

1 KAMALA D. HARRIS
Attorney General of California
2 MARGARITA PADILLA
Supervising Deputy Attorney General
3 ROSE B. FUA
Deputy Attorney General
4 State Bar No. 119757
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2126
Fax: (510) 622-2270
7 E-mail: Rose.Fua@doj.ca.gov

Attorneys for Plaintiff

8 People of the State of California, *ex rel.* Deborah O.
Raphael, Director, Department of Toxic Substances
9 Control

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SACRAMENTO

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.

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:

- 26 1. **Riverbank Facility.**

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

5 **2. Investigation Activities.**

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

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

18 **3. Alleged Violations of Law.**

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

26 **4. Agreement to Settle**

27 DTSC and Riverbank (the “Parties”) enter into this Stipulation pursuant to a compromise
28 and settlement. DTSC and Riverbank each consent to the entry by the Superior Court of

1 Sacramento County ("Court") of the Final Judgment Pursuant to Stipulation in the substance and
2 form attached hereto as Exhibit B ("Final Judgment"), incorporated herein by reference to
3 resolve the Complaint and the Riverbank Appeal on the terms set forth in the Stipulation and
4 Final Judgment. The Stipulation and Final Judgment were negotiated and executed in good faith
5 and at arms' length, by DTSC and by Riverbank, with their respective counsel to avoid
6 expensive and protracted litigation regarding the Complaint and the Riverbank Appeal.

7 **5. Jurisdiction and Venue.**

8 Jurisdiction exists over this matter and the Parties pursuant to Health & Safety Code
9 sections 25181, 25189, and 25189.2. Venue is proper pursuant to Health & Safety Code section
10 25183.

11 **6. Waiver of Hearing.**

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

15 **7. Settlement /Matters Covered.**

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

1 right to initiate further actions as necessary to protect public health or welfare or the environment
2 notwithstanding Riverbank's compliance with the terms of the Final Judgment.

3 **8. Ability to Pay Claim**

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

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

13 Riverbank will pay DTSC the sum of Two Hundred Forty Five Thousand Dollars
14 (\$245,000), as penalties. Riverbank shall pay as follows: :

15 (1) The sum of \$21,000, of which \$20,000 shall be paid to DTSC for civil penalties, and
16 \$1,000 shall be credited by DTSC for attendance and satisfactory completion by a
17 Riverbank employee of California Compliance School. The \$20,000 shall be paid to DTSC
18 within 90 days of the signing of the Stipulation.

19 (2) If Riverbank timely pays DTSC the full \$20,000, as and for civil penalties and does not
20 file a bankruptcy petition within 95 days of the date of delivery of the \$20,000 payment to
21 DTSC, the balance of the \$245,000 will be forgiven by DTSC. Riverbank, however, will
22 still be responsible for complying with the provisions of paragraph 10 regarding
23 compliance school.

24 (3) Payments due to DTSC by Riverbank pursuant to this Stipulation and Final Judgment
25 shall be made by cashier's check, payable to the California Department of Toxic Substances
26 Control, and mailed to:

27 Cashier
28 Accounting Office

1 Department of Toxic Substances Control
2 P.O. Box 806
3 Sacramento, CA 95812-0806.

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

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

7 Roberto Kou, Acting Performance Manager
8 Enforcement and Emergency Response Program
9 Department of Toxic Substances Control
10 9211 Oakdale Avenue
11 Chatsworth, CA 91311

12 Debra Schwartz, Senior Staff Counsel
13 Office of Legal Counsel
14 Department of Toxic Substances Control
15 9211 Oakdale Avenue
16 Chatsworth, CA 91311
17 E-mail: dschwart@dtsc.ca.gov

18 and to

19 Rose B. Fua
20 Deputy Attorney General
21 State of California Department of Justice
22 Attorney General's Office
23 1515 Clay Street, 20th Floor
24 Oakland, CA 94612
25 E-mail: rose.fua@doj.ca.gov

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

28 **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 Satisfactory Completion issued by the California Compliance School to DTSC within 185 days of the entry of Final Judgment. In recognition of this educational investment, the civil penalty was reduced by \$1,000 provided the employee satisfactorily completes the specified modules and DTSC receives the Certificate of Satisfactory Completion within 185 days of the entry of Final

1 Judgment. If Riverbank fails to submit the certificate as required, the civil penalty of \$1,000 is
2 due and payable within 30 days after the 185-day period expires. The 185-day period may be
3 extended by DTSC upon a written request demonstrating good cause from Riverbank.

4 11. **Dismissal of Appeal.**

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

8 13. **Compliance with Applicable Law.**

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

11 14. **Access.**

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

14 15. **Integration.**

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

21 16. **Authority to Enter Stipulation.**

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

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

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

28 18. **Parties Bonnd.**

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

7 19. **Effect of Final Judgment**.

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

12 20. **Entry of Judgment Required**.

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

15 21. **Governing Law**.

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

17 22. **Retention of Jurisdiction**.

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

22 23. **Counterparts**.

23 The Stipulation may be executed in counterparts, each of which shall be deemed an
24 original, and all such counterparts taken together shall be deemed to constitute one and the same
25 instrument.

26 **IT IS SO STIPULATED:**

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July 5,

Dated: ~~June~~ 2011

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

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

Dated: June __, 2011

RIVERBANK OIL TRANSFER LLC

By: _____
Linda Clark
Owner, Riverbank Oil Transfer LLC

APPROVED AS TO FORM:

Dated: June 2011

July 25,

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

By: Original signed by Rose B. Fua
ROSE B. FUA
Deputy Attorney General
Attorneys for Plaintiff

Dated: June __, 2011

(ATTORNEY'S FOR DEFENDANTS)

By: _____
MICHAEL GUTA (Bar No. 121509)
Attorneys for Defendant Riverbank Oil Transfer
LAW OFFICES OF JOHN E. HILL
A Professional Corporation
8105 Edgewater Drive, Suite 100
Oakland, CA 94621
Telephone: (510) 588-1000
Facsimile: (510) 729-6333

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Dated: June ___ 2011

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: _____
Roberto Kou
Acting Performance Manager
Enforcement and Emergency Response Program
Chatsworth and Cypress Offices

Dated: June 28, 2011

RIVERBANK OIL TRANSFER LLC

By: Original signed by Linda Clark

Linda Clark
Owner, Riverbank Oil Transfer LLC

APPROVED AS TO FORM:

Dated: June ___ 2011

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

By: _____
ROSE B. FUA
Deputy Attorney General
Attorneys for Plaintiff

Dated: June 27 2011

(ATTORNEY'S FOR DEFENDANTS)

Suly

By: Original signed by Michael Guta

MICHAEL GUTA (Bar No. 121509)
Attorneys for Defendant Riverbank Oil Transfer
LAW OFFICES OF JOHN E. HILL
A Professional Corporation
8105 Edgewater Drive, Suite 100
Oakland, CA 94621
Telephone: (510) 588-1000
Facsimile: (510) 729-6333

DATED: AUG 10 2011
SO ORDERED
Original signed by David I. Brown

JUDGE OF THE SUPERIOR COURT

8 DAVID I. BROWN