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*Attorneys for the California Department of Toxic  
 9 Substances Control and the Toxic Substances  
 Control Account*

11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE EASTERN DISTRICT OF CALIFORNIA  
 13 SACRAMENTO DIVISION

15 **CALIFORNIA DEPARTMENT OF TOXIC  
 16 SUBSTANCES CONTROL and the TOXIC  
 17 SUBSTANCES CONTROL ACCOUNT,**

18 Plaintiffs,

19 v.

20 **JIM DOBBAS, INC., a California  
 21 corporation; CONTINENTAL RAIL, INC.,  
 22 a Delaware corporation; DAVID VAN  
 23 OVER, individually; PACIFIC WOOD  
 24 PRESERVING, a dissolved California  
 25 corporation; and WEST COAST WOOD  
 PRESERVING, LLC, a Nevada limited  
 liability company,**

26 Defendants.

Case No.

**COMPLAINT FOR RECOVERY OF  
 RESPONSE COSTS; DECLARATORY  
 RELIEF; INJUNCTIVE RELIEF;  
 TREBLE DAMAGES; AND CIVIL  
 PENALTIES**

**(Comprehensive Environmental Response,  
 Compensation, and Liability Act  
 ("CERCLA"), 42 U.S.C. § 9607(a) and  
 9613(g)(2), and supplemental state law  
 claims)**

1 Plaintiffs, the California Department of Toxic Substances Control (“Department”) and the  
2 Toxic Substances Control Account (together “Plaintiffs”), allege as follows:

3 **JURISDICTION**

4 1. This Court has jurisdiction under 28 U.S.C. sections 1331 and 1367, and under  
5 section 113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act  
6 (“CERCLA”), 42 U.S.C. section 9613(b).

7 **VENUE**

8 2. Venue is proper in this district under 42 U.S.C. section 9613(b) and 28 U.S.C. section  
9 1391(b), because the releases and threatened releases of hazardous substances into the  
10 environment that are at issue occurred in this judicial district.

11 **INTRA-DISTRICT ASSIGNMENT**

12 3. Under Local Rule 120(d), Plaintiffs are filing this action in the Sacramento Division  
13 of the Eastern District because it arose in Solano County.

14 **STATEMENT OF THE ACTION**

15 4. Plaintiffs make a claim against Defendants under section 107(a) of CERCLA, 42  
16 U.S.C. section 9607(a), for the recovery of response costs and interest on such response costs that  
17 Plaintiffs have incurred in connection with releases and threatened releases of hazardous  
18 substances, including arsenic, chromium, and copper, at, beneath, and/or from the approximately  
19 7.5 acre property located northwest of the intersection of A Street and Holdener Road in the  
20 community of Elmira, Solano County, California. The property has a street address of 147 A  
21 Street, Elmira, California 95625, and is identified by Solano County Assessor’s Parcel Number(s)  
22 142-010-130, 142-010-140, and 142-042-010. The property, and the areal extent of the hazardous  
23 substances contamination that is, or has been, present at or has extended from the property, are  
24 referred to herein as “the Site.”

25 5. Plaintiffs further make a claim for declaratory relief, under 28 U.S.C. section 2201  
26 and section 113(g)(2) of CERCLA, 42 U.S.C. section 9613(g)(2), for a declaratory judgment that  
27 each of the Defendants is jointly and severally liable to Plaintiffs for future response costs  
28

1 incurred by the Plaintiffs in responding to releases and threatened releases of hazardous  
2 substances at, beneath, and/or from the Site.

3 6. Plaintiffs also seek injunctive relief, treble damages, and civil penalties against  
4 certain Defendants pursuant to a supplemental state law claim under Chapter 6.8 of Division 20  
5 of the California Health and Safety Code, for the Defendants' failure to comply with an Imminent  
6 or Substantial Endangerment Determination Order and Remedial Action Order that the  
7 Department issued to those Defendants, concerning the releases and threatened releases of  
8 hazardous substances referenced above.

9 **PLAINTIFFS**

10 7. The Department is a public agency of the State of California, organized and existing  
11 under California Health and Safety Code section 58000 et seq. The Department is responsible  
12 under state law for determining whether there has been a release and/or threatened release of a  
13 hazardous substance into the environment and for responding to releases and/or threatened  
14 releases of a hazardous substance into the environment.

15 8. The Toxic Substances Control Account is an account within the State of California  
16 General Fund. California Health and Safety Code section 25173.6 establishes the account, and  
17 the director of the Department administers it. Under California Health and Safety Code section  
18 25361(a), the account shall be a party in any action for recovery of response costs or expenditures  
19 incurred from the account under Chapter 6.8 of Division 20 of the California Health and Safety  
20 Code.

21 **DEFENDANTS**

22 9. Defendant Jim Dobbas, Inc. ("Dobbas") is a California corporation, with its principal  
23 place of business in Placer County, California. It owned an undivided fifty percent interest in the  
24 Site from on or about March 20, 1997 to on or about February 11, 2011, and conducted business  
25 operations there during all or part of that time.

26 10. Defendant Continental Rail, Inc. ("CRI") is a Delaware corporation. Under Delaware  
27 Code, title 8, section 510, its charter is presently void, and all powers conferred by Delaware law  
28 on the corporation are presently inoperative. It owned an undivided fifty percent interest in the

1 Site from on or about March 20, 1997 to on or about February 11, 2011, and conducted business  
2 operations there during all or part of that time.

3 11. Defendant David van Over (“Van Over”) is a citizen of California residing in Solano  
4 County, California. He currently owns and operates the Site.

5 12. Defendant Pacific Wood Preserving (“PWP”) is a dissolved California corporation. It  
6 conducted business operations at the Site from about 1972 to on or about September 12, 1979,  
7 and owned it from 1977 to on or about September 12, 1979.

8 13. Defendant West Coast Wood Preserving, LLC (“West Coast Wood”) is a Nevada  
9 limited liability company, with its principal place of business in Kern County, California. It is a  
10 successor to Defendant PWP, as evidenced by the following facts:

- 11 • PWP was incorporated in 1972.
- 12 • The sole or primary shareholder of PWP was non-party Richard F. Jackson  
13 (deceased March 2012).
- 14 • Mr. Jackson elected to wind up and dissolve PWP on or about December 30,  
15 1979.
- 16 • Before PWP’s dissolution, Mr. Jackson caused the formation of what is now  
17 West Coast Wood Preserving, LLC, which was originally organized as Pacific  
18 Wood Preserving of Bakersfield Inc. (“PWP-Bakersfield”), in October 1978.
- 19 • On information and belief, Mr. Jackson was the sole or primary shareholder of  
20 PWP-Bakersfield until his death in March 2012, just as he was the sole or  
21 primary shareholder of PWP.
- 22 • Mr. Jackson was a director of both PWP and PWP-Bakersfield.
- 23 • Mr. Jackson was the President of PWP during most of all of its corporate  
24 existence, and was also the President of PWP-Bakersfield from at least  
25 September 1980 until his death.
- 26 • In 1979, PWP-Bakersfield (now West Coast Wood) started business operations  
27 on property that PWP owned in Bakersfield, California, and has operated at  
28 that location through the present.

- 1 • Since 1979, PWP-Bakersfield (now West Coast Wood) has engaged in  
2 substantially the same wood preserving business at a facility in Bakersfield,  
3 California as PWP conducted at the Site in Elmira, California until 1979.
- 4 • PWP conveyed its Bakersfield, California property directly to PWP-Bakersfield  
5 in September 1981 for unknown consideration.
- 6 • PWP's transfer of its Bakersfield, California property to PWP-Bakersfield  
7 occurred almost two years *after* PWP certified that it had dissolved.
- 8 • PWP-Bakersfield (now West Coast Wood), which incorporated in October  
9 1978, has stated in company brochures and elsewhere that it has operated since  
10 1972, the year of PWP's incorporation.
- 11 • PWP-Bakersfield (West Coast Wood) has stated on its website that the  
12 proceeds from PWP's sale of the assets of its facility in Elmira, California were  
13 used to start the PWP-Bakersfield facility in Bakersfield, California.
- 14 • On or about November 19, 2013, PWP-Bakersfield filed Articles of Conversion  
15 with the Nevada Secretary of State that provided for the conversion of PWP-  
16 Bakersfield to West Coast Wood.
- 17 • The Articles of Conversion attached a plan of conversion stating that all debts,  
18 liabilities, and obligations of PWP-Bakersfield "shall be assumed and continue  
19 as debts, liabilities, and obligations" of West Coast Wood.

#### 20 **GENERAL ALLEGATIONS**

21 14. Defendant PWP conducted wood preserving operations at the Site from  
22 approximately 1972 through on or about September 12, 1979.

23 15. From on or about September 12, 1979 through approximately 1982, non-party Collins  
24 & Aikman Products, LLC, a cancelled Delaware limited liability company under Delaware Code,  
25 title 6, section 18-203 (formerly known as Collins & Aikman Products Co., and the successor by  
26 merger to The Wickes Corporation) ("C&A Products") conducted wood preserving operations at  
27 the Site.  
28

1           16. At various times since 1972, hazardous substances within the definition of section  
2 101(14) of CERCLA, 42 U.S.C. section 9601(14), were released into the environment at and from  
3 the Site within the meaning of section 101(22) of CERCLA, 42 U.S.C. section 9601(22). These  
4 hazardous substances included arsenic, chromium, and copper, which were constituents of wood  
5 preserving chemicals used at the Site.

6           17. From the 1980's through 2005, C&A Products took various actions under oversight  
7 of the Department and its predecessor agency to address environmental contamination at, around,  
8 and/or beneath the Site. Those actions included, among other things, soil excavation, installing  
9 an asphalt cap over contaminated soils, constructing a building and a drainage system over  
10 another contaminated area of the Site, installing and operating a groundwater extraction and  
11 treatment system, and groundwater monitoring.

