited to, Past
 24 Response Costs and Future DTSC Oversight Costs not paid by Settling
 25 Defendants.

26 7.3 Nothing in this Consent Decree shall preclude DTSC from seeking
 27 recovery of any response costs from the Settling Defendants incurred after the

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1 termination of this Consent Decree and not otherwise included in the Covenant Not
2 to Sue in Paragraph 7.1 above.

3 7.4 The Covenant Not to Sue set forth in Paragraph 7.1 above shall take
4 effect upon the Effective Date of this Consent Decree. This covenant not to sue is
5 conditioned upon the complete and satisfactory performance by Settling
6 Defendants of all obligations under this Consent Decree, including, but not limited
7 to, performance of the Work to Be Performed pursuant to Paragraph 4.1, and full
8 payment of certain Past Response Costs, Future DTSC Oversight Costs, and Future
9 Interim Response Costs pursuant to Paragraphs 4.7, 4.8 and 4.9. This covenant not
10 to sue extends only to Settling Defendants and does not extend to any other person
11 or entity.

12 7.5 DTSC's Standstill. DTSC agrees not to take any additional
13 administrative or judicial actions against the Settling Defendants with respect to
14 the Facility until the earlier of: (a) termination of this Consent Decree; or (b) the
15 date a complaint is served on DTSC requiring the performance of work,
16 reimbursement of cleanup costs, or contribution towards costs associated with
17 cleanup of the Subject Property. This Paragraph does not limit DTSC's reserved
18 rights under Paragraph 7.6(a) below.

19 7.6 DTSC's Reservation of Rights. The Covenant Not to Sue set forth in
20 Paragraph 7.1 above does not pertain to any matters other than those expressly
21 specified therein. DTSC reserves and this Consent Decree is without prejudice to
22 all rights against Settling Defendants with respect to all other matters, including
23 but not limited to, the following:

24 (a) claims based on a failure by Settling Defendants and their
25 successors or assignees to meet a requirement of or to otherwise enforce this
26 Consent Decree;

27 (b) criminal liability;

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1 (c) liability for damages for injury to, destruction of, or loss of
2 natural resources, and for the costs of any natural resource damage assessment
3 incurred by agencies;

4 (d) except as may otherwise be provided for herein, liability for
5 violations of local, state or federal law or regulations;

6 (e) except as may otherwise be provided for herein, liability for
7 performance of response actions and/or work, other than the Work to Be
8 Performed pursuant to Paragraph 4.1, the work identified in Exhibits C and D, and
9 the Excluded Work;

10 (f) liability for DTSC response costs, other than Future DTSC
11 Oversight Costs, Interim Future Response Costs, and Past Response Costs;

12 (g) except as may otherwise be provided for herein, any liability
13 arising from past, present or future ownership, operation, disposal, release, or
14 threat of release of hazardous substances, pollutants or contaminants, at other sites
15 besides the Facility;

16 (h) except as may otherwise be provided for herein, liability based
17 upon the Settling Defendants' ownership or operation of the Facility, or upon the
18 Settling Defendants' transportation, treatment, storage, or disposal, or the
19 arrangement for the transportation, treatment, storage, or disposal of any hazardous
20 substances, pollutants or contaminants at or in connection with the Facility.

21 7.7 Except as provided in this Consent Decree, nothing herein shall limit
22 the power and authority of DTSC or any other State agency to take, direct, or order
23 all actions necessary to protect public health, welfare, or the environment or to
24 prevent, abate, or minimize an actual or threatened release of hazardous
25 substances, pollutants or contaminants, or hazardous or solid waste on, at, or from
26 the Facility. Further, except as specifically provided for in this Consent Decree,
27 nothing herein shall prevent DTSC from seeking legal or equitable relief to enforce
28 the terms of this Consent Decree, from taking other legal or equitable actions as it

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1 deems appropriate and necessary, or from requiring Settling Defendants to perform
2 additional activities after the termination of this Consent Decree pursuant to the
3 Comprehensive Environmental Response, Compensation, and Liability Act
4 (CERCLA), the Health and Safety Code, the California Code of Regulations, title
5 22, or any other applicable law.

6 7.8 Settling Defendants' Covenant Not To Sue. In consideration of
7 DTSC's Covenant Not To Sue in Paragraph 7.1 of this Consent Decree, the
8 Settling Defendants hereby covenant not to sue and not to assert any claims or
9 causes of action against DTSC, its authorized officers or employees, with respect
10 to any regulatory action undertaken by DTSC with respect to the Subject Property
11 from January 1, 2004 through the Effective Date of this Consent Decree.

12 7.9 Settling Defendants' Reservation of Rights. The Covenant Not To
13 Sue set forth in Paragraph 7.8 and the Standstill Agreement set forth in
14 Paragraph 7.10 do not pertain to any matters other than those specifically
15 addressed therein and apply only to DTSC and do not extend to any other
16 department, agency, board or body of the State of California. The Settling
17 Defendants reserve, and this Consent Decree is without prejudice to, all rights
18 against DTSC with respect to all other matters.

