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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 CONTRA COSTA

12
13 **PEOPLE OF THE STATE OF**
14 **CALIFORNIA, *ex rel. Deborah O. Raphael,***
15 **Director, Department of Toxic Substances**
Control,

16 Plaintiff,

17 v.

18 **ECOLOGY CONTROL INDUSTRIES,**
19 **INC., a California Corporation and Does 1**
20 **through 20 inclusive,**

21 Defendants.

Case No. MSC10-03366

**STIPULATION FOR ENTRY OF FINAL
JUDGMENT**

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

22
23 Plaintiff the People of the State of California *ex rel.* Deborah O. Raphael, Director of the
24 Department of Toxic Substances Control ("Plaintiff" or the "DTSC"), and Defendant Ecology
25 Control Industries, Inc. ("Defendant" or "ECI") enter into this Stipulation for Entry of Final
26 Judgment ("Stipulation"), and agree as follows:
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1. **ECI Facility.**

ECI, a California corporation owns and operates a hazardous waste facility at 255 Parr Boulevard, Richmond, Contra Costa County ("Richmond Facility"), and had formerly operated a second hazardous waste facility in Fontana before its closure in 2008. At the Richmond Facility, ECI accepts for decontamination hazardous waste tanks that previously held petroleum products, as well as piping and ancillary equipment. ECI, as part of its operations at the Richmond Facility, stores hazardous waste tank bottom solids and sludges removed during the decontamination of the petroleum tanks. ECI also generates hazardous waste rinsewaters from the tank decontamination process.

2. **Investigation Activities.**

On or about September 8-9, 2008 (2008 Inspection Report), and September 30, October 1, 4, and 12, 2010, DTSC inspected ECI for compliance with the Hazardous Waste Control Law, Health and Safety Code §§ 25100 et seq. (the "HWCL"). DTSC alleged violations of the HWCL and the applicable regulations (Cal. Code Regs, tit. 22, Division 4.5, sections 66000 et seq.).

3. **Alleged Violations of Law.**

On November 19, 2010, DTSC filed a Complaint seeking, among other things, civil penalties against ECI pursuant to the HWCL based on the 2008 inspection of ECI's Richmond Facility. DTSC's complaint is attached as Exhibit A ("Complaint"). On February 23, 2011, DTSC issued ECI an inspection report (2010 Inspection Report) based on its 2010 inspection of the Richmond Facility. The 2010 Inspection Report alleges that ECI violated provisions of the HWCL and DTSC's regulations. Nothing herein shall inure to the benefit of any persons not parties to this Stipulation.

4. **Agreement to Settle Dispute.**

DTSC and ECI (the "Parties") enter into the Stipulation pursuant to a compromise and settlement. Each of the parties consent to the entry by the Superior Court of Contra Costa County ("Court") of the Final Judgment Pursuant to Stipulation in the substance and form attached hereto as Exhibit B ("Final Judgment"). The Stipulation and Final Judgment were negotiated and executed in good faith and at arm's length, by each of the parties, with their respective counsel, to

1 avoid expensive and protracted litigation regarding alleged violations of the Health & Safety
2 Code section 25100 et seq. and its implementing regulations.

3 5. **Jurisdiction and Venue.**

4 Jurisdiction exists over this matter and the Parties pursuant to Health & Safety Code
5 sections 25181, 25189, and 25189.2. Venue is proper pursuant to Health & Safety Code section
6 25183.

7 6. **Waiver of Hearing.**

8 ECI waives any right to a judicial hearing in this matter prior to the entry of the Stipulation
9 and Final Judgment.

10 7. **Matters Covered By This Stipulation for Entry of Final Judgment.**

11 7.1 This Stipulation is a final and binding resolution and settlement of all "Matters
12 Covered." As used in this Stipulation, "Matters Covered" means all claims, alleged violations, or
13 causes of action which DTSC alleged in the 2008 and 2010 Inspection Reports, the Complaint, or
14 which DTSC could have asserted against ECI based on the facts alleged in the 2008 and 2010
15 Inspection Reports or the Complaint, against ECI, its predecessors in interest, and its officers,
16 directors, shareholders, partners, employees, representatives, and agents up through October 12,
17 2010. The provisions of this paragraph become effective when the Final Judgment is entered and
18 ECI has made full payment of all amounts in paragraph 11. Nothing in the Final Judgment shall
19 constitute or be construed as a satisfaction or release from liability for any conditions or claims
20 arising as a result of past, current, or future operations of ECI, its predecessors in interest, and its
21 officers, directors, shareholders, partners, employees, representatives, and agents except for the
22 Matters Covered. DTSC reserves the right to initiate further actions as necessary to protect public
23 health or welfare or the environment on matters not within the scope of "Matters Covered",
24 notwithstanding ECI's compliance with the terms of the Final Judgment.

25 7.2 ECI agrees to not pursue any administrative or civil proceeding against the State of
26 California, DTSC, or any other governmental units of the State of California, or against their
27 officers, employees, representatives, agents or attorneys, for alleged actions or omissions against
28

1 ECI arising out of the Matters Covered, including any inspections, the Complaint, Stipulation, or
2 settlement of the Matters Covered.

3 7.3 Paragraph 7.1 does not limit the ability of DTSC to enforce the terms of this
4 Stipulation or Final Judgment.

5 8. **Application of Settlement.**

6 The provisions of the Final Judgment are applicable to ECI, its subsidiaries and divisions,
7 its officers and directors, its agents, employees, contractors, consultants, successors, assignees,
8 and representatives, and all persons, partners, corporations and successors thereto, or other
9 entities, acting by, through, under, or on behalf of ECI (collectively, "Enjoined Parties") with
10 respect to the Richmond Facility when the Final Judgment is entered.

11 9. **Schedule for Compliance for Permit Modification.**

12 a. ECI submitted a proposed permit modification to DTSC on August 30, 2011. Until
13 DTSC approves ECI's permit modification:

- 14 1. ECI shall comply with the terms and conditions of its existing hazardous waste
15 facility permit.
- 16 2. ECI shall respond to all DTSC correspondence within 30 days of receipt, or in
17 accordance with the time period specified in the correspondence.

18 b. ECI's proposed permit modification shall be developed in accordance with California
19 Code of Regulations, title 22, section 66270.42.5 and, as included by reference,
20 section 66270.42, and shall accurately reflect all current ECI operations and shall
21 include, but not be limited to, the following:

- 22 1. Revised Waste Analysis Plan that accurately reflects waste streams presently
23 received and generated by ECI, and includes any other proposed adjustments to
24 the approved waste analysis plan;
- 25 2. Removal of reference to Bin Storage Area 3. Bin Storage Area 3 was never
26 constructed and needs to be removed from the facility's hazardous waste
27 facility permit.

- 1 3. Revised Closure Plan and Closure Cost Estimate to reflect all proposed
2 modifications to the facility operations, including but not limited to the removal
3 of Bin Storage Area 3.
- 4 c. Within 30 days of receiving notice of an approved permit modification, ECI shall do
5 the following:
- 6 1. Modify the facility training plan to reflect all approved modifications made to
7 the facility's hazardous waste facility permit;
- 8 2. Modify the facility inspection schedule and inspection log to reflect all
9 approved modifications made to the facility's hazardous waste facility permit;
- 10 3. ECI shall review and modify as needed the facility's contingency plan to reflect
11 all approved modifications made to the facility's hazardous waste facility
12 permit.
- 13 4. ECI shall increase as necessary, the value of the financial assurance mechanism
14 to reflect any changes made to the closure plan and cost estimate and submit
15 appropriate documentation to DTSC for review and approval.
- 16 d. Within 60 days after notification of the approved permit modification. ECI shall
17 provide documentation of training to DTSC on including, but not limited to: the
18 training syllabus of information presented which reflects changes to ECI's permit
19 and the employee sign-in sheet containing the employee name, signature, and date
20 of training.
- 21 e. The time periods set forth in 9(c) and 9(d) may be extended by DTSC in its normal
22 course of business upon reasonable advance written application by ECI.