12           18. On or about October 27, 1995, the Department and C&A Products recorded a  
13 Covenant to Restrict Use of Property ("Land Use Covenant") concerning the Site under  
14 California Health and Safety Code sections 25355.5 and 25356.1 that restricted the permissible  
15 uses of the Site based on environmental conditions there. A copy of the Land Use Covenant is  
16 attached as Exhibit A and incorporated by this reference.

17           19. On or about March 20, 1997, C&A Products sold the Site to Defendants Dobbas and  
18 CRI, while continuing to take actions to address environmental contamination at, around, and/or  
19 beneath the Site.

20           20. On or about May 17, 2005, C&A Products (then known as Collins & Aikman  
21 Products Co.) filed a Chapter 11 petition in the United States Bankruptcy Court for the Eastern  
22 District of Michigan, Case No. 05-55932. That bankruptcy case was jointly administered with the  
23 bankruptcy cases of numerous other debtors under Case No. 05-55927.

24           21. In July or August 2005, while in Chapter 11 bankruptcy proceedings, C&A Products  
25 stopped operating the groundwater extraction and treatment system, and stopped taking other  
26 action to address contamination at, around, and/or beneath the Site. The Department was verbally  
27 notified that C&A Products had stopped operating the groundwater extraction and treatment  
28 system in early November 2005.

1           22. In 2006, the Department requested that Defendants Dobbas and CRI, the then-owners  
2 and operators of the Site, resume such actions to address contamination.

3           23. In December 2007, Defendant Dobbas agreed to perform certain actions at the Site,  
4 which included limited maintenance of the asphalt cap and repair of a roof drainage system for a  
5 building over an area that was a source of contamination at the Site. However, Defendants  
6 Dobbas and CRI failed and refused to perform most of the actions formerly conducted by C&A  
7 Products to address contamination at, around, and/or beneath the Site.

8           24. On or about October 16, 2008, CRI filed a Chapter 7 petition in the United States  
9 Bankruptcy Court for the Eastern District of California (Sacramento), Case No. 08-34986 (closed  
10 December 7, 2010).

11           25. In July 2010, the Department finalized a Removal Action Workplan for the Site that  
12 called for contaminated soil excavation, off-site disposal, backfilling, confirmation sampling,  
13 demolition of the groundwater extraction and treatment system, and long-term groundwater  
14 monitoring.

15           26. On or about February 11, 2011, Defendants Dobbas and CRI sold the Site to  
16 Defendant Van Over for \$2.00.

17           27. On March 16, 2011, the Department issued an Imminent or Substantial Endangerment  
18 Determination Order and Remedial Action Order (“I/SE Order”) ordering Defendants Dobbas,  
19 CRI, and Van Over to conduct the actions described in the Removal Action Workplan, and to  
20 take other response actions. A copy of the I/SE Order is attached as Exhibit B and incorporated  
21 by this reference.

22           28. Defendants Dobbas, CRI, and Van Over failed to complete the actions described in  
23 the Removal Action Workplan, and to take other response actions described in the I/SE Order.

24           29. Based on the above, from November 2005 to the present, the Department has taken  
25 “response” actions of the Site, as that term is defined in section 101(25) of CERCLA, 42 U.S.C.  
26 section 9601(25), related the release and/or threatened release of hazardous substances at the Site.  
27 The response actions included, inter alia, efforts to repair and restart the groundwater extraction  
28 and treatment system, completion of a remedial investigation for site soils, preparation of the

1 Removal Action Workplan, implementation of the Removal Action Workplan in October and  
2 November 2011, groundwater monitoring, and other tasks.

3 30. As a result of taking response actions at the Site, Plaintiffs have incurred response  
4 costs related to the release and/or threatened release of hazardous substances at, around, and/or  
5 beneath the Site.

6 31. Plaintiffs' unpaid costs related to the Site from November 2005 through September  
7 2013 total \$2,202,176.92, exclusive of interest.

8 32. Plaintiffs have incurred and expect to continue to incur additional response costs  
9 related to the release and/or threatened release of hazardous substances at, beneath, and/or from  
10 the Site.

11 **FIRST CLAIM FOR RELIEF**

12 (Claim for Recovery of Response Costs Pursuant to

13 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a))

14 (Against All Defendants)

15 33. Plaintiffs incorporate the allegations in each of the preceding paragraphs as though  
16 fully set forth herein.

17 34. The Site is a "facility" within the meaning of section 101(9) of CERCLA, 42 U.S.C.  
18 section 9601(9).

19 35. Each Defendant is a "person," within the meaning of section 101(21) of CERCLA, 42  
20 U.S.C. section 9601(21).

21 36. The Department is a "State" for purposes of recovery of response costs under section  
22 107(a) of CERCLA, 42 U.S.C. section 9607(a). Under this section, the Department may also  
23 recover interest on response costs incurred.

24 37. Each of the Defendants is an "owner" and/or "operator" of the Site, or was an  
25 "owner" and/or "operator" of the Site "at the time of disposal of a[] hazardous substance" there,  
26 as those terms are used in section 107(a) of CERCLA, 42 U.S.C. section 9607(a).

27 38. Plaintiffs have incurred costs in responding to the release or threatened release of  
28 hazardous substances at or from the Site in a manner that satisfies the requirements of Section

1 107(a)(4) of CERCLA, 42 U.S.C. section 9607(a)(4), in that the costs arose from activities that  
2 are not, and have not been, inconsistent with the applicable requirements of the National  
3 Contingency Plan, 40 C.F.R. Part 300.

4 39. Each of the Defendants is jointly and severally liable, without regard to fault, under  
5 section 107(a) of CERCLA, 42 U.S.C. section 9607(a), for Plaintiffs' costs incurred in response  
6 to the release or threatened release of hazardous substances at or from the Site.

7 **SECOND CLAIM FOR RELIEF**

8 (Declaratory Relief Pursuant to Section 113(g)(2) of

9 CERCLA, 42 U.S.C. § 9613(g)(2))

10 (Against All Defendants)

11 40. Plaintiffs incorporate the allegations of each of the preceding paragraphs as though  
12 fully set forth herein.

13 41. Under section 113(g)(2) of CERCLA, 42 U.S.C. section 9613(g)(2), Plaintiffs are  
14 entitled to a declaratory judgment that each of the Defendants is jointly and severally liable in any  
15 subsequent action or actions by the Plaintiffs to recover any further costs incurred in response to  
16 the release and/or threatened release of hazardous substances into the environment at or from the  
17 Site.

18 **THIRD CLAIM FOR RELIEF**

19 (Failure and Refusal to Comply with Imminent or Substantial Determination Order

20 and Remedial Action Order – California Health and Safety Code sections

21 25355.5, 25358.3, 25359, 25359.2, 25367)

22 (Against Defendants Dobbas, CRI, and Van Over)

23 42. Plaintiffs incorporate the allegations of each of the preceding paragraphs as though  
24 fully set forth herein.

25 43. The Department issued the I/SE Order to Defendants Dobbas, CRI, and Van Over  
26 under, inter alia, Chapter 6.8 of Division 20 of the California Health and Safety Code, specifically  
27 sections 25355.5 and 25358.3.  
28

1 44. California Health and Safety Code section 25358.3(f) provides that upon the failure  
2 of any person to comply with any order issued under sections 25355.5 or 25358.3, the director  
3 may request the Attorney General to petition for the issuance of a temporary restraining order or  
4 preliminary or permanent injunction requiring that person to comply with the order.

5 45. California Health and Safety Code 25359(a) provides that any person liable for a  
6 release or threatened release of hazardous substances who “fails, without sufficient cause...to  
7 properly provide a removal or remedial action upon order of the director...pursuant to Section  
8 25358.3,” is liable for “damages equal to three times the...costs incurred by the state account...as  
9 a result of the failure to take proper action.” The referenced “state account” is Plaintiff Toxic  
10 Substances Control Account.

11 46. California Health and Safety Code section 25359.2 provides that any person who  
12 does not comply with an order under section 25355.5 or 25358.3 without sufficient cause shall be  
13 subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each day of  
14 noncompliance.

15 47. California Health and Safety Code section 25367(c) provides that any person who  
16 refuses, without sufficient cause, any activity authorized under section 25358.1 or 25358.3 is  
17 subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000) for each separate  
18 violation, or for each day of a continuing violation.

19 48. Defendants Dobbas, CRI, and Van Over have failed and refused, without sufficient  
20 cause, to comply with the I/SE Order, including, without limitation, as follows:

- 21 • Defendants failed and refused to restore groundwater monitoring at the Site, as  
22 specified in section 5.1 of the I/SE Order.
- 23 • Defendants failed and refused to implement the Removal Action Workplan for  
24 the Site, as specified in section 5.2 of the I/SE Order.
- 25 • Defendants failed and refused to conduct operation and maintenance activities,  
26 including maintenance of the asphalt cap, as specified in section 5.4 of the I/SE  
27 Order.

28

- 1 • Defendants failed and refused to demonstrate and maintain financial assurance
- 2 for operation and maintenance and monitoring, as specified in section 5.9 of the
- 3 I/SE Order.
- 4 • Defendant Van Over has used and is using the Site as a residence, in violation
- 5 of section 5.3 of the I/SE Order and the Land Use Covenant.

6 49. Plaintiffs have incurred costs as a result of the failure of Defendants Dobbas, CRI,

7 and Van Over to take proper action as directed in the I/SE Order.

