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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 **The CALIFORNIA DEPARTMENT OF**
13 **TOXIC SUBSTANCES CONTROL et**
14 **al.,**

15 **Plaintiffs,**

16 **v.**

17 **AMERICAN HONDA MOTOR CO.,**
18 **INC., et al.,**

19 **Defendants.**

NO. CV05-7746 CAS (JWJx)

DECLARATION OF MARILEE
HANSON IN SUPPORT OF
MOTION FOR JUDICIAL
APPROVAL OF AMENDED
CONSENT DECREE RE BKK
HAZARDOUS WASTE
FACILITY

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

20
21 I, Marilee Hanson, declare:

22 1. I am employed by the California Department of Toxic Substances
23 Control ("DTSC") as a staff counsel. I represent DTSC with respect to the
24 BKK Hazardous Waste facility located at 2210 South Azusa Avenue, West
25 Covina, County of Los Angeles, California ("the Facility"), owned and operated
26 by the BKK Corporation ("BKK"). I have firsthand knowledge of the facts set
27 forth in this Declaration and if called as a witness I would and could
28

1 competently testify to these facts. In Paragraph 2 of this Declaration, I
2 summarize certain allegations that DTSC has made with respect to the Facility,
3 and I am informed and believe that these allegations are true.

4 2. DTSC has made the following allegations with respect to the BKK
5 Hazardous Waste Facility:

6 (A) Home Savings owned the Facility from 1962 to 1976 and
7 was an owner and operator of the Class I (hazardous waste
8 landfill) until 1976, when the Facility was sold to BKK. In
9 the late 1980's, BKK closed the Class I landfill under a
10 Closure Plan approved by the California Department of
11 Health Services (the predecessor agency to DTSC) and the
12 United States Environmental Protection Agency. DTSC
13 continues to regulate the post-closure care of the Class I
14 Landfill. The Facility currently also includes an operating
15 leachate treatment plant (LTP) located at the Class I landfill,
16 and a Class III (municipal waste) landfill, which is in the
17 process of closing. On June 30, 2004, DTSC issued a
18 consolidated Hazardous Waste Facilities Permit for Leachate
19 Treatment Plant Operation and Class I Landfill Post-Closure
20 Care, which BKK appealed. BKK is required to conduct
21 post-closure operation, monitoring, and maintenance of the
22 Class I landfill pursuant to its Interim Status Document and
23 the Post-closure/Operation Plan until DTSC notifies BKK
24 otherwise and BKK is required to continue to operate the
25 LTP pursuant to the LTP Permit issued in 1987.

26 (B) During its operating life, the Class I landfill accepted waste
27 containing hazardous substances. From 1972 to 1984, the
28 Class I landfill accepted approximately 3.4 million tons of

1 liquid and solid hazardous wastes, together with large
2 amounts of other wastes.

3 (C) The landfills have an integrated gas collection system.
4 Collected landfill leachate, gas condensate, and
5 contaminated groundwater are commingled and treated at
6 the LTP. Groundwater and landfill leachate at the Facility
7 contains hazardous substances. The gas collection system
8 must be maintained and operated 24 hours per day to prevent
9 releases of hazardous substances from the site. Releases of
10 methane and vinyl chloride from these systems are of
11 particular concern. Groundwater/leachate extraction wells
12 must also be operated to prevent further migration of
13 hazardous substances from the site.

14 (D) The LTP must be maintained and kept operational to process
15 liquids coming from gas collection, leachate extraction, and
16 groundwater extraction wells. There is a potential for
17 release of hazardous substances to the environment if the
18 Class I landfill cover deteriorates and allows hazardous
19 substances to migrate.

20 (E) In October 2004, BKK notified DTSC that it was not
21 financially able to perform further required post-closure care
22 of the Class I landfill, including operation of the LTP, after
23 November 17, 2004.

24 (F) As a result, DTSC hired a contractor to conduct emergency
25 response activities at the Facility. These activities are
26 necessary to ensure continuous maintenance, monitoring,
27 and operation of systems that are essential to protect public
28 health, safety and the environment.

3. On December 2, 2004, DTSC issued an imminent and substantial endangerment order (“ISE Order”) to fifty-one potentially responsible parties, including many of the defendants named in this action (“Settling Defendants”). The ISE Order required the named respondents to take actions at the Facility to protect public health and safety and the environment.

4. DTSC's contractors have performed interim cleanup actions designed to minimize the threat that the Facility poses to human health and the environment. Specifically, DTSC's contractors have operated and maintained the pollution control equipment at the site while DTSC has negotiated with some of the potentially responsible parties named in the ISE Order, including, but not limited to, the Settling Defendants. To date, the California Department of Transportation (a potentially responsible party, but not one of the Settling Defendants) has paid approximately \$750,000 to help defray DTSC's costs. Another group of potentially responsible parties, who are not among the Settling Defendants, has agreed, pursuant to an interim agreement, to pay approximately \$1.275 million over 15 months to help defray DTSC's costs incurred in maintaining the Facility.

