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10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12

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

15

Plaintiffs,

16

v.

17

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

No.

CONSENT DECREE

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CONSENT DECREE

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

13 Defendants.

## 14 CONSENT DECREE

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

## 26 INTRODUCTION

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

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

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

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

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

14 I. JURISDICTION

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

24 II. BACKGROUND

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

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

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

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

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

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

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

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

18 2.7 Consent Decree. This Consent Decree provides for the performance  
19 of certain operation, maintenance and monitoring activities at the Subject Property  
20 for two years following the Effective Date of this Consent Decree or until January  
21 14, 2008, whichever is earlier, for the reimbursement of certain DTSC response  
22 costs with respect to the Facility, and the dismissal, without prejudice, of the ISE  
23 Order against the Settling Defendants. This Consent Decree also provides  
24 covenants not to sue and contribution protection, standstill agreements and a  
25 tolling agreement with respect to enforcement activity and litigation among the  
26 Parties concerning the Facility, to enable the Parties to work collaboratively to  
27 identify additional entities to participate in the performance and/or funding of  
28

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

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

17 III. DEFINITIONS

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

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

28

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

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

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

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

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

22          3.8    “Future DTSC Oversight Costs” shall mean all direct and indirect  
23 costs of overseeing this Consent Decree, including but not limited to payroll costs,  
24 travel costs, and laboratory costs, incurred by DTSC in reviewing, revising,  
25 modifying, commenting on or approving plans, reports and other items pursuant to  
26 this Consent Decree, and verifying the Work to Be Performed after a) the Effective  
27 Date of this Consent Decree or b) the date upon which the Settling Defendants  
28

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

3 3.9 "Future Interim Response Costs" shall mean all costs incurred by  
4 DTSC in response to conditions at the Facility from the date of lodging of this  
5 Consent Decree through a) the Effective Date of this Consent Decree, b) one  
6 hundred and five (105) days from the date of lodging, or c) the date upon which the  
7 Settling Defendants fully commence the Essential Activities and Critical Task and  
8 other work pursuant to Section IV herein, whichever is earlier.

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

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

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

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

21 3.14 "Parties" shall mean Plaintiffs and the Settling Defendants.

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

26 3.16 "Plaintiffs" or "DTSC" shall mean the California Department of Toxic  
27 Substances Control, the California Toxic Substances Control Account and the  
28

1 following state accounts or funds, to the extent that funds from those accounts or  
2 funds have been, or will be expended on behalf of DTSC at the Facility:

- 3 (a) The California Hazardous Substance Account;
- 4 (b) The California Hazardous Waste Control Account;
- 5 (c) The California Hazardous Substance Cleanup Fund; and
- 6 (d) The California Site Remediation Account.

7 3.17 “Settling Defendants” shall mean the parties identified as Defendants  
8 in the caption above. For purposes of Paragraph 2.8, Section VII, and Section  
9 VIII, “Settling Defendants” also shall mean Defendants’ corporate predecessors-in-  
10 interest, successors-in-interest and affiliated companies identified in Exhibit G.

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

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

20 IV. SETTLING DEFENDANTS’ WORK TO BE PERFORMED AND OTHER  
21 OBLIGATIONS

22 4.1 Work to Be Performed. Settling Defendants shall undertake the  
23 following response actions (Work to Be Performed) set forth below.

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

1 and described in Exhibit C. No later than thirty (30) days after lodging of this  
2 Consent Decree, Settling Defendants shall commence preparations for undertaking  
3 the Essential Activities (Exhibit C) on a day-to-day basis. On or before fourteen  
4 (14) days after the Effective Date of this Consent Decree, Settling Defendants shall  
5 commence the Essential Activities described in Exhibit C. Settling Defendants  
6 shall perform this work for a period of two calendar years after the Effective Date  
7 or until January 14, 2008, whichever is earlier.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9       4.7 Future Interim Response Costs. The Settling Defendants shall pay  
10 DTSC \$500,000 per calendar month (prorated as appropriate) in partial  
11 reimbursement to DTSC for response costs incurred by DTSC with respect to the  
12 Facility after the lodging of and prior to the Effective Date of this Consent Decree.  
13 The first of these payments shall be made within thirty (30) days of the lodging of  
14 this Consent Decree and each subsequent payment shall be made on the 15th of  
15 each month. However, Settling Defendants' obligation to make these payments  
16 shall terminate on a) the Effective Date, b) one hundred and five (105) days after  
17 lodging, or c) the date upon which the Settling Defendants fully commence the  
18 Essential Activities and Critical Task and other work pursuant to Section IV  
19 herein, whichever is earlier. Any final prorated payment shall be made within  
20 three (3) working days of the date the Settling Defendants' obligation to make  
21 these payments terminates.

22       4.8 Payment of Future DTSC Oversight Costs. The Settling Defendants  
23 shall reimburse DTSC for Future DTSC Oversight Costs incurred after a) the  
24 Effective Date of this Consent Decree or b) the date upon which the Settling  
25 Defendants fully commence the Essential Activities and Critical Task and other  
26 work pursuant to Section IV herein, whichever is earlier, to oversee the activities  
27 of Settling Defendants and their agents under this Consent Decree, in the sum of  
28 \$50,000 per month for a period of two calendar years after the Effective Date of

1 this Consent Decree subject to Paragraph 4.8.1, or until January 14, 2008,  
2 whichever is earlier. Such payments shall begin 30 days after a) the Effective Date  
3 of this Consent Decree or b) the date upon which the Settling Defendants fully  
4 commence the Essential Activities and Critical Task and other work pursuant to  
5 Section IV herein, whichever is earlier, and each subsequent payment shall be  
6 made on the 15th of each month thereafter. In the event that the payments required  
7 by this Paragraph are not made on a timely or complete basis, Settling Defendants  
8 shall pay interest on the unpaid balance, calculated at the rate of return earned on  
9 investment in the Surplus Money Investment Fund pursuant to section 16475 of the  
10 Government Code. The interest shall accrue from the date the payment was due,  
11 through the date of Settling Defendants' payment. Payments of interest under this  
12 Paragraph shall be in addition to such other remedies or sanctions available to  
13 Plaintiffs by virtue of Settling Defendants' failure to make timely payments under  
14 this Section. Settling Defendants shall make all payments required by this Consent  
15 Decree in the manner described in Paragraph 10.15.

