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SUBSTANCES CONTROL ACCOUNT

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

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

16 Plaintiffs,

17 v.

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

CASE NO.: CV05-7746 CAS (JWJx)

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR JUDICIAL  
APPROVAL OF CONSENT DECREE  
RE BKK HAZARDOUS WASTE  
FACILITY, AS MODIFIED

Date: March 6, 2006  
Time: 10:00 a.m.  
Judge: Honorable Christina A. Snyder  
Place: Courtroom 5

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

8  
9 Defendants.

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I.

**INTRODUCTION**

This motion requests this Court’s approval of the Amended Consent Decree re BKK Hazardous Waste Facility (“Amended Consent Decree or “Decree”) that has been filed concurrently with this motion. The Amended Consent Decree requires Defendants to perform certain work at the contaminated BKK hazardous waste disposal site located at 2210 South Azusa Avenue, West Covina, County of Los Angeles, California (“the Facility”). The original Consent Decree was lodged with the Court on October 31, 2005. Since the lodging, the Parties to this action have agreed that minor revisions must be made to the Consent Decree to address changing circumstances concerning the Facility and to respond to certain concerns raised by the owner of the Facility. Accordingly, the original Consent Decree has been modified as explained in detail below. The Parties have agreed that the Amended Consent Decree may be substituted for the Consent Decree previously lodged with the Court. By this motion, the Parties respectively request the Court to sign and enter the Amended Consent Decree.

The Amended Consent Decree is viewed by the Parties as a first step in addressing a difficult and complicated situation. The Facility is over 580 acres in areal extent and received large volumes of hazardous waste for more three decades while it operated. The infrastructure at the Facility, which includes pollution control equipment, is aging and in constant need of inspection and maintenance in order to continue to operate in a manner that protects the public. Currently Plaintiff California Department of Toxic Substances Control (“Department” or “DTSC”) is overseeing the operation and maintenance at the Facility and is spending over five hundred thousand dollars a month to maintain the site in a safe condition.

The Consent Decree allows for some of that responsibility to be assumed by the defendants in the action (“the Settling Defendants”) under the supervision of

1 DTSC for a period of two years. During the interval covered by the Consent  
2 Decree, it is the Parties' intent to work out a long term, comprehensive solution to  
3 maintaining the Facility in a manner that prevents a release or threatened release of  
4 hazardous substances. Finding a long term solution for operating and maintaining  
5 the pollution control equipment at the Facility will require the involvement of  
6 numerous parties and significant resources. The Consent Decree is the first step  
7 toward reaching a permanent solution and will allow the Settling Defendants to  
8 maintain the Facility, with DTSC oversight, in a safe condition while long term  
9 negotiations are held.

## 10 II.

### 11 SUMMARY OF FACTS

12 The following is a summary of the facts relevant to the pending Consent  
13 Decree.

14 **A. The Plaintiffs.** The Plaintiffs in this case are DTSC and a state  
15 account administered by DTSC. DTSC is the state agency charged with  
16 supervising the cleanup of sites where hazardous substances have been released  
17 (Cal. Health & Safety Code, §§ 25300, *et seq.*) and has the authority to sue and  
18 settle cases under the Comprehensive Environmental Response, Compensation  
19 and Liability Act ("CERCLA") (42 U.S.C. § 9607(a) and § 9613(f)(2).)

20 **B. The Settling Defendants.** The Settling Defendants are the  
21 Defendants named above in the caption to this memorandum. DTSC alleges that  
22 all of the Settling Defendants so named, with the exception of Washington Mutual  
23 Bank ("Washington Mutual"), arranged to have hazardous substances disposed of  
24 at the Facility. Washington Mutual owned or operated the Facility at a time when  
25 hazardous substances were disposed of at the Facility. DTSC alleges that,  
26 pursuant to CERCLA, each of these Defendants is jointly and severally liable for  
27 the costs of remedying the contamination at the Facility.