23 10. **Ability to Pay Claim.**

24 ECI asserted and reaffirms by signing below that it does not have the ability to pay the
25 penalties DTSC was seeking based on the violations alleged in the Complaint and in the 2010
26 inspection report. DTSC requested that ECI provide documents to substantiate its inability to pay
27 claim. Relying on the information provided by ECI as true, DTSC evaluated ECI's inability to
28 pay claim and determined that ECI could pay a total of \$50,000 in penalties for violations in this

1 case and in the 2010 inspection report. The monetary settlement in Paragraph 11 below reflects
2 ECI's inability to pay claim, and reflects neither the merits of DTSC's allegations nor the
3 seriousness of the violations alleged in the Complaint and the 2010 Inspection Report.

4 11. Monetary Settlement.

5 ECI shall pay DTSC the sum of Fifty Thousand Dollars (\$50,000), in settlement of DTSC's
6 claims, as follows:

7 (a) The sum of \$50,000, as and for civil penalties, shall be made in five payments of
8 \$10,000 each. The first payment of \$10,000 shall be received by DTSC within fifteen (15) days
9 of entry of Final Judgment. Each of the four subsequent payments will be due each following
10 month on or before the fifteenth (15th) of every month until the \$50,000 is paid in full.

11 (b) Payment of the \$50,000 to DTSC will be guaranteed by ECI through a personal
12 guarantee from Mr. Ron Flury, President of ECI. If ECI fails to pay any portion of the \$50,000
13 owed to DTSC, Mr. Flury will be personally liable under this Final Judgment for the amount
14 owing and a \$10,000 penalty to DTSC without DTSC having to file any pleading(s) to name or
15 otherwise include or bind Mr. Flury as a defendant in this matter.

16 (c) These payments under the Final Judgment shall be made by cashier's check, payable
17 to the Department of Toxic Substances Control, and sent by overnight mail to:

18 Cashier
19 Accounting Office, MS-21A
20 Department of Toxic Substances Control
21 P.O. Box 806
22 Sacramento, CA 95812-0806.

23 The checks shall bear on their face the phrase "DTSC # HWCA20081858-ECI."

24 A photocopy of all checks and payments made pursuant to the Final Judgment including
25 overnight mail tracking information shall be sent by e-mail or first class U.S. mail, at the same
26 time, to:

26 Patti Barni, Section Chief
27 State Oversight and Enforcement Branch
28 Enforcement and Emergency Response Program
Department of Toxic Substances Control

1 700 Heinz Avenue
2 Berkeley, California 94710
3 Fax: 510 540-3891
4 Email: pbarni@dtsc.ca.gov

5 Vivian Murai, Senior Staff Counsel
6 Office of Legal Counsel, MS-23A
7 Department of Toxic Substances Control
8 1001 I Street
9 P.O. Box 806
10 Sacramento, CA 95812-0806
11 E-mail: vmurai@dtsc.ca.gov

12 and to

13 Rose B. Fua
14 Deputy Attorney General
15 State of California Department of Justice
16 Attorney General's Office
17 1515 Clay Street, 20th Floor
18 Oakland, CA 94612
19 E-mail: rose.fua@doj.ca.gov

20 (d) If a payment is not received when due, DTSC shall notify ECI in writing, via email or
21 telefax, with a simultaneous copy to counsel for ECI. ECI will be considered in default if the
22 payment is not received by DTSC within five (5) working days of DTSC's written notice. If ECI
23 fails to make payment as provided for hereinabove and fails to cure any payment default, Ronald
24 Flury will become personally and individually liable for any unpaid amounts owing under
25 paragraph 11. In addition, Ronald Flury will be liable for a penalty of \$10,000 and post judgment
26 interest as provided in Code of Civil Procedure 685.010 (10%) from the date of default, and will
27 be obligated to pay costs incurred by the DTSC in enforcing the money judgment against ECI
28 and/or Ronald Flury, individually, in this matter, including, but not limited to reasonable
attorney's fees.

12. Notice.

All submissions and notices required by the Stipulation and Final Judgment shall be in writing, and shall be sent to:

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DTSC:
Patti Barni, Section Chief
State Oversight and Enforcement Branch
Enforcement and Emergency Response Program
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710
Fax: 510 540-3891
Email: Pbarni@dtsc.ca.gov

ECI:
Ronald Flury, President
Ecology Control Industries
20846 Normandie Avenue
Torrance, California 90502
Fax: (310) 354-6673
Email: rflury@ecologycontrol.com
With simultaneous copy to counsel for ECI

Peter A. Goldenring, Esq.
Goldenring & Prosser, A PLC
6050 Seahawk Street
Ventura, CA 93003
Fax: (805) 642-6702
Email: goldenringlaw@aol.com

All approvals and decisions regarding any matter requiring approvals or decisions under the terms of the Final Judgment shall be communicated in writing. Each Party may change its respective representative(s) for purposes of notice by providing the name and address of the new representative, in writing, to all Parties. Any such change will be effective on the date given in the notice or 7 calendar days after the date of the written notice.

No advice, guidance, suggestions, or comments by employees or officials of DTSC regarding submittals or notices shall be construed to relieve ECI of its obligation to obtain any final written approvals required by the Final Judgment.

13. DTSC Not Liable.

Neither DTSC nor the State of California or any of its agencies, boards, or departments (collectively, "State Entities") shall be liable for any injury or damage to persons or property resulting from acts or omissions by ECI, its directors, officers, employees, parent

1 companies, affiliates, agents, representatives, or contractors in carrying out activities pursuant to
2 the Final Judgment, nor shall DTSC or any of the State Entities be held as a party to or guarantor
3 of any contract entered into by ECI, its directors, officers, employees, agents, representatives,
4 parent companies, affiliates, or contractors in carrying out activities required pursuant to the Final
5 Judgment.

6 14. **Compliance with Applicable Law.**

7 ECI shall implement the terms of the Final Judgment in compliance with all local, State,
8 and federal requirements, including, but not limited to, requirements to obtain permits and to
9 assure worker safety.

10 15. **Access.**

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

13 16. **Sampling, Data, and Document Availability.**

14 ECI shall permit DTSC or its authorized representatives to inspect and copy all sampling,
15 testing, monitoring, and other data generated by ECI or on ECI's behalf in any way pertaining to
16 DTSC's regulatory authority under the Health & Safety Code. Retention times for the above
17 records, and extensions thereof, shall be as specified in the applicable statutes and regulations.

18 17. **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 may not be amended or supplemented except as provided
24 for in the Stipulation.

25 18. **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 29. **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 30. **Parties Bound.**

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

11 31. **Effect of Final Judgment.**

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

16 32. **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 33. **Governing Law.**

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

21 34. **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 hereof. Entry is authorized immediately
25 upon filing.

26 35. **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. Facsimile signature and PDF signatures shall be deemed original for the purposes of
2 this Stipulation.

