

1 JOHN C. CRUDEN
Deputy Assistant Attorney General
2 U.S. Department of Justice
Environment and Natural Resources Division

3 ELLEN M. MAHAN
4 Deputy Chief
Environmental Enforcement Section
5 Environment and Natural Resources Division
U.S. Department of Justice
6 Washington, D.C. 20530

7 KARL J. FINGERHOOD (PA Bar ID No. 63260)
Trial Attorney
8 Environmental Enforcement Section
Environment and Natural Resources Division
9 U.S. Department of Justice
P.O. Box 7611
10 Washington, D.C. 20044-7611
Tel. (202) 514-7519
11 Fax. (202) 514-2583
E-Mail: karl.fingerhood@usdoj.gov

12
13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION**

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 ALCOA INC., et al.,

19 Defendants.

20 CIVIL ACTION NO.

21 2:10-cv-05051-TJH (PLAx)

22
23
24
25
26
27 **CONSENT DECREE**
28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. BACKGROUND 1

II. JURISDICTION 4

III. PARTIES BOUND 4

IV. DEFINITIONS 5

V. GENERAL PROVISIONS 11

VI. PERFORMANCE OF THE WORK BY SETTLING WORK DEFENDANTS 13

VII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS 21

VIII. ACCESS AND INSTITUTIONAL CONTROLS 23

IX. REPORTING REQUIREMENTS 29

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS 31

XI. PROJECT COORDINATORS 34

XII. PERFORMANCE GUARANTEE 35

XIII. CERTIFICATION OF COMPLETION 42

XIV. EMERGENCY RESPONSE 44

XV. OBLIGATIONS OF SETTLING CASH DEFENDANTS 45

XVI. PAYMENTS FOR RESPONSE COSTS 46

XVII. INDEMNIFICATION AND INSURANCE 49

XVIII. FORCE MAJEURE 52

1	XIX. DISPUTE RESOLUTION.....	54
2		
3	XX. STIPULATED PENALTIES	58
4	XXI. COVENANTS NOT TO SUE BY PLAINTIFF	63
5		
6	XXII. COVENANTS BY SETTLING DEFENDANTS.....	67
7	XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION	69
8		
9	XXIV. ACCESS TO INFORMATION	71
10	XXV. RETENTION OF RECORDS.....	72
11		
12	XXVI. NOTICES AND SUBMISSIONS	74
13	XXVII. RETENTION OF JURISDICTION	75
14		
15	XXVIII. APPENDICES.....	76
16	XXIX. COMMUNITY INVOLVEMENT	76
17		
18	XXX. MODIFICATION.....	76
19	XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	77
20		
21	XXXII. SIGNATORIES/SERVICE	77
22	XXXIII. FINAL JUDGMENT.....	78
23		
24		
25		
26		
27		
28		

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, *inter alia*: (1) reimbursement of costs incurred by EPA and the United States Department of Justice for response actions at the Omega Chemical Corporation Superfund Site in Whittier, California (“Site”), together with accrued interest; and (2) performance of response actions by the Settling Work Defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of California (the “State”) on January 21, 2009, of negotiations with potentially responsible parties (“PRPs”) regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Federal natural resource trustee, the United States Department of Interior, Fish and Wildlife Service, on July 21, 1999, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of that Consent Decree.

E. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on January 19, 1999, 64 Fed. Reg. 2950.

1 F. On February 28, 2001, the Court entered a Consent Decree (“Phase 1a
2 Consent Decree”) wherein the certain settling defendants (“Settling Work
3 Defendants” as defined therein) agreed to perform certain work at the Site and to
4 reimburse the United States for certain past response costs and oversight costs.
5 The Phase 1a Consent Decree required, *inter alia*, that the certain defendants (1)
6 implement a Remedial Investigation (“RI”) and a Feasibility Study (“FS”) for
7 contamination of soils within the vadose zone within the Phase 1a Area and (2)
8 fund and implement a removal action within the Phase 1a area to contain
9 contaminated groundwater. The Phase 1a Consent Decree also required payments
10 from other defendants, in lieu of participation in the work required under that
11 decree.

12 G. On January 22, 2009, the Court entered an order approving the First
13 Amendment to the Consent Decree, which addressed a new response action
14 undertaken by certain defendants unrelated to existing work under the Phase 1a
15 Consent Decree. Pursuant to the First Amendment to the Phase 1a Consent
16 Decree, certain defendants undertook work to address indoor air contamination
17 issues at a nearby property (“Skateland property”) alleged by EPA to be caused in
18 part by vapor intrusion from hazardous substances associated with the Omega Site.
19 Specifically, the work defendants under the Phase 1a Consent Decree organized
20 and funded the purchase of the Skateland property and implemented an EPA-
21 approved remedy that permanently discontinued its use as a commercial building.

22 H. On January 22, 2009, the Court entered an order approving the
23 Second Amendment to Consent Decree to add additional defendants as work
24 defendants under the Phase 1a Consent Decree, to incorporate additional generator
25 volume and payments of certain defendants, and to correct certain omissions and
26 typographical errors in the caption.

1 I. Work defendants under the Phase 1a Consent Decree are currently
2 implementing the groundwater removal action pursuant to the requirements of that
3 decree.

4 J. Work defendants under the Phase 1a Consent Decree completed the
5 OU-1 vadose zone remedial investigation report in November 2007, and completed
6 the OU-1 feasibility study in May 2008.

7 K. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA
8 published notice of the completion of the FS and of the proposed plan for remedial
9 action on June 6, 2008, in a major local newspaper of general circulation. EPA
10 provided an opportunity for written and oral comments from the public on the
11 proposed plan for remedial action. A copy of the transcript of the public meeting
12 held on June 24, 2008 is available to the public as part of the administrative record
13 upon which the Assistant Director of the Superfund Division based the selection of
14 the response action.

15 L. The decision by EPA on the remedial action to be implemented at the
16 Site is embodied in a final Record of Decision for Operable Unit 1 (Soils)
17 (“ROD”), signed on September 30, 2008, on which the State had a reasonable
18 opportunity to review and comment, and on which the State has given its
19 concurrence. The ROD includes a responsiveness summary to the public
20 comments. The selected remedy is intended to address soil and soil vapor
21 contamination within OU-1 by removing soil contamination to reduce risk
22 associated with exposure to contaminated soils and contaminant vapors, and to
23 reduce the impact of soil contamination on groundwater.

24 M. The defendants that have entered into this Consent Decree (“Settling
25 Defendants”) do not admit any liability to Plaintiff arising out of the transactions or
26 occurrences alleged in the complaint, nor do they acknowledge that the release or
27 threatened release of hazardous substances at or from the Site constitutes an

1 imminent or substantial endangerment to the public health or welfare or the
2 environment.

3 N. Based on the information presently available to EPA, EPA believes
4 that the Work will be properly and promptly conducted by the Settling Work
5 Defendants if conducted in accordance with the requirements of this Consent
6 Decree and its appendices.

7 O. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. §
8 9613(j), the Remedial Action selected by the ROD and the Work to be performed
9 by Settling Work Defendants shall constitute a response action taken or ordered by
10 the President for which judicial review shall be limited to the administrative
11 record.

12 P. The Parties recognize, and the Court by entering this Consent Decree
13 finds, that this Consent Decree has been negotiated by the Parties in good faith and
14 implementation of this Consent Decree will expedite the cleanup of the Site and
15 will avoid prolonged and complicated litigation between the Parties, and that this
16 Consent Decree is fair, reasonable, and in the public interest.

17 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

18 **II. JURISDICTION**

19 1. This Court has jurisdiction over the subject matter of this action
20 pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and
21 9613(b). This Court also has personal jurisdiction over Settling Defendants.
22 Solely for the purposes of this Consent Decree and the underlying complaints,
23 Settling Defendants waive all objections and defenses that they may have to
24 jurisdiction of the Court or to venue in this District. Settling Defendants shall not
25 challenge the terms of this Consent Decree or this Court's jurisdiction to enter and
26 enforce this Consent Decree.

27 **III. PARTIES BOUND**

1 “CERCLA” shall mean the Comprehensive Environmental Response,
2 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

3 “Consent Decree” shall mean this Decree and all appendices attached hereto
4 (listed in Section XXVIII). In the event of conflict between this Decree and any
5 appendix, this Decree shall control.