8 50. The director of the Department has requested the Attorney General to petition for

9 injunctive and other relief concerning the failure and refusal of Defendants Dobbas, CRI, and Van

10 Over to comply with the I/SE Order.

11 **PRAYER FOR RELIEF**

12 Plaintiffs pray for relief as follows:

13 A. For a judgment that each Defendant is jointly and severally liable without regard to

14 fault to the Department under section 107(a) of CERCLA, 42 U.S.C. section 9607(a), for all

15 response costs incurred by the Plaintiffs as a result of the release and threatened release of

16 hazardous substances from the Site, in an amount to be proven at trial, but at least \$2,202,176.92;

17 B. For interest on the above sums from each Defendant as provided under section 107(a)

18 of CERCLA, 42 U.S.C. section 9607(a);

19 C. For a declaratory judgment that each Defendant is jointly and severally liable without

20 regard to fault to the Plaintiffs under section 113(g)(2) of CERCLA, 42 U.S.C. section 9613(g)(2),

21 for all future response costs incurred by the Plaintiffs as a result of the release and threatened

22 release of hazardous substances at and/or from the Site;

23 D. For an injunction ordering Defendants Jim Dobbas, Inc., Continental Rail, Inc., and

24 David van Over to comply with the I/SE Order, including, without limitation, by performing

25 groundwater monitoring and operation and maintenance activities, including asphalt cap

26 maintenance, as required by the I/SE Order, and by obtaining financial assurance as required by

27 that order;

28

1 E. For an injunction ordering Defendant David van Over to stop using the Site as a  
2 residence, in violation of the I/SE Order and the Land Use Covenant;

3 F. For treble damages against Defendants Jim Dobbas, Inc., Continental Rail, Inc., and  
4 David van Over under California Health and Safety Code section 25359, in an amount to be  
5 proven at trial;

6 G. For civil penalties against Defendants Jim Dobbas, Inc., Continental Rail, Inc., and  
7 David van Over under California Health and Safety Code sections 25359.2 and/or 25367, in an  
8 amount to be proven at trial;

9 H. For enforcement costs against each Defendant, including costs of this suit and  
10 attorneys' fees; and

11 I. For all other relief the Court deems just and appropriate.

12  
13 Dated: March 3, 2014

Respectfully submitted,

14 KAMALA D. HARRIS  
15 Attorney General of California  
16 TIMOTHY R. PATTERSON  
Supervising Deputy Attorney General

17 /s/ Thomas G. Heller

18 THOMAS G. HELLER  
19 DENNIS L. BECK, JR.  
Deputy Attorneys General  
20 *Attorneys for the California Department of*  
21 *Toxic Substances Control and the Toxic*  
22 *Substances Control Account*

# Exhibit A

1995-00068154  
Recorded By: COLLINS & AIKMAN  
Official Records  
County of Solano  
Robert Blechs Schmidt  
Assessor/Recorder  
03 RecFee  
SurMon  
NoPCOR  
DTTax  
Free \$ . 0  
OvrSht

Recording requested by:  
Collins & Aikman Products Co.  
701 McCullough Drive  
Charlotte, North Carolina 28262

14:36 27-OCT-95 AR16 11 Pgs

When recorded, mail to:  
Department of Toxic Substances Control  
Region 1  
10151 Croydon Way, Suite 3  
Sacramento, California 95827  
Attention: James L. Tjosvold

**COVENANT  
TO RESTRICT USE OF PROPERTY**

Wickes Forest Industries  
Elmira, Solano County, California

This Covenant and Agreement ("Covenant") is made on this 27th day of October, 1995, by Collins & Aikman Products Co. ("Covenantor"), a Delaware corporation, which is the owner of record of certain real property situated at 147 A Street in the City of Elmira, County of Solano, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference ("the Property") and the California Department of Toxic Substances Control ("DTSC"), with reference to the following facts:

A. The Property is the real property known as Wickes Forest Industries, which has been contaminated.

B. The Property was formerly used as a wood treatment facility. During the operational years, wood was treated with preservative solutions containing arsenic, chromium, and copper. These metals have contaminated the soils. Arsenic is highly toxic by ingestion and inhalation and is a known carcinogen. Higher concentrations of copper can be toxic to humans, and aquatic life is sensitive to lower concentrations. The soils at the site exceed local background concentrations for these metals. Certain of the

soils have been left in place, and an asphalt cap has been constructed over the site to prevent direct human exposure and migration of the contamination.

C. Covenantor desires and intends that in order to protect the present or future public health and safety, and the environment, the Property shall be used in such a manner as to avoid any potential harm to persons or property which may result from contamination in place underneath the Property.

## ARTICLE I

### GENERAL PROVISIONS

1.01 Provisions To Run With The Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to as "Restrictions"), upon the Property and subject to which the Property shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Sections 25355.5 and 25356.1 of the California Health and Safety Code (H&SC) and run with the land pursuant to Section 25230(a)(1) of the California H&SC. Each and all of the Restrictions are enforceable by DTSC and its successor agencies, if any.

1.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that their interests in the Property will be subject to the Restrictions contained herein.

1.03 Incorporation Into Deeds and Leases. Covenantor desires and covenants, and all purchasers, lessees or possessors shall be deemed to have covenanted, that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of the Property.

ARTICLE II  
DEFINITIONS

2.01 DTSC. "DTSC" shall mean the California Department of Toxic Substances Control and shall include its successor agencies, if any.

2.02 Improvements. "Improvements" shall mean all buildings, structures, roads, driveways, regrading, landscaping, bodies of water, park and playground improvements, and paved parking areas, constructed or placed upon any portion of the Property.

2.03 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.04 Owner. "Owner" shall mean the Covenantor, its successors in interest, and their successors in interest, including heirs, and assigns, who at any time hold title to all or any portion of the Property.

2.05 "Final Cap" shall mean the combination of materials that covers the site to reduce infiltration of surface water and limit human exposure to contaminated soil.

2.06 "Excavation" shall mean the excavation of soil below the final cap that covers the Property.

2.07 "Hazardous materials" shall have the meaning set forth in California Code of Regulations, Title 22, Section 66260.10.

ARTICLE III  
DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use. Every Owner and Occupant promises to restrict the use of the Property described in Exhibit "A" as follows:

(A) The Property at 147 A Street shall not be used for residences, hospitals, schools for persons under age 21, day-care centers or any permanently occupied human habitation, including hotels or motels which are used as a permanent residence by employees, without the prior written approval of DTSC.

(B) Except as specified in subsection (D), no use of the Property shall disturb the integrity of the final cap over the Property as described in Exhibit "A", unless the Covenantor, owner, occupant or lessee can demonstrate to DTSC that the disturbance of the final cap is necessary to the proposed use of the Property and will not increase to an unacceptable level any potential reasonable hazard to the public health and safety or the environment, or is necessary to reduce an imminent threat to the public health and safety or the environment, and DTSC approves such a use in writing.

(C) The Covenantor, owner, occupant, or lessee may obtain DTSC approvals as provided in subsection (A) and (B) of this paragraph without instituting the variance provisions of Section 4.01.

(D) The final cap may be disturbed for the purpose of performing emergency repairs, routine periodic maintenance or planned construction, if the final cap is restored to its original condition upon completion of such work. The Covenantor shall notify DTSC of emergency repairs, or planned construction on the property where the final cap has been disturbed not later than two business days after such repairs are begun. Upon completion of the emergency repairs or planned construction, the owner or occupant shall provide DTSC with all documentation requested by DTSC to establish that the final cap has been restored to an equivalent condition.

3.02 Conveyance of Property. The Owner or Owners and the Occupants shall provide a thirty (30) day advance notice to DTSC of any sale, lease, or other conveyance of the Property or an interest in the Property to a third person. DTSC shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property or any

interest in it except as otherwise provided by law or by reason of this Covenant.

3.03 Enforcement. Failure of an Owner to comply with any of the requirements, as set forth in Paragraph 3.01, shall be grounds for DTSC, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for DTSC to file an action against the Owner as provided by law, including but not limited to the provisions of Chapter 6.5 and 6.8, Division 20 of the H&SC.

3.04 Notice in Agreements. The Covenantor shall provide a notice to all Owners and Occupants that shall accompany all purchase, lease, sublease, or rental agreements relating to the Property by supplying a copy of this Agreement. In this way all Owners and Occupants shall be aware of the following statement:

"The land described herein contains hazardous substances. Such condition renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

#### ARTICLE IV

##### VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, subject to the prior written consent of the Owner, any Occupant of the Property or a portion thereof may apply to DTSC for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Section 25233 of the California H&SC.

4.02 Termination. Any Owner or, subject to the prior written consent of the Owner, an Occupant of the Property or a portion thereof may apply to DTSC for a termination of the Restrictions as they apply to all or any portion of the Property. Such application

shall be made in accordance with Section 25234 of the California H&SC.

4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V

MISCELLANEOUS

5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property to the general public or for any purposes whatsoever.

5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three business days after deposit in the mail if mailed by United States mail, postage paid, certified, return receipt requested to the record Owner. Notices shall be sent to:

Collins & Aikman Products Co  
Real Estate Department  
701 McCullough Drive  
Post Office Box 32665  
Charlotte, North Carolina 28232  
Attention: Bettie Coltrane  
(704) 548-2369  
(704) 548-2300 FAX

and

Collins & Aikman Products Co.  
Legal Department  
Post Office Box 32665  
Charlotte, North Carolina 28232  
Attention: John B. Orgain  
(704) 548-2353  
(704) 548-2010 FAX

In every case, a copy shall be sent to:

Department of Toxic Substances Control  
Attention: James L. Tjsovold  
Region 1  
Acting Chief  
Central California Site Mitigation Branch  
10151 Croydon Way, Suite 3  
Sacramento, California 95827  
(916) 255-3545  
(916) 255-3697 FAX

5.03 Partial Invalidity. If any portion of the Restrictions or terms set forth herein are determined to be invalid for any reason, the remaining portions shall remain in full force and effect as if such portion had not been included herein.

5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of this Covenant.

5.05 Recordation. This instrument shall be executed by the Covenantor, and by the Director, California Department of Toxic Substances Control. This instrument shall be recorded by the Covenantor in the County of Solano within fourteen (14) days after the date of execution by both parties in accordance with the recording requirements of the California H&SC, Section 25230.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date first set forth above.

Covenantor: Collins & Aikman Products Co.

By: John B. Orquin  
Title: Senior Counsel  
Date: August 28, 1995

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: James L. Tjsovold  
Title: Acting Branch Chief  
Date: July 18, 1995

Order No. 40969

EXHIBIT "A"

The following described parcels of land are located within the County of Solano, State of California.