19 7.10 Settling Defendants' Standstill. The Settling Defendants agree not to
20 assert any judicial claim against DTSC with respect to the Facility until the earlier
21 of: (a) four (4) years from the Effective Date of this Consent Decree; or (b) the
22 date a complaint is served on Settling Defendants requiring the performance of
23 work, reimbursement of cleanup costs, or contribution towards costs associated
24 with cleanup of the Facility.

25 7.11 Tolling Agreement. DTSC and Settling Defendants agree that all
26 statutes of limitations applicable as of the Effective Date to any rights, claims,
27 causes of action, counterclaims, crossclaims and defenses with respect to the
28 Facility that Settling Defendants could assert against DTSC as of the Effective

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1 Date shall be tolled for the period between the Effective Date and the Tolling
 2 Termination Date, and this tolling period shall be excluded from all computations
 3 of any applicable period of limitations. Such potentially applicable statutes of
 4 limitations that are tolled by this agreement include, without limitation, any
 5 applicable time limits within which an action may be commenced against DTSC
 6 under the provisions of the California Tort Claims Act, including, without
 7 limitation, Section 945.6 of the California Government Code.

8 **VIII. EFFECT OF SETTLEMENT/ CONTRIBUTION PROTECTION**

9 8.1 With regard to claims for contribution against Settling Defendants, the
 10 Parties hereto agree, and by entering this Consent Decree the Court finds, upon
 11 entry of this Consent Decree, that the Settling Defendants are entitled to protection
 12 from contribution actions or claims as provided by CERCLA Section 113(f) (2), 42
 13 U.S.C. § 9613(f) (2) for matters addressed in this Consent Decree. The matters
 14 addressed in this Consent Decree are: (a) the Work to Be Performed by Settling
 15 Defendants described herein, to the extent that such work is actually performed by
 16 or on behalf of Settling Defendants and approved by DTSC; (b) Past Response
 17 Costs; (c) Future Interim Response Costs; (d) Future DTSC Oversight Costs;
 18 (e) interest on amounts referred to in (b), (c) and (d) above; and (f) compliance
 19 with the ISE Order from its effective date through the date on which it is dismissed
 20 as provided in this Consent Decree.

21 8.2 Nothing in this Consent Decree shall be construed to create any rights
 22 in, or grant any cause of action to, any person not a party to this Consent Decree
 23 with respect to the Facility. Each of the Parties to this Consent Decree expressly
 24 reserves, and this Consent Decree is without prejudice to, all rights (including, but
 25 not limited to, any right to contribution, indemnification and/or reimbursement),
 26 defenses, claims, remedies, demands, and causes of action that each party may
 27 have with respect to any matter, transaction, or occurrence relating in any way to
 28 the Facility against any person not a party hereto.

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1 8.3 The Settling Defendants agree that with respect to any suit or claim
2 for contribution brought by them for matters related to this Consent Decree they
3 will notify DTSC in writing at least sixty (60) days prior to the initiation of any
4 such suit or claim.

5 8.4 The Settling Defendants also agree that with respect to any suit or
6 claim for contribution brought against them for matters related to this Consent
7 Decree, they will notify in writing DTSC within fifteen (15) days of service of the
8 complaint on them. In addition, Settling Defendants shall notify DTSC within ten
9 (10) days of service or receipt of any Motion for Summary Judgment and within
10 ten (10) days of receipt of any order from a court setting a case for trial.

11 8.5 In any subsequent administrative or judicial proceeding initiated by
12 one or more of the Plaintiffs for injunctive relief, recovery of response costs, or
13 other appropriate relief relating to the Facility, Settling Defendants shall not assert,
14 and may not maintain, any defense or claim based upon the principles of waiver,
15 res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses
16 based upon any contention that the claims raised by DTSC in the subsequent
17 proceeding were or should have been brought in the instant case.

18 **IX. FUTURE COOPERATION**

19 9.1 The Parties recognize that the Settling Defendants represent a subset
20 of those who may be responsible for response actions at the Subject Property. The
21 Parties also recognize that this Consent Decree represents an interim step towards a
22 more permanent solution to the long term operation and maintenance of the
23 Subject Property that may include a component for additional responsible parties.
24 The Parties agree to work in good faith towards this long term solution.

25 9.2 Additional Potentially Responsible Parties (PRPs).

26 (a) DTSC issued notices of noncompliance to respondents to the
27 ISE Order who are not Parties to this Consent Decree.

28

1 (b) If the Settling Defendants provide evidence and supporting
2 documentation to DTSC in accordance with Health and Safety Code section
3 25356.1.3 concerning the potential liability of any other person with respect to the
4 Facility, then DTSC will evaluate the information accordingly and take such
5 actions as deemed appropriate in DTSC's sole discretion. These actions may
6 include, but are not limited to, notice letters, information requests, issuing final
7 determinations of non-compliance with the ISE Order, and judicial and
8 administrative enforcement actions, or no action.

9 (c) DTSC shall work in good faith to provide the Settling
10 Defendants with reasonable access to those BKK documents concerning waste
11 disposal to which BKK allows DTSC to assume control.

12 9.3 Within seven (7) months of lodging of this Consent Decree, the
13 Settling Defendants shall provide written notice to DTSC of their intent to
14 commence negotiations on a settlement agreement that will supercede this Consent
15 Decree.