28 **C. The Facility.** BKK Corporation ("BKK") currently owns and  
operates the Facility, which includes a closed Class I (hazardous waste) landfill, a

1 leachate treatment plant (LTP) located at the Class I landfill, and an adjacent Class  
2 III landfill, which is in the process of closing. Home Savings, the corporate  
3 predecessor to Defendant Washington Mutual, was the owner and operator of the  
4 Class I landfill from the time of its inception in 1962 until 1976. Home Savings  
5 sold the Facility to BKK in 1976. In the late 1980's, BKK closed the Class I  
6 landfill under a Closure Plan approved by the California Department of Health  
7 Services (the predecessor agency to DTSC) and the United States Environmental  
8 Protection Agency. DTSC continues to regulate the post-closure care of the Class  
9 I Landfill and operation of the LTP. [Hanson Decl. ¶ 2(A).]

10 From 1972 to 1984, the Class I landfill at the Facility accepted  
11 approximately 3.4 million tons of liquid and solid hazardous wastes, together with  
12 large amounts of other wastes. The two landfills at the Facility have an integrated  
13 gas collection system. Collected landfill leachate, gas condensate, and  
14 contaminated groundwater are commingled and treated at the onsite LTP.  
15 [Hanson Decl. ¶ 2.]

16 **D. CERCLA Liability.** DTSC contends that Defendants are each a  
17 “liable person” pursuant to CERCLA and that each is jointly and severally  
18 responsible for the cleanup of the Facility. DTSC contends that the liability of  
19 each Defendant other than Washington Mutual arises under CERCLA §107(a) (42  
20 U.S.C. §9607(a)); that section provides that a person who has “arranged for  
21 disposal” of hazardous substances at a contaminated site is liable for all cleanup  
22 costs incurred with respect that site. Specifically, section 107(a) provides, in  
23 pertinent part:

24 (3) any person who by contract, agreement or otherwise arranged  
25 for disposal or treatment, or arranged with a transporter for  
26 transport for disposal or treatment, of hazardous substances  
27 owned or possessed by such person, by any other party or  
28 entity, at any Facility. . . owned or operated by another party or  
entity and containing such hazardous substances,

\* \* \*

shall be liable for –

- 1 (A) all costs of removal or remedial action incurred by . . . a  
2 State . . . not inconsistent with the national contingency  
3 plan; [and]
- 3 (B) any other necessary costs of response incurred by any  
4 other person consistent with the national contingency  
5 plan . . .

5 (42 U.S.C. § 9607(a)(4).) DTSC has alleged in its complaint that the Settling  
6 Defendants other than Washington Mutual arranged to have their hazardous waste  
7 disposed of at the Facility, and that these Settling Defendants are therefore liable  
8 for all response costs at the Facility. (DTSC Complaint, ¶¶ 7-31, 50-51.) The  
9 corporate predecessor of Washington Mutual owned or operated the Facility during a  
10 time when disposal of hazardous waste occurred, and therefore DTSC has alleged  
11 that it is jointly and severally liable under 42 U.S.C. § 9607 (a)(2). (DTSC  
12 Complaint ¶¶ 32, 50-51.)

13 **E. Measures Leading Up to the Present Consent Decree.**

14 1. On June 30, 2004, DTSC issued a consolidated Hazardous  
15 Waste Facilities Permit for Leachate Treatment Plant Operation and Class I  
16 Landfill Post-Closure Care, which BKK appealed. Until that appeal is resolved,  
17 BKK is required to conduct post-closure operation, monitoring, and maintenance  
18 of the Class I landfill pursuant to its Interim Status Document and the Post-  
19 closure/Operation Plan until DTSC notifies BKK otherwise and BKK is required  
20 to continue to operate the LTP pursuant to the LTP Permit issued by DTSC in  
21 1987. [Hanson Decl. ¶ 2(A).]

22 2. In October 2004, BKK notified DTSC that it was not  
23 financially able to perform further required post-closure care of the Class I  
24 landfill, including operation of the LTP, after November 17, 2004. As a result,  
25 DTSC hired a contractor to conduct emergency response activities at the Facility.  
26 These activities are necessary to ensure continuous maintenance, monitoring, and  
27 operation of systems that are essential to protect public health, safety and the  
28 environment. [Hanson Decl. ¶¶ 2 (E), 2(F).]