PARCEL ONE

Beginning at the southeast corner of the Northwest One Quarter of Section Nineteen (19) Township Six (6) North Range One (1) East, Mount Diablo Base and Meridian; thence North along the Quarter Section line to the Southeasterly boundary of the right of way of the Southern Pacific Railroad; thence Southwesterly along the southeasterly line of the right of way of the Southern Pacific Railroad Company to the Quarter Section line running East and West through said Section Nineteen (19); thence East and along said Quarter Section line to the place of beginning. EXCEPTING THEREFROM, however, all that certain real property as conveyed by Eleanor S. Allison to Southern Pacific Railroad Company, a corporation, by Deed dated May 10th, 1916, and recorded May 23rd, 1916 in Liber "226" of Deeds, Page 104, thereof, and described as follows: Beginning at the point of intersection of the Southeasterly right of way line of the Southern Pacific Railroad Company's railroad (as it now exists across said Northwest Quarter of Section 19) with the east line of the Northwest Quarter of Section 19, Township 6 North Range 1 East, Mount Diablo Base and Meridian; thence Southwesterly along said Southeasterly right of way line of the Southern Pacific Railroad Company, a distance of 506 feet to a point; thence at a right angle Southeasterly 15 feet to a point; thence at a right angle Northeastarly parallel to said right of way line 265 feet to a point; thence at a right angle Southeasterly 15 feet to a point; thence at a right angle Northeastarly parallel to said right of way line 200 feet to a point; thence at a right angle Northeastarly parallel to said right of way line 200 feet to a point on the east line of said Northwest Quarter of Section 19; thence North along said East line of the Northwest Quarter of Section 19, a distance of 50.7 feet to the point of beginning.

PARCEL TWO

Beginning at the intersection of the northerly line of Edwards Street and the westerly line of "A" Street extended northerly; thence running Westerly and along the northerly line of Edwards Street, One Hundred Forty (140) feet, more or less, to the intersection of the easterly line of the right of way of the Southern Pacific Railroad Company; thence Northerly and along the easterly line of the right of way of the Southern Pacific Railroad Company, One Hundred Ninety-One (191) feet more or less to the southerly line of County Road Number Two Hundred Forty-Six (246) sometimes also known as Binghampton Street; thence Easterly and along

CONTINUED

142-010-13

Order No. 40969

142-042-010

Exhibit "A" Cont'd. (Parcel Two)

the southerly line of County Road Number 246, to the intersection of the westerly line of a street, extended Northerly; thence Southerly and along the westerly line of a street, extended Northerly to the northerly line of Edwards Street and the place of beginning. All as said streets herein referred to are laid down and designated on that certain map entitled: "PLAN OF RESURVEY OF PORTION OF VACA STATION, PROPERTY OF W. C. FARMER, SITUATED ON SOUTH WEST ONE QUARTER (S.W. 1/4) OF SECTION NINETEEN (19) TOWNSHIP VI NORTH RANGE 1 EAST SOLANO COUNTY," surveyed by E. H. Marshall, Deputy County Surveyor, April 8th, 1870 and now appearing of record in Volume "1" of Maps, Page 44 thereof, Solano County Records.

PARCEL THREE

142-010-14

Beginning at the point of intersection of the westerly line of "A" Street, extended Northerly, and the northerly line of County Road Number 246 (Holdener Road, formerly shown as Binghampton Street) in Elmira Townsite, Solano County, California, which point bears North  $0^{\circ} 22' 08''$  West, 30 feet and South  $89^{\circ} 55' 06''$  West, 397.80 feet from the southeast corner of the Northwest One-Quarter of Section 19, T6N, R1E, N.D.B. & M.; thence, from said point of beginning, along the northerly line of the aforementioned Binghampton Street South  $89^{\circ} 55' 06''$  West, 171.67 feet to the easterly right-of-way line of the Southern Pacific Railroad; thence along said easterly right-of-way line South  $34^{\circ} 52' 51''$  West, 73.21 feet to the southerly line of said Binghampton Street; thence, along said southerly line, North  $89^{\circ} 55' 06''$  East, 171.67 feet to the westerly line of the aforementioned "A" Street; thence along the prolongation of said westerly line of "A" Street, North  $34^{\circ} 52' 51''$  East, 73.21 feet to the point of beginning.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

No. 5907

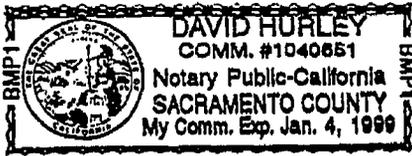
State of CALIFORNIA

County of SACRAMENTO

On JULY 18, 1985 before me, DAVID HURLEY  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared JAMES TJOSVOLD  
NAME(S) OF SIGNER(S)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]  
SIGNATURE OF NOTARY

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

- INDIVIDUAL
- CORPORATE OFFICER

\_\_\_\_\_  
TITLE(S)

- PARTNER(S)       LIMITED
- GENERAL

- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)

\_\_\_\_\_  
\_\_\_\_\_

**DESCRIPTION OF ATTACHED DOCUMENT**

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

STATE OF NORTH CAROLINA        )  
  )  
COUNTY OF MECKLENBURG        )

On August 28, 1995, before me the undersigned, a Notary Public in and for said state, personally appeared John B. Orgain, IV, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Senior Counsel of Collins & Aikman Products Co., the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

*Karen M. Allen*  
Notary Public in and for said County  
and State  
MY COMMISSION EXPIRES JANUARY 31, 1998

END OF  
DOCUMENT

This is certified to be an exact reproduction of the filed record if certification is imprinted in purple ink, bearing date of issuance and an original signature of the Assessor/Recorder or deputy.

MARC C. TONNESEN  
Solano County Assessor/Recorder

By: *Marc C. Tonnese* Deputy

Issue Date: 2/13/14

Copy No: 14-587667



## Exhibit B



Linda S. Adams  
Acting Secretary for  
Environmental Protection

## Department of Toxic Substances Control

Leonard E. Robinson  
Acting Director  
8800 Cal Center Drive  
Sacramento, California 95826-3200



Edmund G. Brown Jr.  
Governor

March 17, 2011

Mr. David Van Over  
216 F Street #108  
Davis, California 95616

Mr. Don Dobbas  
Jim Dobbas, Incorporated  
P.O. Box 177  
Newcastle, California 95658

Continental Rail, Inc.  
3218 Nacodoches Road, #8  
San Antonio, Texas 78217

### NOTICE OF ISSUANCE OF IMMINENT OR SUBSTANTIAL ENDANGERMENT ORDER AND REMEDIAL ACTION ORDER (I/SE ORDER) FOR FORMER WICKES FOREST INDUSTRIES SITE, ELMIRA, CALIFORNIA, SOLANO COUNTY

Dear Mr. Van Over, Mr. Dobbas and Continental Rail, Inc.:

The purpose of this letter is to provide notification that the Department of Toxic Substances Control (DTSC) is issuing an Imminent and Substantial Endangerment Order (I/SE Order) for the former Wickes Forest Industries Site at 147 A Street (the Property), Elmira, California, due to hazardous substances releases on the site. This I/SE Order applies to the Property and the areal extent of contamination that resulted from activities on the Property (hereinafter, the "Site"). Elevated levels of arsenic and hexavalent chromium in surface and sub-surface soil on the Property are continuing to act as a persistent source to groundwater contamination and represent a significant threat to human health and the environment.

DTSC has enclosed a copy of the I/SE Order for your records. The Order is final and effective five days from the date of mailing, which is the date of this cover letter transmitting the Order to you.

Any legal representatives acting on behalf of you with regard to this letter or the I/SE Order should contact Ms. Marilee Hanson, with DTSC's Office of Legal Counsel at (916) 327-0979 or e-mail [mhanson@dtsc.ca.gov](mailto:mhanson@dtsc.ca.gov).

Mr. David Van Over  
Mr. Don Dobbas  
Continental Rail, Inc.  
March 17, 2011  
Page 2

If you have any questions or comments on this letter, please feel free to contact Mr. MacNicholl at (916) 255-3713 or e-mail at [pmacnich@dtsc.ca.gov](mailto:pmacnich@dtsc.ca.gov).

Sincerely,



Charles Ridenour, P.E.  
Performance Manager  
Cleanup Program – Sacramento Office

Enclosure

cc: Ms. Marilee Hanson  
Staff Counsel III  
Office of Legal Counsel  
Department of Toxic Substances Control  
1011 "I" Street, 23<sup>rd</sup> Floor  
P.O. Box 806  
Sacramento, California 95812-0806

Mr. Richard Hume, P.E.  
Supervising Hazardous Substances Engineer  
Cleanup Program – Sacramento Office  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826

Mr. Peter MacNicholl, P.E.  
Project Manager  
Cleanup Program – Sacramento Office  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:	)	Docket No. <u>I/SE 10/11 - 008</u>
	)	
Wickes Forest Industries Site	)	
147 A Street	)	IMMINENT OR SUBSTANTIAL
Elmira, California 95625	)	ENDANGERMENT
	)	DETERMINATION ORDER
Respondents:	)	AND REMEDIAL ACTION ORDER
Mr. David Van Over	)	
216 F Street #108	)	
Davis, California 95616	)	
	)	
Jim Dobbas, Inc.	)	Health and Safety Code
P.O. Box 177	)	Sections
Newcastle, California 95658	)	25355.5(a)(1)(B),
	)	25358.3(a), 58009 and 58010
	)	
Continental Rail, Inc.	)	
3218 Nacodoches Road, #8	)	
San Antonio, Texas 78217	)	
	)	

I. INTRODUCTION

1.1 Parties. The California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) issues this Imminent or Substantial Endangerment Determination and Order and Remedial Action Order (Order) to Jim Dobbas Inc. (Dobbas), a California Corporation, Continental Rail, Inc., a corporation (Continental Rail), and David Van Over, an individual (Van Over) (Respondents).

1.2 Property/Site. This Order applies to the property located at 147 A Street, Elmira, Solano County, California 95625, which consists of 7.5 acres and is identified by Assessor's Parcel Number(s) 142-010-130, 142-010-140, and 142-042-010 (the Property). A legal description of the Property is attached as Exhibit A. This Order applies to the Property and the areal extent of contamination that resulted from activities on the Property (hereinafter, the "Site"). The Property is frequently referred to as the "Wickes Forest Industries Site."