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

11 “Effective Date” shall be the earlier of the date upon which this Consent
12 Decree is entered by the Court or the date upon which the order granting the
13 motion to enter the Consent Decree is entered by the Court, as recorded on the
14 Court docket.

15 “EPA” shall mean the United States Environmental Protection Agency and
16 any successor departments or agencies of the United States.

17 “Future Response Costs” shall mean all costs, including, but not limited to,
18 direct and indirect costs, that the United States incurs in reviewing or developing
19 plans, reports, and other deliverables submitted pursuant to this Consent Decree, in
20 overseeing implementation of the Work, or in otherwise implementing, overseeing,
21 or enforcing this Consent Decree, including, but not limited to, payroll costs,
22 contractor costs, travel costs, laboratory costs, the costs incurred pursuant to
23 Sections VIII (Access and Institutional Controls) (including, but not limited to, the
24 cost of attorney time and any monies paid to secure access and/or to secure,
25 implement, monitor, maintain, or enforce Institutional Controls including, but not
26 limited to, the amount of just compensation), XIV (Emergency Response), and
27

1 Paragraph 83 of Section XXI (Work Takeover), and Section XXIX (Community
2 Involvement).

3 “Interest” shall mean interest at the rate specified for interest on investments
4 of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,
5 compounded annually on October 1 of each year, in accordance with 42 U.S.C. §
6 9607(a). The applicable rate of interest shall be the rate in effect at the time the
7 interest accrues. The rate of interest is subject to change on October 1 of each
8 year.

9 “National Contingency Plan” or “NCP” shall mean the National Oil and
10 Hazardous Substances Pollution Contingency Plan promulgated pursuant to
11 Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and
12 any amendments thereto.

13 “Omega Chemical Superfund Site Special Account” shall mean the special
14 account, within the EPA Hazardous Substances Superfund, established for the Site
15 by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

16 “Omega Property” shall mean that portion of the Omega Chemical
17 Corporation Superfund Site consisting of the property formerly owned by the
18 Omega Chemical Corporation, encompassing approximately one acre, located at
19 12504 and 12508 East Whittier Boulevard, Whittier, California, Los Angeles
20 County, California, and bounded by fencing and existing streets.

21 “Operation and Maintenance” or “O&M” shall mean all activities required
22 to maintain the effectiveness of the Remedial Action as required under the
23 Operation and Maintenance Manual approved or developed by EPA pursuant to
24 Section VI (Performance of the Work by Settling Defendants) and the Statement of
25 Work (SOW).

26 “OU-1” or “Operable Unit 1” shall have the same meaning as and be
27 coextensive with the term “Phase 1a Area” as defined herein.

1 “Paragraph” shall mean a portion of this Consent Decree identified by an
2 Arabic numeral or an upper or lower case letter.

3 “Parties” shall mean the United States and Settling Defendants.

4 “Past Response Costs”, for purposes of this Consent Decree, shall be equal
5 to One Million Five Hundred Thousand Dollars (\$1,500,000). The parties agree
6 that this sum includes only a portion of the direct and indirect costs that the United
7 States has paid at or in connection with the Site, for which it has not been
8 reimbursed. The parties agree that Settling Work Defendants’ payment of
9 \$1,500,000 shall be considered a partial payment and a credit towards the total sum
10 of unreimbursed response costs the United States has incurred as of the Effective
11 Date. Interest shall continue to accrue on all unpaid past response costs in
12 accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

13 “Performance Standards” shall mean the cleanup standards and other
14 measures of achievement of the goals of the Remedial Action, set forth in the ROD
15 and SOW, and any modified standards established pursuant to this Consent Decree.

16 “Phase 1a Area” shall mean the area of soil and groundwater contamination
17 within and below the Omega Property and extending downgradient approximately
18 100 feet southwest of Putnam Street, Whittier, California. This area is defined as
19 “OU-1” in the ROD and is represented graphically in Figure 5 therein. This term
20 is meant to have the same meaning and scope as the term “Phase 1a Area” in the
21 Phase 1a Consent Decree.

22 “Phase 1a Consent Decree” shall mean the consent decree (#00-12471-TIH),
23 entered by the Court on February 28, 2001 between the United States and certain
24 settling defendants, wherein certain settling defendants agreed to perform certain
25 work at the Omega Chemical Corporation Superfund Site (“Site”) and to reimburse
26 the United States for certain costs as defined therein, and all amendments thereto.

27 “Plaintiff” shall mean the United States of America

1 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
2 §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

3 “Record of Decision” or “ROD” shall mean the EPA Record of Decision
4 relating to OU-1 at the Site, signed on September 30, 2008 by the delegate of the
5 Regional Administrator, EPA Region 9, and all attachments thereto. The ROD is
6 attached as Appendix A.

7 “Remedial Action” shall mean those activities, except for Remedial Design
8 and Operation and Maintenance, to be undertaken by Settling Work Defendants to
9 implement the ROD, in accordance with the SOW, the final RD/RA Work Plan
10 and other plans approved by EPA.

11 “Remedial Action Work Plan” shall mean the document developed pursuant
12 to Paragraph 11 and approved by EPA, and any amendments thereto.

13 “Remedial Design” shall mean those activities to be undertaken by Settling
14 Work Defendants to develop the final plans and specifications for the Remedial
15 Action pursuant to the RD/RA Work Plan.

16 “RD/RA Work Plan” shall mean the document developed pursuant to
17 Paragraph 10 and the SOW, and approved by EPA, and any amendments thereto.

18 “Section” shall mean a portion of this Consent Decree identified by a Roman
19 numeral.

20 “Settling Cash Defendants” shall mean those Parties listed in Appendix C,
21 who are signatories to this Consent Decree, who will participate in this Consent
22 Decree with the other Parties to this Consent Decree, primarily through cash
23 payments, and are not involved in performing the Work under this Consent Decree.

24 The term “Settling Cash Defendant” shall also apply to certain affiliates of each
25 Settling Cash Defendant; where the Settling Cash Defendant is a trust, its trustees
26 and successor trustees appointed to carry out the purposes of said trust; where the
27 Settling Cash Defendant is a corporate entity, its corporate successors to potential

1 liability for the Site; and where the Settling Cash Defendant is a partnership, its
2 partners. However, the term “Settling Cash Defendant” shall not include any
3 person or entity with liability for the Site independent of that person’s or entity’s
4 affiliation with a Settling Cash Defendant, including liability for Waste Material
5 that has not been attributed to a Settling Cash Defendant.

6 “Settling Defendants” shall mean the Settling Work Defendants and Settling
7 Cash Defendants.

8 “Settling Work Defendants” shall mean those Parties identified in Appendix
9 D, who are signatories to this Consent Decree, who are required to perform the
10 Work, whether they perform the Work individually or through any legal entity that
11 they may establish to perform the Work. The term “Settling Work Defendants”
12 shall also apply to certain affiliates of each Settling Work Defendants: where the
13 Settling Work Defendants is a trust, its trustees and successor trustees appointed to
14 carry out the purposes of said trust; where the Settling Work Defendant is a
15 corporate entity, its corporate successors to potential liability for the Site; and
16 where the Settling Work Defendant is a partnership, its partners. However, the
17 term “Settling Work Defendant” shall not include any person or entity with
18 liability for the Site independent of that person’s or entity’s affiliation with a
19 Settling Work Defendant, including liability for Waste Material that has not been
20 attributed to a Settling Work Defendant.

21 “Site” shall mean the Omega Chemical Corporation Superfund Site, listed
22 on the National Priorities List on January 19, 1999, 64 Fed. Reg. 2950.

23 “State” shall mean the State of California and any agencies or
24 instrumentalities thereof.

25 “Statement of Work” or “SOW” shall mean the statement of work for
26 implementation of the Remedial Design, Remedial Action, and Operation and
27

1 Maintenance at the Site, as set forth in Appendix B to this Consent Decree, and any
2 modifications made in accordance with this Consent Decree.

3 “Supervising Contractor” shall mean the principal contractor retained by
4 Settling Work Defendants to supervise and direct the implementation of the Work
5 under this Consent Decree.