- 1           3.     Settling Defendants paid \$500,000 a month to DTSC to partially  
2                 reimburse the DTSC for the costs it incurs during the period between  
3                 when the Decree was lodged and December 15, 2005.
- 4           4.     Defendants will pay DTSC \$50,000 a month towards DTSC's cost of  
5                 overseeing the work of the Settling Defendants and their agents under  
6                 the Amended Consent Decree.
- 7           5.     Settling Defendants will begin performing certain tasks within thirty  
8                 (30) of the lodging of the original Consent Decree and submit to  
9                 DTSC within five days of lodging a Critical Task Work plan as  
10                identified in Exhibit "D" to the Decree. Settling Defendants will  
11                begin performing certain "Essential Activities" identified in Exhibit  
12                "C" within 14 days of entry of the Decree. Defendants will also  
13                perform other repair projects listed in Exhibit "D" after entry of the  
14                Amended Consent Decree.
- 15          6.     Settling Defendants receive a covenant not to sue from DTSC and  
16                 contribution protection with respect to the "actions to be performed  
17                 and the payments made pursuant to the Consent Decree." This  
18                 covenant not to sue does not preclude DTSC from seeking to recover  
19                 its costs not recovered under the Amended Consent Decree (i.e. any  
20                 response costs that occur after the termination of the Consent Decree,  
21                 nor from any entity not a party to the Consent Decree.)
- 22          7.     The Parties to the Amended Consent Decree view the Decree as an  
23                 interim step towards a more permanent solution for the long term  
24                 operation and maintenance of the Facility that will likely involve  
25                 additional parties, and have agreed to work in good faith towards a  
26                 long term solution for a Facility that will require strict monitoring and  
27                 maintenance for the foreseeable future.

28

1 IV.

2 PUBLIC NOTICE, COMMENT AND RESPONSE

3 On November 11, 2005, DTSC published notice of the proposed Decree in  
4 the California Regulatory Notice Register. [Hanson Decl., ¶ 7, Exh. A.] The  
5 notice requested that comments on the Decree be submitted by December 13,  
6 2005. On December 13, 2005, at the request of BKK, DTSC granted an extension  
7 until December 20, 2005 for comments. DTSC thereafter granted three additional  
8 extensions, ultimately terminating the comment period on January 13, 2006.  
9 DTSC received only three comment letters with respect to the Decree. [Hanson  
10 Decl., ¶ 8, Exh. C.] One comment letter was from the County of Los Angeles, one  
11 comment letter was from Steadfast Insurance Company, which issued an insurance  
12 policy to BKK for post-closure care at the Facility, and the final comment letter  
13 was from a private citizen. DTSC has responded to these comments. [Hanson  
14 Decl. ¶ 8, Exh. D.] DTSC has provided Defendants with copies of the comments  
15 and DTSC's responses. [Hanson Decl., ¶ 8, Exh. E.] In addition to the public  
16 notice, DTSC sent a fact sheet describing the Decree to the neighboring  
17 community. [Hanson Dec., ¶ 7, Exh. B.]

18 Summary of Public Comments and DTSC Responses

19 1. *Comment from Al Kamatoy.* Mr. Kamatoy commented that he  
20 supported the Consent Decree and encouraged DTSC to remain vigilant in  
21 regulating the Facility. DTSC responded by thanking him for his support.

22 2. *Comment from the County of Los Angeles.* The first two comments  
23 from the County of Los Angeles requested that the language of the Consent  
24 Decree make it clear that the Decree only covers the Facility and not BKK's other  
25 operations. DTSC responded that the Decree already clearly defines the location  
26 that is covered, and that the Consent Decree explicitly states that it does not cover  
27 any other BKK facility. Further, the Decree makes clear that BKK, which is not a  
28 defendant in this action, does not receive any release from liability under the  
Decree. [Hanson Decl., Exhibit D.] The County's third comment was that DTSC

1 should take possession of BKK's files for the Facility. DTSC is in the process of  
2 securing possession of certain "waste-in" records associated with the Facility's  
3 operation. [Hanson Decl., Exhibit D.]