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

26 4.9 Reimbursement of Past Response Costs. As described in Paragraph  
27 2.5, the Settling Defendants have reimbursed DTSC for certain of its Past  
28 Response Costs incurred through the lodging of this Consent Decree in the amount

1 of three million dollars (\$3,000,000.00). The Settling Defendants shall pay DTSC  
2 an additional \$ 750,000 in reimbursement of certain of DTSC's Past Response  
3 Costs within three (3) working days of the lodging of this Consent Decree.

4 V. AGREEMENTS BY DTSC

5 5.1 Postclosure Insurance Reimbursement.

6 5.1.1 For purposes of California Code of Regulations, title 22,  
7 sections 66264.145 and 66265.145, DTSC authorizes Settling Defendants to  
8 perform certain postclosure care of the Class I Landfill by conducting the Work to  
9 Be Performed that is related to postclosure care of the Class I Landfill under this  
10 Consent Decree for the period of two (2) calendar years after the Effective Date of  
11 this Consent Decree or until January 14, 2008, whichever is earlier. As persons  
12 authorized to perform postclosure care of the Class I Landfill, Settling Defendants  
13 shall be entitled to submit a claim for reimbursement of costs incurred in  
14 performing the work pursuant to this Consent Decree from Steadfast Insurance  
15 Company Policy No. PLC 7969053-04 for postclosure care expenditures by  
16 submitting itemized bills to DTSC pursuant to California Code of Regulations, title  
17 22, sections 66264.145 (e) and 66265.145 (d) as applicable and Exhibit F of this  
18 Consent Decree. Settling Defendants shall submit the reimbursement request at  
19 the close of each annual coverage cycle (May 30) and shall submit only one  
20 reimbursement request for each reimbursement cycle during the period covered by  
21 this Consent Decree. Provided that Settling Defendants perform the work  
22 specified in this Consent Decree, they shall be entitled to all of the insurance  
23 proceeds, on a first priority basis, for the 2005 (June 1, 2005 through May 30,  
24 2006) and the 2006 (June 1, 2006 through May 30, 2007) cycles. For work  
25 performed by the Settling Defendants after May 30, 2007, Settling Defendants  
26 shall be entitled on a first priority basis to a monthly pro-rata share of insurance  
27 proceeds based on the duration of work performed by the Settling Defendants  
28 pursuant to this Consent Decree. Settling Defendants shall be entitled to those

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

9           5.1.2 DTSC shall not be liable for any denial of reimbursement by  
10 Steadfast Insurance Company or its successor or by a court. DTSC agrees to  
11 provide non-privileged information in its possession to the Settling Defendants  
12 necessary for securing reimbursement from Steadfast as authorized pursuant to  
13 Paragraph 5.1.

14           5.2 Site Coordination. DTSC agrees to work with Settling Defendants  
15 and other relevant entities to achieve a coordinated approach for all of the activities  
16 to be conducted at the Facility during the term of this Consent Decree.

17           5.3 Termination of ISE Order. Within 7 (seven) days of entry of this  
18 Consent Decree, DTSC will dismiss without prejudice the ISE Order, as against  
19 the Settling Defendants. DTSC reserves the right to issue any other administrative  
20 order against Settling Defendants with respect to the Facility, after the termination  
21 of this Consent Decree.

## 22 VI. DUE CARE/COOPERATION

23           6.1 Subject to Paragraph 4.6 above, the Settling Defendants shall exercise  
24 due care in performing work under this Consent Decree, and shall perform the  
25 work required by this Consent Decree in compliance with all applicable local,  
26 state, and federal laws and regulations. Nothing in this Paragraph shall be deemed  
27 to (a) relieve BKK of the obligation to comply with any local, state, and federal  
28 laws and regulations applicable to it or permits issued to it with respect to the

1 Subject Property or the Class III Landfill, or (b) require Settling Defendants to  
2 perform the obligations of BKK as owner and operator of the Facility to comply  
3 with any such laws, regulations or permits.

4 VII. COVENANTS NOT TO SUE AND RESERVATIONS OF RIGHTS

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

17 7.2 Nothing in this Consent Decree shall preclude DTSC from seeking the  
18 recovery of any response cost not recovered under this Consent Decree from any  
19 entity not a party to this Consent Decree, including but not limited to, Past  
20 Response Costs and Future DTSC Oversight Costs not paid by Settling  
21 Defendants.

22 7.3 Nothing in this Consent Decree shall preclude DTSC from seeking  
23 recovery of any response costs from the Settling Defendants incurred after the  
24 termination of this Consent Decree and not otherwise included in the Covenant Not  
25 to Sue in Paragraph 7.1 above.