1.3 Jurisdiction. This Order is issued by DTSC to Respondents pursuant to DTSC's authority under Health and Safety Code sections 25358.3(a), 25355.5(a)(1)(B), 58009 and 58010.

Health and Safety Code section 25358.3(a) authorizes DTSC to take various actions, including issuance of an Imminent or Substantial Endangerment Determination and Order, when DTSC determines that there may be an imminent or substantial endangerment to the public health or welfare or to the environment, because of a release or a threatened release of a hazardous substance.

Health and Safety Code section 25355.5(a)(1)(B) authorizes DTSC to issue an order establishing a schedule for removing or remedying a release of a hazardous substance at a site, or for correcting the conditions that threaten the release of a hazardous substance. The order may include, but is not limited to, requiring specific dates by which the nature and extent of a release shall be determined and the site adequately characterized, a Remedial Action Plan (RAP) prepared and submitted to DTSC for approval, and a removal or remedial action completed.

Health and Safety Code section 58009 authorizes DTSC to commence and maintain all proper and necessary actions and proceedings to enforce its rules and regulations; to enjoin and abate nuisances related to matters within its jurisdiction which are dangerous to health; to compel the performance of any act specifically enjoined upon any person, officer, or board, by any law of this state relating to matters within its jurisdiction; and/or on matters within its jurisdiction, to protect and preserve the public health.

Health and Safety Code section 58010 authorizes DTSC to abate public nuisances related to matters within its jurisdiction.

## II. FINDINGS OF FACT

DTSC hereby finds:

2.1 Liability of Respondents. Respondents are responsible parties or liable persons as defined in Health and Safety Code section 25323.5. Dobbas and Continental Rail both owned undivided fifty percent (50%) interests in the Property from April 1, 1997 until approximately February 15, 2011. Van Over purchased the Property from Dobbas and Continental Rail on or around February 15, 2011, with knowledge that environmental contamination exists at the Site.

### 2.2 Property/Site History.

2.2.1 The Property is a former wood treatment facility located on approximately 7.5 acres near the intersection of A Street and Holdener Road in Elmira, California. Pacific Wood Preserving (a domestic corporation, dissolved effective September 11, 1980) operated a wood treatment facility at the Property until September 1979. The Wickes Corporation (Wickes), the predecessor to Collins and Aikman Products Company (CAPCO), purchased the Property from Pacific Wood Preserving and then operated the wood treatment facility at the Property until August 1982. Operations at the Property included treating lumber with preservative solutions containing arsenic,

chromium, and copper. Investigations have shown that the Site soils have been affected by these inorganic metals. Groundwater beneath the Site has also been contaminated by chromium, copper, and arsenic. The Central Valley Regional Water Quality Control Board (CVRWQCB) and DTSC conceptually approved a Remedial Action Plan (RAP) on September 19, 1983, submitted by Wickes, which proposed storm water management and ground water removal and treatment measures for the Site. On February 26, 1984, DTSC issued to Wickes an Order and Schedule of Compliance pursuant to Health and Safety Code section 25187. The Order adopted and incorporated a Settlement Agreement and Schedule of Compliance addressing soil, surface water, and ground water contamination at the Site. The CVRWQCB has also issued a series of Waste Discharge Requirements (WDRs) over the years to Wickes and CAPCO, including the last WDR Order No. R5-2005-0022, which was issued to CAPCO on June 4, 2004.

Respondents Dobbas and Continental Rail purchased the Property from CAPCO in April 1997. Respondent Van Over purchased the Property from Dobbas and Continental Rail on or about February 15, 2011.

2.2.2 To address groundwater contamination, a subsurface french drain system 200 feet long with a single recovery well was installed along with an ion-exchange treatment system so effluent could be discharged to the ditch adjacent to Holdener Road and A Street under the 1983 RAP. In 1987, an additional extraction well was connected to the system to prevent the migration of affected ground water further off-site. This system was confined to the southern portion of the Property. In 1992, the groundwater extraction and treatment system (GWETS) was modified significantly. Seven (7) additional extraction wells were installed (five (5) off-Property) and the ion-exchange treatment system was replaced with an electrochemical treatment system that removes chromium, arsenic, and copper from ground water by co-precipitating the metal ions with ferric hydroxide particles. Treated water was then discharged to the ditch along Holdener Road and A Street under a National Pollutant Discharge Elimination System (NPDES) permit from the CVRWQCB.

2.2.3 Initial soil investigations conducted during the early 1980s were centered on the southern portion of the Property where the manufacturing process took place. In 1983, contaminated soil was excavated from the truck loading pad, and the drying pad for treated wood was sealed with a low permeability asphalt cap under a RAP approved by DTSC on September 19, 1983. Soils inside the metal sided building situated over the process area were capped in 1991 with shot-crete to prevent rainwater from further transporting the constituents of concern to ground water. Two additional RAPs were completed to address contamination at the Site. The RAP approved by DTSC on September 9, 1993 addressed the soil contamination, storm water control, and ground water treatment in the southern portion of the Site. On February 25, 1994, DTSC approved a RAP concentrating on soil in the northern portion of the Site (the "1994 RAP"). The implementation of the 1994 RAP included: (i) excavating 2,100 cubic yards of off-Property soil from drainage ditches and placing it on the Property in an area to be capped with asphalt; (ii) excavation of 89 cubic yards of soil from the railroad drainage

ditch and disposing of it at the Chemwaste Kettleman Hills facility in Kettleman City, California; (iii) regrading the Property; (iv) installing an asphalt cap in all areas of the Property that were not previously sealed; and (v) installing a positive drainage system to prevent storm water intrusion under the cap. On January 5, 1996, DTSC approved the Operation and Maintenance Plan dated October 1995 (the "O&M Plan"), which required, among other things, maintenance of the cap and operation of the GWETS.

2.2.4 On October 27, 1995, CAPCO recorded in Solano County a Covenant to Restrict Use of Property-Environmental Restriction, which was entered into between CAPCO and DTSC (the "Covenant"). The Covenant, among other things, disclosed that the Property was contaminated with hazardous substances, banned uses that would disturb the cap, and restricted the Property's use to non-residential purposes without prior written approval from DTSC. On February 26, 1996, CAPCO and DTSC entered into an Operation and Maintenance Agreement, Docket Number 95/96-038 (the "O&M Agreement") in which CAPCO agreed to maintain the cap and operate the GWETS pursuant to the O&M Plan. Respondents Dobbas and Continental Rail purchased the Property from CAPCO on April 1, 1997, after the Covenant for the Property had been recorded and the O&M Agreement was in place. Also on April 1, 1997 an "Access and Remediation Agreement" was recorded which was signed by Respondent Dobbas, in which Dobbas agreed to provide access to the Property for CAPCO's remediation activities. Dobbas subsequently apparently provided access to the Property to CAPCO's contractors to conduct O&M activities, including operating the GWETS. On May 17, 2005, CAPCO filed a voluntary Chapter 11 bankruptcy petition in United States Bankruptcy Court, Eastern District of Michigan (Detroit), Case Number 05-55927-SWR. In August, 2005, CAPCO ceased operating the GWETS. On March 7, 2006, DTSC directed CAPCO to resume operating the GWETS. On March 22, 2006, CAPCO refused to comply.

From July 24, 2006 through September 28, 2006, DTSC negotiated with Dobbas and Continental Rail regarding the continuation of O&M activities at the Site. Respondents refused to conduct O&M activities such as restarting and repairing the GWETS. DTSC issued an Imminent and Substantial Endangerment Determination on November 13, 2006. On January 19, 2007, DTSC contracted with Kleinfelder Inc. to resume operation of the GWETS, groundwater monitoring and reporting and maintenance of the asphalt cap. On December 3, 2007, Dobbas agreed to perform certain repairs at the Site, which included limited maintenance of the asphalt cap and repair of the roof drainage system for the building over the source area. On May 9, 2007, DTSC and Dobbas entered into an Access Agreement.

On February 14, 2008, DTSC contracted with URS Corporation to investigate soils in the source area of the Site. Results of the 2008 URS soil investigation confirmed that elevated levels of arsenic and hexavalent chromium in soil were continuing to act as a persistent source to groundwater contamination. In August 2009, URS on behalf of DTSC prepared a draft Removal Action Work Plan (2010 RAW) to remediate groundwater at the Site. The 2010 RAW identifies demolition of the GWETS, contaminated soil excavation, confirmation sampling, off-site disposal, backfilling,

reporting, and long-term groundwater monitoring to assess the performance of the remedial action.

In February and March 2010, DTSC staff conducted Site inspections and noticed numerous cracks in the asphalt cap, including blockage and disrepair to the drain and gutter systems. Site inspections also revealed that the lock on the main gate was removed, allowing unsecured access to the Site. In April 2010, DTSC conducted surface water sampling of accumulated stormwater inside the Site's source area. Analytical data showed dissolved arsenic at 720 µg/L and 1200 µg/L due to contact with the remaining contaminated soil. Hexavalent chromium concentrations in the storm water measured 14 µg/L and 21 µg/L, including 30 µg/L and 15 µg/L reported for total chromium.

DTSC finalized the Wickes Forest Industries 2010 RAW in July of 2010. On November 22, 2010, DTSC recorded a lien in the amount of \$833,347.98 against Dobbas' undivided fifty percent interest in the Property, which reflected the amount of funds DTSC had spent to clean up and mitigate impacts from the Site since December 2006.

Reports about the Site are available on DTSC's website at [http://www.envirostor.dtsc.ca.gov/public/profile\\_report.asp?global\\_id=48240001](http://www.envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=48240001) and are otherwise publically available.