4 3. *Comment from Steadfast Insurance Company.* Steadfast Insurance  
5 Company ("Steadfast") commented that it objected to the Decree to the extent it  
6 purported to assign benefits of a Steadfast policy without Steadfast's consent, and  
7 to the extent that it altered terms and conditions of that policy without Steadfast's  
8 consent. It also objected to the Decree to the extent it prejudiced any of  
9 Steadfast's policy holders under the policy. DTSC has responded to Steadfast that  
10 it believes the concerns of Steadfast have been resolved via its settlement with  
11 Steadfast's policy holder, BKK, as discussed in Part V.1 below. In any event, the  
12 Consent Decree does not assign the policy to a successor owner or operator, nor  
13 does it alter the policy's terms or conditions. Accordingly, DTSC does not believe  
14 that Steadfast's consent is necessary for the implementation of the Consent  
15 Decree.

## 16 V.

### 17 **MODIFICATIONS TO THE CONSENT DECREE**

18 Since the lodging of the Consent Decree with the Court on October 31,  
19 2005, a number of events have occurred which have required the parties to modify  
20 the Consent Decree. These are as follows:

21 1. Concerns of Owner of the Facility - To address concerns raised by  
22 BKK about reimbursements from post-closure care insurance, BKK and DTSC  
23 entered into a settlement agreement (attached to Hanson Declaration as Exhibit F)  
24 providing for an allocation of the insurance proceeds during the period of time  
25 covered by the Amended Consent Decree. [Hanson Decl. ¶ 9.] That settlement  
26 agreement necessitated changes to Paragraphs 5.1.1 and 5.1.2 and the addition of a  
27 new Paragraph 5.1.3 in the Amended Consent Decree.

28 2. Additional Work by Settling Defendants - DTSC has identified  
certain maintenance tasks at the Facility as high priority and since BKK no longer

1 would perform this work, DTSC has been handling these repairs on an emergency  
2 basis. [Hanson Decl. ¶ 10.] The Settling Defendants prefer to finish this work in  
3 order to reduce coordination issues and to ensure a smoother transition of  
4 employees. These tasks involve repair of the flare station and the clarifier for the  
5 LTP. Therefore, the parties have now agreed that this work will be completed by  
6 the Settling Defendants. In return for their agreement to perform this work, DTSC  
7 has agreed that the Settling Defendants will only pay Future Interim Response  
8 Costs of \$1,000,000, instead of the payment of approximately \$1,750,000 that was  
9 envisioned in the original Consent Decree. [Hanson Decl. ¶ 10.] This change in  
10 the agreement between the parties has resulted in changes to paragraph 4.7 of the  
11 Consent Decree. In addition, Exhibit “D,” attached to the Amended Consent  
12 Decree, has been modified to reflect the additional tasks that Settling Defendants  
13 have agreed to perform. Because there has been some delay in resolving these  
14 issues, the Parties have agreed that Paragraph 3.9 will be modified so that “Future  
15 Interim Response Costs” shall now mean all costs incurred by DTSC between the  
16 lodging of the Consent Decree and March 15, 2006.

17 In addition, the end date for the Settling Defendant’s obligations to perform  
18 work under the Consent Decree has been changed from January 14, 2008 to March  
19 15, 2008, or “two years from the date the Settling Defendants fully commence the  
20 Essential Activities and Critical Tasks and other work pursuant to Section IV  
21 herein, whichever is later.”

## 22 VI.

### 23 **THE AMENDED CONSENT DECREE IS A “FAIR 24 AND REASONABLE” SETTLEMENT AND THE COURT SHOULD APPROVE IT.**

25 In determining whether to approve a CERCLA Consent Decree, a district  
26 court should consider whether the decree is “reasonable, fair and consistent with  
27 the purposes that CERCLA is intended to serve.” *U.S. v. Cannons Engineering  
28 Corp.*, 899 F.2d 79, 85 (1st Cir. 1990)(citations omitted.) The district court’s  
review should be informed by the general federal policy favoring settlements (*see*,