26 7.4 The Covenant Not to Sue set forth in Paragraph 7.1 above shall take  
27 effect upon the Effective Date of this Consent Decree. This covenant not to sue is  
28 conditioned upon the complete and satisfactory performance by Settling

1 Defendants of all obligations under this Consent Decree, including, but not limited  
2 to, performance of the Work to Be Performed pursuant to Paragraph 4.1, and full  
3 payment of certain Past Response Costs, Future DTSC Oversight Costs, and Future  
4 Interim Response Costs pursuant to Paragraphs 4.7, 4.8 and 4.9. This covenant not  
5 to sue extends only to Settling Defendants and does not extend to any other person  
6 or entity.

7       7.5 DTSC's Standstill. DTSC agrees not to take any additional  
8 administrative or judicial actions against the Settling Defendants with respect to  
9 the Facility until the earlier of: (a) termination of this Consent Decree; or (b) the  
10 date a complaint is served on DTSC requiring the performance of work,  
11 reimbursement of cleanup costs, or contribution towards costs associated with  
12 cleanup of the Subject Property. This Paragraph does not limit DTSC's reserved  
13 rights under Paragraph 7.6(a) below.

14       7.6 DTSC's Reservation of Rights. The Covenant Not to Sue set forth in  
15 Paragraph 7.1 above does not pertain to any matters other than those expressly  
16 specified therein. DTSC reserves and this Consent Decree is without prejudice to  
17 all rights against Settling Defendants with respect to all other matters, including  
18 but not limited to, the following:

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

22           (b) criminal liability;

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

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

28

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

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

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

11 (h) except as may otherwise be provided for herein, liability based  
12 upon the Settling Defendants' ownership or operation of the Facility, or upon the  
13 Settling Defendants' transportation, treatment, storage, or disposal, or the  
14 arrangement for the transportation, treatment, storage, or disposal of any hazardous  
15 substances, pollutants or contaminants at or in connection with the Facility.

16 7.7 Except as provided in this Consent Decree, nothing herein shall limit  
17 the power and authority of DTSC or any other State agency to take, direct, or order  
18 all actions necessary to protect public health, welfare, or the environment or to  
19 prevent, abate, or minimize an actual or threatened release of hazardous  
20 substances, pollutants or contaminants, or hazardous or solid waste on, at, or from  
21 the Facility. Further, except as specifically provided for in this Consent Decree,  
22 nothing herein shall prevent DTSC from seeking legal or equitable relief to enforce  
23 the terms of this Consent Decree, from taking other legal or equitable actions as it  
24 deems appropriate and necessary, or from requiring Settling Defendants to perform  
25 additional activities after the termination of this Consent Decree pursuant to the  
26 Comprehensive Environmental Response, Compensation, and Liability Act  
27 (CERCLA), the Health and Safety Code, the California Code of Regulations, title  
28 22, or any other applicable law.

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

7           7.9    Settling Defendants’ Reservation of Rights. The Covenant Not To  
8 Sue set forth in Paragraph 7.8 and the Standstill Agreement set forth in  
9 Paragraph 7.10 do not pertain to any matters other than those specifically  
10 addressed therein and apply only to DTSC and do not extend to any other  
11 department, agency, board or body of the State of California. The Settling  
12 Defendants reserve, and this Consent Decree is without prejudice to, all rights  
13 against DTSC with respect to all other matters.

14           7.10 Settling Defendants’ Standstill. The Settling Defendants agree not to  
15 assert any judicial claim against DTSC with respect to the Facility until the earlier  
16 of: (a) four (4) years from the Effective Date of this Consent Decree; or (b) the  
17 date a complaint is served on Settling Defendants requiring the performance of  
18 work, reimbursement of cleanup costs, or contribution towards costs associated  
19 with cleanup of the Facility.

20           7.11 Tolling Agreement. DTSC and Settling Defendants agree that all  
21 statutes of limitations applicable as of the Effective Date to any rights, claims,  
22 causes of action, counterclaims, crossclaims and defenses with respect to the  
23 Facility that Settling Defendants could assert against DTSC as of the Effective  
24 Date shall be tolled for the period between the Effective Date and the Tolling  
25 Termination Date, and this tolling period shall be excluded from all computations  
26 of any applicable period of limitations. Such potentially applicable statutes of  
27 limitations that are tolled by this agreement include, without limitation, any  
28 applicable time limits within which an action may be commenced against DTSC

1 under the provisions of the California Tort Claims Act, including, without  
2 limitation, Section 945.6 of the California Government Code.

3 VIII. EFFECT OF SETTLEMENT/ CONTRIBUTION PROTECTION

4 8.1 With regard to claims for contribution against Settling Defendants, the  
5 Parties hereto agree, and by entering this Consent Decree the Court finds, upon  
6 entry of this Consent Decree, that the Settling Defendants are entitled to protection  
7 from contribution actions or claims as provided by CERCLA Section 113(f) (2), 42  
8 U.S.C. § 9613(f) (2) for matters addressed in this Consent Decree. The matters  
9 addressed in this Consent Decree are: (a) the Work to Be Performed by Settling  
10 Defendants described herein, to the extent that such work is actually performed by  
11 or on behalf of Settling Defendants and approved by DTSC; (b) Past Response  
12 Costs; (c) Future Interim Response Costs; (d) Future DTSC Oversight Costs;  
13 (e) interest on amounts referred to in (b), (c) and (d) above; and (f) compliance  
14 with the ISE Order from its effective date through the date on which it is dismissed  
15 as provided in this Consent Decree.