6 “United States” shall mean the United States of America.

7 “Waste Material” shall mean (1) any “hazardous substance” under Section
8 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant
9 under Section 101(33), 42 U.S.C. § 9601(33); (3) any “solid waste” under Section
10 1004(27) of RCRA, 42 U.S.C. § 6903(27); or as any of the foregoing terms are
11 defined under any appropriate or applicable provisions of California law.

12 “Work” shall mean all activities and obligations the Settling Work
13 Defendants are required to perform under this Consent Decree, except those
14 required by Section XXV (Retention of Records).

15 V. GENERAL PROVISIONS

16 5. Objectives of the Parties. The objectives of the Parties in entering
17 into this Consent Decree are to protect public health, welfare or the environment
18 by the design and implementation of response actions at the Site by the Settling
19 Work Defendants, to pay response costs of the Plaintiff, and to partially resolve the
20 claims of Plaintiff against Settling Defendants as provided in this Consent Decree.

21 6. Commitments by Settling Defendants.

22 a. Settling Work Defendants shall finance and perform the Work
23 in accordance with this Consent Decree, the ROD, the SOW, and all work plans
24 and other plans, standards, specifications, and schedules set forth in this Consent
25 Decree or developed by Settling Work Defendants and approved by EPA pursuant
26 to this Consent Decree. Settling Work Defendants also shall pay the United States
27 for Past Response Costs and Future Response Costs as provided in this Consent
28

1 Decree, as well as any modifications made thereto pursuant to the terms of this
2 Consent Decree.

3 b. The obligations of the Settling Work Defendants to perform the
4 Work and the obligation of the Settling Work Defendants to pay amounts owed the
5 United States under this Consent Decree are joint and several. In the event of the
6 insolvency or other failure of any one or more Settling Work Defendants to
7 implement the requirements of this Consent Decree, the remaining Settling Work
8 Defendants shall complete all such requirements.

9 c. The Settling Cash Defendants shall cooperate with the EPA and
10 the Settling Work Defendants to effectuate the purposes of this Consent Decree,
11 including, but not limited to, those obligations set forth in Section XV (Obligations
12 of Settling Cash Defendants).

13 7. Compliance with Applicable Law. All activities undertaken by
14 Settling Work Defendants pursuant to this Consent Decree shall be performed in
15 accordance with the requirements of all applicable federal and state laws and
16 regulations. Settling Work Defendants must also comply with all applicable or
17 relevant and appropriate requirements of all federal and state environmental laws
18 as set forth in the ROD and the SOW. The activities conducted pursuant to this
19 Consent Decree, if approved by EPA, shall be deemed to be consistent with the
20 NCP.

21 8. Permits.

22 a. As provided in Section 121(e) of CERCLA, 42 U.S.C. §
23 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any
24 portion of the Work conducted entirely on-Site (i.e., within the areal extent of
25 contamination or in very close proximity to the contamination and necessary for
26 the implementation of the Work). The Parties believe that all work under this
27 Consent Decree will be on or in close proximity to the Site and therefore, pursuant
28

1 to 42 U.S.C. § 9621(e) and NCP Section 300.400(e), the Parties anticipate that no
2 permit shall be required by any State, local or Federal entity for any aspect of the
3 Work. In the unanticipated event that any portion of the Work is not on-Site and
4 requires a federal, state or local permit or approval, Settling Work Defendants shall
5 submit timely and complete applications and take all other actions necessary to
6 obtain all such permits or approvals. The EPA agrees to cooperate with and assist
7 the Settling Work Defendants in obtaining any necessary permits or approvals.

8 b. Settling Work Defendants may seek relief under the provisions
9 of Section XVIII (Force Majeure) for any delay in the performance of the Work
10 resulting from a failure to obtain, or a delay in obtaining, any permit or approval
11 referenced in Paragraph 8.a and required for the Work, provided that they have
12 submitted timely and complete applications and taken all other actions necessary to
13 obtain all such permits or approvals.

14 c. This Consent Decree is not, and shall not be construed to be, a
15 permit issued pursuant to any Federal or State statute or regulation.

16 **VI. PERFORMANCE OF THE WORK BY SETTLING WORK DEFENDANTS**

17 9. **Selection of Supervising Contractor.**

18 a. All aspects of the Work to be performed by Settling Work
19 Defendants pursuant to Sections VI (Performance of the Work by Settling Work
20 Defendants), VII (Quality Assurance, Sampling and Data Analysis), VIII (Access
21 and Institutional Controls), and XIV (Emergency Response) shall be under the
22 direction and supervision of the Supervising Contractor, the selection of which
23 shall be subject to disapproval by EPA. Within ten days after the lodging of this
24 Consent Decree, Settling Work Defendants shall notify EPA in writing of the
25 name, title, and qualifications of any contractor proposed to be the Supervising
26 Contractor. With respect to any contractor proposed to be Supervising Contractor,
27 Settling Work Defendants shall demonstrate that the proposed contractor has a

1 quality assurance system that complies with ANSI/ASQC E4-1994, “Specifications
2 and Guidelines for Quality Systems for Environmental Data Collection and
3 Environmental Technology Programs” (American National Standard, January 5,
4 1995), by submitting a copy of the proposed contractor’s Quality Management
5 Plan (QMP). The QMP should be prepared in accordance with “EPA
6 Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002,
7 March 2001; Reissued May 2006) or equivalent documentation as determined by
8 EPA. EPA will issue a notice of disapproval or an authorization to proceed
9 regarding hiring of the proposed contractor. If at any time thereafter, Settling
10 Work Defendants propose to change a Supervising Contractor, Settling Work
11 Defendants shall give such notice to EPA and must obtain an authorization to
12 proceed from EPA before the new Supervising Contractor performs, directs, or
13 supervises any Work under this Consent Decree. EPA shall not unreasonably
14 withhold or delay authorization of the Contractor .

15 b. If EPA disapproves a proposed Supervising Contractor, EPA
16 will notify Settling Work Defendants in writing. Settling Work Defendants shall
17 submit to EPA a list of contractors, including the qualifications of each contractor,
18 which would be acceptable to them within 30 days of receipt of EPA’s disapproval
19 of the contractor previously proposed. EPA will provide written notice of the
20 names of any contractor(s) that it disapproves and an authorization to proceed with
21 respect to any of the other contractors. Settling Work Defendants may select any
22 contractor from that list that is not disapproved and shall notify EPA of the name
23 of the contractor selected within 21 days of EPA’s authorization to proceed.

24 c. If EPA fails to provide written notice of its authorization to
25 proceed or disapproval as provided in this Paragraph and this failure prevents
26 Settling Work Defendants from meeting one or more deadlines in a plan approved
27

1 by EPA pursuant to this Consent Decree, Settling Defendants may seek relief
2 under the provisions of Section XVIII (Force Majeure) hereof.

3 10. Remedial Design.

4 a. Within 15 days after EPA's issuance of an authorization to
5 proceed pursuant to Paragraph 9, Settling Work Defendants shall submit to EPA
6 and the State a work plan for the design of the remedial action at the Site, as set
7 forth in the ROD, in accordance with the SOW, and for achievement of the
8 Performance Standards and other requirements set forth in the ROD, this Consent
9 Decree and/or the SOW ("RD/RA Work Plan"). Upon its approval by EPA, the
10 RD/RA Work Plan shall be incorporated into and become enforceable under this
11 Consent Decree. At the same time as they submit the RD/RA Work Plan, Settling
12 Work Defendants shall submit to EPA a Health and Safety Plan for field design
13 activities which conforms to the applicable Occupational Safety and Health
14 Administration and EPA requirements including, but not limited to, 29 C.F.R. §
15 1910.120.

16 b. The RD/RA Work Plan shall include plans and schedules for
17 implementation of all remedial design and pre-design tasks identified in the SOW,
18 including, but not limited to, plans and schedules for the completion of: (1) Site
19 Management Plan (including an RD/RA Contingency Plan); (2) Health and Safety
20 Plan; (3) Sampling and Analysis Plan (including, but not limited to, a Remedial
21 Design Quality Assurance Project Plan (QAPP) in accordance with Section VII
22 (Quality Assurance, Sampling and Data Analysis) and Field Sampling Plan); (4) a
23 Construction Quality Assurance Plan; (5) an Institutional Controls Implementation
24 and Assurance Plan; (6) quarterly progress reports; (7) a preliminary design
25 submission; (8) an intermediate design submission; and (9) a prefinal/final design
26 submission.