16 9.4 The Parties may, by mutual written agreement, and with approval of
17 the court, extend some or all of the obligations and related provisions of this
18 Consent Decree.

19 9.5 The Settling Defendants shall inform DTSC at least four (4) months
20 before the date the obligations of this Consent Decree terminate as to whether they
21 intend to extend this Consent Decree.

22 X. GENERAL PROVISIONS

23 10.1 Project Coordinators. Settling Defendants' Project Coordinator is
24 Roberto Puga, P.G. of Project Navigator, Ltd. Settling Defendants shall promptly
25 notify DTSC in writing at least seven (7) working days before any proposed
26 change in the identity of the Project Coordinator. Settling Defendants shall obtain
27 approval from DTSC before the new Project Coordinator performs any work under
28 this Consent Decree. DTSC's Project Coordinator is Don Plain, Chief, Emergency

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1 Response and Special Projects Branch, Site Mitigation and Brownfields Reuse
2 Program. DTSC's Project Coordinator will be responsible for overseeing Settling
3 Defendants' implementation of this Consent Decree.

4 10.1.1 Each Project Coordinator shall be responsible for designating
5 a person to act in her/his absence. All communications between DTSC and
6 Settling Defendants concerning the Work to Be Performed shall be directed
7 through the Project Coordinators.

8 10.2 Project Engineer/Geologist. The Work to Be Performed pursuant to
9 this Consent Decree shall be under the direction and supervision of a qualified
10 professional engineer or a professional geologist in the State of California, with
11 expertise in hazardous substance site management and post-closure care of
12 landfills. On January 21, 2005, the Settling Defendants provided the name,
13 address, telephone number and resume of Mr. Roberto Puga, P.G. to serve as
14 interim Project Geologist along with the statement of qualifications of Mr. Puga's
15 firm, Project Navigator, Ltd. Within seven (7) days of a) the Effective Date of this
16 Consent Decree or b) the date upon which the Settling Defendants fully
17 commence the Essential Activities and Critical Task and other work pursuant to
18 Section IV herein, whichever is earlier, Settling Defendants shall submit
19 supplemental resumes and/or statements of qualifications as appropriate. Settling
20 Defendants shall promptly notify DTSC in writing at least seven (7) working days
21 before any proposed change in the identity of the Project Engineer/Geologist.
22 Settling Defendants shall obtain approval from DTSC before the new Project
23 Engineer/Geologist performs any work under this Consent Decree.

24 10.3 Monthly Summary Reports. After the end of the first month after a)
25 the Effective Date of this Consent Decree or b) the date upon which the Settling
26 Defendants fully commence the Essential Activities and Critical Task and other
27 work pursuant to Section IV herein, whichever is earlier, and on a monthly basis
28 thereafter, Settling Defendants shall submit to DTSC a Monthly Summary Report

1 of their activities under the provisions of this Consent Decree. The reports shall be
2 received by DTSC by the 15th day of each month and shall describe:

3 (a) Specific actions taken by or on behalf of Settling Defendants
4 during the previous calendar month;

5 (b) Actions expected to be undertaken during the current calendar
6 month;

7 (c) All planned activities for the next month;

8 (d) Any problems or anticipated problems in complying with this
9 Consent Decree; and

10 (e) All results of sample analyses, tests, and other data generated
11 under this Consent Decree during the previous calendar month, and any significant
12 findings from these data.

13 10.4 Quality Assurance/Quality Control (QA/QC). All sampling and
14 analysis conducted by Settling Defendants under this Consent Decree shall be
15 performed in accordance with QA/QC procedures submitted by Settling
16 Defendants and approved by DTSC pursuant to this Consent Decree.

17 10.5 Submittals. All submittals and notifications from Settling Defendants
18 required by this Consent Decree shall be sent simultaneously to:

19 Don Plain, Chief [three copies]
20 Attention: Andy Burrow
21 Emergency Response and Special Projects Branch
22 Site Mitigation and Brownfields Reuse Program
23 Department of Toxic Substances Control
24 8810 Cal Center Drive
25 Sacramento, California 95826-3200

26 With a copy to:

27 Jose Kou, Branch Chief [one copy]
28 Attention: Richard Allen
Southern California Permitting and Corrective Action Branch
Hazardous Waste Management Program
Department of Toxic Substances Control
1011 North Grandview Avenue
Glendale, California 91201-2205

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1 10.6 Communications. All approvals and decisions of DTSC made
 2 regarding submittals and notifications will be communicated to Settling
 3 Defendants in writing by the DTSC Project Coordinator or his/her designee. No
 4 informal advice, guidance, suggestions or comments by DTSC regarding reports,
 5 plans, specifications, schedules or any other writings by Settling Defendants shall
 6 be construed to relieve Settling Defendants of their obligation to obtain such
 7 formal approvals as may be required by this Consent Decree.

8 10.7 DTSC Review and Approval.