2.3 Hazardous Substances Found at the Property. The Property has been used as a wood preparation, treatment, and storage area. Wood preserving solutions used at the Property contained copper, chromium, and arsenic. Property investigations conducted in 1982 showed that Site soil and ground water have been contaminated with chromium, copper, and arsenic. Samples of groundwater taken in June 1984, as listed in the June 1984 Monthly Monitoring and Progress Report/Wickes Forest Industries Elmira Site, had concentrations of 120 mg/L or parts per million (ppm) of hexavalent chromium and .22 mg/L (ppm) of arsenic. Groundwater samples taken by Kleinfelder Inc. between September 11 and 13, 2007 had a maximum on-Property concentration of 1700 µg/L (ppb) in monitoring well E-6 and a maximum off-Property concentration of 74 µg/L (ppb) in monitoring well E-18A for hexavalent chromium. Analytical groundwater data from February 10, 2010, reported maximum hexavalent chromium concentrations in groundwater of 1500 µg/L and 93 µg/L in both on-site and off-site groundwater, respectively. Maximum concentrations of arsenic in groundwater measured 650 µg/L on-site compared to 190 µg/L in off-site groundwater. Storm water runoff from the leaking gutter on the source area building has allowed rainwater to pond and collect in the two existing sumps. Surface water samples taken from the accumulated storm water in April 2010, identified dissolved arsenic at 720 µg/L and 1200 µg/L due to contact with the remaining contaminated soil. Hexavalent chromium concentrations in the storm water run-off measured 14 µg/L and 21 µg/L, including 30 µg/L and 15 µg/L reported for total chromium.

Near surface soil samples taken by LFR Levine and Fricke in 1991 to support the 1994 RAP showed elevated concentrations of arsenic and hexavalent chromium in the source area ranging from 52 to 70,000 mg/kg and 0.2 to 190 mg/kg (ppm), respectively. URS' 2008 soil investigation at the Site sampled the original locations from the 1991 remedial investigation, but focused efforts on deeper intervals to satisfy the data gaps. URS' 2008 fieldwork effort sampled soil at three depth intervals of 0.5, 2.5, and 5 feet below ground surface. The sampling effort was conducted to further characterize the vertical extent of contaminants remaining and augment the 1991 dataset with newer analytical data. The 2008 analytical soil data produced arsenic concentrations ranging from 4.7 mg/kg to 610 mg/kg, with hexavalent chromium levels spanning 0.05 mg/kg to 17 mg/kg. Fieldwork efforts show that contaminant concentrations are the highest in surface soil and attenuate with depth, indicating that surface releases likely contaminated the Site.

Soil cleanup goals identified in the 2010 RAW specify 13 mg/kg for arsenic (background), the target compound at the site. Due to the similar distribution patterns of arsenic and chromium in the soil, the cleanup will allow for the remediation of chromium concurrent with the removal of arsenic contaminated soil. The 2010 RAW presents a groundwater cleanup goal of 10 µg/L for both arsenic and hexavalent chromium, including 50 µg/L for total chromium. If new cleanup standards are promulgated by State or federal agencies, those new standards may be applicable at the Site.

## 2.4 Health Effects.

2.4.1 Arsenic. Acute ingestion of arsenic may lead to a burning sensation in the mouth, nausea and vomiting. Chronic exposure to arsenic is associated with a persistent metallic taste in the mouth, hyperkeratosis, anemia, and peripheral nerve disease, and may increase the risk of developing skin cancer, aplastic anemia and leukemia.

2.4.2 Chromium. Chronic inhalation of Chromium (VI) compounds has been associated with the development of lung disease, including cancer in humans.

2.4.3 Copper. Acute inhalation of copper fumes or dust can result in a reversible influenza-like syndrome. Chronic ingestion of high levels of copper has been reported to cause hemolysis, fibrosis, and cirrhosis of the liver, nervous system damage and kidney dysfunction.

2.5 Routes of Exposure. Potential routes of exposure at the Site for hazardous substances that may affect public health or the environment, factoring the protectiveness of the asphalt cap, include direct contact with contaminated soil, air routes for dust, contact with contaminated surface storm water in the source area, consumption of food irrigated with contaminated groundwater, migration of hazardous substances to groundwater, and migration of hazardous substances in soil and surface runoff from rain into surface water bodies. If the drinking water source is impacted, direct exposure could be through bathing or drinking the water or breathing vapors while

using the water. Ecological habitat receptors may be more sensitive to hazardous substances concentrations than are human receptors.

2.6 Public Health and/or Environmental Risk. The Property is limited to non-residential use by a Covenant recorded with Solano County on October 27, 1995 that will remain in effect until its termination is approved in writing by DTSC. Adjacent properties are used for commercial and residential purposes. Nearby residences use down-gradient irrigation water drawn from the contaminated aquifer to grow produce for personal consumption. Additional remedial actions are necessary at the Site to address the existing soil contamination. Remedial actions including contaminated soil removal, will eliminate human exposure pathways, protect the environment, restore the beneficial uses of the aquifer, and remediate the persistent source of groundwater contamination for both on-site and off-site aquifers. Without mitigating the persistent source of groundwater contamination, domestic irrigation wells and potential drinking water already impacted by contaminants, would likely reach concentrations that would exceed federal standards and present an acute risk to human health. Inspection and maintenance of the asphalt cap and storm water drainage systems are necessary to prevent direct contact with contaminated soil, eliminate exposure pathways due to contaminated surface storm water, help mitigate infiltration and flushing of contaminated soils with surface water, and to reduce hydraulic influences therefore aiding in the capture of the groundwater plume and helping to achieve the remedial action objectives established for the Site.

### III. CONCLUSIONS OF LAW

3.1 Respondents are responsible parties as defined by Health and Safety Code section 25323.5.

3.2 Each of the substances listed in Section 2.4 is a "hazardous substance" as defined in Health and Safety Code section 25316.

3.3 There has been a "release" and/or there is a "threatened release" of hazardous substances listed in Section 2.4 at the Site, as defined in Health and Safety Code section 25320.

3.4 The actual and threatened release of hazardous substances at the Site may present an imminent and substantial endangerment to the public health or welfare or to the environment.

3.5 Response action is necessary to abate a public nuisance and/or to protect and preserve the public health.

### IV. DETERMINATION

4.1 DTSC issued an Imminent or Substantial Endangerment Determination for the Site on November 13, 2006, thereby determining that response actions are necessary at the Site due to the release of a hazardous substance.

4.2 Based on the foregoing findings of fact and conclusions of law, DTSC hereby determines that there may be an imminent and/or substantial endangerment to the public health or welfare or to the environment because of the release and/or the threatened release of the hazardous substances at the Site due to the unauthorized cessation of the approved remedy.

#### V. ORDER

Based on the foregoing FINDINGS, CONCLUSIONS, AND DETERMINATION, IT IS HEREBY ORDERED THAT Respondents conduct the following response actions in the manner specified herein, and in accordance with a schedule specified by DTSC as follows: All response actions taken pursuant to this Order shall be consistent with the requirements of Chapter 6.8 (commencing with section 25300), Division 20 of the Health and Safety Code and any other applicable state or federal statutes and regulations.

5.1 Groundwater Monitoring. Respondents shall immediately restore groundwater monitoring in accordance with the approved O&M Plan for the Site dated October 16, 1995 and the Final Sampling and Analysis Plan for Groundwater Monitoring dated April 2009, prepared by URS Corporation.

5.2 Groundwater Remediation. Respondents shall take all necessary steps to implement the 2010 RAW and meet its remedial action objectives, including any additional steps necessary to remediate groundwater and restore its beneficial uses.

5.3 Land Use Covenant. The Respondents shall comply with the Covenant recorded with Solano County on October 27, 1995.

5.4 Operation and Maintenance (O&M). Respondents shall conduct all operation and maintenance activities for the approved Site remedies including the asphalt cap and shall comply with the O&M Plan approved by DTSC for the Site dated October 16, 1995 as part of the 1993 and 1994 RAPs. Within thirty (30) days of the effective date of this Order, Respondents shall submit to DTSC for approval an O&M Plan implementation schedule. The schedule shall propose that Respondents initiate the following within sixty (60) days from the effective date of the Order: a) a routine inspection and necessary maintenance program for the Cap and storm water drainage system; and b) groundwater monitoring activities. Respondents shall implement section Section G, subsection 6.0, of the O&M Plan specifying the work necessary and maintenance schedule for the asphalt cap fieldwork efforts.

5.5 Five-Year Review. The remedial action shall be reviewed and reevaluated after a period of five (5) years from the completion of construction and startup, and every five (5) years thereafter. The last comprehensive five year review for the Site was completed on July 27, 2001; a five year review for the asphalt cap only was completed on March 1, 2005. The 2001 five year review determined that the current ground water pump and treat system would likely be unsuccessful in meeting the

remedial action objectives and proposed an alternative technology. The 2010 RAW specifies demolition of the GWETS due the unsuccessful system performance, required access to remaining soil contamination, and the necessity to remove impacted soil acting as continuing source to groundwater contamination.

As a result of any review performed under this Section, Respondents may be required to perform additional Work or to modify Work previously performed.

5.6 Stop Work Order. In the event that DTSC determines that any activity (whether or not pursued in compliance with this Order) may pose an imminent or substantial endangerment to the health or safety of people on the Site or in the surrounding area or to the environment, DTSC may order Respondents to stop further implementation of this Order for such period of time needed to abate the endangerment. In the event that DTSC determines that any Site activities (whether or not pursued in compliance with this Order) are proceeding without DTSC authorization, DTSC may order Respondents to stop further implementation of this Order or activity for such period of time needed to obtain DTSC authorization, if such authorization is appropriate. Any deadline in this Order directly affected by a Stop Work Order, under this Section, shall be extended for the term of the Stop Work Order.

5.7 Emergency Response Action/Notification. In the event of any action or occurrence (such as a fire, earthquake, explosion, or human exposure to hazardous substances caused by the release or threatened release of a hazardous substance) during the course of this Order, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such emergency, release, or immediate threat of release and shall immediately notify the Project Manager. Respondents shall take such action in consultation with the Project Manager and in accordance with all applicable provisions of this Order. Within seven (7) days of the onset of such an event, Respondents shall furnish a report to DTSC, signed by Respondents' Project Coordinator, setting forth the events which occurred and the measures taken in the response thereto. In the event that Respondents fail to take appropriate response and DTSC takes the action instead, Respondents shall be liable to DTSC for all costs of the response action. Nothing in this Section shall be deemed to limit any other notification requirement to which Respondents may be subject.