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4 **IT IS SO STIPULATED:**

5 Dated: January __, 2012

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

6
7 By: SUE LANEY, ACTING DEPUTY DIRECTOR
8 ENFORCEMENT AND EMERGENCY RESPONSE
9 PROGRAM

10 Dated: January 26, 2012

ECOLOGY CONTROL INDUSTRIES, INC.

11 Original signed by Ronald Flury

12 By: ~~RONALD FLURY, President~~

13 Original signed by Ronald Flury

14 By: ~~RONALD FLURY, individually, as Guarantor of~~
15 Paragraph 11

16 **APPROVED AS TO FORM:**

17 Dated: January __, 2012

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

18
19
20
21 By: ROSE B. FUA
22 Deputy Attorney General
23 *Attorneys for Plaintiff*

24 Dated: January 7, 2012

(ATTORNEY'S FOR DEFENDANTS)

25 Original signed by Peter Goldenring

26 By: PETER GOLDENRING
27 *Attorneys for Defendant ECI*

28 OK2009604672
90224618.doc

1 instrument. Facsimile signature and PDF signatures shall be deemed original for the purposes of
2 this Stipulation.

4 **IT IS SO STIPULATED:**

5 Dated: January 10, 2012
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DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Original signed by Sue Laney

By: SUE LANEY, ACTING DEPUTY DIRECTOR
ENFORCEMENT AND EMERGENCY RESPONSE
PROGRAM

9
10 Dated: January __, 2012

ECOLOGY CONTROL INDUSTRIES, INC.

12 By: RONALD FLURY, President

14 By: RONALD FLURY, individually, as Guarantor of
15 Paragraph 11

16 **APPROVED AS TO FORM:**

17 Dated: ~~January~~ __, 2012
February 14, 2012

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

Original signed by Rose B. Fua

20 By: ROSE B. FUA
21 Deputy Attorney General
22 *Attorneys for Plaintiff*

23 Dated: January __, 2012

(ATTORNEY'S FOR DEFENDANTS)

25
26 By: PETER GOLDENRING
Attorneys for Defendant ECI

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EXHIBIT A

COPY

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1 EDMUND G. BROWN JR.
 Attorney General of California
 2 KEN ALEX
 Senior Assistant Attorney General
 3 MARGARITA PADILLA
 Supervising Deputy Attorney General
 4 ROSE B. FUA
 Deputy Attorney General
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 6 P.O. Box 70550
 Oakland, CA 94612-0550
 7 Telephone: (510) 622-2126
 Fax: (510) 622-2270
 8 E-mail: Rose.Fua@doj.ca.gov

9 Attorneys for Plaintiff
 People of the State of California ex. rel. Maziar
 10 Movassaghi, Acting Director, California
 Department of Toxic Substances Control
 11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 COUNTY OF CONTRA COSTA
 14

15 **PEOPLE OF THE STATE OF**
 16 **CALIFORNIA ex rel. Maziar Movassaghi,**
 17 **Acting Director, CALIFORNIA**
 18 **DEPARTMENT OF TOXIC**
 19 **SUBSTANCES CONTROL,**

Plaintiff,

v.

20 **ECOLOGY CONTROL INDUSTRIES,**
 21 **INC., a California Corporation and Does 1**
 22 **through 20 inclusive,**

Defendants.

Case No. **C-10-03366**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Calif. Health & Saf. Code, §§ 25181,
28184, 25189 and 25189.2)

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1 Plaintiff, People of the State of California ex rel. Maziar Movassaghi, Acting Director of
2 the Department of Toxic Substances Control ("DTSC"), alleges as follows:

3 **STATEMENT OF THE CASE**

4 1. Defendant Ecology Control Industries, Inc. ("ECI"), a California corporation owns
5 and operates several hazardous waste facilities including one at 255 Parr Boulevard, Richmond,
6 Contra Costa County ("Richmond Facility"). At the Richmond Facility, ECI and Does 1-20
7 accept for decontamination hazardous waste tanks that previously held petroleum products, as
8 well as piping and ancillary equipment. ECI and Does 1-20 also, as part of their operations, store
9 hazardous waste tank bottom solids and sludges removed during the decontamination of the
10 petroleum tanks. ECI and Does 1-20 also generate hazardous waste rinsewaters from the tank
11 decontamination process.

12 2. While conducting their operations, ECI and Does 1-20 violated numerous provisions
13 of the California Hazardous Waste Control Law, Health and Safety Code sections 25100 *et seq.*
14 (the "HWCL") and its implementing regulations, including, but not limited to, failing to follow
15 ECI's Waste Analysis Plan, modifying its hazardous waste facility operations without DTSC
16 approval, failing to have and/or make available various required operating documents at the
17 Richmond Facility, including ECI's hazardous waste facility permit and operating plans, and
18 failing to meet ECI's financial responsibility requirements for third party liability.

19 3. DTSC seeks civil penalties from, and injunctive relief against, ECI and Does 1-20,
20 and each of them, for violations of the HWCL and of its implementing regulations.

21 **PLAINTIFF**

22 4. DTSC is a public agency of the State of California. DTSC is the state agency that
23 administers and enforces the HWCL.

24 5. Maziar Movassaghi is the Acting Director of DTSC.

25 6. Pursuant to Health & Safety Code sections 25181 and 25182, the Attorney General of
26 the State of California is authorized, at the request of DTSC, to commence an action in the name
27 of the People for civil penalties and injunctive relief under the HWCL. DTSC has requested the
28 Attorney General bring this civil enforcement action.

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DEFENDANTS

7. ECI is a "person," as defined at Health and Safety Code section 25118. ECI is an "owner" and/or "operator," as defined at California Code of Regulations, Title 22, section 66260.10. ECI operates or operated at least three facilities in California: the Richmond Facility, the Fontana Facility, located at 13738 Slover Ave., Fontana, California and the Torrance Facility, located at 20846 Normandie Ave., Torrance, California.

8. When reference is made in this complaint to any act of ECI, such allegation shall mean that ECI did such acts, or employees or representatives of ECI did or authorized such acts, or recklessly failed to adequately or properly supervise, control, or direct ECI's employees or representatives while engaged in the management, direction, operation or control of the affairs of ECI, and that they did so while acting within the course and scope of their employment or agency for ECI.

9. Defendants Does 1-20 are the officers, agents, employees, servants or others acting in interest or concert with ECI. DTSC is ignorant of the true names of the defendants sued herein as Does 1-20. When the names of these defendants have been ascertained, DTSC will seek leave to amend the complaint to substitute the true name of each Doe defendant in place of the fictitious name. ECI and Does 1-20 are collectively referred to as Defendants.

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JURISDICTION AND VENUE

10. This court has jurisdiction pursuant to California Constitution, article VI, section 10 and Health & Safety Code section 25181. Venue in this court is proper under Health and Safety Code section 25183. The violations of law principally took place at ECI's Richmond Facility in Richmond, Contra Costa County, California.

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STATUTORY AND REGULATORY BACKGROUND

11. Through the HWCL, the California Legislature has enacted a comprehensive – "cradle to grave" – statutory and regulatory framework for the generation, management, treatment, transport, storage, and disposal of hazardous wastes. The HWCL's implementing regulations specify requirements for the tracking, storage, treatment, and disposal of hazardous waste to protect the public and the environment from the risks posed by improper management of

1 hazardous wastes. (Cal. Code Regs., tit. 22, §§ 66260.1 *et seq.*) The HWCL also requires that
2 facilities which handle hazardous waste provide financial assurances for third party liability.
3 (Cal. Code Regs., tit. 22, § 66264.147.)