9 10.7.1 All response actions taken pursuant to this Consent Decree
 10 shall be subject to the approval of DTSC. Settling Defendants shall submit all
 11 deliverables required by this Consent Decree to DTSC. DTSC shall revise and
 12 approve or reject the deliverables within 45 days of its receipt thereof. Once the
 13 deliverables are approved by DTSC, they shall be deemed incorporated into, and
 14 where applicable, enforceable under this Consent Decree.

15 10.7.2 If DTSC determines that any report, plan, schedule or other
 16 document submitted for approval pursuant to this Consent Decree fails to comply
 17 with this Consent Decree, subject to Settling Defendants' right to invoke dispute
 18 resolutions pursuant to this Consent Decree, DTSC may:

19 (a) Modify the document as deemed necessary and
 20 approve the document as modified; or

21 (b) Return comments to Settling Defendants with
 22 recommended changes and a date by which Settling Defendants must submit to
 23 DTSC a revised document incorporating the recommended changes.

24 10.8 Access for DTSC/Access to Property Owned by Others.

25 10.8.1 On November 4, 2004, BKK and DTSC entered into the
 26 Right to Enter Agreement, which requires BKK to provide full access to Parcel 3
 27 to DTSC and its consultants, contractors and designees (Exhibit B).

28

1 10.8.2 For purposes of gaining access to the Facility, the Settling
2 Defendants are deemed DTSC's designees.

3 10.8.3 Settling Defendants shall cooperate with DTSC to provide
4 DTSC with access to the Subject Property consistent with applicable health and
5 safety plans, laws and regulations. Settling Defendants shall provide access to data
6 and facilitate access to laboratories used for analyses of the samples obtained
7 pursuant to this Consent Decree at all reasonable times to employees, contractors,
8 and consultants of DTSC. Nothing in this Paragraph is intended or shall be
9 construed to limit in any way the right of entry or inspection that DTSC or any
10 other agency may otherwise have by operation of any law.

11 10.8.4 The Settling Defendants shall also cooperate with DTSC to
12 provide access to any other person not a party to this Consent Decree as directed
13 by DTSC subject to applicable health and safety plans, laws and regulations.
14 DTSC shall work with Settling Defendants to assure that all activities at the
15 Subject Property are coordinated.

16 10.8.5 For property other than Parcel 3, to which access is required
17 for the implementation of this Consent Decree and which is owned or controlled by
18 persons other than Settling Defendants, Settling Defendants shall use best efforts to
19 secure from such persons access for Settling Defendants, as well as DTSC, its
20 representatives, and contractors, as necessary to effectuate this Consent Decree.
21 For purposes of this Paragraph, "best efforts" shall include the payment of
22 reasonable sums of money in consideration for access.

23 10.8.6 If any access required to complete the Work to Be Performed
24 is not obtained, Settling Defendants shall promptly notify DTSC and shall include
25 in that notification a summary of the steps Settling Defendants have taken to gain
26 access. DTSC may, as it deems appropriate, assist Settling Defendants in
27 obtaining access. Settling Defendants shall be subject to liability for costs incurred
28 by DTSC in obtaining access.

1 10.9 Sampling, Data and Document Availability. Settling Defendants shall
 2 permit DTSC and its authorized representatives to inspect and copy all sampling,
 3 testing, monitoring or other data generated by Settling Defendants or on Settling
 4 Defendants' behalf pursuant to this Consent Decree. Settling Defendants shall
 5 submit all such data upon the request of DTSC. Copies shall be provided within
 6 seven (7) days of receipt of DTSC's written request. Settling Defendants shall
 7 inform DTSC at least seven (7) days in advance of all field sampling under this
 8 Consent Decree, and shall allow DTSC and its authorized representatives to take
 9 duplicates of any samples collected by Settling Defendants pursuant to this
 10 Consent Decree. Settling Defendants shall maintain a central depository of the
 11 data, reports, and other documents prepared pursuant to this Consent Decree.

12 10.10 Record Retention. All such data, reports and other documents shall be
 13 preserved by Settling Defendants for a minimum of ten (10) years after the
 14 conclusion of all activities under this Consent Decree. If DTSC requests that some
 15 or all of these documents be preserved for a longer period of time, Settling
 16 Defendants shall either comply with that request or deliver the documents to
 17 DTSC, or permit DTSC to copy the documents prior to destruction. Settling
 18 Defendants shall notify DTSC in writing, at least six (6) months prior to destroying
 19 any documents prepared pursuant to this Consent Decree.

20 10.11 Government Liabilities. The State of California shall not be liable for
 21 any injuries or damages to persons or property resulting from acts or omissions by
 22 Settling Defendants, or related parties specified in Paragraph 10.20 (Parties
 23 Bound), in carrying out activities pursuant to this Consent Decree, nor shall the
 24 State of California be held as party to any contract entered into by Settling
 25 Defendants or its agents in carrying out activities pursuant to this Consent Decree.

26 10.12 Extension Requests. If Settling Defendants are unable to perform any
 27 activity or submit any document within the time required under this Consent
 28 Decree, Settling Defendants may, prior to expiration of the time, request an

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1 extension of the time in writing. The extension request shall include a justification
2 for the delay. All such requests shall be in advance of the date on which the
3 activity or document is due.

4 10.13 Extension Approvals. If DTSC determines that good cause exists for
5 an extension, it will grant the request and specify a new schedule in writing.
6 Settling Defendants shall comply with the new schedule incorporated in this
7 Consent Decree.

8 10.14 Recoverable Costs. The Parties agree, and by entering this Consent
9 Decree the Court finds, that all payments made to DTSC for Past Response Costs
10 described in Paragraph 4.9 of this Consent Decree, all payments for Future Interim
11 Response Costs, and all payments for Future DTSC Oversight Costs pursuant to
12 this Consent Decree have been or are being made to reimburse DTSC for
13 recoverable response costs as defined under CERCLA and the HSAA, incurred by
14 DTSC with respect to releases or threatened releases of hazardous substances at the
15 Facility in a manner that was and is consistent with the NCP.

16 10.15 Payments. All payments made by the Settling Defendants pursuant to
17 this Consent Decree shall be made by a cashier's or certified check made payable
18 to the "Department of Toxic Substances Control", and bearing on its face the
19 project code for the Facility (Site # 300012-00) and the docket number of this
20 Consent Decree. On each check, Settling Defendants shall state: "For BKK
21 Costs". On each check, payments shall be further identified as either "BKK Future
22 DTSC Oversight Costs", "BKK Future Interim Response Costs", or "BKK Past
23 Response Costs", and shall be sent to:

24 Department of Toxic Substances Control
25 Accounting/Cashier
26 400 P Street, 4th Floor
27 P.O. Box 806
28 Sacramento, California 95812-0806

27 A photocopy of the check shall be sent concurrently to DTSC's Project
28 Coordinator.

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1 10.16 Severability. The requirements of this Consent Decree are severable,
 2 and Settling Defendants shall comply with each and every provision hereof,
 3 notwithstanding the effectiveness of any other provision.

4 10.17 Incorporation of Plans, Schedules and Reports. All plans, schedules,
 5 reports, specifications and other documents that are submitted by Settling
 6 Defendants pursuant to this Consent Decree are incorporated in this Consent
 7 Decree upon DTSC's approval or as modified pursuant to Paragraph 10.7, DTSC
 8 Review and Approval, and shall be implemented by Settling Defendants. Any
 9 noncompliance with the documents incorporated in this Consent Decree shall be
 10 deemed a failure or refusal to comply with this Consent Decree.

11 10.18 Modifications. This Consent Decree may only be modified in writing
 12 by mutual agreement by the Parties and approval of the Court.

13 10.19 Time Periods. Unless otherwise specified, time periods begin from
 14 the Effective Date of this Consent Decree.

15 10.20 Parties Bound. This Consent Decree applies to and is binding upon
 16 DTSC and its successors-in-interest and the Settling Defendants, and their
 17 corporate predecessors-in-interest, successors-in-interest and affiliated companies
 18 identified in Exhibit G. Settling Defendants shall provide a copy of this Consent
 19 Decree to all contractors, subcontractors, laboratories, and consultants that are
 20 retained to conduct any work performed under this Consent Decree, within fifteen
 21 (15) days after a) the Effective Date of this Consent Decree, b) the date upon
 22 which the Settling Defendants fully commence the Essential Activities and Critical
 23 Task and other work pursuant to Section IV herein, or c) the date of retaining their
 24 services, whichever is later. Settling Defendants shall condition any such contracts
 25 upon satisfactory compliance with this Consent Decree. Notwithstanding the terms
 26 of any contract, Settling Defendants are responsible for compliance with this
 27 Consent Decree and for ensuring that their successors-in-interest, affiliated
 28

1 companies identified in Exhibit G, employees, contractors, consultants,
2 subcontractors, agents and attorneys comply with this Consent Decree.

3 10.21 Joint and Several Obligations. The obligations of the Settling
4 Defendants to carry out all activities and to make the payments required by this
5 Consent Decree are joint and several. In the event of failure of any one or more
6 Settling Defendants to conduct the Work to Be Performed pursuant to this Consent
7 Decree and/or to make the payments required under this Consent Decree, the
8 remaining Settling Defendants shall be responsible for such Work to Be Performed
9 and for such payments. In the event of the insolvency or other failure of any one
10 or more Settling Defendants to implement the requirements of this Consent
11 Decree, the remaining Settling Defendants shall complete all of the requirements.

12 10.22 Change in Ownership. No change in ownership or corporate or
13 partnership status relating to the Subject Property shall in any way alter Settling
14 Defendants' responsibility under this Consent Decree. No conveyance of title,
15 easement, or other interest in the Subject Property, or a portion of the Subject
16 Property, shall affect Settling Defendants' obligations under this Consent Decree.
17 Unless DTSC agrees that such obligations may be transferred to a third party,
18 Settling Defendants shall be responsible for and liable for any failure to carry out
19 all activities required of Settling Defendants by the terms and conditions of this
20 Consent Decree, regardless of Settling Defendants' use of employees, agents,
21 contractors, or consultants to perform any such tasks. Settling Defendants shall
22 provide a copy of this Consent Decree to any subsequent owners or successors
23 before ownership rights or stock or assets in a corporate acquisition are transferred.