1 c. Upon approval of the RD/RA Work Plan by EPA, after a
2 reasonable opportunity for review and comment by the State, and submission of
3 the Health and Safety Plan for all field activities to EPA and the State, Settling
4 Work Defendants shall implement the RD/RA Work Plan. Settling Work
5 Defendants shall submit to EPA and the State all plans, reports, and other
6 deliverables required under the approved RD/RA Work Plan in accordance with
7 the approved schedule for review and approval pursuant to Section X (EPA
8 Approval of Plans and Other Submissions). Unless otherwise directed by EPA,
9 Settling Work Defendants shall not commence further Remedial Design activities
10 at the Site prior to approval of the RD/RA Work Plan.

11 d. The preliminary design submission shall include, at a
12 minimum, the following: (1) design criteria; (2) project delivery strategy; (3)
13 preliminary plans, drawings and sketches; (4) required specifications in outline
14 form; (5) preliminary construction schedule; and other items described in the
15 SOW.

16 e. The intermediate design submission shall be a continuation and
17 expansion of the preliminary design, and shall contain the items described in the
18 SOW. Any value engineering proposals must be identified and evaluated during
19 this review.

20 f. The pre-final/final design submission shall include, at a
21 minimum, the following: (1) final plans and specifications; (2) Operation and
22 Maintenance Manual; (3) Construction Quality Assurance Plan; and other items
23 described in the SOW. The Construction Quality Assurance Plan, which shall
24 detail the approach to quality assurance during construction activities at the Site,
25 shall specify a quality assurance official (“QA Official”), independent of the
26 Supervising Contractor, to conduct a quality assurance program during the
27 construction phase of the project.

1 11. Remedial Action.

2 a. Within 30 days after EPA’s approval of the prefinal design
3 submission, Settling Work Defendants shall submit to EPA and the State a work
4 plan for the performance of the Remedial Action at the Site, and which
5 supplements and updates the RD/RA Work Plan (“Remedial Action Work Plan”).
6 Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated
7 into and become enforceable under this Consent Decree. Settling Work
8 Defendants shall submit to EPA and the State: (1) a Construction Health and
9 Safety Plan for field activities required by the Remedial Action Work Plan, which
10 conforms to the applicable Occupational Safety and Health Administration and
11 EPA requirements including, but not limited to, 29 C.F.R. § 1910.120; (2) a
12 construction schedule for completion of the Remedial Action; and other
13 deliverables, as described in the SOW. The timeframes for submittal of the
14 Construction Health and Safety Plan and construction schedule for completion of
15 the Remedial Action shall be those set forth in the SOW.

16 b. The Remedial Action section of the RD/RA Work Plan shall
17 include the following: (1) a schedule for the completion of the Remedial Action;
18 (2) method and schedule for selection of contractors; (3) plans and schedules for
19 field investigation; (4) methods for satisfying permitting requirements; (5)
20 methodology for implementation of the Operation and Maintenance Manual; (6)
21 methodology for implementation of the Contingency Plan; (7) plans and schedules
22 for formulation of the Remedial Action team; (8) methodology for implementation
23 of the Construction Quality Assurance Plan; (9) procedures and plans for the
24 decontamination of equipment and the disposal of contaminated materials; (10)
25 procurement and contracting details; and (11) a schedule for developing and
26 submitting other required Remedial Action plans. The Remedial Action section of
27 the RD/RA Work Plan also shall include the methodology for implementation of
28

1 the Construction Quality Assurance Plan and a schedule for implementation of all
2 Remedial Action tasks identified in the final design submission and shall identify
3 the initial formulation of Settling Defendants' Remedial Action project team
4 (including, but not limited to, the Supervising Contractor).

5 c. Upon approval of the updated RD/RA Work Plan and Remedial
6 Action Work Plan by EPA, after a reasonable opportunity for review and comment
7 by the State, Settling Work Defendants shall implement the activities required
8 under the Remedial Action Work Plan. Settling Work Defendants shall submit to
9 EPA and the State all reports and other deliverables required under the approved
10 Remedial Action Work Plan in accordance with the approved schedule for review
11 and approval pursuant to Section X (EPA Approval of Plans and Other
12 Submissions). Unless otherwise directed by EPA, Settling Defendants shall not
13 commence physical Remedial Action activities at the Site prior to approval of the
14 Remedial Action Work Plan.

15 12. Settling Work Defendants shall continue to implement the Remedial
16 Action and O&M until the Performance Standards are achieved and for so long
17 thereafter as is otherwise required under this Consent Decree.

18 13. Modification of the SOW or Related Work Plans.

19 a. If EPA determines that modification to the work specified in
20 the SOW and/or in work plans developed pursuant to the SOW is necessary to
21 achieve and maintain the Performance Standards or to carry out and maintain the
22 effectiveness of the remedy set forth in the ROD, EPA may require that such
23 modification be incorporated in the SOW and/or such work plans, provided,
24 however, that a modification may only be required pursuant to this Paragraph to
25 the extent that it is consistent with the scope of the remedy selected in the ROD.

26 b. For the purposes of this Paragraph 13 and Paragraph 45
27 (Completion of the Work) only, the "scope of the remedy selected in the ROD" is:

1 removal of the potential threat to human health from contaminated soil and soil
2 vapor by using soil vapor extraction (SVE) followed by carbon filters to remove
3 and treat volatile organic compounds (VOCs) and semi-volatile organic
4 compounds present in the OU-1 soils. If necessary to meet Performance
5 Standards, contingencies for increasing the effectiveness of SVE, including hot air
6 injection and dual phase extraction, will be implemented. Institutional controls
7 will be used within the Phase 1a Area, to maintain paved areas and to place
8 restrictions on excavation during operation of the SVE system. It is expected that
9 institutional controls will remain in place until such time as EPA deems the OU-1
10 soil remedy complete.

11 c. If Settling Work Defendants object to any modification
12 determined by EPA to be necessary pursuant to this Paragraph, they may seek
13 dispute resolution pursuant to Section XIX (Dispute Resolution). The SOW and/or
14 related work plans shall be modified in accordance with final resolution of the
15 dispute.

16 d. Settling Work Defendants shall implement any work required
17 by any modifications incorporated in the SOW and/or in work plans developed
18 pursuant to the SOW in accordance with this Paragraph.

19 e. Nothing in this Paragraph shall be construed to limit EPA's
20 authority to require performance of further response actions as otherwise provided
21 in this Consent Decree.

22 f. Any modifications shall be implemented pursuant to Section
23 XXX (Modification).

24 14. Nothing in this Consent Decree, the SOW, or in work plans developed
25 pursuant to the SOW constitutes a warranty or representation of any kind by
26 Plaintiff that compliance with the work requirements set forth in the SOW and the
27 Work Plans will achieve the Performance Standards.

1 facility that complies with the requirements of the statutory provision and
2 regulations cited in the preceding sentence.

3 VII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

4 16. Quality Assurance.

5 a. Settling Work Defendants shall use quality assurance, quality
6 control, and chain of custody procedures for all treatability, design, compliance
7 and monitoring samples in accordance with “EPA Requirements for Quality
8 Assurance Project Plans (QA/R5)” (EPA/240/B-01/003, March 2001), “Guidance
9 for Quality Assurance Project Plans (QA/G-5)” (EPA/600/R-98/018, February
10 1998), and subsequent amendments to such guidelines upon notification by EPA to
11 Settling Work Defendants of such amendment. Amended guidelines shall apply
12 only to procedures conducted after such notification.