4 12. ECI applied to DTSC for, and DTSC issued to ECI, a Hazardous Waste Facility
5 Series "A" Standardized Permit ("Permit") on April 6, 2007, for hazardous waste activities at
6 ECI's Richmond Facility.

7 ENFORCEMENT AUTHORITY UNDER THE HWCL

8 13. Pursuant to the provisions of the HWCL, the Court may impose civil penalties under
9 two distinct and alternative provisions. Section 25189 of the HWCL creates liability for any
10 negligent or intentional violation of the HWCL or any permit, rule, regulation, standard, or
11 requirement issued or adopted thereunder. (Health & Saf. Code, § 25189.) Section 25189.2 of
12 the HWCL is a strict liability provision, which creates liability for any violation of the HWCL or
13 any permit, rule, regulation, standard, or requirement issued or adopted thereunder. (Health &
14 Saf. Code, § 25189.2(b).)

15 14. Sections 25181 and 25184 of the HWCL authorize and direct the Court to enjoin,
16 *inter alia*, any ongoing or potential violation(s) of the HWCL, its implementing regulations and
17 permits issued by DTSC.

18 15. Section 25181 provides that when DTSC determines that any person has engaged in,
19 is engaged in, or is about to engage in any acts or practices which constitute or will constitute a
20 violation of any provision of the HWCL or any rule or requirement issued or promulgated
21 thereunder, and when requested by DTSC, the Attorney General may make application to the
22 superior court for an order enjoining such acts or practices, or for an order directing compliance,
23 and upon a showing by DTSC that such person has engaged in or is about to engage in any such
24 acts or practices, a permanent or temporary injunction, restraining order, or other order may be
25 granted.

26 16. Section 25184 provides that in civil actions brought pursuant to the HWCL in which
27 an injunction or temporary restraining order is sought:

28 "...it shall not be necessary to allege or prove at any stage of the proceeding that

1 irreparable damage will occur should the temporary restraining order, preliminary
2 injunction, or permanent injunction not be issued; or that the remedy at law is
3 inadequate, and the temporary restraining order, preliminary injunction, or permanent
4 injunction shall issue without such allegations and without such proof.”

5 GENERAL ALLEGATIONS

6 17. ECI has a history of prior violations of the HWCL at its various facilities in
7 California, some of which are recurring violations in this action. ECI has entered into Consent
8 Orders with DTSC to resolve the prior violations:

9 a) On September 21, 2001, ECI entered into a Consent Order, DTSC Docket HWCA
10 00/01-2002, with DTSC to settle nine operating violations of the HWCL at the Richmond
11 Facility, including but not limited to, failure to follow the financial responsibility
12 regulations.

13 b) On December 26, 2003, ECI entered into a Consent Order Agreement, DTSC
14 Docket HWCA 2003-0268, with DTSC to settle previous HWCL violations in connection
15 with ECI's operations at the now closed Fontana Facility, including but not limited to,
16 failure to conduct annual review training.

17 c) On May 15, 2006, ECI entered into a Consent Order Agreement, DTSC Docket
18 HWCA 20030381, with DTSC to settle previous operating violations of the HWCL at the
19 Richmond Facility including storing hazardous waste in unauthorized areas, and hazardous
20 waste transportation violations of the HWCL at its Torrance Facility.

21 d) On or about July 19, 2006, DTSC sent ECI a financial responsibility review
22 findings report stating that violations of the HWCL and its implementing regulations for
23 financial responsibility were found for both ECI's Richmond Facility and Fontana Facility.

24 e) On or about January 30, 2007 and March 16, 2009, DTSC sent ECI a financial
25 responsibility review findings report finding a new violation of the HWCL and its
26 implementing regulations for financial responsibility, and noting that prior violations have
27 not been corrected at ECI's Richmond Facility and at the Fontana Facility.

28 18. In order to conduct its operations at the Richmond Facility, ECI prepared a hazardous
waste facility permit application for the Richmond Facility, in which ECI proposed its own

1 operating terms and conditions for that facility, and submitted it to DTSC for approval. DTSC
2 reviewed and approved a Hazardous Waste Facility Series "A" Standardized Permit (Permit) for
3 ECI's Richmond Facility on April 6, 2007.

4 19. Health and Safety Code section 25202(a), requires ECI, as a holder of a hazardous
5 waste facility permit, to comply with the HWCL, its implementing regulations, and the terms of
6 its Permit.

7 20. California Code of Regulations, Title 22, section 66270.30(a) requires ECI to comply
8 with all conditions of its Permit.

9 21. ECI's Permit, Part III, paragraph 2(a) requires ECI to comply with its terms, the
10 HWCL, and its implementing regulations.

11 22. On or about September 9-10, 2008, DTSC inspected ECI's Richmond Facility ("2008
12 DTSC Inspection") for compliance with the HWCL, its implementing regulations and the terms
13 of ECI's Permit. DTSC's inspector discovered violations of the HWCL, the implementing
14 regulations and the ECI Permit.

15 23. On September 18, 2008, DTSC's inspector provided ECI with a summary of
16 violations ("2008 Summary of Violations" or "SOV").

17 24. On or about January 13, 2009, DTSC sent ECI an inspection report indicating its
18 findings for the 2008 DTSC inspection ("DTSC Inspection Report"). The DTSC Inspection
19 Report cited ECI for violations of the HWCL, the implementing regulations and the Permit for
20 the ECI Richmond Facility.

21 **SPECIFIC ALLEGATIONS**

22 **FIRST CAUSE OF ACTION**

23 (ECI's and Does 1-20 Failure to Follow Approved Waste Analysis Plan)
24 (Cal. Code Regs., tit. 22 § 66264.13(b), Permit, Part V.1(h) and Section III)

25 25. Paragraphs 1 through 24 are realleged as if fully set forth herein.

26 26. California Code of Regulations, Title 22, section 66264.13(b) requires ECI to develop
27 and follow a written waste analysis plan ("WAP") for a detailed chemical and physical analysis of
28 a representative sample of a waste before the waste can be transferred, stored, treated, or

1 disposed. This regulation further requires that the WAP be kept at the Richmond Facility.

2 27. As of April 6, 2007, Section III of the Permit required ECI to collect baseline samples
3 of select waste streams and to collect annual samples thereafter. ECI never collected the required
4 baseline samples or annual samples of select waste streams until after the 2008 DTSC inspection
5 of the ECI Richmond Facility. Defendants violated California Code of Regulations, Title 22,
6 section 66264.13(b) and Permit, Part V.1(h) and Section III of the WAP.

7 28. Pursuant to section 25189(b), or section 25189.2(b), DTSC is entitled to penalties
8 against Defendants, and each of them, for said violations of up to \$25,000 for each day during
9 which each violation occurred or continued.

10 SECOND CAUSE OF ACTION

11 (ECI and Does 1-20 Failure to Provide and Document Employee Training)
12 (Cal. Code Regs., tit. 22, § 66264.16(a)(1) and (c) and (d)(4))

13 29. Paragraphs 1 through 28 are realleged as if fully set forth herein.

14 30. California Code of Regulations, Title 22, section 66264.16 (a)(1) requires ECI to
15 ensure that its employees who handle hazardous waste complete a program of training that
16 teaches each employee to perform his/her duties in a way that ensures the Richmond Facility's
17 compliance with the HWCL and its implementing regulations. That regulation also requires
18 facility personnel to take part in annual review of initial training and for ECI to retain the
19 documentation of the required employee training at the Richmond Facility for a specified period
20 of time showing that such training is actually provided to, and completed by, the employees. (See
21 Cal. Code Regs., tit. 22, § 66264.16(c) & (d)(4).)