16 8.2 Nothing in this Consent Decree shall be construed to create any rights  
17 in, or grant any cause of action to, any person not a party to this Consent Decree  
18 with respect to the Facility. Each of the Parties to this Consent Decree expressly  
19 reserves, and this Consent Decree is without prejudice to, all rights (including, but  
20 not limited to, any right to contribution, indemnification and/or reimbursement),  
21 defenses, claims, remedies, demands, and causes of action that each party may  
22 have with respect to any matter, transaction, or occurrence relating in any way to  
23 the Facility against any person not a party hereto.

24 8.3 The Settling Defendants agree that with respect to any suit or claim  
25 for contribution brought by them for matters related to this Consent Decree they  
26 will notify DTSC in writing at least sixty (60) days prior to the initiation of any  
27 such suit or claim.

28

1           8.4    The Settling Defendants also agree that with respect to any suit or  
2 claim for contribution brought against them for matters related to this Consent  
3 Decree, they will notify in writing DTSC within fifteen (15) days of service of the  
4 complaint on them. In addition, Settling Defendants shall notify DTSC within ten  
5 (10) days of service or receipt of any Motion for Summary Judgment and within  
6 ten (10) days of receipt of any order from a court setting a case for trial.

7           8.5    In any subsequent administrative or judicial proceeding initiated by  
8 one or more of the Plaintiffs for injunctive relief, recovery of response costs, or  
9 other appropriate relief relating to the Facility, Settling Defendants shall not assert,  
10 and may not maintain, any defense or claim based upon the principles of waiver,  
11 res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses  
12 based upon any contention that the claims raised by DTSC in the subsequent  
13 proceeding were or should have been brought in the instant case.

#### 14 IX.   FUTURE COOPERATION

15           9.1    The Parties recognize that the Settling Defendants represent a subset  
16 of those who may be responsible for response actions at the Subject Property. The  
17 Parties also recognize that this Consent Decree represents an interim step towards a  
18 more permanent solution to the long term operation and maintenance of the  
19 Subject Property that may include a component for additional responsible parties.  
20 The Parties agree to work in good faith towards this long term solution.

#### 21           9.2    Additional Potentially Responsible Parties (PRPs).

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

24                   (b)    If the Settling Defendants provide evidence and supporting  
25 documentation to DTSC in accordance with Health and Safety Code section  
26 25356.1.3 concerning the potential liability of any other person with respect to the  
27 Facility, then DTSC will evaluate the information accordingly and take such  
28 actions as deemed appropriate in DTSC's sole discretion. These actions may

1 include, but are not limited to, notice letters, information requests, issuing final  
2 determinations of non-compliance with the ISE Order, and judicial and  
3 administrative enforcement actions, or no action.

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

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

11 9.4 The Parties may, by mutual written agreement, and with approval of  
12 the court, extend some or all of the obligations and related provisions of this  
13 Consent Decree.

14 9.5 The Settling Defendants shall inform DTSC at least four (4) months  
15 before the date the obligations of this Consent Decree terminate as to whether they  
16 intend to extend this Consent Decree.

## 17 X. GENERAL PROVISIONS

18 10.1 Project Coordinators. Settling Defendants' Project Coordinator is  
19 Roberto Puga, P.G. of Project Navigator, Ltd. Settling Defendants shall promptly  
20 notify DTSC in writing at least seven (7) working days before any proposed  
21 change in the identity of the Project Coordinator. Settling Defendants shall obtain  
22 approval from DTSC before the new Project Coordinator performs any work under  
23 this Consent Decree. DTSC's Project Coordinator is Don Plain, Chief, Emergency  
24 Response and Special Projects Branch, Site Mitigation and Brownfields Reuse  
25 Program. DTSC's Project Coordinator will be responsible for overseeing Settling  
26 Defendants' implementation of this Consent Decree.

27 10.1.1 Each Project Coordinator shall be responsible for designating  
28 a person to act in her/his absence. All communications between DTSC and

1 Settling Defendants concerning the Work to Be Performed shall be directed  
2 through the Project Coordinators.

3 10.2 Project Engineer/Geologist. The Work to Be Performed pursuant to  
4 this Consent Decree shall be under the direction and supervision of a qualified  
5 professional engineer or a professional geologist in the State of California, with  
6 expertise in hazardous substance site management and post-closure care of  
7 landfills. On January 21, 2005, the Settling Defendants provided the name,  
8 address, telephone number and resume of Mr. Roberto Puga, P.G. to serve as  
9 interim Project Geologist along with the statement of qualifications of Mr. Puga's  
10 firm, Project Navigator, Ltd. Within seven (7) days of a) the Effective Date of this  
11 Consent Decree or b) the date upon which the Settling Defendants fully  
12 commence the Essential Activities and Critical Task and other work pursuant to  
13 Section IV herein, whichever is earlier, Settling Defendants shall submit  
14 supplemental resumes and/or statements of qualifications as appropriate. Settling  
15 Defendants shall promptly notify DTSC in writing at least seven (7) working days  
16 before any proposed change in the identity of the Project Engineer/Geologist.  
17 Settling Defendants shall obtain approval from DTSC before the new Project  
18 Engineer/Geologist performs any work under this Consent Decree.