1 e.g., *Citizens for a Better Environment v. Gorsuch*, 718 F.2d 1117, 1126 (D.C. Cir.  
2 1983), cert. denied 467 U.S. 1219 (1984)), which is “even stronger in the  
3 CERCLA context.” *B.F. Goodrich v. Betkoski* 99 F.3d 505, 527 (2<sup>nd</sup> Cir.  
4 1996)(abrogated on other grounds.) Accordingly, in conducting its review, a  
5 district court should “take a broad view of proposed settlements, leaving highly  
6 technical issues and relatively petty inequalities to the discourse between the  
7 parties . . . [and treating] each case on its own merits, recognizing the wide range  
8 of potential problems and solutions.” *U.S. v. Charles George Trucking*, 34 F.3d  
9 1081, 1088 (1<sup>st</sup> Cir. 1994), (quoting *Cannons*, 899 F.2d at 85-86.) Where, as here,  
10 the settlement has been negotiated by a governmental agency with expertise in  
11 enforcing environmental laws, a district court should “give a proper degree of  
12 deference to the agency’s expertise” *U.S. v. Akzo Coatings of Am.*, 949 F.2d 1409,  
13 1426 (6th Cir. 1991) and must approve the settlement unless it is “arbitrary,  
14 capricious and devoid of rational basis.” *Cannons*, 899 F.2d at 87. One district  
15 court described this presumption of validity as follows:

16           The objecting parties, moreover, carry a heavy burden in  
17           opposing judicial approval of the settlements, inasmuch  
18           as the State’s negotiated Consent Decrees are  
19           presumptively valid [citations] and this Court will not  
20           interfere with the settlements unless there is no credible  
21           explanation for the structure of the Consent Decrees.

22 *New York v. Panex Industries, Inc.*, 2000 U.S. District Lexis 7913, p.4. (W.D.N.Y.  
23 2000).

24           In *Cannons*, the First Circuit established the following specific factors for  
25           district courts to use in deciding whether to approve a Consent Decree under  
26           CERCLA: (1) procedural fairness, (2) substantive fairness, (3) reasonableness, and  
27           (4) fidelity to the statute. *Cannons*, 899 F.2d at 85-93. All four of these factors  
28           are present in this settlement.

29           **A.    The Consent Decree is Procedurally Fair.** The Amended Consent  
30           Decree is procedurally fair. “To measure procedural fairness, a court should  
31           ordinarily look to the negotiation process and attempt to gauge its candor,  
32           openness and bargaining balance.” *Cannons*, 899 F.2d at 86. Here, the Decree is

1 the product of settlement negotiations between Defendants and DTSC. Each party  
2 was represented by experienced counsel, and the Decree was negotiated at arms'  
3 length. [Hanson Decl., ¶ 6.]

4 DTSC and the Settling Defendants jointly drafted the Decree. As the Ninth  
5 Circuit noted in *U.S. v. Montrose Chemical Corp.* 50 F.3d 741 (9th Cir. 1995):

6 . . . CERCLA's policy of encouraging early settlement is  
7 strengthened when a government agency charged with  
8 protecting the public interest "has pulled the laboring oar  
9 in constructing the proposed settlement."

10 *Id.*, 50 F.3d at 746, quoting *Cannons*, 899 F.2d at 84.

11 DTSC negotiated with the Defendants over a period of months in shaping the  
12 settlement proposal, worked on multiple drafts of the Decree, and jointly drafted  
13 its final terms. [Hanson Decl., ¶ 6.]

14 In a further attempt to ensure procedural fairness, the Department has (i)  
15 published notice of the proposed Decree in the *California Regulatory Notice*  
16 *Register*; (ii) provided a fact sheet to the neighboring property owners in the City  
17 of West Covina; and (iii) invited comments on the Decree, and responded to those  
18 comments as set forth in Section IV of this memorandum. [Hanson Decl., ¶¶ 7, 8.]  
19 The Department has thus ensured procedural fairness by (i) engaging in arms'  
20 length negotiations; (ii) providing the public and neighbors with notice and an  
21 opportunity to comment on the Decree; and (iii) making changes to the Decree to  
22 reflect concerns of the property owner.

23 **B. The Consent Decree is Substantively Fair.**

24 1. **Standard of Review.** Substantive fairness involves whether  
25 the parties bear their comparative share of the cleanup costs. *Cannons*, 899 F.2d  
26 at 87. The determination of comparative fault, however, should be left largely to  
27 the government's expertise and "the chosen measure of comparative fault should  
28 be upheld unless it is arbitrary, capricious, and devoid of a rational basis." *Id.*  
Moreover, if the governmental entity negotiating the Decree has ensured  
procedural fairness, then comparative levels of fault are only "minimally relevant."