22 31. On and prior to September 9, 2008, ECI violated California Code of Regulations,
23 Title 22, section 66264.16 (a)(1) and (c) by, *inter alia*, failing to provide annual training for ECI's
24 employees at the Richmond Facility as required by this regulation. ECI failed to train employees
25 at the Richmond Facility on:

26 a) maintenance, repair and replacement of alarms and other safety and emergency
27 equipment;

28 b) emergency procedures in the event of explosions, spills, power failure or

1 earthquake;

2 c) emergency equipment other than fire extinguishers.

3 32. On and prior to September 9, 2008, ECI violated California Code of Regulations,
4 Title 22, section 66264.16 (a)(1) and (d) (4) by, *inter alia*, failing to provide documentation for
5 annual training for employees at the Richmond Facility with hazardous waste handling
6 responsibilities.

7 33. Pursuant to section 25189 (b), or section 25189.2(b), DTSC is entitled to penalties for
8 said violations of up to \$25,000 against Defendants, and each of them, for each day during which
9 each violation occurred or continued.

10 **THIRD CAUSE OF ACTION**

11 (ECI and Does 1-20 Failure to Have Necessary Operating Plans at the Facility)
12 (Cal. Code Regs., tit. 22, § 66270.30(a) and Permit, Part V.1))

13 34. Paragraphs 1 through 33 are realleged as if fully set forth herein.

14 35. On and prior to September 9, 2008, ECI did not have on-site any of the following
15 plans that are required pursuant to the HWCL to operate the Richmond Facility: a) the Permit
16 (including the approved Standardized Permit Application/operation plan); b) documents certified
17 for use by ECI and required to be maintained at the facility, including Facility Management
18 Practices, such as:

- 19 • Inspection Plan/Schedule
- 20 • Security Plan
- 21 • Manifest Procedures
- 22 • Reporting Plan
- 23 • Personnel Training
- 24 • Waste Analysis Plan

25 36. ECI's failure to have the above listed documents at the Richmond Facility constitutes
26 a violation of California Code of Regulations, Title 22, section 66270.30(a) and ECI's Permit,
27 Part V.1.

28 37. Pursuant to section 25189 (b), or section 25189.2(b), DTSC is entitled to penalties for

1 said violations of up to \$25,000 against Defendants, and each of them, for each day during which
2 each violation occurred or continued.

3 **FOURTH CAUSE OF ACTION**

4 (ECI and Does 1-20 Failure to Demonstrate Proof of Financial Responsibility to
5 Third Parties for Sudden Accidental Occurrences)
(Cal. Code Regs., tit. 22, §§ 66264.147(a))

6 38. Paragraphs 1 through 37 are realleged as if fully set forth herein.

7 39. California Code of Regulations, Title 22, section § 66264.147 (a) requires that ECI
8 demonstrate to DTSC that it has liability coverage (financial responsibility) for bodily injury and
9 property damage to third parties caused by sudden accidental occurrences arising from operations
10 at the Richmond Facility and at the Fontana Facility. Under the financial responsibility
11 regulations, owners/operators may select the mechanism for providing this coverage from the
12 options provided by the regulation. ECI chose insurance as the mechanism to provide this
13 coverage for the Richmond Facility and the Fontana Facility. To demonstrate compliance using
14 insurance, the financial responsibility regulations require ECI to submit proof of insurance in the
15 form of a liability certificate of insurance or liability endorsement.

16 40. On July 19, 2006, DTSC's Financial Responsibility Review Findings Report
17 informed ECI that it failed to meet the requirements of California Code of Regulations, Title 22,
18 section 66264.147(a) because the liability certificate of insurance submitted by ECI to DTSC for
19 the Fontana Facility did not have the language required by the regulations. DTSC also informed
20 ECI that it should make corrections to the liability certificate of insurance for the Richmond
21 Facility.

22 41. Between July 2006 and the date this complaint was filed, DTSC repeatedly informed
23 ECI that it needed to correct the violations of the requirements of California Code of Regulations,
24 Title 22, section 66264.147(a).

25 42. In 2010, ECI submitted new documents to DTSC as liability certificates of insurance
26 for the years 2002 to 2010. These certificates failed to meet the requirements of the regulations
27 because:

28 a. none of them were signed by an authorized representative of the insurer and therefore

1 were invalid.

2 b. The certificates for the years 2002, 2003, 2004, 2005, 2006, and 2007 were also
3 inadequate because they covered either the Richmond Facility or the Fontana Facility, but not
4 both facilities. ECI has not submitted certificates for the Fontana Facility for years 2004, 2005,
5 2006 and 2007 and has not submitted a certificate for the Richmond Facility for the year 2003.

6 c. The certificate covering the period January 31, 2002 to March 31, 2003 was also
7 inadequate because the annual aggregate amount was only for one million dollars and not the
8 required two million dollars.

9 43. Despite DTSC's repeated requests to ECI for compliance, ECI remains in violation of
10 California Code of Regulations, Title 22, section 66264.147(a).

11 44. Pursuant to section 25189 (b), or section 25189.2(b), DTSC is entitled to penalties for
12 said violations of up to \$25,000 against Defendants, and each of them, for each day during which
13 each violation occurred or continued.

14 **FIFTH CAUSE OF ACTION**

15 (ECI and Does 1-20 Failure to Provide Insurance Policies Requested by DTSC)
16 (Cal. Code Regs., tit. 22, § 66264.147(a)(1)(B))

17 45. Paragraphs 1 through 44 are realleged as if fully set forth herein.

18 46. California Code of Regulations, Title 22, section § 66264.147 (a) (1)(B) requires
19 owners/operators to provide copies of the insurance policies for bodily injury and property
20 damage to third parties upon request by DTSC.

21 47. On November 29, 2007, DTSC requested that ECI provide insurance policies from
22 January 31, 2002 to December 9, 2007 to DTSC. ECI provided two policies that covered
23 December 9, 2005 through December 9, 2007. ECI provided no other policies until June 2010
24 when it provided to DTSC three additional policies for January 31, 2002 through January 31,
25 2003, March 31, 2004 through March 31, 2005, and December 9, 2004 through December 9,
26 2005. ECI also informed DTSC that it was unlikely to find the last outstanding policy issued by
27 Gulf Insurance for March 31, 2003 through March 31, 2004. ECI violated California Code of
28 Regulations, Title 22, section § 66264.147 (a) (1)(B) by failing to provide three of the requested

1 insurance policies to DTSC in a timely manner and by failing to provide the Gulf policy at all.

2 48. Pursuant to section 25189 (b), or section 25189.2(b), DTSC is entitled to penalties for
3 said violations of up to \$25,000 against Defendants, and each of them, for each day during which
4 each violation occurred or continued.

5 **SIXTH CAUSE OF ACTION**

6 (ECI and Does 1-20 Failure to Provide Adequate Insurance for Third Party Liability)
7 (Cal. Code Regs., tit. 22, § 66264.147(a) and 66264.147(a)(1)(B))

8 49. Paragraphs 1 through 48 are realleged as if fully set forth herein.

