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8 People of the State of California, *ex rel.* Deborah O.
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9 Control

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SACRAMENTO

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14 **PEOPLE OF THE STATE OF**
15 **CALIFORNIA, *ex rel.* Deborah O. Raphael,**
16 **Director, Department of Toxic Substances**
Control,

17 Plaintiff,

18 v.

19 **RIVERBANK OIL TRANSFER, LLC,**

20 Defendants.
21

Case No. 07AS02681

**STIPULATION FOR ENTRY OF FINAL
JUDGMENT PURSUANT TO
STIPULATION**

Date:
Time:
Dept:
Judge:
Trial Date:
Action Filed:

22 Plaintiff the People of the State of California *ex rel.* Deborah O. Raphael, Director of the
23 Department of Toxic Substances Control (“Plaintiff” or the “DTSC”) and Defendant Riverbank
24 Oil Transfer, LLC (“Defendant” or “Riverbank”) enter into this Stipulation for Entry of Final
25 Judgment Pursuant to Stipulation (“Stipulation”), and agree as follows:
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1 1. **Riverbank Facility.**

2 Riverbank owns and operates a hazardous waste facility located at 5300 Claus Road,
3 Riverbank, California (“facility”), which accepts hazardous waste from offsite generators and
4 combines the accepted hazardous waste for transportation to offsite treatment and disposal
5 facilities. The hazardous waste accepted by Riverbank at the facility is primarily used oil.

6 2. **Investigation Activities.**

7 DTSC conducted three separate inspections of the Riverbank facility on October 7-8, 2004,
8 August 3 and 16, 2005, and February 28 and March 8, 2006, to inspect for compliance with the
9 Hazardous Waste Control Law, Health and Safety Code §§ 25100 et seq. (the “HWCL”) and its
10 implementing regulations. During these inspections, DTSC observed alleged violations of the
11 HWCL and its implementing regulations as alleged in the Complaint.

12 DTSC previously conducted an inspection of the Riverbank facility which resulted in a
13 judgment against Riverbank by this Court in the matter entitled, *Riverbank Oil Transfer v. State*
14 *of California, Office of Administrative Hearing*, Sacramento Superior Court, Case No.
15 04CS00321. Riverbank filed an appeal of the judgment of this Court which is pending in the
16 Court of Appeal and awaiting oral argument. (*Riverbank Oil Transfer v. State of California,*
17 *Office of Administrative Hearing*, California Court of Appeal, Third Appellate District, Case
18 No.C061413.) (“Riverbank Appeal”)

19 3. **Alleged Violations of Law.**

20 On June 12, 2007, DTSC filed a Complaint in this matter seeking, among other things,
21 permanent injunctive relief and civil penalties against Riverbank pursuant to the HWCL and its
22 implementing regulations. DTSC’s complaint, attached as Exhibit A (“Complaint”), alleges that
23 Riverbank violated numerous provisions of the HWCL and its regulations including, but not
24 limited to, unauthorized storage and transfer of hazardous waste at the facility, and requests
25 injunctive relief and penalties against Riverbank. As of March 28, 2011, DTSC considers all
26 violations alleged in the Complaint to have been corrected.

1 4. **Agreement to Settle**

2 DTSC and Riverbank (the “Parties”) enter into this Stipulation pursuant to a compromise
3 and settlement. DTSC and Riverbank each consent to the entry by the Superior Court of
4 Sacramento County (“Court”) of the Final Judgment Pursuant to Stipulation in the substance and
5 form attached hereto as Exhibit B (“Final Judgment ”), incorporated herein by reference to
6 resolve the Complaint and the Riverbank Appeal on the terms set forth in the Stipulation and
7 Final Judgment. The Stipulation and Final Judgment were negotiated and executed in good faith
8 and at arms’ length, by DTSC and by Riverbank, with their respective counsel to avoid
9 expensive and protracted litigation regarding the Complaint and the Riverbank Appeal.

10 5. **Jurisdiction and Venue.**

11 Jurisdiction exists over this matter and the Parties pursuant to Health & Safety Code
12 sections 25181, 25189, and 25189.2. Venue is proper pursuant to Health & Safety Code section
13 25183.

14 6. **Waiver of Hearing.**

15 Riverbank and DTSC waive any right to a judicial or administrative hearing in connection
16 with the Complaint prior to the entry of the Final Judgment and to a hearing in the Court of
17 Appeal regarding the Riverbank Appeal.