5. After the issuance of the ISE Order, DTSC began negotiating in early 2005 with the Settling Defendants. In March 2005, this group began to pay DTSC \$500,000 a month to reimburse DTSC for its response costs at the Facility. DTSC was closely involved in shaping the settlement proposal that resulted in the Consent Decree, negotiated with the Defendants over a several month period, worked on multiple drafts of the Consent Decree, and jointly drafted its final terms. The Consent Decree resulted from these negotiations with the Settling Defendants. Each party was represented by experienced counsel, and the Consent Decree was negotiated at arms' length.

6. On November 11, 2005, DTSC published notice of the BKK Hazardous Waste Facility Consent Decree in the *California Regulatory Notice*

1 *Register*. (*California Regulatory Notice Register 2005*, Vol. No. 45-Z, p. 1592,
2 available at http://www.oal.ca.gov/Notice_Register). True and correct copies of
3 the cover pages of Vol. No. 45-Z of the Register and the pages containing the
4 notice with respect to the present matter are attached hereto as Exhibit "A."

5 The notice invited public comments on the Consent Decree, and asked that
6 comments be submitted by December 13, 2005. On November 14, 2005, DTSC
7 provided a fact sheet to the neighboring community. True and correct copies of
8 this fact sheet are attached hereto as Exhibit "B." On December 13, 2005, at the
9 request of BKK, DTSC granted an extension until December 20, 2005 for
10 comments. On December 20, 2005, DTSC granted an extension to December
11 30, 2005. On December 30, DTSC granted an additional extension until January
12 6, 2006. On January 6, 2006, DTSC granted a final extension until January 13,
13 2006. The public comment period terminated on January 13, 2006.

14 7. During the public comment period, DTSC received three comment
15 letters. A true and correct copy of each letter is attached hereto as Exhibit "C".
16 A true and correct copy of DTSC's response to each of these comment letters is
17 attached hereto as Exhibit "D". I have provided the Settling Defendants'
18 counsel with copies of the comments and DTSC's responses. A true and
19 correct copy of my transmittal letter is attached hereto as Exhibit "E".

20 8. During the comment period, BKK raised concerns about the terms
21 of the Consent Decree as they affected the post-closure insurance
22 reimbursement policy for the Class I landfill. BKK sought a portion of the
23 insurance proceeds from this policy, which covers post-closure care of the
24 Class I landfill. To resolve this issue, DTSC has entered into a settlement
25 agreement with BKK wherein it agrees that BKK may be reimbursed from the
26 policy of up to \$120,000 for costs BKK incurs after the effective date of the
27 Consent Decree and during the 2005-6 and 2006-7 annual terms of the
28 insurance policy; BKK may also make a pro rata claim against the policy after

1 the end of the 2006-7 annual term of the policy. A true and correct copy of the
2 settlement agreement is attached hereto as Exhibit "F". Based on the concerns
3 raised by BKK, DTSC also agreed to modify Paragraph 5.1.1 of the Consent
4 Decree.

5 9. DTSC has identified certain maintenance tasks at the Facility as
6 high priority and because BKK no longer would perform this work, DTSC has
7 been handling these repairs on an emergency basis. The Settling Defendants
8 prefer to finish this work in order to reduce coordination issues and to ensure a
9 smoother transition of employees. These tasks involve repairs to the flare
10 station and the LTP. The Parties have now agreed that this work will be
11 completed by the Settling Defendants. The value of this work has been
12 estimated at approximately \$750,000. In return, DTSC has agreed that the
13 Settling Defendants will only be required to make Interim Response Costs for a
14 period of sixty days, for a total of \$1,000,000, instead of making payments for
15 105 days, as was envisioned in the original Consent Decree. This change in the
16 agreement between the parties has resulted in changes to paragraph 4.7 of the
17 Consent Decree and in Exhibit "D," attached to the Consent Decree. In
18 addition, because of the time needed to resolve these issues, DTSC and the
19 Settling Defendants have agreed to modify the Consent Decree to extend
20 Settling Defendant's obligations under the Consent Decree from January 14,
21 2008 until March 15, 2008, or two years from the date the Settling Defendants
22 fully commence the Essential Activities and Critical Tasks and other work
23 pursuant to Section IV herein, whichever is later.

24 I declare under penalty of perjury under the laws of the United States that
25 the foregoing is true and correct.

26 Dated: February 7, 2006

27 //original signed by//

28 Marilee Hanson

Declaration of Marilee Hanson
in Support of Motion for Judicial Approval
of Amended Consent Decree re BKK Hazardous Waste Facility