9 50. California Code of Regulations, Title 22, section 66264.147 (a) requires
10 owner/operators to have and maintain liability coverage for sudden accidental occurrences. ECI
11 was required to have such insurance coverage for the Richmond Facility and the Fontana Facility
12 in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million,
13 exclusive of legal defense costs. This regulation also requires that insurance policies not contain
14 exclusions, conditions, and limitations that conflict with the regulations. The insurance policies
15 submitted by ECI violated Title 22, section 66264.147 (a) and (a)(1)(B) because they failed to
16 meet the requirements of 66264.147(a) and (a)(1)(B):

17 a. On June 3, 2010, DTSC received two policies issued by American International
18 Specialty Lines Insurance Company ("AISLIC policies") which covered January 31, 2002 to
19 January 31, 2003 and March 31, 2004 to March 31, 2005. Both AISLIC policies failed to meet
20 the requirements of California Code of Regulations, Title 22, section 66264.147 (a) and (a)(1)(B)
21 because they effectively excluded coverage for the "actual, alleged, or threatened discharge,
22 dispersal, seepage, migration, release or escape of pollutants at any time". In addition, the policy
23 for January 31, 2002 to January 31, 2003 also failed to meet the regulatory requirements because
24 the annual aggregate coverage was \$1 million, and not the required \$2 million.

25 b. The AISLIC policies also failed to meet the requirements of California Code of
26 Regulations, Title 22, section 66264.147 (a) and (a)(1)(B) because they included provisions not
27 allowed under the regulations, such as the ability to cancel the policies without 60 days prior
28 written notice to DTSC and the right to refuse to pay the deductible amount.

1 c. ECI submitted to DTSC five insurance policies issued by Zurich/Steadfast ("Steadfast
2 policies") which covered the five year period from December 9, 2004 to December 9, 2009. The
3 Steadfast policies failed to meet the requirements of California Code of Regulations, Title 22,
4 section 66264.147 (a) and (a)(1)(B) because they excluded coverage for hazardous waste
5 treatment and storage and for claims based upon or arising out of bankruptcy or insolvency of the
6 insured.

7 d. The Steadfast policies also failed to meet the requirements of California Code of
8 Regulations, Title 22, section 66264.147 (a) and (a)(1)(B) because they included provisions not
9 allowed under the regulations such as: the ability to cancel the policies without 60 days prior
10 written notice to DTSC, the right to refuse to pay the deductible amount, and the reduction of the
11 amount of coverage by "claim expenses," which includes legal and other defense costs.

12 e. ECI also submitted to DTSC a policy issued from Chartis which covers the period
13 from December 9, 2009 to December 9, 2010 ("Chartis Policy"). The Chartis Policy also fails to
14 meet the requirements of California Code of Regulations, Title 22, section 66264.147 (a) and
15 (a)(1)(B) because it contains provisions allowing Chartis to cancel or refuse to renew the policy
16 without 60 days prior written notice to DTSC, to reduce the amount of coverage available by
17 claim expenses, including legal, and other defense costs and to refuse to pay the deductible
18 amount.

19 51. Pursuant to section 25189 (b), or section 25189.2 (b), DTSC is entitled to penalties
20 for said violations of up to \$25,000 against Defendants, and each of them, for each day during
21 which each violation occurred or continued.

22 SEVENTH CAUSE OF ACTION

23 (ECI and Does 1-20 Failure to Have Required Operating Records at the Richmond Facility)
24 (Cal. Code Regs., tit. 22, § 66264.73(a), (b) (1), (2), (8) and (9)
and Permit, Parts III.4 and V.1.(f and i))

25 52. Paragraphs 1 through 51 are realleged as if fully set forth herein.

26 53. The Permit requires that ECI maintain copies of operating records at the Richmond
27 Facility. Since on and prior to September 9, 2008, ECI failed to have copies of some required
28 operating records at the Richmond Facility, including, but not limited to: a) all completed Tank

1 Receiving/Discrepancy Forms and Tank tracking log sheet; b) closure cost estimates; c) annual
2 reports for the years 2005, 2006, and 2007; and d) a waste minimization certification (all of which
3 are collectively referred to as "Operating Records") as required by the Permit, Part V.1.(i).

4 54. ECI violated California Code of Regulations, Title 22, sections 66264.73(a)(b) (1),
5 (2), (8), and (9) by not having each of the Operating Records on site at the Richmond Facility as
6 required by this regulation.

7 55. ECI violated its Permit, Part V.1.(i) by not having each of the Operating Records on
8 site at the Richmond Facility.

9 56. Pursuant to section 25189 (b), or section 25189.2(b), DTSC is entitled to penalties
10 for said violations of up to \$25,000 against Defendants, and each of them, for each day during
11 which each violation occurred or continued.

12 **EIGHTH CAUSE OF ACTION**

13 (ECI and Does 1-20 Failure to Accurately Record Observations and
14 Actual Conditions in Inspection Log)
(Cal. Code Regs., tit. 22, § 66264.15(d))

15 57. Paragraphs 1 through 56 are realleged as if fully set forth herein.

16 58. California Code of Regulations, Title 22, section 66264.15(d) requires ECI to record
17 its inspections of its facility in an inspection log or summary.

18 59. Since on or before September 9, 2008, and continuing thereafter, ECI failed to record
19 the appearance of fine cracks that were visible in its Tank Staging Area and the existence of a bin
20 on its Tank Pad in violation of California Code of Regulations, Title 22, section 66264.15(d).

21 60. Pursuant to section 25189(b), or section 25189.2(b), DTSC is entitled to penalties for
22 said violations of up to \$25,000 against Defendants, and each of them, for each day during which
23 each violation occurred or continued.

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1 **NINTH CAUSE OF ACTION**

2 (ECI and Does 1-20 Exceeding Permitted Tank Capacity)
3 (Cal. Code Regs., tit. 22, § 66270.30(a) and Permit, Part IV)

4 61. Paragraphs 1 through 60 are realleged as if fully set forth herein.

5 62. California Code of Regulations, Title 22, section 66270.30(a) requires ECI to
6 maintain and operate its tank storage and design capacity at the levels authorized by its Permit.
7 The Permit, Part IV, authorizes the facility to store up to 4,900 gallons in a rinsate tank whose
8 design capacity is 5,200 gallons.

9 63. ECI exceeded the permitted storage capacity of 4,900 gallons for a rinsate tank on at
10 least five occasions in May 2008 at the Richmond Facility. ECI exceeded the design capacity of
11 the 5,200-gallon rinsate tank at the Richmond Facility on at least one occasion in May 2008.

12 64. Pursuant to section 25189(b), or section 25189.2(b), DTSC is entitled to penalties for
13 said violations of up to \$25,000 against Defendants, and each of them, for each day during which
14 each violation occurred or continued.

15 **TENTH CAUSE OF ACTION**

16 (ECI and Does 1-20 Inadequate Inspection Schedule)
17 (Cal. Code Regs., tit. 22, § 66264.15(b)(1) and (3))

18 65. Paragraphs 1 through 64 are realleged as if fully set forth herein.

19 66. California Code of Regulations, Title 22, section 66264.15 (b)(1) and (3) require ECI
20 to develop and follow a written schedule for inspecting monitoring equipment, safety and
21 emergency equipment, security devices, and operating and structural equipment. This regulation
22 further requires that ECI's inspection schedule identify the types of problems that facility staff
23 should check for routinely.

24 67. Since on or about September 9, 2008, ECI's inspection schedule for the Richmond
25 Facility did not include inspection of, *inter alia*, the specific secondary containment areas
26 identified in the Permit, waste bins, drum storage areas, storage lockers, and emergency
27 equipment. ECI's inspection schedule for the Richmond Facility also failed to include specific
28 problems to identify during an inspection, such as improper location of the storage bins,

1 hazardous waste tanks containing wastes in excess of the permitted capacity, amount of debris
2 and/or liquid in sumps and sump clean out when a specified level in the sump is found, drum
3 storage area capacity, adequacy of aisle space as specified in the various locations in the permit,
4 drum and bin labeling, and cracks in the tank pads.