19 10.3 Monthly Summary Reports. After the end of the first month after a)  
20 the Effective Date of this Consent Decree or b) the date upon which the Settling  
21 Defendants fully commence the Essential Activities and Critical Task and other  
22 work pursuant to Section IV herein, whichever is earlier, and on a monthly basis  
23 thereafter, Settling Defendants shall submit to DTSC a Monthly Summary Report  
24 of their activities under the provisions of this Consent Decree. The reports shall be  
25 received by DTSC by the 15th day of each month and shall describe:

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

28

1 (b) Actions expected to be undertaken during the current calendar  
2 month;

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

4 (d) Any problems or anticipated problems in complying with this  
5 Consent Decree; and

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

9 10.4 Quality Assurance/Quality Control (QA/QC). All sampling and  
10 analysis conducted by Settling Defendants under this Consent Decree shall be  
11 performed in accordance with QA/QC procedures submitted by Settling  
12 Defendants and approved by DTSC pursuant to this Consent Decree.

13 10.5 Submittals. All submittals and notifications from Settling Defendants  
14 required by this Consent Decree shall be sent simultaneously to:

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

22 With a copy to:

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

10.6 Communications. All approvals and decisions of DTSC made  
regarding submittals and notifications will be communicated to Settling  
Defendants in writing by the DTSC Project Coordinator or his/her designee. No  
informal advice, guidance, suggestions or comments by DTSC regarding reports,

1 plans, specifications, schedules or any other writings by Settling Defendants shall  
2 be construed to relieve Settling Defendants of their obligation to obtain such  
3 formal approvals as may be required by this Consent Decree.

4 10.7 DTSC Review and Approval.

5 10.7.1 All response actions taken pursuant to this Consent Decree  
6 shall be subject to the approval of DTSC. Settling Defendants shall submit all  
7 deliverables required by this Consent Decree to DTSC. DTSC shall revise and  
8 approve or reject the deliverables within 45 days of its receipt thereof. Once the  
9 deliverables are approved by DTSC, they shall be deemed incorporated into, and  
10 where applicable, enforceable under this Consent Decree.

11 10.7.2 If DTSC determines that any report, plan, schedule or other  
12 document submitted for approval pursuant to this Consent Decree fails to comply  
13 with this Consent Decree, subject to Settling Defendants' right to invoke dispute  
14 resolutions pursuant to this Consent Decree, DTSC may:

15 (a) Modify the document as deemed necessary and  
16 approve the document as modified; or

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

20 10.8 Access for DTSC/Access to Property Owned by Others.

21 10.8.1 On November 4, 2004, BKK and DTSC entered into the  
22 Right to Enter Agreement, which requires BKK to provide full access to Parcel 3  
23 to DTSC and its consultants, contractors and designees (Exhibit B).

24 10.8.2 For purposes of gaining access to the Facility, the Settling  
25 Defendants are deemed DTSC's designees.

26 10.8.3 Settling Defendants shall cooperate with DTSC to provide  
27 DTSC with access to the Subject Property consistent with applicable health and  
28 safety plans, laws and regulations. Settling Defendants shall provide access to data

1 and facilitate access to laboratories used for analyses of the samples obtained  
2 pursuant to this Consent Decree at all reasonable times to employees, contractors,  
3 and consultants of DTSC. Nothing in this Paragraph is intended or shall be  
4 construed to limit in any way the right of entry or inspection that DTSC or any  
5 other agency may otherwise have by operation of any law.

6 10.8.4 The Settling Defendants shall also cooperate with DTSC to  
7 provide access to any other person not a party to this Consent Decree as directed  
8 by DTSC subject to applicable health and safety plans, laws and regulations.  
9 DTSC shall work with Settling Defendants to assure that all activities at the  
10 Subject Property are coordinated.

11 10.8.5 For property other than Parcel 3, to which access is required  
12 for the implementation of this Consent Decree and which is owned or controlled by  
13 persons other than Settling Defendants, Settling Defendants shall use best efforts to  
14 secure from such persons access for Settling Defendants, as well as DTSC, its  
15 representatives, and contractors, as necessary to effectuate this Consent Decree.  
16 For purposes of this Paragraph, “best efforts” shall include the payment of  
17 reasonable sums of money in consideration for access.

18 10.8.6 If any access required to complete the Work to Be Performed  
19 is not obtained, Settling Defendants shall promptly notify DTSC and shall include  
20 in that notification a summary of the steps Settling Defendants have taken to gain  
21 access. DTSC may, as it deems appropriate, assist Settling Defendants in  
22 obtaining access. Settling Defendants shall be subject to liability for costs incurred  
23 by DTSC in obtaining access.

24 10.9 Sampling, Data and Document Availability. Settling Defendants shall  
25 permit DTSC and its authorized representatives to inspect and copy all sampling,  
26 testing, monitoring or other data generated by Settling Defendants or on Settling  
27 Defendants’ behalf pursuant to this Consent Decree. Settling Defendants shall  
28 submit all such data upon the request of DTSC. Copies shall be provided within

1 seven (7) days of receipt of DTSC's written request. Settling Defendants shall  
2 inform DTSC at least seven (7) days in advance of all field sampling under this  
3 Consent Decree, and shall allow DTSC and its authorized representatives to take  
4 duplicates of any samples collected by Settling Defendants pursuant to this  
5 Consent Decree. Settling Defendants shall maintain a central depository of the  
6 data, reports, and other documents prepared pursuant to this Consent Decree.

7 10.10 Record Retention. All such data, reports and other documents shall be  
8 preserved by Settling Defendants for a minimum of ten (10) years after the  
9 conclusion of all activities under this Consent Decree. If DTSC requests that some  
10 or all of these documents be preserved for a longer period of time, Settling  
11 Defendants shall either comply with that request or deliver the documents to  
12 DTSC, or permit DTSC to copy the documents prior to destruction. Settling  
13 Defendants shall notify DTSC in writing, at least six (6) months prior to destroying  
14 any documents prepared pursuant to this Consent Decree.