5.8 Discontinuation of Remedial Technology. Any remedial technology employed in implementation of any DTSC approved RAP or RAW shall be left in place and operated by Respondents until and except to the extent that DTSC authorizes Respondents in writing to discontinue, move or modify some or all of the remedial technology because Respondents have met the criteria specified in the approved RAP or RAW for its discontinuance, or because the modifications would better achieve the goals of the approved RAP or RAW.

5.9 Financial Assurance. Respondents shall demonstrate to DTSC and maintain financial assurance for operation and maintenance and monitoring. Respondents shall demonstrate financial assurance within sixty (60) days of the

effective date of the Order and shall maintain it throughout the period of time necessary to complete all required operation and maintenance activities. The financial assurance mechanisms shall meet the requirements of Health and Safety Code section 25355.2. All financial assurance mechanisms are subject to the review and approval of DTSC.

## VI. GENERAL PROVISIONS

6.1 Project Coordinator. Within fourteen (14) days from the date the Order is signed by DTSC, Respondents shall submit to DTSC in writing the name, address, and telephone number of a Project Coordinator whose responsibilities will be to receive all notices, comments, approvals, and other communications from DTSC. Respondents shall promptly notify DTSC of any change in the identity of the Project Coordinator. Respondents shall obtain approval from DTSC thirty (30) days before the new Project Coordinator performs any work under this Order.

6.2 Project Engineer/Geologist. The work performed pursuant to this Order shall be under the direction and supervision of a qualified professional engineer or a registered geologist in the State of California, with expertise in hazardous substance site cleanups. Within fourteen (14) calendar days from the date this Order is signed by DTSC, Respondents shall submit: a) The name and address of the project engineer or geologist chosen by Respondent; and b) in order to demonstrate expertise in hazardous substance cleanup, the resumé of the engineer or geologist, and the statement of qualifications of the consulting firm responsible for the work. Respondents shall promptly notify DTSC of any change in the identity of the Project Engineer/Geologist. Respondents shall obtain approval from DTSC before the new Project Engineer/Geologist performs any work under this Order.

6.3 Monthly Summary Reports. Within sixty (60) days from the date this Order is signed by DTSC, and on a monthly basis thereafter, Respondents shall submit a Monthly Summary Report of its activities under the provisions of this Order. The report shall be received by DTSC by the fifteenth (15<sup>th</sup>) day of each month and shall describe:

- (a) Specific actions taken by or on behalf of Respondents during the previous calendar month;
- (b) Actions expected to be undertaken during the current calendar month;
- (c) All planned activities for the next month;
- (d) Any requirements under this Order that were not completed;
- (e) Any problems or anticipated problems in complying with this Order; and
- (f) All results of sample analyses, tests, and other data generated under this Order during the previous calendar month, and any significant findings from these data.

6.4 Quality Assurance/Quality Control (QA/QC). All sampling and analysis conducted by Respondents under this Order shall be performed in accordance with QA/QC procedures submitted by Respondent and approved by DTSC pursuant to this Order.

6.5 Submittals. All submittals and notifications from Respondents required by this Order shall be sent simultaneously to:

Charles Ridenour, P.E.  
Performance Manager  
Cleanup Program – Sacramento Office  
Attention: Peter MacNicholl, P.E.  
Project Manager (two copies)  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826

6.6 Communications. All approvals and decisions of DTSC made regarding submittals and notifications will be communicated to Respondents in writing by the Cleanup Program Performance Manager, or his/her designee. No informal advice, guidance, suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by Respondents shall be construed to relieve Respondents of the obligation to obtain such formal approvals as may be required.

6.7 DTSC Review and Approval.

- (a) All response actions taken pursuant to this Order shall be subject to the approval of DTSC. Respondents shall submit all deliverables required by this Order to DTSC. Once the deliverables are approved by DTSC, they shall be deemed incorporated into, and where applicable, enforceable under this Order.
- (b) If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or the environment, DTSC may:
  - (1) Modify the document as deemed necessary and approve the document as modified; or
  - (2) Return comments to Respondents with recommended changes and a date by which Respondents must submit to DTSC a revised document incorporating the recommended changes.
- (c) Any modifications, comments or other directives issued pursuant to (a) above, are incorporated into this Order. Any noncompliance with these modifications or directives shall be deemed a failure or refusal to comply with this Order.

6.8 Compliance with Applicable Laws. Nothing in this Order shall relieve Respondents from complying with all other applicable laws and regulations, including but not limited to compliance with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California Regional Water Quality Control Board. Respondents shall conform all actions required by this Order with all applicable federal, state and local laws and regulations.

6.9 Respondent Liabilities. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current or future operations of Respondents. Nothing in this Order is intended or shall be construed to limit the rights of any of the parties with respect to claims arising out of or relating to the deposit or disposal at any other location of substances removed from the Site. Nothing in this Order is intended or shall be construed to limit or preclude DTSC from taking any action authorized by law to protect public health or safety or the environment and recovering the cost thereof. Notwithstanding compliance with the terms of this Order, Respondents may be required to take further actions as are necessary to protect public health and the environment.

6.10 Site Access. Access to the Site and laboratories used for analyses of samples under this Order shall be provided at all reasonable times to employees, contractors, and consultants of DTSC. Nothing in this Section is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of any law. DTSC and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including, but not limited to: inspecting records, operating logs, sampling and analytic data, and contracts relating to this Site; reviewing the progress of Respondents in carrying out the terms of this Order; conducting such tests as DTSC may deem necessary; and verifying the data submitted to DTSC by Respondents.

To the extent the Site or any other property to which access is required for the implementation of this Order is owned or controlled by persons other than Respondents, Respondents shall use best efforts to secure from such persons access for Respondents, as well as DTSC, its representatives, and contractors, as necessary to effectuate this Order. To the extent that any portion of the Site is controlled by tenants of Respondents, Respondents shall use best efforts to secure from such tenants, access for Respondents, as well as for DTSC, its representatives, and contractors, as necessary to effectuate this Order. For purposes of this Section, "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Work is not obtained within sixty (60) days of the effective date of this Order, or within forty-five (45) days of the date DTSC notifies Respondents in writing that additional access beyond that previously secured is necessary, Respondents shall promptly notify DTSC, and shall include in that notification a summary of the steps Respondents have taken to attempt to obtain access. DTSC may, as it deems appropriate, assist Respondents in obtaining access. Respondents shall reimburse DTSC in obtaining access, including, but not limited to, attorneys fees and the amount of just compensation.

Respondents shall grant access to any persons who need access for the purpose of conducting activities pursuant to this Order or for activities deemed necessary by DTSC to meet the objectives of this Order and/or the O&M Plan.

6.11 Sampling, Data and Document Availability. Respondents shall permit DTSC and its authorized representatives to inspect and shall provide copies of all sampling, testing, monitoring or other data including technical records and contractual documents generated by Respondents, or on Respondents' behalf in any way whether or not such information or data was developed pursuant to this Order. Respondents shall submit all such data upon the request of DTSC. Copies shall be provided within (7) days of receipt of DTSC's written request. For Final reports, Respondents shall submit one hard (paper) copy and one electronic copy with all applicable signatures and certification stamps as a text-readable Portable Document Formatted (pdf) file Adobe Acrobat or Microsoft.Word formatted file. Respondents shall inform DTSC at least (7) days in advance of all field sampling under this Order, and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by Respondents pursuant to this Order. Respondents shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order.

6.12 Record Retention. All such data, reports and other documents shall be preserved by Respondents for a minimum of ten years after the conclusion of all activities under this Order. If DTSC requests that some or all of these documents be preserved for a longer period of time, Respondents shall either comply with that request or deliver the documents to DTSC, or permit DTSC to copy the documents prior to destruction. Respondents shall notify DTSC in writing at least six months prior to destroying any documents prepared pursuant to this Order.

6.13 Government Liabilities. The State of California shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or related parties specified in Section 6.25, Parties Bound, in carrying out activities pursuant to this Order, nor shall the State of California be held as party to any contract entered into by Respondents or its agents in carrying out activities pursuant to this Order.

6.14 Additional Actions. By issuance of this Order, DTSC does not waive the right to take any further actions authorized by law.

6.15 Extension Requests. If Respondents are unable to perform any activity or submit any document within the time required under this Order, Respondents may, prior to expiration of the time, request an extension of the time in writing. The extension request shall include a justification for the delay. All such requests shall be in advance of the date on which the activity or document is due.

6.16 Extension Approvals. If DTSC determines that good cause exists for an extension, it will grant the request and specify a new schedule in writing. Respondents shall comply with the new schedule incorporated in this Order.

shall comply with the new schedule incorporated in this Order.

6.17 Liability for Costs. Respondents are liable for all of DTSC's costs that have been incurred in taking response actions at the Site (including costs of overseeing response actions performed by Respondents and costs to be incurred in the future.

6.18 Payment of Costs. DTSC may bill Respondents for costs incurred in taking response actions at the Site prior to the effective date of this Order. DTSC will bill Respondents quarterly for its response costs incurred after the effective date of this Order. Respondents shall pay DTSC within sixty (60) days of receipt of any DTSC billing. Any billing not paid within sixty (60) days is subject to interest calculated from the date of the billing pursuant to Health and Safety Code section 25360.1. All payments made by Respondents pursuant to this Order shall be by cashier's or certified check made payable to this "DTSC," and shall bear on the face the project code of the Site (Site # 100164) and the Docket number of this Order. Payments shall be sent to:

Department of Toxic Substances Control  
Accounting/Cashier  
1001 I Street, 21<sup>st</sup> Floor  
P.O. Box 806  
Sacramento, California 95812-0806

A photocopy of all payment checks shall also be sent to the person designated by DTSC to receive submittals under this Order.