13 b. Prior to the commencement of any monitoring project under
14 this Consent Decree, Settling Work Defendants shall submit to EPA for approval,
15 after a reasonable opportunity for review and comment by the State, a Quality
16 Assurance Project Plan (“QAPP”) that is consistent with the SOW, the NCP and
17 applicable guidance documents. If relevant to the proceeding, the Parties agree
18 that validated sampling data generated in accordance with the QAPP(s) and
19 reviewed and approved by EPA shall be admissible as evidence, without objection,
20 in any proceeding under this Decree. Settling Work Defendants shall ensure that
21 EPA and State personnel and its authorized representatives are allowed access at
22 reasonable times to all laboratories utilized by Settling Work Defendants in
23 implementing this Consent Decree. In addition, Settling Work Defendants shall
24 ensure that such laboratories shall analyze all samples submitted by EPA pursuant
25 to the QAPP for quality assurance monitoring. Settling Work Defendants shall
26 ensure that the laboratories they utilize for the analysis of samples taken pursuant
27 to this Decree perform all analyses according to accepted EPA methods. Accepted

1 EPA methods consist of those methods that are documented in the “Contract Lab
2 Program Statement of Work for Inorganic Analysis” and the “Contract Lab
3 Program Statement of Work for Organic Analysis,” dated February 1988, and any
4 amendments made thereto during the course of the implementation of this Decree;
5 however, upon approval by EPA, after opportunity for review and comment by the
6 State, Settling Work Defendants may use other analytical methods which are as
7 stringent as or more stringent than the CLP-approved methods. Settling Work
8 Defendants shall ensure that all laboratories they use for analysis of samples taken
9 pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC
10 program. Settling Work Defendants shall use only laboratories that have a
11 documented Quality System which complies with ANSI/ASQC E4-1994,
12 “Specifications and Guidelines for Quality Systems for Environmental Data
13 Collection and Environmental Technology Programs” (American National
14 Standard, January 5, 1995), and “EPA Requirements for Quality Management
15 Plans (QA/R-2)” (EPA/240/B-01/002, March 2001; Reissued May 2006) or
16 equivalent documentation as determined by EPA. EPA may consider laboratories
17 accredited under the National Environmental Laboratory Accreditation Program
18 (NELAP) as meeting the Quality System requirements. Settling Work Defendants
19 shall ensure that all field methodologies utilized in collecting samples for
20 subsequent analysis pursuant to this Decree are conducted in accordance with the
21 procedures set forth in the QAPP approved by EPA.

22 17. Upon request, Settling Work Defendants shall allow split or duplicate
23 samples to be taken by EPA or their authorized representatives. Settling Work
24 Defendants shall notify EPA not less than 10 days in advance of any sample
25 collection activity unless shorter notice is agreed to by EPA. In addition, EPA
26 shall have the right to take any additional samples that EPA deems necessary.
27 Upon request, EPA shall allow Settling Work Defendants to take split or duplicate

1 samples of any samples it takes as part of the Plaintiff's oversight of Settling Work
2 Defendants' implementation of the Work.

3 18. Settling Work Defendants shall submit to EPA two copies of the
4 results of all sampling and/or tests or other data obtained or generated by or on
5 behalf of Settling Work Defendants with respect to the Site and/or the
6 implementation of this Consent Decree unless EPA agrees otherwise.

7 19. Notwithstanding any provision of this Consent Decree, the United
8 States hereby retains all of its information gathering and inspection authorities and
9 rights, including enforcement actions related thereto, under CERCLA, RCRA, and
10 any other applicable statutes or regulations.

11 VIII. ACCESS AND INSTITUTIONAL CONTROLS

12 20. If the Site, or any other property where access and/or land/water use
13 restrictions are needed to implement this Consent Decree, is owned or controlled
14 by any of the Settling Defendants, such Settling Defendants shall:

15 a. commencing on the date of lodging of this Consent Decree,
16 provide the United States and its representatives, including EPA and its
17 contractors, and Settling Work Defendants and their contractors and
18 representatives, with access at all reasonable times to the Site, or such other
19 property, for the purpose of conducting any activity related to this Consent Decree
20 including, but not limited to, the following activities:

21 (1) Monitoring the Work;

22 (2) Verifying any data or information submitted to the
23 United States;

24 (3) Conducting investigations relating to contamination at or
25 near the Site;

26 (4) Obtaining samples;

1 (5) Assessing the need for, planning, or implementing
2 additional response actions at or near the Site;

3 (6) Assessing implementation of quality assurance and
4 quality control practices as defined in the approved Quality Assurance
5 Project Plans;

6 (7) Implementing the Work pursuant to the conditions set
7 forth in Paragraph 83 (Work Takeover) of this Consent Decree;

8 (8) Inspecting and copying records, operating logs, contracts,
9 or other documents maintained or generated by Settling Work
10 Defendants or their agents, consistent with Section XXIV (Access to
11 Information);

12 (9) Assessing Settling Work Defendants' compliance with
13 this Consent Decree; and

14 (10) Determining whether the Site or other property is being
15 used in a manner that is prohibited or restricted, or that may need to be
16 prohibited or restricted, by or pursuant to this Consent Decree;

17 b. commencing on the date of lodging of this Consent Decree,
18 refrain from using the Site, or such other property, in any manner that would
19 interfere with or adversely affect the implementation, integrity, or protectiveness of
20 the remedial measures to be performed pursuant to this Consent Decree; and

21 c. If EPA so requests, execute and record in the Recorder's Office,
22 Los Angeles County, State of California, an easement, running with the land, that
23 (i) grants a right of access for the purpose of conducting any activity related to this
24 Consent Decree including, but not limited to, those activities listed in Paragraph
25 20.a of this Consent Decree, and (ii) grants the right to enforce the land/water use
26 restrictions listed in Paragraph 20.b of this Consent Decree, or other restrictions
27 that EPA determines are necessary to implement, ensure non-interference with, or

1 ensure the protectiveness of the remedial measures to be performed pursuant to this
2 Consent Decree. Such Settling Defendants shall grant the access rights and the
3 rights to enforce the land/water use restrictions to (i) the United States, on behalf of
4 EPA, and its representatives, (ii) the State and its representatives, and (iii) the other
5 Settling Defendants and their representatives. Such Settling Defendants shall,
6 within 45 days of EPA's request, submit to EPA for review and approval with
7 respect to such property:

8 (1) A draft easement that is enforceable under the laws
9 of the State of California, and

10 (2) a current title insurance commitment or some other
11 evidence of title acceptable to EPA, which shows title to the land
12 described in the easement to be free and clear of all prior liens and
13 encumbrances (except when those liens or encumbrances are approved
14 by EPA or when, despite best efforts, Settling Work Defendants are
15 unable to obtain release or subordination of such prior liens or
16 encumbrances).

17 Within 15 days of EPA's approval and acceptance of the easement and the title
18 evidence, such Settling Work Defendants shall update the title search and, if it is
19 determined that nothing has occurred since the effective date of the commitment to
20 affect the title adversely, record the easement with the Recorder's Office, Los
21 Angeles County, State of California. Within 30 days of recording the easement,
22 such Settling Work Defendants shall provide EPA with a final title insurance
23 policy, or other final evidence of title acceptable to EPA, and a certified copy of
24 the original recorded easement showing the clerk's recording stamps. If the
25 easement is to be conveyed to the United States, the easement and title evidence
26 (including final title evidence) shall be prepared in accordance with the U.S.

1 Department of Justice Title Standards 2001, and approval of the sufficiency of title
2 must be obtained as required by 40 U.S.C. § 3111.