5 68. Pursuant to section 25189(b), or section 25189.2(b), DTSC is entitled to penalties for
6 said violations of up to \$25,000 against Defendants, and each of them, for each day during which
7 each violation occurred or continued.

8 **ELEVENTH CAUSE OF ACTION**

9 (ECI and Does 1-20 Acceptance of Unauthorized Waste)
10 (Cal. Code Regs., tit. 22, §§ 66270.30(a) and Permit, Part IV)

11 69. Paragraphs 1 through 68 are realleged as if fully set forth herein.

12 70. California Code of Regulations, Title 22, section 66270.30(a), requires ECI to accept
13 at its Richmond Facility only hazardous waste authorized under the Permit and to treat such
14 hazardous waste as allowed under the Permit. The Permit, Part IV only allows ECI to
15 decontaminate hazardous waste tanks that previously held petroleum products. Thus, the only
16 hazardous waste ECI can accept and treat under its Permit are tanks that previously held
17 petroleum products.

18 71. Since on and before July 23, 2007, ECI violated California Code of Regulations, Title
19 22, sections 66270.30(a) and Permit, Part IV, by accepting and decontaminating a potentially
20 highly flammable acetone tank--a non petroleum product tank.

21 72. Pursuant to section 25189(b), or section 25189.2(b), DTSC is entitled to penalties for
22 said violations of up to \$25,000 against Defendants, and each of them, for each day during which
23 each violation occurred or continued.

24 **TWELFTH CAUSE OF ACTION**

25 (ECI and Does 1-20 Unauthorized Removal of Hazardous Waste Tanks)
26 (Cal. Code Regs., tit. 22, §66270.42.5(d)(1))

27 73. Paragraphs 1 through 72 are realleged as if fully set forth herein.

28 74. California Code of Regulations, Title 22, section 66270.42.5 (d)(1), requires ECI to

1 obtain written approval from DTSC prior to making physical and operational changes to the
2 Richmond Facility.

3 75. Since on and before September 9, 2008, ECI violated California Code of Regulations,
4 Title 22, section 66270.42.5 (d)(1), by removing, or causing to be removed, two of the three tanks
5 that were permitted for the storage of hazardous waste, without obtaining prior written approval
6 from DTSC to remove the two tanks. ECI removed, or caused to be removed, from the
7 Richmond Facility a 250 gallon measuring tank and a 1,850 rinsate tank without DTSC
8 authorization.

9 76. Pursuant to section 25189(b), and section 25189.2(b), DTSC is entitled to penalties
10 for said violations of up to \$25,000 against Defendants, and each of them, for each day during
11 which each violation occurred or continued.

12 **THIRTEENTH CAUSE OF ACTION**

13 (ECI and Does 1-20 Failure to Submit As-Built Drawing of
14 Secondary Containment System to DTSC)
(Cal. Code Regs., tit. 22, § 66264.175(c) and Permit, Part IV)

15 77. Paragraphs 1 through 76 are realleged as if fully set forth herein.

16 78. California Code of Regulations, Title 22, section 66264.175(c) requires ECI to submit
17 to DTSC an as-built drawing with certification from an independent, qualified professional
18 engineer, registered in California, that the containment system is designed to meet the
19 requirements of California Code of Regulations, Title 22, section 66264.175(c). ECI failed to
20 submit to DTSC an as-built drawing with certification from an independent professional engineer
21 that the containment system is designed to meet the requirements of California Code of
22 Regulations, Title 22, section 66264.175(c) within 30 days after the secondary containment
23 system for the tank staging area for tanks received for processing was completed as required by
24 the Permit, Part IV. ECI violated California Code of Regulations, Title 22, section 66264.175(c)
25 and the Permit, Part IV.

26 79. Pursuant to section 25189(b), or section 25189.2(b), DTSC is entitled to penalties for
27 said violations of up to \$25,000 against Defendants, and each of them, for each day during which
28 each violation occurred or continued.

1 **FOURTEENTH CAUSE OF ACTION**

2 (ECI and Does 1-20 Failure to Prepare and to Submit Annual Reports to DTSC)
3 (Cal. Code Regs., tit. 22, § 66264.75)

4 80. Paragraphs 1 through 79 are realleged as if fully set forth herein.

5 81. California Code of Regulations, Title 22, section 66264.75 requires ECI to submit to
6 DTSC an annual report containing information about the Richmond Facility's operations
7 including, but not limited to, the identification number of each hazardous waste generator from
8 which the Richmond Facility received hazardous waste during the reporting year; a description,
9 including the appropriate waste codes and Department of Transportation hazard class, and the
10 quantity of each hazardous waste the Richmond Facility received; the method of transfer,
11 treatment, storage or disposal for each hazardous waste; the most recent closure cost estimate; and
12 a certification regarding the heating value and volatile organic compound content of hazardous
13 waste shipped offsite and how that waste was handled depending on the heating value and volatile
14 organic compound content.

15 82. ECI failed to submit annual reports for 2003 through and including 2007 at the time
16 they were due to DTSC each year. ECI submitted the reports for years 2003 and 2007 to DTSC
17 late, by 35 days (April 5, 2004) and 110 days (June 19, 2008), respectively. The reports for years
18 2004, 2005 and 2006 were not submitted to DTSC until after the 2008 DTSC inspection of the
19 Richmond Facility. Each failure to submit a timely annual report constitutes a separate violation
20 of the applicable regulations.

21 83. Pursuant to section 25189 (b), or section 25189.2 (b), DTSC is entitled to penalties
22 for said violations of up to \$25,000 against Defendants, and each of them, for each day during
23 which each violation occurred or continued.

24 **FIFTEENTH CAUSE OF ACTION**

25 (ECI and Does 1-20 Failure to Amend the Facility Contingency Plan)
26 (Cal. Code Regs., tit. 22, § 66264.54(d))

27 84. Paragraphs 1 through 83 are realleged as if fully set forth herein.

28 85. California Code of Regulations, Title 22, section 66264.54(d) requires ECI to

1 immediately amend its Contingency Plan for the Richmond Facility when its emergency
2 coordinator(s) change. On or before September 8, 2008, ECI failed to change the Contingency
3 Plan after two of three listed coordinators were no longer employed at ECI's Richmond Facility.

4 86. Pursuant to section 25189(b), or section 25189.2(b), DTSC is entitled to penalties for
5 said violations of up to \$25,000 against Defendants, and each of them, for each day during which
6 each violation occurred or continued.

7 **SIXTEENTH CAUSE OF ACTION**

8 (ECI and Does 1-20 Failure to Sign Manifests)
9 (Cal. Code Regs., tit. 22, § 66264.71(a)(1))

10 87. Paragraphs 1 through 86 are realleged as if fully set forth herein.

11 88. California Code of Regulations, Title 22, section 66264.71(a)(1) requires ECI to sign
12 the hazardous waste manifest when it receives waste at the Richmond Facility. On at least two
13 occasions, ECI failed to sign the manifest at the time it received the hazardous waste at the
14 Richmond Facility. ECI received manifest No. 004090209 JJK on August 22, 2008, but signed it
15 on September 9, 2008 with the date of August 22, 2008. ECI received manifest No. 004090212
16 JJK on September 2, 2008, but signed it on September 10, 2008 with the date of September 2,
17 2008.

18 89. Pursuant to section 25189(b), or section 25189.2(b), DTSC is entitled to penalties for
19 said violations of up to \$25,000 against Defendants, and each of them, for each day during which
20 each violation occurred or continued.

21 **SEVENTEENTH CAUSE OF ACTION**

22 (ECI and Does 1-20 Failure to Furnish Records Upon Request)
23 (Cal. Code Regs., tit. 22, § 66264.74(a))

24 90. Paragraphs 1 through 89 are realleged as if fully set forth herein.

25 91. California Code of Regulations, Title 22, section 66264.74 (a) requires ECI to furnish
26 records to DTSC upon request, and to have those records available at all reasonable times for
27 inspection by DTSC.

28 //

1 Training Records

2 a. DTSC requested employee training records during the 2008 inspection. ECI
3 did not provide the employee training records. The manager at the Richmond Facility stated the
4 training records were not kept at the Richmond Facility.

5 b. DTSC requested that ECI produce the employee training records by September
6 17, 2008, a week after the 2008 inspection of the Richmond Facility. ECI did not provide any
7 training records to DTSC until October 7, 2008. The training records produced to DTSC on
8 October 7, 2008 were incomplete because they did not contain the following records:

- 9 • Emergency Response and Contingency Plan annual review for 2005- 2007;
10 • Facility Operations annual review for 2005 -2007;
11 • CPR/First Aid Training for 2007;
12 • Tailgate Safety Meetings for 2005 – 2007;
13 • Medical Surveillance Annual Physicals for 2005 -2007;
14 • 8 hour Health and Safety Annual Refresher Training for 2006 – 2007;
15 • Supervisor Health and Safety Annual Refresher Training for 2006 – 2007; and
16 • Forklift Biennial Training 2005 – 2007

17 c. ECI provided to DTSC a few additional training records on February 12, 2009
18 and on October 8, 2009 in response to repeated requests by DTSC for the records.

19 d. On June 8, 2010, ECI provided to DTSC additional training records that were
20 first requested by DTSC during the 2008 inspection of the Richmond Facility

21 e. As of the date this complaint was filed, ECI still had not submitted training
22 documents to DTSC relating to:

23 i.) maintenance, repair, and replacement of alarms and other safety and emergency
24 equipment;

25 ii.) emergency procedures in the event of explosions, spills, power failure, or
26 earthquake;

27 iii.) emergency equipment other than fire extinguishers.

28 f. On and prior to September 9, 2008, and continuing thereafter, ECI violated
California Code of Regulations, Title 22, section 66264.74(a) by failing to provide the training
records when requested by DTSC and by failing to have those records available for inspection by
DTSC at all reasonable times.

1 Financial Responsibility Records

2 g. On July 19, 2006, DTSC sent ECI a Financial Responsibility Review letter
3 informing ECI that it was in violation of the HWCL and its regulations and that ECI needed to
4 submit a new liability certificate of insurance for the Richmond Facility and the Fontana Facility
5 (2006 FR violation).

6 h. On January 30, 2007, DTSC sent ECI a Financial Responsibility Review letter
7 informing ECI that there was a new violation of the HWCL and its regulations regarding the
8 closure trust agreement submitted by ECI (failure to submit certification of acknowledgment) and
9 that ECI had not submitted the information previously requested by DTSC to correct the 2006 FR
10 violation ("2007 FR violations").

11 i. On March 16, 2009, DTSC sent ECI a Financial Responsibility Review letter
12 informing ECI of another new violation of the HWCL and its regulations regarding the closure
13 trust agreement (failure to update Schedule A) and noting that ECI still had not submitted
14 information to correct the 2006 and 2007 FR violations ("2009 FR violations").

15 j. In addition to the Financial Responsibility review letters DTSC sent to ECI in
16 2006, 2007, and 2009, DTSC informed ECI on other occasions about ECI's continuing violation
17 of the financial responsibility regulations.

18 k. Beginning on and prior to July 19, 2006, and continuing thereafter, ECI
19 violated California Code of Regulations, Title 22, section 66264.74 (a) by failing to provide the
20 proper documents to demonstrate financial responsibility when requested by DTSC, and by
21 failing to have those records available for inspection by DTSC at all reasonable times.

22 Tank Removal Report

23 l. On September 18, 2008, DTSC requested that ECI provide by October 3, 2008,
24 a tank removal report for two tanks removed by ECI at the Richmond Facility without prior
25 DTSC authorization.

26 m. ECI did not submit the requested tank removal report to DTSC until January
27 28, 2009 despite repeated DTSC requests for the report.

28 n. On and prior to September 18, 2008, and continuing thereafter to October 3,

1 2008, ECI violated California Code of Regulations, Title 22, section 66264.74(a) by failing to
2 provide the tank removal report for the Richmond Facility when requested by DTSC and by
3 failing to have those records available for inspection by DTSC at all reasonable times.

4 92. Pursuant to section 25189(b), or section 25189.2(b), DTSC is entitled to penalties for
5 said violations of up to \$25,000 against Defendants, and each of them, for each day during which
6 each violation occurred or continued.

7 **REQUEST FOR RELIEF**

8 DTSC requests that the Court grant the following relief:

9 1. Enter judgment that ECI and Does 1-20 have violated the HWCL, its implementing
10 regulations and Permit as alleged in the First through Seventeenth Causes of Action inclusive;

11 2. Enter judgment that ECI and Does 1-20, and each of them, are jointly and severally
12 liable for civil penalties for those violations as set forth in Health and Safety Code section 25189
13 or, in the alternative, by Health and Safety Code section 25189.2, according to proof;

14 3. Enter temporary restraining orders, preliminary injunctions, permanent injunctions, or
15 other orders requiring ECI and Does 1-20 to comply with the HWCL, the regulations adopted
16 thereunder and the Permit;

17 4. Grant DTSC its costs of suit herein against ECI and Does 1-20; and

18 5. Grant such other and further relief as the Court deems just and proper.

19 Dated: November 18, 2010

Respectfully Submitted,

20 EDMUND G. BROWN JR.
21 Attorney General of California
22 KEN ALEX
23 Senior Assistant Attorney General
24 MARGARITA PADILLA
25 Supervising Deputy Attorney General

Original signed by Rose B. Fua

26 ROSE B. FUA
27 Deputy Attorney General
28 *Attorneys for Plaintiff People of the State
of California ex. rel. Maziar Movassaghi,
Acting Director, California Department of
Toxic Substances Control*

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EXHIBIT B

Attorney General's Office
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9 Control

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF CONTRA COSTA

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

16 Plaintiff,

17 v.

18
19 ECOLOGY CONTROL INDUSTRIES,
INC., a California Corporation and Does 1
20 through 20 inclusive,

21 Defendants.

Case No. MSC10-03366

[PROPOSED] FINAL JUDGMENT
PURSUANT TO STIPULATION

22
23 Good cause appearing herein, the Court approves the settlement between the Plaintiff,
24 People of the State of California, *ex rel.* Deborah O. Raphael, Director, Department of Toxic
25 Substances Control (DTSC), and Defendant Ecology Control Industries (ECI) as set forth in the
26 parties' Stipulation for Entry of Final Judgment Pursuant to Stipulation ("Stipulation for Entry of
27 Final Judgment") filed with this Court.

28 //

FILED

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K. T. ...
BY: ...

1 Accordingly, the Stipulation for Entry of Final Judgment entered into by DTSC and ECI is
2 approved, and the Final Judgment is entered as provided therein.

3
4 **IT IS SO ORDERED, ADJUDGED, AND DECREED:**

5
6 Dated: 2/27/12

DAVID B. FLINN

Judge of the Superior Court

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