6.19 Severability. The requirements of this Order are severable, and Respondents shall comply with each and every provision hereof, notwithstanding the effectiveness of any other provision.

6.20 Incorporation of Plans, Schedules and Reports. All plans, schedules, reports, specifications and other documents that are submitted by Respondents pursuant to this Order are incorporated in this Order upon DTSC's approval or as modified pursuant to Section 6.7, DTSC Review and Approval, and shall be implemented by Respondents. Any noncompliance with the documents incorporated in this Order shall be deemed a failure or refusal to comply with this Order.

6.21 Modifications. DTSC reserves the right to unilaterally modify this Order. Any modification to this Order shall be effective upon the date the modification is signed by DTSC and shall be deemed incorporated in this Order.

6.22 Time Periods. Unless otherwise specified, time periods begin from the effective date of this Order and "days" means calendar days.

6.23 Termination and Satisfaction. Except for Respondents' obligations under Sections 5.4 Operation and Maintenance (O&M), 5.5 Five-Year Review, 5.9 Financial Assurance, 6.12 Record Retention, 6.17 Liability for Costs, and 6.18 Payment of Costs, Respondents' obligations under this Order shall terminate and be deemed satisfied upon Respondents' receipt of written notice from DTSC that Respondents have

6.24 Calendar of Tasks and Schedules. This Section is merely for the convenience of listing in one location the submittals required by this Order. If there is a conflict between the date for a scheduled submittal within this Section and the date within the Section describing the specific requirement, the latter shall govern.

Calendar of Tasks and Schedules

TASK	SCHEDULE
1. Identify Project Coordinator; Section 6.1;	Within fourteen (14) days from the effective date of this Order.
2. Identify Project Engineer/Geologist; Section 6.2;	Within fourteen (14) days from the effective date of this Order.
3. Submit Monthly Summary Reports; Section 6.3;	Within sixty (60) days from the effective date of this Order.
4. Submit groundwater level measurements Section 5.1;	First Monday of specified month.
5. Groundwater sampling results; Section 5.1;	Quarterly basis.
6. Submit O&M Workplan Schedule; Section 5.4;	Within thirty (30) days of DTSC's request.
7. Submit and initiate O&M Workplan; Section 5.4;	Within sixty (60) days from the effective date of this order.
8. Submit Emergency Response Action Report; Section 5.7;	Within seven (7) days of a emergency response action.
9. Provide copies of sampling, data, and documentation; Section 6.11;	Within seven (7) days of receipt of DTSC's request.
10. Maintain central depository of data, reports, documentation; Section 6.12; and	Maintain central depository for a minimum of ten years after conclusion of all activities conducted pursuant to this Order.
11. Provide prior written notice to DTSC before destroying any documentation prepared pursuant to this Order; Section 6.12.	At least six months prior to destroying any documents.

6.25 Parties Bound. This Order applies to and is binding upon Respondents, and their officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors and assignees, including but not limited to, individuals, partners, and subsidiary and parent corporations. Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants that are retained to conduct any work performed under this Order, within fifteen (15) days after the effective date of this Order or the date of retaining their services, whichever is later. Respondents shall condition any such contracts upon satisfactory compliance with this Order. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Order and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, agents and attorneys comply with this Order.

6.26 Change in Ownership. No change in ownership or corporate or partnership status relating to the Property shall in any way alter Respondents' responsibility under this Order. No conveyance of title, easement, or other interest in the Site, or a portion of the Property, shall affect Respondents' obligations under this Order. Unless DTSC agrees that such obligations may be transferred to a third party, Respondents shall be responsible for and liable for any failure to carry out all activities required of Respondents by the terms and conditions of this Order, regardless of Respondents' use of employees, agents, contractors, or consultants to perform any such tasks. Respondents shall provide a copy of this Order to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition are transferred.

#### VII. NOTICE OF INTENT TO COMPLY

7.0 Not later than seven (7) days after the effective date of this Order, Respondents shall provide written notice, in accordance with paragraph 6.5 Submittals of this Order, stating whether or not Respondents will comply with the terms of this Order. If Respondents do not unequivocally commit to perform all of the requirements of this Order, they, or each so refusing, shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondents' written notice shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondents under Health and Safety Code sections 25358.3(a) and 25355.5(a)(1)(B) or CERCLA section 107(c)(3), 42 U.S.C. section 9607(c)(3).

#### VIII. EFFECTIVE DATE

8.0 This Order is final and effective five days from the date of mailing, which is the date of the cover letter transmitting the Order to you.

#### IX. PENALTIES FOR NONCOMPLIANCE

9.0 Each Respondent may be liable for penalties of up to \$25,000 for each day out of compliance with any term or condition set forth in this Order and for punitive

damages up to three times the amount of any costs incurred by DTSC as a result of Respondent's(s') failure to comply, pursuant to Health and Safety Code sections 25359, 25359.2, 25359.4, and 25367(c). Health and Safety Code section 25359.4.5 provides that a responsible party who complies with this Order, or with another order or agreement concerning the same response actions required by this Order, may seek treble damages from responsible parties who fail or refuse to comply with this Order without sufficient cause.

DATE OF ISSUANCE: 3/16/11   
Charles Ridenour, P.E.  
Performance Manager  
Cleanup Program – Sacramento Office  
Department of Toxic Substances Control

EXHIBIT "A"

The land referred to herein is in the State of California, County of Solano, unincorporated area, and is described as follows:

PARCEL ONE

Beginning at the southeast corner of the Northwest One Quarter of Section Nineteen (19) Township Six (6) North Range One (1) East, Mount Diablo Base and Meridian, running thence north along the Quarter Section line to the southeasterly boundary of the right of way of the Southern Pacific Railroad; thence southwesterly along the southeasterly line of the right of way of the Southern Pacific Railroad Company to the Quarter Section line running east and west through said Section Nineteen (19); thence east and along said Quarter Section line to the place of beginning.

EXCEPTING THEREFROM, however, all that certain real property as conveyed by Eleanor B. Allison to Southern Pacific Railroad Company, a corporation, by Deed dated May 10, 1916, and recorded May 23, 1916 in Liber "226" of Deeds, Page 104, thereof, and described as follows: Beginning at the point of intersection of the southeasterly right of way line of the Southern Pacific Railroad Company's railroad (as it now exists across said Northwest Quarter of Section 19) with the east line of the Northwest Quarter of Section 19, Township 6 North Range 1 East, Mount Diablo Base and Meridian, thence southwesterly along said southeasterly right of way line of the Southern Pacific Railroad Company, a distance of 506 feet to a point; thence at a right angle southeasterly 15 feet to a point, thence at a right angle northeasterly parallel to said right of way line 265 feet to a point, thence at a right angle southeasterly 15 feet to a point, thence at right angle northeasterly parallel to said right of way line 200 feet to a point, thence at a right angle northeasterly parallel to said right of way line 200 feet to a point on the east line of said Northwest Quarter of Section 19, thence north along said east line of the Northwest Quarter of Section 19, a distance of 50.7 feet to the point of beginning.

PARCEL TWO

Beginning at the intersection of the northerly line of Edwards Street and the westerly line of "A" Street extended northerly, thence running westerly and along the northerly line of Edwards Street, One Hundred Forty (140) feet, more or less, to the intersection of the easterly line of the right of way of the Southern Pacific Railroad Company, thence northerly and along the easterly line of the right of way of the Southern Pacific Railroad Company, One Hundred Ninety-One (191) feet more or less to the southerly line of County Road Number Two Hundred Forty-Six (246) sometimes also know as Binghampton Street, thence easterly and along the southerly line of County Road Number 246, to the intersection of the westerly line of a Street, extended northerly, thence southerly and along the westerly line of a Street, extended northerly to the northerly line of Edwards Street and the place of beginning. All as said streets herein referred to are laid down and designated on that certain Map entitled: "Plan of

Resurvey of Portion of Vaca Station, Property of W.C. Farmer, situated on South West One Quarter (S.W. ¼) of Section Nineteen (19) Township VI North Range 1 East Solano County," surveyed by E.H. Marshall, Deputy County Surveyor, April 8, 1870 and now appearing of record in Volume "1" of Maps, Page 44 thereof, Solano County Records.

PARCEL THREE

Beginning at the point of intersection of the westerly line of "A" Street, extended northerly, and the northerly line of County Road Number 246 (Holdener Road, formerly shown as Binghampton Street) in Elmira Townsite, Solano County, California, which point bears north 0°22' 08" west, 30 feet and south 89°55' 06" west, 397.80 feet from the southeast corner of the Northwest One-Quarter of Section 19, T6N, R1E, M.D.B & M., thence, from said point of beginning, along the northerly line of the aforementioned Binghampton Street south 89°55' 06" west, 171.67 feet to the easterly right-of-way line of the Southern Pacific Railroad and thence along said easterly right-of-way line south 34° 52' 51" west, 73.21 feet to the southerly line of said Binghampton Street, thence, along said southerly line, north 89°55' 06" east, 171.67 feet to the westerly line of the aforementioned "A" Street, thence along the prolongation of said westerly line of "A" Street, north 34°52' 51" east, 73.21 feet to the point of beginning.

A.P.N. 142-010-130, 142-010-140 and 142-042-010

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
California Department of Toxic Substances Control, and Toxic Substances Control Account
(b) County of Residence of First Listed Plaintiff Sacramento
(c) Attorneys (Firm Name, Address, and Telephone Number) Thomas G. Heller, Deputy Attorney General, California Department of Justice, 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, (213) 897-2628

DEFENDANTS
(1) Jim Dobbas, Inc. (2) Continental Rail, Inc. (3) Van Over, David (4) Pacific Wood Preserving (5) West Coast Wood Preserving, LLC
County of Residence of First Listed Defendant Placer
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC 9607; 42 USC 9613
Brief description of cause: Recovery of environmental response costs, and declaratory relief

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ At least \$2202176.92 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 03/03/2014 SIGNATURE OF ATTORNEY OF RECORD /s/ Thomas G. Heller, Deputy Attorney General

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE