

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:

WRECKING YARDS AND AUTOMOBILE
DISMANTLERS OPERATING ON
PROPERTY OWNED BY MALCOLM AND
RUTH BRACKETT IN ARROYO
GRANDE, CALIFORNIA 93420

Respondents.

Docket SRPD01/02SCC-4258

CORRECTIVE ACTION
CONSENT AGREEMENT

Health and Safety Code Section
25187

INTRODUCTION

1. The Department of Toxic Substances Control (DTSC) and Malcolm and Ruth Brackett, individuals (Bracketts) enter into this Corrective Action Consent Agreement (Consent Agreement) and agree as follows:

1.1. Jurisdiction exists pursuant to Health and Safety Code section 25187, which authorizes DTSC to issue an order to require corrective action when DTSC determines that there is or may be a release of hazardous waste or hazardous waste constituents into the environment from a hazardous waste facility.

1.2. The parties enter into this Consent Agreement to avoid the expense of litigation and to carry out promptly the corrective action described below.

1.3. The Bracketts own numerous parcels of contiguous real property located in the Nipomo Mesa area, near the intersection of Sheridan Road and Highway 1, in Arroyo Grande, San Luis Obispo County, California (hereinafter, Sheridan Road

Properties). The Sheridan Road Properties comprise approximately 18 acres. For many years, the Bracketts have rented certain of the Sheridan Road Properties to various persons and/or entities who or which operate businesses associated with automobile repair, service, body work, dismantling, and disposal (Tenant Businesses). The Tenant Businesses' operations have caused hazardous wastes, including waste oil, waste gasoline, waste anti-freeze, and waste solvent, to be released to the soil on and around the Sheridan Road Properties.

1.4. The Bracketts own property on which there have been releases of hazardous waste.

1.5. The terms used in this Consent Agreement are as defined in California Code of Regulations, title 22, section 66260.10, except as otherwise provided.

1.6. Respondent agrees to implement all DTSC-approved workplans and to undertake all actions required by the terms and conditions of this Consent Agreement.

1.7. Respondent waives any right to request a hearing on this Consent Agreement pursuant to Health and Safety Code section 25187.

DTSC'S FINDINGS OF FACT

2.1. DTSC asserts that the facts contained in this section (Section 2) are true and accurate to the best of DTSC's knowledge. The Bracketts deny the truth and accuracy of the alleged facts. DTSC agrees and acknowledges that the allegations of fact contained in this section are not agreed to or conceded by the Bracketts, and their entry into this Consent Agreement

cannot be used in any proceeding, whether judicial, administrative, or otherwise, as evidence that they agree to or concede the truth and accuracy of the facts as alleged by DTSC.

2.2. Summary of Inspections and Identification of Areas of Concern

The facts contained in the following section are taken from DTSC's inspection-related documents. The addresses and names of Tenant Businesses are based on the information available and/or provided to the inspector at the time of the inspection. DTSC will work with the Bracketts and the County to resolve any remaining questions about the identity or the location of now-defunct Tenant Businesses, the operations of which are relevant to identifying areas of concern.

A. On August 28, 1995, DTSC conducted an inspection of three of the Tenant Businesses.

Arroyo Grande Auto Wreckers (Arroyo Grande) was operating at 880 Alley Oop Way. Based on the presence of asbestos waste on the surface of the soil, DTSC concluded that Arroyo Grande had been disposing of hazardous waste to the ground. DTSC also noted other hazardous waste storage and labeling violations.

El Camino Wrecking was operating at 864 El Camino. DTSC concluded that El Camino Wrecking was storing hazardous waste, specifically waste oil, without a hazardous waste permit or other authorization and, in addition, had failed properly to label the hazardous waste containers.

Truck and Van Auto Dismantlers was operating at 875-A El Camino. DTSC concluded that Truck and Van Auto Dismantlers was storing hazardous waste, specifically waste oil, without a

hazardous waste permit or other authorization and, in addition, had failed to properly label the hazardous waste containers.

B. On July 23, 1996, in response to a complaint that waste oil, solvents, and antifreeze were being disposed of to the ground at the Sheridan Road Properties, DTSC conducted another inspection of several Tenant Businesses.

Arroyo Grande was operating at 880 Alley Oop Way. DTSC concluded that Arroyo Grande had been disposing of hazardous waste to the ground. Analysis of soil samples taken from 880 Alley Oop Way established the presence of copper and lead at levels above the regulatory threshold.

Ramirez Towing and Auto Repair (Ramirez) was operating at 875 Oop Loop and/or 815 Alley Oop Way. DTSC concluded that Ramirez had been disposing of hazardous waste to the ground. Analysis of soil and ash samples taken from 875 Oop Loop established the presence of lead at levels above the regulatory threshold.

Jacobo's Auto Wrecking (Jacobo's) was operating at 2226 Gasoline Alley. DTSC concluded that Jacobo's had been disposing of hazardous waste to the ground. Analysis of soil samples taken from 2226 Gasoline Alley established the presence of lead at levels above the regulatory threshold. DTSC also noted other hazardous waste storage and labeling violations.

C. On August 13, 1996, DTSC inspected a business called Raul S. Tapia operating at 2221-D Gasoline Alley. DTSC concluded that Raul S. Tapia was storing hazardous waste, specifically waste oil and an oil-gas mixture, without a hazardous waste permit or other authorization and, in addition,

had failed to properly label the hazardous waste containers.

D. On March 17, 2000, in preparation for an enforcement action and in conjunction with other state and local agencies, including representatives from San Luis Obispo County (County) and the Certified Unified Program Agency (CUPA), DTSC conducted another inspection of two of the Tenant Businesses.

Jacobo's was operating at 880 Sheridan Road. DTSC concluded that Jacobo's had been disposing of hazardous waste to the ground. Analysis of soil samples taken from 880 Sheridan Road established the presence of lead at levels above the regulatory threshold. In addition, DTSC inspectors noted that Jacobo's had been storing hazardous waste without a permit.

Timo's Auto Sales (Timo's) was operating at 2226 Gasoline Alley. DTSC inspectors noted that there was discoloration to the soil at the site, evidence that the business at this location was disposing of hazardous waste to the ground. Analysis of soil samples taken from 2226 Gasoline Alley established the presence of lead at levels above the regulatory threshold. In addition, CUPA inspectors noted numerous violations of hazardous waste laws, including failure to remove a deteriorating waste oil tank.

E. On May 18 and May 23, 2000, in further preparation for an enforcement action and in conjunction with other state and local agencies, including representatives from the County and the CUPA, DTSC conducted an inspection of four of the Tenant Businesses.

An automobile wrecking business, the name of which is unknown, was operating at 2221-B Gasoline Alley. DTSC concluded that the automobile wrecking business had been disposing of

hazardous waste to the ground. Analysis of soil samples taken from 2221-B Gasoline Alley established the presence of lead at levels above the regulatory threshold.

Pancho's Auto Repair was operating at 2221-G Gasoline Alley. CUPA inspectors noted numerous violations of hazardous waste laws, including failure to operate and maintain facility to prevent, minimize, and mitigate fire, explosion, or releases of hazardous wastes to the environment.

Max Auto Sales was operating at 2226 Gasoline Alley. CUPA inspectors noted numerous violations of hazardous waste laws, including failure to operate and maintain facility to prevent, minimize, and mitigate fire, explosion, or release of hazardous wastes to the environment.

Ramirez was operating at 875 Alley Oop Way. Analysis of soil samples taken from 875 Alley Oop Way established the presence of lead at levels above the regulatory threshold. In addition, CUPA inspectors noted numerous violations of hazardous waste laws, including failure to operate and maintain facility to prevent, minimize, and mitigate fire, explosion, or releases of hazardous wastes to the environment.

Timo's was operating at 880 Sheridan Road. CUPA inspectors noted numerous violations of hazardous waste laws, including failure to manage used oil and solvents as hazardous wastes.

F. On July 19, 2000, in final preparation for an enforcement action and in conjunction with other state and local agencies, including representatives from the County, the CUPA, and DTSC conducted another inspection of two of the Tenant

Businesses.

Chipper's Auto Wrecking and Storage Yard was operating at 2234 Oop Loop. CUPA inspectors noted numerous violations of hazardous waste laws, including failure to operate and maintain facility to prevent, minimize, and mitigate fire, explosion, or release of hazardous wastes to the environment.

Arroyo Grande was operating at 880 Alley Oop Way. DTSC concluded that Arroyo Grande had been disposing of hazardous waste to the ground. Specifically, the DTSC inspector observed that waste oil and transmission fluid was allowed to drain onto the ground from engine and transmission bodies located on site. Analysis of soil samples taken from 880 Alley Oop Way established the presence of lead at levels above the regulatory threshold. In addition, DTSC and CUPA inspectors noted numerous violations of hazardous waste laws, including failure to operate and maintain facility to prevent, minimize, and mitigate fire, explosion, or release of hazardous wastes to the environment.

2.3. Based on the information available to DTSC, DTSC concludes that further investigation is needed to determine the nature and extent of any release of hazardous waste or hazardous waste constituents at the Sheridan Road Properties, including the following specific areas of concern (AOCs): 880 Alley Oop Way; 864 El Camino; 875-A El Camino; 875 Alley Oop Way; 815 Alley Oop Way; 2226 Gasoline Alley; 2221-D Gasoline Alley; 880 Sheridan Road; 2221-B Gasoline Alley; 2221-G Gasoline Alley; and 2234 Oop Loop. Additional AOCs may be identified during the course of performing the actions described in this Consent Agreement.

2.4. The hazardous waste and hazardous waste

constituents of concern at the Sheridan Road Properties include: Cam 17 metals (antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, molybdenum, nickel, selenium, silver, thallium, vanadium, and zinc), solvents (halogenated and non-halogenated), semi-volatile organic compounds, volatile organic compounds (VOCs), asbestos, polychlorinated biphenyls (PCBs), and oils.

2.5. Hazardous wastes or hazardous waste constituents have migrated or may migrate from the Sheridan Road Properties into the environment through the following pathways: subsurface soils, groundwater, and airborne dust particulate matter.

2.6. The Sheridan Road Properties overlie the Lower Nipomo Mesa ground water basin. This ground water basin is of high quality and quantity. In addition, there are residences and agricultural operations in the general area of the Sheridan Road Properties.

2.7. Releases from the Facility may migrate or may have migrated toward the ground water basin and may impact area residences and agricultural operations.

PROJECT COORDINATOR

3. Within fourteen (14) days of the effective date of this Consent Agreement, DTSC and the Bracketts shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Agreement and for designating a

person to act in his/her absence. All communications between the Bracketts and DTSC, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to this Consent Agreement shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven (7) days prior written notice.

WORK TO BE PERFORMED

4. The Bracketts agree to perform the work required by this Consent Agreement in accordance with the applicable state and federal laws, their implementing regulations, and the applicable DTSC and the United States Environmental Protection Agency guidance documents.

INTERIM MEASURES (IM)

5.1. The Bracketts shall evaluate available data and assess the need for interim measures in addition to those specifically required by this Consent Agreement. Interim measures shall be used whenever possible to control or abate immediate threats to human health and/or the environment, and to prevent and/or minimize the spread of contaminants while long-term corrective action alternatives are being evaluated.

5.2. Within 60 days of the effective date of this Consent Agreement, the Bracketts shall submit a Current Conditions Report to DTSC in accordance with paragraph 6.1. The

Current Conditions Report shall contain an assessment of the need for interim measures and, if necessary, an analysis of appropriate interim measures. The assessment must include both previously implemented interim measures and other interim measures that are recommended for implementation, if any, at the Sheridan Road Properties. The assessment must also identify any additional data needed, if any, for making decisions on interim measures. This new data or information, if any, shall be collected during the early stages of the Facility Investigation (FI), described below. DTSC will review the Bracketts' assessment and determine which interim measures, if any, the Bracketts will implement at the Sheridan Road Properties. If deemed appropriate by DTSC, such determination may be deferred until additional data are collected.

5.3. If at any time the Bracketts identify an immediate or potential threat to human health and/or the environment, or discover new releases of hazardous waste and/or hazardous waste constituents, they shall notify the DTSC Project Coordinator orally within 48 hours of discovery and notify DTSC in writing within 10 days of discovery summarizing the findings, including the immediacy and magnitude of the potential threat to human health and/or the environment, to the extent then known. Within 30 days of receiving DTSC's written request to prepare an IM Workplan, the Bracketts shall submit to DTSC an IM Workplan for approval. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan, IM Operation and Maintenance Plan, and IM Plans and Specifications shall be

developed in a manner consistent with the Scope of Work for Interim Measures Implementation contained as Attachment 2. If DTSC determines that immediate action is required to address a threat or potential threat to human health and/or the environment or to address a new release of hazardous waste and/or hazardous waste constituents, the DTSC Project Coordinator may orally authorize the Bracketts to implement an IM prior to DTSC's receipt of a written IM Workplan.

5.4. If DTSC identifies an immediate or potential threat to human health and/or the environment or discovers new releases of hazardous waste and/or hazardous waste constituents, DTSC will notify the Bracketts in writing within a reasonable amount of time. Any such notice will expressly state that it is being given pursuant to paragraph 5.4 of this Consent Agreement. Within 30 days of receiving DTSC's written notification, the Bracketts shall submit to DTSC for approval an IM Workplan that identifies Interim Measures that will mitigate the threat, as outlined in the previous Paragraph. If DTSC determines that immediate action is required, the DTSC Project Coordinator may orally authorize the Bracketts to implement an IM prior to DTSC's receipt of a written IM Workplan.

5.5. All IM Workplans shall ensure that the Interim Measures are designed to mitigate current or potential threats to human health and/or the environment, and should, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any remedy which may be required at the Sheridan Road Properties.

5.6. Concurrent with the submission of an IM Workplan,

the Bracketts shall submit to DTSC a Health and Safety Plan in accordance with the Scope of Work for a Health and Safety Plan contained in Attachment 3.

5.7. Concurrent with the submission of an IM Workplan, the Bracketts shall submit to DTSC for approval a Community Profile in accordance with Attachment 4. Based on the information provided in the Community Profile, if DTSC determines that there is a high level of community concern about the Sheridan Road Properties, DTSC may require the Bracketts to prepare a Public Participation Plan.

FACILITY INVESTIGATION (FI)

6.1. Within 60 days of the effective date of this Consent Agreement, the Bracketts shall submit to DTSC a Current Conditions Report and a Workplan for a Facility Investigation ("FI Workplan"). The Current Conditions Report and FI Workplan are subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a Facility Investigation contained in Attachment 1. DTSC will review the Current Conditions Report and FI Workplan and notify the Bracketts in writing of DTSC's approval or disapproval.

6.2. The FI Workplan shall detail the methodology to:

- (1) gather data needed to make decisions on interim measures/stabilization during the early phases of the Facility Investigation;
- (2) identify and characterize all sources of contamination;
- (3) define the nature, degree and extent of

contamination; (4) define the rate of movement and direction of contamination flow; (5) characterize the potential pathways of contaminant migration; (6) identify actual or potential human and/or ecological receptors; and (7) support development of alternatives from which a corrective measure will be selected by DTSC. A specific schedule for implementation of all activities shall be included in the FI Workplan.

6.3. The Bracketts shall submit a FI Report to DTSC for approval in accordance with DTSC-approved FI Workplan schedule. The FI Report shall be developed in a manner consistent with the Scope of Work for a Facility Investigation contained in Attachment 1. DTSC will review the FI Report and notify the Bracketts in writing of DTSC's approval or disapproval.

6.4. Concurrent with the submission of a FI Workplan, the Bracketts shall submit to DTSC a Health and Safety Plan in accordance with Attachment 3. The Bracketts may submit a single Health and Safety Plan that addresses the combined IM and FI activities.

6.5. DTSC may require the Bracketts to prepare a FI Summary Fact Sheet. If required, the Bracketts shall submit a FI Summary Fact Sheet to DTSC that summarizes the findings from all phases of the FI. The FI Summary Fact Sheet shall be submitted to DTSC in accordance with the schedule contained in the approved FI Workplan. DTSC will review the FI Summary Fact Sheet and notify the Bracketts in writing of DTSC's approval or disapproval, including any comments and/or proposed modifications. When DTSC approves the FI Summary Fact Sheet, the Bracketts shall mail the approved FI Summary Fact Sheet to all

individuals on a mailing list established pursuant to California Code Regulations, title 22, section 66271.9(c)(1)(D), within 15 calendar days of receipt of written approval.

6.6. Concurrent with the submission of a FI Workplan, the Bracketts shall submit to DTSC for approval a Community Profile in accordance with Attachment 4. Based on the information provided in the Community Profile and any Supplement to the Community Profile, if DTSC determines that there is a high level of community concern about the Facility, the Bracketts shall prepare a Public Participation Plan.

RISK ASSESSMENT

7. Based on the information available to DTSC, the Bracketts may be required to conduct a Risk Assessment to evaluate potential human health risk and ecological risk and to establish site-specific action levels and cleanup standards. If DTSC determines that a Risk Assessment is required, the Bracketts shall submit to DTSC for approval a Risk Assessment Workplan within 60 days of receipt of DTSC's written determination. The Bracketts shall submit to DTSC for approval a Risk Assessment Report in accordance with DTSC-approved Risk Assessment Workplan schedule.

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CORRECTIVE MEASURES STUDY (CMS)

8. If it becomes necessary to perform subsequent phase(s) of work, DTSC and the Bracketts will negotiate another consent agreement or amend this Consent Agreement to address the additional work. If another consent agreement or an amendment is not reached within 60 days, DTSC reserves its right to issue an order or take any other action provided for by law. DTSC's costs incurred in negotiating any subsequent consent agreement or amendment are considered costs incurred pursuant to this Consent Agreement and are payable under this Consent Agreement.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

9. DTSC must comply with the California Environmental Quality Act (CEQA) insofar as activities required by this Consent Agreement are projects subject to CEQA. The Bracketts shall provide all information reasonably available to them that is necessary to facilitate any CEQA analysis. DTSC will make an initial determination regarding the applicability of CEQA. If the activities are not exempt from CEQA, DTSC will conduct an Initial Study. Based on the results of the Initial Study, DTSC will determine if a Negative Declaration or an Environmental Impact Report (EIR) should be prepared. DTSC will prepare and process any such Negative Declaration. However, should DTSC determine that an EIR is necessary, such an EIR would be prepared under a separate agreement between DTSC and the Bracketts.

DTSC APPROVAL

10.1. The Bracketts shall revise any workplan, report, specification, or schedule in response to with DTSC's written comments. The Bracketts shall submit to DTSC any revised documents by the due date specified by DTSC. DTSC will establish a due date that is reasonable, taking into account the scope of DTSC's written comments and any other applicable deadlines.

10.2. Upon receipt of DTSC's written approval, the Bracketts shall commence work and implement any approved workplan in accordance with the schedule and provisions contained therein.

10.3. Any DTSC-approved workplan, report, specification, or schedule required under this Consent Agreement shall be deemed incorporated into this Consent Agreement.

10.4. Verbal advice, suggestions, or comments given by DTSC representatives will not constitute an official approval or decision.

SUBMITTALS

11.1. Any report or other document submitted by the Bracketts pursuant to this Consent Agreement shall be signed by a professional engineer or registered geologist and certified by the Project Coordinator, a responsible corporate officer, or a duly authorized representative.

11.2. The certification required by paragraph 11.1 above, shall be in the following form:

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I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared at my direction in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted.

Signature: _____

Name: _____

Title: _____

Date: _____

11.3. The Bracketts shall provide three copies of all documents, including but not limited to, workplans, reports, and correspondence.

11.4. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to this Consent Agreement shall be in writing and shall be sent to the current Project Coordinators.

11.5. The Bracketts agree that all information they submit to DTSC pursuant to this Consent Agreement may be shared with the CUPA and the San Luis Obispo County Health Agency.

PROPOSED CONTRACTOR/CONSULTANT

12. All work performed pursuant to this Consent Agreement shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in hazardous waste site cleanup. The Bracketts contractor or consultant shall have the technical

expertise sufficient to fulfill his or her responsibilities. Within fourteen (14) days of the effective date of this Consent Agreement, the Bracketts shall notify the DTSC Project Coordinator in writing of the name, title, and qualifications of the professional engineer or registered geologist and of any contractors or consultants and their personnel to be used in carrying out the terms of this Consent Agreement.

ADDITIONAL WORK

13. DTSC may determine or the Bracketts may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in any part of DTSC-approved workplans. DTSC shall request in writing that the Bracketts perform the additional work and shall specify the basis and reasons for DTSC's determination that the additional work is necessary. Within fourteen (14) days after the receipt of such determination, the Bracketts may confer with DTSC to discuss the additional work DTSC has requested. If required by DTSC, the Bracketts shall submit to DTSC a workplan for the additional work. Such workplan shall be submitted to DTSC within thirty (30) days of receipt of DTSC's written determination or according to an alternate schedule established by DTSC. Upon approval of a workplan, the Bracketts shall implement it in accordance with the provisions and schedule contained therein. The need for, and disputes concerning, additional work are subject to the dispute resolution procedures

specified in this Consent Agreement.

QUALITY ASSURANCE

14.1. All sampling and analyses performed by the Bracketts under this Consent Agreement shall follow applicable DTSC and USEPA guidance for sampling and analysis. Workplans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved workplans must be approved by DTSC prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report.

14.2. The names, addresses, and telephone numbers of the California State certified analytical laboratories the Bracketts propose to use must be specified in the applicable workplans.

SAMPLING AND DATA/DOCUMENT AVAILABILITY

15.1. The Bracketts shall submit to DTSC upon request the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to this Consent Agreement.

15.2. The Bracketts shall notify DTSC in writing at least seven (7) days prior to beginning each separate phase of field work approved under any workplan required by this Consent Agreement. If the Bracketts believe they must commence emergency field activities without delay, the Bracketts may seek emergency

telephone authorization from the DTSC Project Coordinator or, if the Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately.

15.3. At the written request of DTSC, the Bracketts shall allow DTSC or its authorized representative to take split or duplicate samples of all samples collected by the Bracketts pursuant to this Consent Agreement. Similarly, at the written request of the Bracketts, DTSC shall allow the Bracketts or their authorized representative to take split or duplicate samples of all samples collected by DTSC under this Consent Agreement.

ACCESS

16. Subject to security and safety procedures, the Bracketts agree to provide DTSC and its representatives access at all reasonable times to the Sheridan Road Properties (excluding the Bracketts' personal residence) and any off-site property under the control of the Bracketts to which access is required for implementation of this Consent Agreement and shall permit such persons to inspect and copy all non-privileged, non-work product records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Agreement and that are within the possession or under the control of the Bracketts or their contractors or consultants. If the Bracketts withhold certain documents based on a privilege or the work product doctrine, the Bracketts shall provide DTSC with a privilege log.

RECORD PRESERVATION

17.1. The Bracketts shall retain, during the pendency of this Consent Agreement and for a minimum of six (6) years after its termination, all data, records, and documents that relate in any way to the performance of this Consent Agreement or to hazardous waste management and/or disposal at the Sheridan Road Properties. The Bracketts shall notify DTSC in writing ninety (90) days prior to the destruction of any such records, and shall provide DTSC with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Consent Agreement and shall be addressed to:

Branch Chief
Southern California Branch
State Regulatory Programs Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

17.2. If the Bracketts retain or employ any agent, consultant, or contractor for the purpose of carrying out the terms of this Consent Agreement, they will require any such agents, consultants, or contractors to provide them a copy of all documents produced pursuant to this Consent Agreement.

17.3. All documents pertaining to this Consent Agreement shall be stored in a central location agreed to by the parties, to afford easy access by DTSC and its representatives.

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DISPUTE RESOLUTION

18.1. The parties agree to use their best efforts to resolve all disputes informally. The parties agree that the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Consent Agreement. If the Bracketts fail to follow the procedures contained in this section, they shall have waived their right to further consideration of the disputed issue. The Bracketts reserve their legal rights to contest or defend against any final decision rendered by DTSC under this section.

18.2. If the Bracketts disagree with any written decision by DTSC pursuant to this Consent Agreement, their Project Coordinator shall orally notify DTSC's Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

18.3. If the Project Coordinators cannot resolve the dispute informally, the Bracketts may pursue the matter formally by placing their objection in writing. The Bracketts' written objection must be sent to Branch Chief, Southern California Branch, State Regulatory Programs Division, Department of Toxic Substances Control, 5796 Corporate Avenue, Cypress, California 90630, with a copy to DTSC's Project Coordinator. The Bracketts must mail their written objection to the Branch Chief within thirty (30) days of their receipt of DTSC's written decision to which they object. The Bracketts' written objection must set forth the specific points of the dispute and the basis for their position.