18 7. **Settlement /Matters Covered.**

19 The Final Judgment is a final and binding settlement, of: (1) the claims, alleged violations,
20 or causes of action alleged by DTSC in the Complaint, and the claims which could have been
21 asserted against Riverbank based on the facts alleged in the Complaint, against Riverbank, its
22 predecessors in interest, and its officers, directors, shareholders, partners, employees,
23 representatives, and agents up through March 28, 2011 and (2) the Riverbank Appeal. The
24 provisions of this paragraph become effective when all of the following are completed: 1) the
25 Court enters the Final Judgment Pursuant to Stipulation, (2) Riverbank makes timely payment of
26 all amounts set forth in Paragraph 9 below; and (3) Riverbank files in the Court of Appeal a
27 dismissal with prejudice of the Riverbank Appeal within 10 days of the entry of the Final
28 Judgment by the Court in this matter. Nothing in the Final Judgment shall constitute or be

1 construed as a satisfaction or settlement of liability for any conditions or claims arising as a result
2 of past, current, or future operations of Riverbank except as provided herein. DTSC reserves the
3 right to initiate further actions as necessary to protect public health or welfare or the environment
4 notwithstanding Riverbank's compliance with the terms of the Final Judgment.

5 **8. Ability to Pay Claim**

6 Riverbank claimed that it did not have the ability to pay the penalties DTSC was seeking as
7 a result of the violations of the HWCL in this case and in the Riverbank Appeal. DTSC requested
8 that Riverbank provide documents to substantiate its inability to pay claim. Based on the
9 information provided by Riverbank, DTSC evaluated Riverbank's inability to pay claim and
10 determined that Riverbank could pay a total of \$21,000 in penalties for violations in this matter
11 and in the Riverbank Appeal. The monetary settlement in paragraph 9 below reflects
12 Riverbank's inability to pay claim, and not the merits of DTSC's allegations or the seriousness of
13 the violations alleged in the Complaint and the Riverbank Appeal.

14 **9. Monetary Payments and Compliance School.**

15 Riverbank will pay DTSC the sum of Two Hundred Forty Five Thousand Dollars
16 (\$245,000), as penalties. Riverbank shall pay as follows: :

17 (1) The sum of \$21,000, of which \$20,000 shall be paid to DTSC for civil penalties, and
18 \$1,000 shall be credited by DTSC for attendance and satisfactory completion by a
19 Riverbank employee of California Compliance School. The \$20,000 shall be paid to DTSC
20 within 90 days of the signing of the Stipulation.

21 (2) If Riverbank timely pays DTSC the full \$20,000, as and for civil penalties and does not
22 file a bankruptcy petition within 95 days of the date of delivery of the \$20,000 payment to
23 DTSC, the balance of the \$245,000 will be forgiven by DTSC. Riverbank , however, will
24 still be responsible for complying with the provisions of paragraph 10 regarding
25 compliance school.
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1 (3) Payments due to DTSC by Riverbank pursuant to this Stipulation and Final Judgment
2 shall be made by cashier's check, payable to the California Department of Toxic Substances
3 Control, and mailed to:

4 Cashier
5 Accounting Office
6 Department of Toxic Substances Control
7 P.O. Box 806
8 Sacramento, CA 95812-0806.

9 The check shall bear on its face the phrase "DTSC # HWCA 2005-0766."

10 A photocopy of all checks and payments made pursuant to the Final Judgment shall be sent,
11 at the same time, to

12 Roberto Kou, Acting Performance Manager
13 Enforcement and Emergency Response Program
14 Department of Toxic Substances Control
15 9211 Oakdale Avenue
16 Chatsworth, CA 91311

17 Debra Schwartz, Senior Staff Counsel
18 Office of Legal Counsel
19 Department of Toxic Substances Control
20 9211 Oakdale Avenue
21 Chatsworth, CA 91311
22 E-mail: dschwart@dtsc.ca.gov

23 and to

24 Rose B. Fua
25 Deputy Attorney General
26 State of California Department of Justice
27 Attorney General's Office
28 1515 Clay Street, 20th Floor
Oakland, CA 94612
E-mail: rose.fua@doj.ca.gov

Copies sent to Debra Schwartz and Rose Fua may be electronic (i.e., Adobe PDF) copies rather than paper copies.

10. **Compliance School**

Riverbank agrees to send one employee to the California Compliance School (Modules I through IV). Attendance must be completed and Riverbank must submit a Certificate of

1 Satisfactory Completion issued by the California Compliance School to DTSC within 185 days of
2 the entry of Final Judgment. In recognition of this educational investment, the civil penalty was
3 reduced by \$1,000 provided the employee satisfactorily completes the specified modules and
4 DTSC receives the Certificate of Satisfactory Completion within 185 days of the entry of Final
5 Judgment. If Riverbank fails to submit the certificate as required, the civil penalty of \$1,000 is
6 due and payable within 30 days after the 185-day period expires. The 185-day period may be
7 extended by DTSC upon a written request demonstrating good cause from Riverbank.