15 10.11 Government Liabilities. The State of California shall not be liable for  
16 any injuries or damages to persons or property resulting from acts or omissions by  
17 Settling Defendants, or related parties specified in Paragraph 10.20 (Parties  
18 Bound), in carrying out activities pursuant to this Consent Decree, nor shall the  
19 State of California be held as party to any contract entered into by Settling  
20 Defendants or its agents in carrying out activities pursuant to this Consent Decree.

21 10.12 Extension Requests. If Settling Defendants are unable to perform any  
22 activity or submit any document within the time required under this Consent  
23 Decree, Settling Defendants may, prior to expiration of the time, request an  
24 extension of the time in writing. The extension request shall include a justification  
25 for the delay. All such requests shall be in advance of the date on which the  
26 activity or document is due.

27 10.13 Extension Approvals. If DTSC determines that good cause exists for  
28 an extension, it will grant the request and specify a new schedule in writing.

1 Settling Defendants shall comply with the new schedule incorporated in this  
2 Consent Decree.

3 10.14 Recoverable Costs. The Parties agree, and by entering this Consent  
4 Decree the Court finds, that all payments made to DTSC for Past Response Costs  
5 described in Paragraph 4.9 of this Consent Decree, all payments for Future Interim  
6 Response Costs, and all payments for Future DTSC Oversight Costs pursuant to  
7 this Consent Decree have been or are being made to reimburse DTSC for  
8 recoverable response costs as defined under CERCLA and the HSAA, incurred by  
9 DTSC with respect to releases or threatened releases of hazardous substances at the  
10 Facility in a manner that was and is consistent with the NCP.

11 10.15 Payments. All payments made by the Settling Defendants pursuant to  
12 this Consent Decree shall be made by a cashier's or certified check made payable  
13 to the "Department of Toxic Substances Control", and bearing on its face the  
14 project code for the Facility (Site # 300012-00) and the docket number of this  
15 Consent Decree. On each check, Settling Defendants shall state: "For BKK  
16 Costs". On each check, payments shall be further identified as either "BKK Future  
17 DTSC Oversight Costs", "BKK Future Interim Response Costs", or "BKK Past  
18 Response Costs", and shall be sent to:

19 Department of Toxic Substances Control  
20 Accounting/Cashier  
21 400 P Street, 4th Floor  
22 P.O. Box 806  
23 Sacramento, California 95812-0806

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

26 10.16 Severability. The requirements of this Consent Decree are severable,  
27 and Settling Defendants shall comply with each and every provision hereof,  
28 notwithstanding the effectiveness of any other provision.

10.17 Incorporation of Plans, Schedules and Reports. All plans, schedules,  
reports, specifications and other documents that are submitted by Settling

1 Defendants pursuant to this Consent Decree are incorporated in this Consent  
2 Decree upon DTSC’s approval or as modified pursuant to Paragraph 10.7, DTSC  
3 Review and Approval, and shall be implemented by Settling Defendants. Any  
4 noncompliance with the documents incorporated in this Consent Decree shall be  
5 deemed a failure or refusal to comply with this Consent Decree.

6 10.18 Modifications. This Consent Decree may only be modified in writing  
7 by mutual agreement by the Parties and approval of the Court.

8 10.19 Time Periods. Unless otherwise specified, time periods begin from  
9 the Effective Date of this Consent Decree.

10 10.20 Parties Bound. This Consent Decree applies to and is binding upon  
11 DTSC and its successors-in-interest and the Settling Defendants, and their  
12 corporate predecessors-in-interest, successors-in-interest and affiliated companies  
13 identified in Exhibit G. Settling Defendants shall provide a copy of this Consent  
14 Decree to all contractors, subcontractors, laboratories, and consultants that are  
15 retained to conduct any work performed under this Consent Decree, within fifteen  
16 (15) days after a) the Effective Date of this Consent Decree, b) the date upon  
17 which the Settling Defendants fully commence the Essential Activities and Critical  
18 Task and other work pursuant to Section IV herein, or c) the date of retaining their  
19 services, whichever is later. Settling Defendants shall condition any such contracts  
20 upon satisfactory compliance with this Consent Decree. Notwithstanding the terms  
21 of any contract, Settling Defendants are responsible for compliance with this  
22 Consent Decree and for ensuring that their successors-in-interest, affiliated  
23 companies identified in Exhibit G, employees, contractors, consultants,  
24 subcontractors, agents and attorneys comply with this Consent Decree.

25 10.21 Joint and Several Obligations. The obligations of the Settling  
26 Defendants to carry out all activities and to make the payments required by this  
27 Consent Decree are joint and several. In the event of failure of any one or more  
28 Settling Defendants to conduct the Work to Be Performed pursuant to this Consent

1 Decree and/or to make the payments required under this Consent Decree, the  
2 remaining Settling Defendants shall be responsible for such Work to Be Performed  
3 and for such payments. In the event of the insolvency or other failure of any one  
4 or more Settling Defendants to implement the requirements of this Consent  
5 Decree, the remaining Settling Defendants shall complete all of the requirements.

6 10.22 Change in Ownership. No change in ownership or corporate or  
7 partnership status relating to the Subject Property shall in any way alter Settling  
8 Defendants' responsibility under this Consent Decree. No conveyance of title,  
9 easement, or other interest in the Subject Property, or a portion of the Subject  
10 Property, shall affect Settling Defendants' obligations under this Consent Decree.  
11 Unless DTSC agrees that such obligations may be transferred to a third party,  
12 Settling Defendants shall be responsible for and liable for any failure to carry out  
13 all activities required of Settling Defendants by the terms and conditions of this  
14 Consent Decree, regardless of Settling Defendants' use of employees, agents,  
15 contractors, or consultants to perform any such tasks. Settling Defendants shall  
16 provide a copy of this Consent Decree to any subsequent owners or successors  
17 before ownership rights or stock or assets in a corporate acquisition are transferred.