18.4. DTSC and the Bracketts shall have thirty (30) days from DTSC's receipt of the Bracketts' written objection to resolve the dispute through formal discussions. This period may be extended by DTSC for good cause. During such period, the Bracketts may meet or confer with DTSC to discuss the dispute.

18.5. After the formal discussion period, DTSC will provide the Bracketts with its written decision on the dispute. DTSC's written decision will reflect any agreements reached during the formal discussion period and be signed by the Branch Chief or his/her designee.

18.6. During the pendency of all dispute resolution procedures set forth above, the time periods for completion of work required under this Consent Agreement that are affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve the dispute. The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Consent Agreement.

RESERVATION OF RIGHTS

19.1. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies, which may pertain to the Bracketts' failure to comply with any of the requirements of this Consent Agreement. The Bracketts reserve all of their statutory, common law and regulatory rights, defenses and remedies. This Consent Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation on any

powers, authorities, rights, or remedies, civil or criminal, that DTSC or the Bracketts may have under any laws, regulations or common law.

19.2. DTSC reserves the right to disapprove of work performed by the Bracketts pursuant to this Consent Agreement and to request that the Bracketts perform additional tasks. The Bracketts reserve their rights to oppose such requests in administrative or judicial form, or otherwise.

19.3. DTSC reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the environment. DTSC may exercise its authority under any applicable state or federal law or regulation to undertake response actions at any time. DTSC reserves its right to seek reimbursement from the Bracketts for costs incurred by the State of California with respect to such actions. The Bracketts reserve the right to reject and oppose any such requests, demands or claims for reimbursement. DTSC will notify the Bracketts in writing as soon as practicable regarding the decision to perform any work described in this section.

19.4. If DTSC determines that activities in compliance or noncompliance with this Consent Agreement have caused or may cause a release of hazardous waste and/or hazardous waste constituents, or a threat to human health and/or the environment, or that the Bracketts are not capable of undertaking any of the work required, DTSC may order the Bracketts to stop further implementation of this Consent Agreement. The stoppage of work

shall be for such period of time as DTSC determines may be needed to abate any such release or threat and/or to undertake any action which DTSC determines is necessary to abate such release or threat. The deadlines for any actions required of the Bracketts under this Consent Agreement affected by the order to stop work shall be extended to take into account DTSC's actions.

19.5. This Consent Agreement is not intended to be nor shall it be construed to be a permit. This Consent Agreement is not a substitute for, and does not preclude DTSC from requiring, any hazardous waste facility permit, post closure permit, closure plan or post closure plan. The parties acknowledge and agree that DTSC's approval of any workplan, plan, and/or specification does not constitute a warranty or representation that the workplans, plans, and/or specifications will achieve the required cleanup or performance standards. Compliance by the Bracketts with the terms of this Consent Agreement shall not relieve the Bracketts of their obligations to comply with the Health and Safety Code or any other applicable local, state, or federal law or regulation.

OTHER CLAIMS

20. Except as provided in this Consent Agreement, nothing in this Consent Agreement shall constitute or be construed as a release by DTSC or the Bracketts from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation for any liability that DTSC or the Bracketts may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation,

release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Sheridan Road Properties, including any claims by DTSC for civil penalties based on past hazardous waste violations at the Sheridan Road Properties.

COMPLIANCE WITH WASTE DISCHARGE REQUIREMENTS

21. The Bracketts shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

OTHER APPLICABLE LAWS

22. All actions required by this Consent Agreement shall be conducted in accordance with the requirements of all local, state, and federal laws and regulations. The Bracketts shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

REIMBURSEMENT OF DTSC'S COSTS

23.1. DTSC shall recover costs incurred in the implementation of this Consent Decree in accordance with Chapter 6.66 of division 20 of the Health and Safety Code. The Bracketts agree to pay DTSC's costs up to \$30,000, subject to the dispute

resolution provisions in paragraph 23.6. Notwithstanding this provision, DTSC reserves its right to seek recovery of costs from the Bracketts in excess of \$30,000 under applicable state and federal law.