8 **11. Dismissal of Appeal.**

9 Within ten days of the entry of the Final Judgment in this matter, Riverbank will file with
10 the Court of Appeal a dismissal with prejudice of the Riverside Appeal in a form approved by
11 DTSC.

12 **13. Compliance with Applicable Law.**

13 Riverbank shall implement the terms of the Final Judgment in compliance with all local,
14 State, and federal requirements.

15 **14. Access.**

16 Nothing in the Final Judgment is intended to limit in any way the right of entry or
17 inspection that DTSC or any other agency may otherwise have by operation of any law.

18 **15. Integration.**

19 The Stipulation, together with exhibits, constitutes the entire agreement and understanding
20 of the Parties with respect to the entire subject matter hereof. No representations, oral or written,
21 express or implied, other than those contained herein have been made by any party hereto. No
22 other agreements not specifically referred to herein, oral or written, shall be deemed to exist or to
23 bind any of the Parties. The Stipulation or the Final Judgment may not be amended or
24 supplemented except as provided for in the Stipulation.

25 **16. Authority to Enter Stipulation.**

26 Each signatory to the Stipulation certifies that he or she is fully authorized by the party he
27 or she represents to enter into the Stipulation, to execute it on behalf of the party represented, and
28 to legally bind that party.

1 17. **Modification of Stipulation and Final Judgment.**

2 Neither the Stipulation nor the Final Judgment may be modified without written stipulation
3 of the Parties hereto and approval by the Court.

4 18. **Parties Bound.**

5 The Stipulation and Final Judgment shall apply to and be binding upon Riverbank, its
6 subsidiaries and divisions, its parent companies, its officers and directors, its agents, employees,
7 contractors, consultants, successors, assignees, and representatives, and all persons, partners,
8 corporations and successors thereto, or other entities, acting by, through, under, or on behalf of
9 Riverbank, and upon DTSC and any successor agency of DTSC that may have responsibility for
10 and jurisdiction over the subject matter of this Stipulation and Final Judgment .

11 19. **Effect of Final Judgment .**

12 Except for the settlement of the claims provided in Paragraph 7, nothing in the Final
13 Judgment shall constitute or be construed as barring DTSC, or any other regulatory body, from
14 taking appropriate enforcement actions or otherwise exercising its authority under any law, statute
15 or regulation.

16 20. **Entry of Judgment Required.**

17 The Stipulation shall be null and void, and be without any force or effect, unless the Court
18 enters the Final Judgment in this matter.

19 21. **Governing Law.**

20 The terms of the Final Judgment shall be governed by the laws of the State of California.

21 22. **Retention of Jurisdiction.**

22 The Court shall retain jurisdiction of this matter for, among other things, purposes of
23 interpretation, implementation, modification, and enforcement of the Final Judgment. The Final
24 Judgment shall go into effect immediately upon entry thereof. The Parties request prompt entry
25 of the Final Judgment by this Court.

26 23. **Counterparts.**

27 The Stipulation may be executed in counterparts, each of which shall be deemed an
28 original, and all such counterparts taken together shall be deemed to constitute one and the same

1 instrument.

2 **IT IS SO STIPULATED:**

3 Dated: July 5, 2011

DEPARTMENT OF TOXIC SUBSTANCES
CONTROL

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By: Original signed by Roberto Kou
Roberto Kou
Acting Performance Manager
Enforcement and Emergency Response Program
Chatsworth and Cypress Offices

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Dated: June 28, 2011

RIVERBANK OIL TRANSFER LLC

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By: Original signed by Linda Clark
Linda Clark
Owner, Riverbank Oil Transfer LLC

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APPROVED AS TO FORM:

Dated: July 25, 2011

KAMALA D. HARRIS
Attorney General of California
MARGARITA PADILLA
Supervising Deputy Attorney General

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By: ORIGINAL SIGNED BY ROSA B. FUA
ROSE B. FUA
Deputy Attorney General
Attorneys for Plaintiff

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Dated: June 22, 2011

(ATTORNEY'S FOR DEFENDANTS)

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By: ORIGINAL SIGNED BY MICHAEL GUTA
MICHAEL GUTA
Attorneys for Defendant Riverbank Oil Transfer

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