3 21. If the Site, or any other property where access and/or land/water use
4 restrictions are needed to implement this Consent Decree, is owned or controlled
5 by persons other than any of the Settling Defendants, Settling Work Defendants
6 shall use best efforts to secure from such persons:

7 a. an agreement to provide access thereto for Settling Work
8 Defendants and their contractors and representatives, as well as for the United
9 States on behalf of EPA, and the State, as well as their representatives (including
10 contractors), for the purpose of conducting any activity related to this Consent
11 Decree including, but not limited to, those activities listed in Paragraph 20.a of this
12 Consent Decree;

13 b. If EPA so requests, an agreement, in the form of a land use
14 covenant under California law, enforceable by the Settling Work Defendants and
15 the United States, to refrain from using the Site, or such other property, in any
16 manner that would interfere with or adversely affect the implementation, integrity,
17 or protectiveness of the remedial measures to be performed pursuant to this
18 Consent Decree; and

19 c. If EPA so requests, the execution and recordation in the
20 Recorder's Office, Los Angeles County, State of California, of an easement,
21 running with the land, that (i) grants a right of access for the purpose of conducting
22 any activity related to this Consent Decree including, but not limited to, those
23 activities listed in Paragraph 21.a of this Consent Decree, and (ii) grants the right
24 to enforce the land/water use restrictions listed in Paragraph 21.b of this Consent
25 Decree, or other restrictions that EPA determines are necessary to implement,
26 ensure non-interference with, or ensure the protectiveness of the remedial measures
27 to be performed pursuant to this Consent Decree. The access rights and/or rights to
28

1 enforce land/water use restrictions shall be granted to (i) the United States, on
2 behalf of EPA, and its representatives, (ii) the State and its representatives, and (iii)
3 the other Settling Work Defendants and their representatives. Within 45 days of
4 EPA's request, Settling Work Defendants shall submit to EPA for review and
5 approval with respect to such property:

6 (1) A draft easement that is enforceable under the laws of the
7 State of California, and

8 (2) a current title insurance commitment, or some other
9 evidence of title acceptable to EPA, which shows title to the land
10 described in the easement to be free and clear of all prior liens and
11 encumbrances (except when those liens or encumbrances are approved
12 by EPA or when, despite best efforts, Settling Work Defendants are
13 unable to obtain release or subordination of such prior liens or
14 encumbrances)

15 Within 15 days of EPA's approval and acceptance of the easement and the title
16 evidence, Settling Work Defendants shall update the title search and, if it is
17 determined that nothing has occurred since the effective date of the commitment to
18 affect the title adversely, the easement shall be recorded with the Recorder's
19 Office, Los Angeles County, State of California. Within 30 days of the recording
20 of the easement, Settling Work Defendants shall provide EPA with a final title
21 insurance policy, or other final evidence of title acceptable to EPA, and a certified
22 copy of the original recorded easement showing the clerk's recording stamps. If
23 the easement is to be conveyed to the United States, the easement and title
24 evidence (including final title evidence) shall be prepared in accordance with the
25 U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of
26 title must be obtained as required by 40 U.S.C. § 3111.

1 22. For purposes of Paragraphs 20 and 21 of this Consent Decree, “best
2 efforts” includes the offer of payment of reasonable sums of money in
3 consideration of access, access easements, land/water use restrictions, restrictive
4 easements, and/or an agreement to release or subordinate a prior lien or
5 encumbrance. Notwithstanding the foregoing, the term “best efforts” shall not
6 require the payment of any sums of money to any of the current or past owners and
7 operators of the Omega Property, including, but not limited to, Dennis O’Meara,
8 Omega Chemical Corporation, or any company owned or affiliated, directly or
9 indirectly, by Dennis O’Meara or Omega Chemical Corporation. If (a) any access
10 or land/water use restriction agreements required by Paragraphs 21a. or 21.b of this
11 Consent Decree are not obtained within 45 days of the date of entry of this Consent
12 Decree, (b) or any access easements or restrictive easements required by Paragraph
13 21.c of this Consent Decree are not submitted to EPA in draft form within 45 days
14 of the date of entry of this Consent Decree, or (c) Settling Work Defendants are
15 unable to obtain an agreement pursuant to Paragraph 20.c.(1) or Paragraph 21.c.(1)
16 from the holder of a prior lien or encumbrance to release or subordinate such lien
17 or encumbrance to the easement being created pursuant to this consent decree
18 within 45 days of the date of entry of this consent decree, Settling Work
19 Defendants shall promptly notify the United States in writing, and shall include in
20 that notification a summary of the steps that Settling Work Defendants have taken
21 to attempt to comply with Paragraph 20 or 21 of this Consent Decree. The United
22 States may, as it deems appropriate, assist Settling Work Defendants in obtaining
23 access or land/water use restrictions, either in the form of contractual agreements
24 or in the form of easements running with the land, or in obtaining the release or
25 subordination of a prior lien or encumbrance. Settling Work Defendants shall
26 reimburse the United States in accordance with the procedures in Section XVI
27 (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by

1 the United States in obtaining such access, land/water use restrictions, and/or the
2 release/subordination of prior liens or encumbrances including, but not limited to,
3 the cost of attorney time and the amount of monetary consideration paid or just
4 compensation.

5 23. If EPA determines that land/water use restrictions in the form of state
6 or local laws, regulations, ordinances or other governmental controls are needed to
7 implement the remedy selected in the ROD, ensure the integrity and protectiveness
8 thereof, or ensure non-interference therewith, Settling Work Defendants shall
9 cooperate with EPA's efforts to secure such governmental controls.

10 24. Notwithstanding any provision of this Consent Decree, the United
11 States retains all of its access authorities and rights, as well as all of its rights to
12 require land/water use restrictions, including enforcement authorities related
13 thereto, under CERCLA, RCRA and any other applicable statute or regulations.

14 IX. REPORTING REQUIREMENTS

15 25. In addition to any other requirement of this Consent Decree, Settling
16 Work Defendants shall submit two copies to EPA and one copy to the State of
17 written quarterly progress reports that: (a) describe the actions that have been taken
18 toward achieving compliance with this Consent Decree during the previous
19 quarter; (b) include a summary of all validated results of sampling and tests and all
20 other data received or generated by Settling Work Defendants or their contractors
21 or agents in the previous quarter; (c) identify all plans, reports, and other
22 deliverables required by this Consent Decree completed and submitted during the
23 previous quarter; (d) describe all actions, including, but not limited to, data
24 collection and implementation of work plans, which are scheduled for the next
25 quarter and provide other information relating to the progress of construction,
26 including, but not limited to, critical path diagrams, Gantt charts and Pert charts;
27 (e) include information regarding percentage of completion, unresolved delays

1 encountered or anticipated that may affect the future schedule for implementation
2 of the Work, and a description of efforts made to mitigate those delays or
3 anticipated delays; (f) include any modifications to the work plans or other
4 schedules that Settling Work Defendants have proposed to EPA or that have been
5 approved by EPA; and (g) describe all activities undertaken in support of the
6 Community Involvement Plan during the previous quarter and those to be
7 undertaken in the next 12 weeks. Settling Work Defendants shall submit these
8 progress reports to EPA and the State by the tenth day of the first month of the next
9 quarter following the lodging of this Consent Decree until EPA notifies Settling
10 Work Defendants pursuant to Paragraph 45.b of Section XIII (Certification of
11 Completion). If requested by EPA, Settling Work Defendants shall also provide
12 briefings for EPA to discuss the progress of the Work.

13 26. Settling Work Defendants shall notify EPA of any change in the
14 schedule described in the quarterly progress report for the performance of any
15 activity, including, but not limited to, data collection and implementation of work
16 plans, no later than seven days prior to the performance of the activity.

17 27. Upon the occurrence of any event during performance of the Work
18 that Settling Work Defendants are required to report pursuant to Section 103 of
19 CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and
20 Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004, Settling Work
21 Defendants shall within 24 hours of the onset of such event orally notify the EPA
22 Project Coordinator or the Alternate EPA Project Coordinator (in the event of the
23 unavailability of the EPA Project Coordinator), or, in the event that neither the
24 EPA Project Coordinator or Alternate EPA Project Coordinator is available, the
25 Emergency Response Section, Region 9, United States Environmental Protection
26 Agency. These reporting requirements are in addition to the reporting required by
27 CERCLA Section 103 or EPCRA Section 304.

1 28. Within 20 days of the onset of such an event, Settling Work
2 Defendants shall furnish to Plaintiff a written report, signed by Settling Work
3 Defendants' Project Coordinator, setting forth the events that occurred and the
4 measures taken, and to be taken, in response thereto. Within 30 days of the
5 conclusion of such an event, Settling Work Defendants shall submit a report setting
6 forth all actions taken in response thereto.

7 29. Settling Work Defendants shall submit two copies of all plans,
8 reports, data, and other deliverables required by the SOW, the RD/RA Work Plan,
9 or any other approved plans to EPA in accordance with the schedules set forth in
10 such plans. Settling Work Defendants shall simultaneously submit one copy of all
11 such plans, reports, data, and other deliverables to the State. Upon request by
12 EPA, Settling Work Defendants shall submit in electronic form all or any portion
13 of any deliverables Settling Work Defendants are required to submit pursuant to
14 the provisions of this Consent Decree.

15 30. All deliverables submitted by Settling Work Defendants to EPA
16 which purport to document Settling Work Defendants' compliance with the terms
17 of this Consent Decree shall be signed by an authorized representative of Settling
18 Work Defendants.

19 XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

20 31. After review of any plan, report, or other deliverable that is required
21 to be submitted for approval pursuant to this Consent Decree or the SOW, EPA,
22 after reasonable opportunity for review and comment by the State, shall: (a)
23 approve, in whole or in part, the submission; (b) approve the submission upon
24 specified conditions; (c) modify the submission to cure the deficiencies; (d)
25 disapprove, in whole or in part, the submission, directing that Settling Work
26 Defendants modify the submission; or (e) any combination of the above.
27 However, EPA will not modify a submission without first providing Settling Work
28

1 Defendants at least one notice of deficiency and an opportunity to cure within 30
2 days, except where to do so would cause serious disruption to the Work or where
3 previous submission(s) have been disapproved due to material defects and the
4 deficiencies in the submission under consideration indicate a bad faith lack of
5 effort to submit an acceptable deliverable.

6 32. In the event of approval, approval upon conditions, or modification by
7 EPA, pursuant to Paragraphs 31(a), 31(b) or 31(c), Settling Work Defendants shall
8 proceed to take any action required by the plan, report, or other deliverable, as
9 approved or modified by EPA subject only to their right to invoke the Dispute
10 Resolution procedures set forth in Section XIX (Dispute Resolution) with respect
11 to the modifications or conditions made by EPA. In the event that EPA modifies
12 the submission to cure the deficiencies pursuant to Paragraph 31(c) and the
13 submission has a material defect, the United States retains its right to seek
14 stipulated penalties, as provided in Section XX (Stipulated Penalties).

15 33. Resubmission of Plans.

16 a. Upon receipt of a notice of disapproval pursuant to Paragraph
17 31(d), Settling Work Defendants shall, within 30 days or such longer time as
18 specified by EPA in such notice, correct the deficiencies and resubmit the plan,
19 report, or other deliverable for approval. Any stipulated penalties applicable to the
20 submission, as provided in Section XX (Stipulated Penalties), shall accrue during
21 the 30-day period or otherwise specified period but shall not be payable unless the
22 resubmission is disapproved or modified due to a material defect as provided in
23 Paragraphs 34 and 35.

24 b. Notwithstanding the receipt of a notice of disapproval pursuant
25 to Paragraph 31(d), Settling Work Defendants shall proceed, at the direction of
26 EPA, to take any action required by any non-deficient portion of the submission.
27 Implementation of any non-deficient portion of a submission shall not relieve
28

1 Settling Work Defendants of any liability for stipulated penalties under Section XX
2 (Stipulated Penalties).

3 34. In the event that a resubmitted plan, report or other deliverable, or
4 portion thereof, is disapproved by EPA, EPA may again require Settling Work
5 Defendants to correct the deficiencies, in accordance with the preceding
6 Paragraphs. EPA also retains the right to modify or develop the plan, report, or
7 other deliverable. Settling Work Defendants shall implement any such plan,
8 report, or other deliverable as modified or developed by EPA, subject only to their
9 right to invoke the procedures set forth in Section XIX (Dispute Resolution).

10 35. If upon resubmission, a plan, report, or other deliverable is
11 disapproved or modified by EPA due to a material defect, Settling Work
12 Defendants shall be deemed to have failed to submit such plan, report, or other
13 deliverable timely and adequately unless Settling Work Defendants invoke the
14 dispute resolution procedures set forth in Section XIX (Dispute Resolution) and
15 EPA's action is overturned pursuant to that Section. The provisions of Section
16 XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the
17 implementation of the Work and accrual and payment of any stipulated penalties
18 during Dispute Resolution. If EPA's disapproval or modification is upheld,
19 stipulated penalties shall accrue for such violation from the date on which the
20 initial submission was originally required, as provided in Section XX (Stipulated
21 Penalties).

22 36. All plans, reports, and other deliverables required to be submitted to
23 EPA under this Consent Decree shall, upon approval or modification by EPA, be
24 enforceable under this Consent Decree. In the event EPA approves or modifies a
25 portion of a plan, report, or other deliverable required to be submitted to EPA
26 under this Consent Decree, the approved or modified portion shall be enforceable
27 under this Consent Decree.

1 XI. PROJECT COORDINATORS

2 37. Within 20 days of lodging this Consent Decree, Settling Work
3 Defendants and EPA will notify each other, in writing, of the name, address and
4 telephone number of their respective designated Project Coordinators and Alternate
5 Project Coordinators. If a Project Coordinator or Alternate Project Coordinator
6 initially designated is changed, the identity of the successor will be given to the
7 other Parties at least five working days before the change occurs, unless
8 impracticable, but in no event later than the actual day the change is made.
9 Settling Work Defendants' Project Coordinator shall be subject to disapproval by
10 EPA and shall have the technical expertise sufficient to adequately oversee all
11 aspects of the Work. Settling Work Defendants' Project Coordinator shall not be
12 an attorney for any of Settling Work Defendants in this matter. He or she may
13 assign other representatives, including other contractors, to serve as a Site
14 representative for oversight of performance of daily operations during remedial
15 activities.

16 38. Plaintiff may designate other representatives, including, but not
17 limited to, EPA employees, and federal contractors and consultants, to observe and
18 monitor the progress of any activity undertaken pursuant to this Consent Decree.
19 EPA's Project Coordinator and Alternate Project Coordinator shall have the
20 authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene
21 Coordinator (OSC) by the NCP, 40 C.F.R. Part 300. In addition, EPA's Project
22 Coordinator or Alternate Project Coordinator shall have authority, consistent with
23 the NCP, to halt any Work required by this Consent Decree and to take any
24 necessary response action when he or she determines that conditions at the Site
25 constitute an emergency situation or may present an immediate threat to public
26 health or welfare or the environment due to release or threatened release of Waste
27 Material.

1 financial test criteria of 40 C.F.R. § 264.143(f)(1)(i) or (ii), with respect to twice
2 the Estimated Cost of the Work (plus the amount(s) of any other federal or any
3 state environmental obligations financially assured to EPA through the use of a
4 financial test or guarantee). The demonstration shall be made by:

5 (i) submission of such Settling Work Defendant(s)'
6 independently audited financial statements (e.g., a 10-K report submitted to the
7 Securities and Exchange Commission), including a letter signed by each of such
8 Settling Work Defendant(s)' chief financial officer(s) certifying the integrity and
9 accuracy of the financial data, as required pursuant to the Sarbanes-Oxley Act of
10 2002, 15 U.S.C. § 7241, and a copy of the independent certified public
11 accountant's report on examination of the Settling Work Defendant(s)' financial
12 statements for the latest completed fiscal year;

13 and

14 (ii) if a Settling Work Defendant applies the criteria of 40
15 C.F.R. § 264.143(f)(ii), a report, including a printout from ratings available online,
16 from the Standard and Poor's or Moody's ratings services indicating the current
17 bond rating for that Settling Work Defendant. The foregoing demonstration
18 requirements are in lieu of the requirements of 40 C.F.R. § 264.143(f)(3); or

19 f. A written guarantee to fund or perform the Work executed in
20 favor of EPA by one or more of the following: (i) a direct or indirect parent
21 company of a Settling Work Defendant, or (ii) a company that has a "substantial
22 business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one
23 Settling Work Defendant; provided, however, that any company providing such a
24 guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial
25 test and reporting requirements for owners and operators set forth in subparagraphs
26 (1) through (8) of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the
27 Work (plus the amount(s) of any other federal or any state environmental

1 obligations financially assured to EPA through the use of a financial test or
2 guarantee) that it proposes to guarantee hereunder.

3 40. Settling Work Defendants have selected, and EPA has found
4 satisfactory, as an initial Performance Guarantee, the demonstration pursuant to
5 Paragraph 39.e, in the form attached hereto as Appendix F. Within ten days after
6 the Effective Date, Settling Work Defendants shall execute or otherwise finalize all
7 instruments or other documents required in order to make the selected Performance
8 Guarantee(s) legally binding in a form substantially identical to the documents
9 attached hereto as Appendix F, and such Performance Guarantee(s) shall thereupon
10 be fully effective. Within 30 days of the Effective Date, Settling Work Defendants
11 shall submit all executed and/or otherwise finalized instruments or other
12 documents required in order to make the selected Performance Guarantee(s)
13 legally binding to the EPA Regional Financial Management Officer in accordance
14 with Section XXVI (Notices and Submissions), with a copy to the United States
15 and EPA as specified in Section XXVI.