24 XI. DELAY IN PERFORMANCE/STIPULATED PENALTIES

25 11.1 For each day that the Settling Defendants fail to deliver a deliverable
26 in a timely manner, fail to perform work of acceptable quality, or otherwise fail to
27 perform the work required by this Consent Decree, including Exhibits C and D,
28 Settling Defendants shall be liable for stipulated penalties as set forth below.

RECEIVED

1 Penalties begin to accrue on the day that the deliverable or performance is due, and
 2 continue to accrue until one of the following occurs: a) DTSC notifies Settling
 3 Defendants that it will conduct the work; or b) Settling Defendants submit the
 4 deliverable or perform the work in question and DTSC determines that the
 5 document or work is acceptable to DTSC (whichever is earlier). Payment of any
 6 Stipulated Penalties by Settling Defendants shall be due within thirty (30) days of
 7 receipt of a demand letter from DTSC.

8 11.1.1 For the following deliverables or work, stipulated penalties
 9 shall accrue in the amount of \$500.00 per day, per violation, for the first seven (7)
 10 days of noncompliance, and \$750.00 per day, per violation thereafter:

- 11 (a) Monthly reports as required by Paragraph 10.3; or
- 12 (b) Emergency response report as required by
- 13 Paragraph 4.4.

14 11.1.2 For the following major deliverables or work, stipulated
 15 penalties shall accrue in the amount of \$1,000 per day, per violation, for the first
 16 seven (7) days of noncompliance, and \$2,500 per day, per violation thereafter,:

- 17 (a) Performance of any Essential Activity identified in
- 18 Exhibit C; or
- 19 (b) Performance of the Critical Task identified in
- 20 Exhibit D; or
- 21 (c) Immediately notifying DTSC of an emergency or
- 22 taking immediate action to address an emergency as set forth in Paragraph 4.4.

23 (Disputes over the appropriate response to be taken should be resolved through the
 24 dispute resolution provisions of this Consent Decree and shall not subject the
 25 Settling Defendants to Stipulated Penalties).

26 11.2 If the payment of Future Interim Response Costs required of the
 27 Settling Defendants by this Consent Decree are not made by the time specified in

28

1 Paragraph 4.7, the Settling Defendants shall be liable, for the following amounts
2 for each date of delay in payment:

3	Days of Delay	Payment per Day of Delay
4	1-14	\$1,000/day
5	15-60	\$2,500/day
6	Beyond 60 days	\$5,000/day

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7 11.3 Settling Defendants may dispute DTSC's right to the stated amount of
8 penalties by invoking the dispute resolution procedures under Paragraph 14.1
9 herein. Penalties shall accrue but need not be paid during the dispute resolution
10 period. If Settling Defendants do not prevail upon resolution, all penalties shall be
11 due to DTSC within thirty (30) days of resolution of the dispute. If Settling
12 Defendants prevail upon resolution, no penalties shall be paid.

13 11.4 These stipulated penalties provisions do not preclude DTSC from
14 pursuing any other legal remedies or sanctions that are available to DTSC because
15 of the Settling Defendants' failure to comply with this Consent Decree. Payment
16 of stipulated penalties does not alter Settling Defendants' obligation to complete
17 performance under this Consent Decree.

18 XII. PUBLIC COMMENT

19 12.1 This Consent Decree shall be subject to a public comment period for
20 not less than thirty (30) days after lodging with the Court. DTSC may modify or
21 withdraw its consent to this Consent Decree if comments received disclose facts or
22 considerations that indicate that this Consent Decree is inappropriate, improper or
23 inadequate.

24 XIII. EFFECTIVE DATE

25 13.1 The Effective Date of this Consent Decree shall be the date on which
26 it is entered by the Court.

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1 XIV. DISPUTE RESOLUTION

2 14.1 Any dispute that arises between the Parties with respect to an
3 obligation under this Consent Decree shall, in the first instance, be the subject of
4 good faith negotiations among the Parties. The Parties agree that they shall use
5 their best efforts to resolve any dispute informally. In the absence of agreement,
6 any Party may submit the matter to the Court for resolution.

7 XV. SIGNATORIES

8 15.1 Each undersigned representative of the Parties to this Consent Decree
9 certifies that he or she is fully authorized to enter into the terms and conditions of
10 this Consent Decree and to execute and legally bind the Parties to this Consent
11 Decree.

12 15.2 This Consent Decree may be executed and delivered in any number of
13 counterparts, each of which when executed and delivered shall be deemed to be an
14 original, but such counterparts shall together constitute one and the same
15 document.

16 SO ORDERED , APPROVED, SIGNED, AND ENTERED THIS
17 6 of March, 2006.

18
19
20 //original signed by//

21 THE HONORABLE CHRISTINA A. SNYDER
22 UNITES STATES DISTRICT JUDGE
23
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1 **XV. SIGNATORIES**

2 15.1 Each undersigned representative of the Parties to this Consent Decree
3 certifies that he or she is fully authorized to enter into the terms and conditions of
4 this Consent Decree and to execute and legally bind the Parties to this Consent
5 Decree.

6 15.2 This Consent Decree may be executed and delivered in any number of
7 counterparts, each of which when executed and delivered shall be deemed to be an
8 original, but such counterparts shall together constitute one and the same
9 document.