## 18 XI. DELAY IN PERFORMANCE/STIPULATED PENALTIES

19 11.1 For each day that the Settling Defendants fail to deliver a deliverable  
20 in a timely manner, fail to perform work of acceptable quality, or otherwise fail to  
21 perform the work required by this Consent Decree, including Exhibits C and D,  
22 Settling Defendants shall be liable for stipulated penalties as set forth below.  
23 Penalties begin to accrue on the day that the deliverable or performance is due, and  
24 continue to accrue until one of the following occurs: a) DTSC notifies Settling  
25 Defendants that it will conduct the work; or b) Settling Defendants submit the  
26 deliverable or perform the work in question and DTSC determines that the  
27 document or work is acceptable to DTSC (whichever is earlier). Payment of any  
28

1 Stipulated Penalties by Settling Defendants shall be due within thirty (30) days of  
2 receipt of a demand letter from DTSC.

3 11.1.1 For the following deliverables or work, stipulated penalties  
4 shall accrue in the amount of \$500.00 per day, per violation, for the first seven (7)  
5 days of noncompliance, and \$750.00 per day, per violation thereafter:

- 6 (a) Monthly reports as required by Paragraph 10.3; or
- 7 (b) Emergency response report as required by  
8 Paragraph 4.4.

9 11.1.2 For the following major deliverables or work, stipulated  
10 penalties shall accrue in the amount of \$1,000 per day, per violation, for the first  
11 seven (7) days of noncompliance, and \$2,500 per day, per violation thereafter,:

- 12 (a) Performance of any Essential Activity identified in  
13 Exhibit C; or
- 14 (b) Performance of the Critical Task identified in  
15 Exhibit D; or
- 16 (c) Immediately notifying DTSC of an emergency or  
17 taking immediate action to address an emergency as set forth in Paragraph 4.4.

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

21 11.2 If the payment of Future Interim Response Costs required of the  
22 Settling Defendants by this Consent Decree are not made by the time specified in  
23 Paragraph 4.7, the Settling Defendants shall be liable, for the following amounts  
24 for each date of delay in payment:

| 25 Days of Delay  | Payment per Day of Delay |
|-------------------|--------------------------|
| 26 1-14           | \$1,000/day              |
| 27 15-60          | \$2,500/day              |
| 28 Beyond 60 days | \$5,000/day              |

1           11.3 Settling Defendants may dispute DTSC’s right to the stated amount of  
2 penalties by invoking the dispute resolution procedures under Paragraph 14.1  
3 herein. Penalties shall accrue but need not be paid during the dispute resolution  
4 period. If Settling Defendants do not prevail upon resolution, all penalties shall be  
5 due to DTSC within thirty (30) days of resolution of the dispute. If Settling  
6 Defendants prevail upon resolution, no penalties shall be paid.

7           11.4 These stipulated penalties provisions do not preclude DTSC from  
8 pursuing any other legal remedies or sanctions that are available to DTSC because  
9 of the Settling Defendants’ failure to comply with this Consent Decree. Payment  
10 of stipulated penalties does not alter Settling Defendants’ obligation to complete  
11 performance under this Consent Decree.

12 **XII. PUBLIC COMMENT**

13           12.1 This Consent Decree shall be subject to a public comment period for  
14 not less than thirty (30) days after lodging with the Court. DTSC may modify or  
15 withdraw its consent to this Consent Decree if comments received disclose facts or  
16 considerations that indicate that this Consent Decree is inappropriate, improper or  
17 inadequate.

18 **XIII. EFFECTIVE DATE**

19           13.1 The Effective Date of this Consent Decree shall be the date on which  
20 it is entered by the Court.

21 **XIV. DISPUTE RESOLUTION**

22           14.1 Any dispute that arises between the Parties with respect to an  
23 obligation under this Consent Decree shall, in the first instance, be the subject of  
24 good faith negotiations among the Parties. The Parties agree that they shall use  
25 their best efforts to resolve any dispute informally. In the absence of agreement,  
26 any Party may submit the matter to the Court for resolution.

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1 **XV. SIGNATORIES**

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

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

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

13  
14  
15 Dated: October 25, 2005

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

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

1 AMERICAN HONDA MOTOR CO., INC.

2

3

4 DATE: October 7, 2005

By: //Original Signed By//  
SIGNATURE

5

6

TIMOTHY J. CONLEY  
NAME (printed or typed)

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8

Vice President and General Counsel  
TITLE (printed or typed)

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1 ANADARKO E&P COMPANY LP

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4 DATE: October 25, 2005

By: //Original Signed By//  
SIGNATURE

5

6

DAVID J. OWENS  
NAME (printed or typed)

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Associate General Counsel  
TITLE (printed or typed)

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

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DATE: October 20, 2005

By: //Original Signed By//  
SIGNATURE

H.C. WINSOR  
NAME (printed or typed)

Regional Manager  
TITLE (printed or typed)

1 BAYER CROPSCIENCE INC.  
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DATE: October 17, 2005

By: //Original Signed By//  
SIGNATURE

BRIAN A. SPILLER  
NAME (printed or typed)

Chairman, Stauffer Management  
Company LLC  
TITLE (printed or typed)

AS AUTHORIZED  
LITIGATION AGENT FOR  
BAYER CROPSCIENCE INC.

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

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

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DATE: October 20, 2005

By: //Original Signed By//  
SIGNATURE

ROBERT R. JOHN  
NAME (printed or typed)

Assistant Secretary  
TITLE (printed or typed)

1 HUNTINGTON BEACH COMPANY, a California corporation

2

3

4 DATE: October 18, 2005

By: //Original Signed By//  
SIGNATURE

5

6

FRANK G. SOLER  
NAME (printed or typed)

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9

Assistant Secretary  
TITLE (printed or typed)

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

3  
4  
5 DATE: October 18, 2005

By: //Original Signed By//  
SIGNATURE

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

9 Assistant Secretary  
10 TITLE (printed or typed)

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

3  
4  
5 DATE: \_\_\_\_\_

By: //Original Signed By//  
SIGNATURE

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7 **[PENDING]**  
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1 CONOCOPHILLIPS COMPANY, on behalf of itself and its affiliated entities

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4 DATE: October 26, 2005

By: //Original Signed By//

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SIGNATURE

6

WILLIAM A. KITCHEN

7

NAME (printed or typed)

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Manager, Risk Management and  
Remediation

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TITLE (printed or typed)

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1 DUCOMMUN AEROSTRUCTURES, INC.

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4 DATE: October 31, 2005

By: //Original Signed By//  
SIGNATURE

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JAMES S. HEISER  
NAME (printed or typed)

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Secretary  
TITLE (printed or typed)

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

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DATE: October 19, 2005

By: //Original Signed By//  
SIGNATURE

ZANE K. BOLEN  
NAME (printed or typed)

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

1 GENERAL MOTORS CORPORATION

2

3

4 DATE: October 10, 2005

By: //Original Signed By//  
SIGNATURE

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6

MICHELLE T. FISHER  
NAME (printed or typed)

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9

Attorney  
TITLE (printed or typed)

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

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DATE: October 14, 2005

By: //Original Signed By//

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SIGNATURE

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TROY J. MEYER

8

NAME (printed or typed)

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Remediation Portfolio Director

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TITLE (printed or typed)

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1 NATIONAL STEEL AND SHIPBUILDING COMPANY

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4 DATE: October 7, 2005

By: //Original Signed By//  
SIGNATURE

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7

LANE L. MCVEY  
NAME (printed or typed)

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9

Vice President, Business Affairs and  
Law

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TITLE (printed or typed)

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

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DATE: October 17, 2005

By: //Original Signed By//  
SIGNATURE

KRAIG H. SCHEYER  
NAME (printed or typed)

Vice President, Administrative Services  
TITLE (printed or typed)

1 QUEMETCO, INC.

2

3

4 DATE: October 10, 2005

By: //Original Signed By//  
SIGNATURE

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DANIEL M. CROWLEY  
NAME (printed or typed)

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Attorney  
TITLE (printed or typed)

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

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4 DATE: October 7, 2005

By: //Original Signed By//  
SIGNATURE

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6

GREGORY B. PETERS  
NAME (printed or typed)

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8

Vice President and General Manager  
Operations

9

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TITLE (printed or typed)

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

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DATE: October 11, 2005

By: //Original Signed By//  
SIGNATURE

STEVEN D. RICHTEL  
NAME (printed or typed)

Area Director, CSMG  
TITLE (printed or typed)

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

2

3

4 DATE: October 13, 2005

By: //Original Signed By//  
SIGNATURE

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6

HECTOR A. PINEDA  
NAME (printed or typed)

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Assistant Corporate Secretary  
TITLE (printed or typed)

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1 SOUTHERN CALIFORNIA EDISON COMPANY

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4 DATE: October 19, 2005

By: //Original Signed By//  
SIGNATURE

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6

STEPHEN E. PICKETT  
NAME (printed or typed)

7

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9

Senior Vice President and  
General Counsel

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TITLE (printed or typed)

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1 THUMS LONG BEACH COMPANY

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4 DATE: October 19, 2005

By: //Original Signed By//  
SIGNATURE

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6

F. E. KOMIN  
NAME (printed or typed)

7

8

President/General Manager  
TITLE (printed or typed)

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1 UNION CARBIDE CORPORATION  
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DATE: October 10, 2005

By: //Original Signed By//  
SIGNATURE

SANDI VAN WORMER  
NAME (printed or typed)

Authorized Representative  
TITLE (printed or typed)

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

2  
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4  
5 DATE: October 20, 2005

By: //Original Signed By//  
SIGNATURE

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

9 General Manager  
10 TITLE (printed or typed)

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

2

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4 DATE: October 21, 2005

By: //Original Signed By//  
SIGNATURE

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7

FAY L. CHAPMAN  
NAME (printed or typed)

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Senior Executive Vice President  
TITLE (printed or typed)

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

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DATE: October 10, 2005

By: //Original Signed By//  
SIGNATURE

STEVEN D. RICHTEL  
NAME (printed or typed)

Area Director, CSMG  
TITLE (printed or typed)

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

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4 DATE: October 10, 2005

By: //Original Signed By//  
SIGNATURE

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STEVEN D. RICHTEL  
NAME (printed or typed)

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Area Director, CSMG  
TITLE (printed or typed)

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1 XEROX CORPORATION  
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DATE: October 24, 2005

By: //Original Signed By//  
SIGNATURE

PATRICIA A. CALKINS  
NAME (printed or typed)

Vice President EH&S  
TITLE (printed or typed)