23.2. DTSC's estimates that it will incur costs in the amount of \$23,913 in the implementation of this Consent Agreement. This estimate is itemized in Attachment 5. It is understood by the parties that this amount is only a cost estimate for the activities shown on Attachment 5 and it may differ from the actual costs incurred by DTSC in overseeing these activities or in implementing this Consent Agreement. DTSC will provide additional cost estimates to the Bracketts as the work progresses under the Consent Agreement.

23.3. The Bracketts shall make an advance payment to DTSC in the amount of \$5,000 within 30 days of the effective date of this Consent Agreement. If the advance payment exceeds DTSC's costs, DTSC will refund the balance within 120 days after execution of an Acknowledgment of Satisfaction, as described in Paragraph 25, below.

23.4. DTSC will provide the Bracketts with a billing statement at least quarterly, which will include the name(s) of the employee(s), identification of the activities, the amount of time spent on each activity, and the hourly rate charged. If the Bracketts do not pay an invoice within 60 days of the date of the billing statement, the amount is subject to interest as provided by Health and Safety Code section 25360.1.

23.5. DTSC will retain all costs records associated with the work performed under this Consent Agreement as required by

state law. DTSC will make all documents that support the Department's cost determination available for inspection upon request, as provided by the Public Records Act.

23.6. Any dispute concerning DTSC's costs incurred pursuant to this Consent Agreement is subject to the Dispute Resolution provision of this Consent Agreement and the dispute resolution procedures as established pursuant to Health and Safety Code section 25269.2. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

23.7. All payments shall be made within 30 days of the date of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit
Department of Toxic Substances Control
P. O. Box 806
Sacramento, California 95812-0806

All checks shall state on the memorandum line "Bracketts/Sheridan Road Properties/Docket No. _____." Copies of all checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

MODIFICATION

24.1. This Consent Agreement may be modified by mutual agreement of the parties. Any agreed modification shall be in writing, shall be signed by all parties, shall have as its effective date the date on which it is signed by all the parties, and shall be deemed incorporated into this Consent Agreement.

24.2. Any requests for revision of an approved workplan requirement must be in writing. Such requests must be timely and provide justification for any proposed workplan revision. DTSC has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by the Chief, Southern California Branch, State Regulatory Programs Division, Department of Toxic Substances Control, or his or her designee. Any approved workplan revision shall be incorporated by reference into this Consent Agreement.

TERMINATION AND SATISFACTION

25. The provisions of this Consent Agreement shall be deemed satisfied upon the execution by both parties of an Acknowledgment of Satisfaction (Acknowledgment). DTSC will prepare the Acknowledgment for the Bracketts' signature. The Acknowledgment will specify that the Bracketts have demonstrated to the satisfaction of DTSC that the terms of this Consent Agreement including payment of DTSC's costs have been satisfactorily completed. The Acknowledgment will affirm the Bracketts' continuing obligation to preserve all records after the rest of the Consent Agreement is satisfactorily completed.

EFFECTIVE DATE

26. The effective date of this Consent Agreement shall be the date on which this Consent Agreement is signed by all the parties. Except as otherwise specified, "days" means calendar

days.

SIGNATORIES

27. Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Agreement.

DATE: 15 Nov 2002 BY: Original was signed by Malcom Brackett
Malcolm Brackett
2250 Gasoline Alley
Arroyo, Grande, California 93420

DATE: 15 Nov 2002 BY: Original was signed by Ruth Brackett
Ruth Brackett
2250 Gasoline Alley
Arroyo, Grande, California 93420

DATE: 12/10/02 BY: Original was signed by S.W. Lavinger
Stephen W. Lavinger, Branch Chief
Southern California Branch
State Regulatory Programs Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

APPROVED AS TO FORM:

DATE: _____ BY: Original was signed by Gregory O'Hara
Gregory P. O'Hara
Thelen Reid & Priest LLP
333 West San Carlos Street, 17th Floor
San Jose, California 95110-2701

This Corrective Action Consent Agreement posted on DTSC's website does not include all attachments from the original document. If you need copies of a specific document, please contact the DTSC project manager listed in the document.