1 *Arizona v. Motorola, Inc.*, 139 F.R.D. 141, 148 (D.Ariz. 1991). In fact, district  
2 courts routinely approve CERCLA settlements that assign a disproportionate  
3 amount of fault to non-settling parties. As one court has noted:

4 This does not mean, however, that CERCLA precludes  
5 leaving a disproportionately large share of liability for  
6 the non-settling defendants. "Congress explicitly created  
7 a statutory framework that left nonsettlers at risk of  
8 bearing a disproportionate amount of liability \* \* \*  
9 [which] can prove to be a substantial benefit to settling  
10 [parties] – and a corresponding detriment to their more  
11 recalcitrant counterparts.

12 *New York v. Panex Industries, Inc.*, 2000 U.S. District Lexis 7913 at 9 (W.D. N.Y.  
13 2000) (quoting *Cannons*, 899 F.2d at 91.) In many cases, the evidence of the  
14 comparative fault of the parties is so fragmentary, uncertain or so hotly disputed  
15 that:

16 a district court cannot be held to the letter of the  
17 *Cannons* substantive fairness standard. In such cases, a  
18 finding of procedural fairness together with other  
19 circumstantial indicia of fairness, may constitute an  
20 acceptable proxy.

21 *U.S. v. Charles George Trucking*, 34 F.3d at 1089.

22 2. **Settlement Calculations in the Present Case.** The settlement  
23 in the present case is designed to ensure that Settling Defendants, as generators of  
24 hazardous waste taken to the Facility and as a successor to a prior owner/operator,  
25 take on the responsibility for operating the pollution control systems at the  
26 Facility. Specifically, the Decree requires Settling Defendants to operate and  
27 maintain the LTP, as well as other pollution control equipment at the Facility as  
28 described in Exhibit "C" of the Amended Consent Decree. In addition, the  
Settling Defendants are required to perform certain tasks designated in a scope of  
work attached to the Amended Consent Decree as Exhibit "D". This comprises a  
very substantial portion of the work to be done at the site during the period of the  
Decree.

This Consent Decree is intended to act as a first step towards a  
comprehensive solution to the maintenance of this heavily contaminated Facility.

1 The proposed settlement is therefore fair, because it requires Settling Defendants  
2 to make a significant financial commitment that will allow the parties to negotiate  
3 a more comprehensive resolution to maintaining the Facility in a manner that  
4 protects public health and the environment, without waiving any of DTSC's rights  
5 to ensure that the final remedy is properly implemented and funded.

6 **C. The Consent Decree is Reasonable.**

7 The court in *Cannons* considered four factors in determining whether that  
8 settlement was "reasonable."

9 1. **Effectiveness.** First, the court considered whether the  
10 settlement was likely to be effective in ensuring a cleanup of the property.  
11 *Cannons*, 899 F.2d at 89-90. Here, the Decree is effective because it requires  
12 Defendants to maintain the Facility in a safe manner while a final decision is made  
13 on how the Facility will be operated to prevent the release of hazardous substances  
14 to the environment.

15 2. **Benefit to the Public.** The *Cannons* court next considered  
16 whether the settlement satisfactorily compensated the public. *Cannons*, 899 F.2d  
17 at 90. Here, the public is adequately compensated because the Decree requires  
18 Defendants to operate the pollution control equipment and to pay a portion of  
19 DTSC's oversight costs while a final comprehensive resolution to protect against  
20 the releases of hazardous substance is negotiated by the parties and others.

21 3. **Relative strengths of the parties.** Third, the *Cannons* court  
22 considered whether the settlement reflected the relative strengths of the parties'  
23 bargaining positions. *Id.* This settlement does reflect the legal positions of the  
24 parties. Plaintiffs have alleged that Settling Defendants are liable parties under  
25 CERCLA. Settling Defendants contest this allegation and also contest some of the  
26 past costs that DTSC has incurred at the Facility and assert that DTSC should look  
27 to others for a portion of this recovery. Given these factors, the settlement  
28 properly reflects the relative bargaining positions of the parties.

1           4.     **Faithfulness to CERCLA.** Fourth, the *Cannons* court  
2 considered whether the settlement was faithful to the statute. *Id.* at 90-91.  
3 CERCLA's twin goals are: (1) to create a prompt and effective response to  
4 hazardous waste problems; and (2) to ensure that those responsible for the  
5 problems their disposal caused bear the costs and responsibility for remedial  
6 action. *Id.* at 90-91. In the present case, the proposed Decree satisfies these twin  
7 goals: it provides “a prompt and effective response,” because it requires Settling  
8 Defendants to immediately take over the management of the Facility without the  
9 long delays that would be engendered by litigation. The Decree also requires  
10 Settling Defendants to begin to “bear the costs and responsibility” for “the  
11 problems [their] disposal caused.” The Decree requires Settling Defendants to pay  
12 part of the past and ongoing State oversight costs for the Facility. In addition, the  
13 Decree specifically reserves DTSC’s rights to look to Settling Defendants to help  
14 implement the final remedy. Together, these provisions are designed to “ensure  
15 that those responsible for the problems their disposal caused bear the costs and  
16 responsibility for remedial action” *Id.* at 91.

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**CONCLUSION**

The Amended Consent Decree is the result of arms' length negotiations between DTSC and Settling Defendants. It requires Settling Defendants to operate and maintain the pollution control systems at the Facility in a manner that will protect public health and safety. During a public comment period, there were only three comments, each of which has been responded to adequately by DTSC. For the reasons described in this Memorandum, Plaintiffs respectfully request that this Court sign and enter the Amended Consent Decree.

DATED: February 2, 2006

Respectfully submitted,  
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TOM GREENE,  
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By: //original signed by//  
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Attorneys for Plaintiffs

1            **DECLARATION OF SERVICE BY OVERNIGHT MAIL (UPS)**

2 **RE: California Department of Toxic Substances Control, et al. v. American**  
3 **Honda Motor Co., Inc.**

4            **Case No.: CV05-7746 CAS (JWJx)**

5            **I, Aimee Lopez, declare:**

6            I am employed in the City of Los Angeles, County of Los Angeles, State of  
7 California. I am over the age of 18 years and not a party to the within action. My  
8 business address is 300 S. Spring Street, Suite 1702, Los Angeles, California  
9 90013. On February 8, 2006, I served the documents named below on the parties  
10 in this action as follows:

11 **DOCUMENT SERVED:            MEMORANDUM OF POINTS AND**  
12 **AUTHORITIES IN SUPPORT OF MOTION**  
13 **FOR JUDICIAL APPROVAL OF CONSENT**  
14 **DECREE RE BKK HAZARDOUS WASTE**  
15 **FACILITY, AS MODIFIED**

16 **SERVED UPON:**

17 **BY MAIL:** I caused each such envelope, with postage thereon fully  
18 prepaid, to be placed in the United States mail at Los Angeles, California. I  
19 am readily familiar with the practice of the Office of the Attorney General  
20 for collection and processing of correspondence for mailing, said practice  
21 being that in the ordinary course of business, mail is deposited in the United  
22 States Postal Service the same day as it is placed for collection.

23 I hereby certify that I am employed in the office of a member of the Bar of  
24 this Court at whose direction the service was made.

25 **XX BY OVERNIGHT MAIL:** I am readily familiar with the practice of the  
26 Office of the Attorney General for collection and processing of  
27 correspondence for overnight delivery and know that the document  
28 described herein will be deposited in a box or other facility regularly  
maintained by United Parcel Service for overnight delivery.

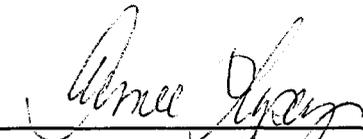
**SEE ATTACHED SERVICE LIST**

**BY FACSIMILE:** I caused to be transmitted the document described herein  
via the following facsimile number:

I declare under penalty of perjury under the laws of the State of California  
that the above is true and correct. Executed on February 8, 2006, at Los Angeles,  
California.

Aimee Lopez

Declarant

  
Signature

**SERVICE LIST**

**RE: *California Department of Toxic Substances Control, et al. v. American Honda Motor Co., Inc.***

**Case No.: CV05-7746 CAS (JWJx)**

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