10
11
12 **FOR THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

13
14
15 Dated: October 25, 2005

By: //Original Signed By//
16 **TIMOTHY J. SWICKARD**
17 Chief Counsel

18
19
20 **SETTLING DEFENDANTS' SIGNATURE PAGES FOLLOW:**

1 AMERICAN HONDA MOTOR CO., INC.

2

3

4 DATE: October 7, 2005

By: //Original Signed By//
SIGNATURE

5

6

TIMOTHY J. CONLEY
NAME (printed or typed)

7

8

9

Vice President and General Counsel
TITLE (printed or typed)

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1 ANADARKO E&P COMPANY LP
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DATE: October 25, 2005

By: //Original Signed By//
SIGNATURE

DAVID J. OWENS
NAME (printed or typed)

Associate General Counsel
TITLE (printed or typed)

1 ATLANTIC RICHFIELD COMPANY, on behalf of itself and its affiliated entities

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DATE: October 20, 2005

By: //Original Signed By//
SIGNATURE

H.C. WINSOR
NAME (printed or typed)

Regional Manager
TITLE (printed or typed)

1 BAYER CROPSCIENCE INC.

2

3

4 DATE: October 17, 2005

By: //Original Signed By//
SIGNATURE

5

6

BRIAN A. SPILLER
NAME (printed or typed)

7

8

Chairman, Stauffer Management
Company LLC

9

10

TITLE (printed or typed)

11

AS AUTHORIZED
LITIGATION AGENT FOR
BAYER CROPSCIENCE INC.

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1 CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY, a California
2 corporation, on behalf of itself and on behalf of:

3 Chevron Oronite Company LLC, a Delaware limited liability company (successor-
4 in-interest to Chevron Chemical Company); Chevron Corporation, a Delaware
5 corporation (for Standard Oil Company of California, k/n/a Chevron Corporation,
6 a Delaware corporation); Chevron U.S.A. Inc., a Pennsylvania corporation (for all
7 Chevron affiliates involved in production, refining, and marketing); Chevron
8 U.S.A. Inc., a Pennsylvania corporation (for Gulf Oil Corporation, k/n/a Chevron
9 U.S.A. Inc., a Pennsylvania corporation, and all other Gulf affiliates); Texaco
10 Downstream Properties Inc., a Delaware corporation (successor-in-interest to
11 Texaco affiliates involved in refining, marketing and research); Chevron U.S.A.
12 Inc., a Pennsylvania corporation (successor-in-interest to Texaco Exploration &
13 Production Inc., and all other Texaco affiliates involved in production); Texaco
14 Downstream Properties Inc., a Delaware corporation (successor-in-interest to Getty
15 Oil Company affiliates involved in refining and marketing operations); Chevron
16 U.S.A. Inc., a Pennsylvania corporation (successor-in-interest to Getty Oil
17 Company affiliates involved in production); Chevron Pipe Line Company, a
18 Delaware corporation,; Kewanee Industries Inc., a Delaware corporation
19 (successor-in-interest to Harshaw Chemical Company and its affiliates); Texaco
20 Downstream Properties Inc., a Delaware corporation (successor-in-interest to
21 Basin Petroleum and its affiliates involved in refining and marketing operations);
22 Chevron U.S.A. Inc., a Pennsylvania corporation (successor-in-interest to Basin
23 Petroleum and its affiliates involved in production); and Texaco Inc, a Delaware
24 corporation

25
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27
28
DATE: October 20, 2005

By: //Original Signed By//
SIGNATURE

ROBERT R. JOHN
NAME (printed or typed)

Assistant Secretary
TITLE (printed or typed)

1 HUNTINGTON BEACH COMPANY, a California corporation

2

3

4 DATE: October 18, 2005

By: //Original Signed By//
SIGNATURE

5

6

FRANK G. SOLER
NAME (printed or typed)

7

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9

Assistant Secretary
TITLE (printed or typed)

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1 McFARLAND ENERGY, INC, a Delaware corporation (successor-in-interest to
2 Seaboard Oil Company)

3
4
5 DATE: October 18, 2005

By: //Original Signed By//
SIGNATURE

6
7 FRANK G. SOLER
8 NAME (printed or typed)

9 Assistant Secretary
10 TITLE (printed or typed)

1 CITY OF LOS ANGELES, ACTING BY AND THROUGH THE LOS ANGELES
2 DEPARTMENT OF WATER AND POWER

3
4
5 DATE: _____

By: //Original Signed By//
6 SIGNATURE

7 **[PENDING]**
8 NAME (printed or typed)

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TITLE (printed or typed)

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1 CONOCOPHILLIPS COMPANY, on behalf of itself and its affiliated entities

2

3

4 DATE: October 26, 2005

By: //Original Signed By//

5

SIGNATURE

6

WILLIAM A. KITCHEN

7

NAME (printed or typed)

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9

Manager, Risk Management and
Remediation

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TITLE (printed or typed)

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1 DUCOMMUN AEROSTRUCTURES, INC.

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4 DATE: October 31, 2005

By: //Original Signed By//
SIGNATURE

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6

JAMES S. HEISER
NAME (printed or typed)

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Secretary
TITLE (printed or typed)

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1 EXXON MOBIL CORPORATION, on behalf of itself, and its subsidiaries and
affiliated entities

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DATE: October 19, 2005

By: //Original Signed By//
SIGNATURE

ZANE K. BOLEN
NAME (printed or typed)

Area Manager Superfund
for
Andrew Warrell, Global Manager,
Major Projects
TITLE (printed or typed)

1 GENERAL MOTORS CORPORATION

2

3

4 DATE: October 10, 2005

By: //Original Signed By//
SIGNATURE

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6

MICHELLE T. FISHER
NAME (printed or typed)

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Attorney
TITLE (printed or typed)

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1 HONEYWELL INTERNATIONAL, INC., on behalf of itself and its affiliated
2 entities

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DATE: October 14, 2005

By: //Original Signed By//
SIGNATURE

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7

TROY J. MEYER
NAME (printed or typed)

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Remediation Portfolio Director
TITLE (printed or typed)

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1 NATIONAL STEEL AND SHIPBUILDING COMPANY

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4 DATE: October 7, 2005

By: //Original Signed By//

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SIGNATURE

6

LANE L. MCVEY

7

NAME (printed or typed)

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9

Vice President, Business Affairs and

Law

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TITLE (printed or typed)

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1 NORTHROP GRUMMAN CORPORATION, on behalf of itself and its affiliated
2 entities

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DATE: October 17, 2005

By: //Original Signed By//
SIGNATURE

KRAIG H. SCHEYER
NAME (printed or typed)

Vice President, Administrative Services
TITLE (printed or typed)

1 QUEMETCO, INC.

2

3

4 DATE: October 10, 2005

By: //Original Signed By//
SIGNATURE

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6

DANIEL M. CROWLEY
NAME (printed or typed)

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Attorney
TITLE (printed or typed)

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1 ROHR, INC., on behalf of itself and its affiliated entities

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4 DATE: October 7, 2005

By: //Original Signed By//
SIGNATURE

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GREGORY B. PETERS
NAME (printed or typed)

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Vice President and General Manager
Operations

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TITLE (printed or typed)

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1 CHEMICAL WASTE MANAGEMENT, INC., on behalf of itself and its affiliated
2 entities

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DATE: October 11, 2005

By: //Original Signed By//
SIGNATURE

STEVEN D. RICHTEL
NAME (printed or typed)

Area Director, CSMG
TITLE (printed or typed)

1 SHELL OIL COMPANY, on behalf of itself and its affiliated entities

2

3

4 DATE: October 13, 2005

By: //Original Signed By//
SIGNATURE

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6

HECTOR A. PINEDA
NAME (printed or typed)

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Assistant Corporate Secretary
TITLE (printed or typed)

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1 SOUTHERN CALIFORNIA EDISON COMPANY

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4 DATE: October 19, 2005

By: //Original Signed By//
SIGNATURE

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6

STEPHEN E. PICKETT
NAME (printed or typed)

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9

Senior Vice President and
General Counsel

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TITLE (printed or typed)

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1 THUMS LONG BEACH COMPANY

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4 DATE: October 19, 2005

By: //Original Signed By//
SIGNATURE

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F. E. KOMIN
NAME (printed or typed)

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President/General Manager
TITLE (printed or typed)

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1 UNION CARBIDE CORPORATION

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4 DATE: October 10, 2005

By: //Original Signed By//
SIGNATURE

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6

SANDI VAN WORMER
NAME (printed or typed)

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Authorized Representative
TITLE (printed or typed)

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1 UNION OIL COMPANY OF CALIFORNIA, a California corporation, on behalf
of itself and its affiliated entities

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5 DATE: October 20, 2005

By: //Original Signed By//
SIGNATURE

6
7 JAMES J. DEAN
8 NAME (printed or typed)

9 General Manager
10 TITLE (printed or typed)

1 WASHINGTON MUTUAL BANK, on behalf of itself and its affiliated entities

2

3

4 DATE: October 21, 2005

By: //Original Signed By//
SIGNATURE

5

6

FAY L. CHAPMAN
NAME (printed or typed)

7

8

Senior Executive Vice President
TITLE (printed or typed)

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1 WASTE MANAGEMENT COLLECTION AND RECYCLING, INC, on behalf of
itself and its affiliated entities

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DATE: October 10, 2005

By: //Original Signed By//
SIGNATURE

STEVEN D. RICHTEL
NAME (printed or typed)

Area Director, CSMG
TITLE (printed or typed)

1 WESTERN WASTE INDUSTRIES, on behalf of itself and its affiliated entities

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DATE: October 10, 2005

By: //Original Signed By//
SIGNATURE

STEVEN D. RICHTEL
NAME (printed or typed)

Area Director, CSMG
TITLE (printed or typed)

1 XEROX CORPORATION

2

3

4 DATE: October 24, 2005

By: //Original Signed By//
SIGNATURE

5

6

PATRICIA A. CALKINS
NAME (printed or typed)

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Vice President EH&S
TITLE (printed or typed)

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