16 41. If at any time during the effective period of this Consent Decree,
17 Settling Work Defendants provide a Performance Guarantee for completion of the
18 Work by means of a demonstration or guarantee pursuant to Paragraphs 39.e or
19 39.f, the relevant Settling Work Defendants shall also comply with the other
20 relevant requirements of 40 C.F.R. § 264.143(f) relating to these methods unless
21 otherwise provided in this Consent Decree, including but not limited to (i) the
22 initial submission of required financial reports and statements from the relevant
23 entity's chief financial officer and independent certified public accountant; (ii) the
24 annual re-submission of such reports and statements within 90 days after the close
25 of each such entity's fiscal year; and (iii) the notification of EPA within 90 days
26 after the close of any fiscal year in which such entity no longer satisfies the
27 financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of
28

1 the Performance Guarantee methods specified in this Section XII, references in 40
2 C.F.R. Part 264, Subpart H, to “closure,” “post-closure,” and “plugging and
3 abandonment” shall be deemed to include the Work required under this Consent
4 Decree, and the terms “current closure cost estimate,” “current post-closure cost
5 estimate,” and “current plugging and abandonment cost estimate” shall be deemed
6 to include the Estimated Cost of the Work.

7 42. In the event that EPA determines at any time that a Performance
8 Guarantee provided by any Settling Work Defendant pursuant to this Section is
9 inadequate or otherwise no longer satisfies the requirements set forth in this
10 Section, whether due to an increase in the estimated cost of completing the Work
11 or for any other reason, or in the event that any Settling Work Defendant becomes
12 aware of information indicating that a Performance Guarantee provided pursuant to
13 this Section is inadequate or otherwise no longer satisfies the requirements set
14 forth in this Section, whether due to an increase in the estimated cost of completing
15 the Work or for any other reason, Settling Work Defendants, within 30 days of
16 receipt of notice of EPA’s determination or, as the case may be, within 30 days of
17 any Settling Work Defendant becoming aware of such information, shall obtain
18 and present to EPA for approval a proposal for a revised or alternative form of
19 Performance Guarantee listed in Paragraph 39 that satisfies all requirements set
20 forth in this Section XII. In seeking approval for a revised or alternative form of
21 Performance Guarantee, Settling Work Defendants shall follow the procedures set
22 forth in Paragraph 45.b.(2). Settling Work Defendants’ inability to post a
23 Performance Guarantee for completion of the Work shall in no way excuse
24 performance of any other requirements of this Consent Decree, including, without
25 limitation, the obligation of Settling Work Defendants to complete the Work in
26 strict accordance with the terms of this Consent Decree.

1 agreed to by the Parties, petition EPA in writing to request a reduction in the
2 amount of the Performance Guarantee provided pursuant to this Section so that the
3 amount of the Performance Guarantee is equal to the estimated cost of the
4 remaining Work to be performed. Settling Work Defendants shall submit a written
5 proposal for such reduction to EPA that shall specify, at a minimum, the cost of the
6 remaining Work to be performed and the basis upon which such cost was
7 calculated. In seeking approval for a revised or alternative form of Performance
8 Guarantee, Settling Work Defendants shall follow the procedures set forth in
9 Paragraph 44.b.(2). If EPA decides to accept such a proposal, EPA will notify the
10 petitioning Settling Work Defendants of such decision in writing. After receiving
11 EPA's written acceptance, Settling Work Defendants may reduce the amount of
12 the Performance Guarantee in accordance with and to the extent permitted by such
13 written acceptance. In the event of a dispute, Settling Work Defendants may
14 reduce the amount of the Performance Guarantee required hereunder only in
15 accordance with a final administrative or judicial decision resolving such dispute
16 pursuant to Section XIX (Dispute Resolution). No change to the form or terms of
17 any Performance Guarantee provided under this Section, other than a reduction in
18 amount, is authorized except as provided in Paragraphs 42 or 44.b.

19 b. Change of Form of Performance Guarantee.

20 (1) If, after the Effective Date, Settling Work Defendants desire to
21 change the form or terms of any Performance Guarantee(s) provided pursuant to
22 this Section, Settling Work Defendants may, on any anniversary of the Effective
23 Date, or at any other time agreed to by the Parties, petition EPA in writing to
24 request a change in the form of the Performance Guarantee provided hereunder.
25 The submission of such proposed revised or alternative form of Performance
26 Guarantee shall be as provided in Paragraph 44.b.(2). Any decision made by EPA
27 on a petition submitted under this Paragraph shall be made in EPA's sole and
28

1 unreviewable discretion, and such decision shall not be subject to challenge by
2 Settling Work Defendants pursuant to the dispute resolution provisions of this
3 Consent Decree or in any other forum.

4 (2) Settling Work Defendants shall submit a written proposal for a
5 revised or alternative form of Performance Guarantee to EPA which shall specify,
6 at a minimum, the estimated cost of the remaining Work to be performed, the basis
7 upon which such cost was calculated, and the proposed revised form of
8 Performance Guarantee, including all proposed instruments or other documents
9 required in order to make the proposed Performance Guarantee legally binding.
10 The proposed revised or alternative form of Performance Guarantee must satisfy
11 all requirements set forth or incorporated by reference in this Section. Settling
12 Work Defendants shall submit such proposed revised or alternative form of
13 Performance Guarantee to the EPA Regional Financial Management Officer in
14 accordance with Section XXVI (Notices and Submissions). EPA will notify
15 Settling Work Defendants in writing of its decision to accept or reject a revised or
16 alternative Performance Guarantee submitted pursuant to this Paragraph. Within
17 ten days after receiving a written decision approving the proposed revised or
18 alternative Performance Guarantee, Settling Work Defendants shall execute and/or
19 otherwise finalize all instruments or other documents required in order to make the
20 selected Performance Guarantee(s) legally binding in a form substantially identical
21 to the documents submitted to EPA as part of the proposal, and such Performance
22 Guarantee(s) shall thereupon be fully effective. Settling Work Defendants shall
23 submit all executed and/or otherwise finalized instruments or other documents
24 required in order to make the selected Performance Guarantee(s) legally binding to
25 the EPA Regional Financial Management Officer within 30 days of receiving a
26 written decision approving the proposed revised or alternative Performance
27

1 Guarantee in accordance with Section XXVI (Notices and Submissions), and to the
2 United States and EPA as specified in Section XXVI.

3 c. Release of Performance Guarantee. If Settling Work Defendants
4 receive written notice from EPA in accordance with Paragraph 45 that the Work
5 has been fully and finally completed in accordance with the terms of this Consent
6 Decree, or if EPA otherwise so notifies Settling Work Defendants in writing,
7 Settling Work Defendants may thereafter release, cancel, or discontinue the
8 Performance Guarantee(s) provided pursuant to this Section. Settling Work
9 Defendants shall not release, cancel, or discontinue any Performance Guarantee
10 provided pursuant to this Section except as provided in this Paragraph. In the
11 event of a dispute, Settling Work Defendants may release, cancel, or discontinue
12 the Performance Guarantee(s) required hereunder only in accordance with a final
13 administrative or judicial decision resolving such dispute pursuant to Section XIX
14 (Dispute Resolution).

15 XIII. CERTIFICATION OF COMPLETION

16 45. Completion of the Work.

17 a. Within 90 days after Settling Work Defendants conclude that
18 all phases of the Work (including O&M) have been fully performed, Settling Work
19 Defendants shall schedule and conduct a pre-certification inspection to be attended
20 by Settling Work Defendants and EPA. If, after the pre-certification inspection,
21 Settling Work Defendants still believe that the Work has been fully performed,
22 Settling Work Defendants shall submit a written report (i.e., a Work Complete
23 Report) by a registered professional engineer stating that the Work has been
24 completed in full satisfaction of the requirements of this Consent Decree. The
25 report shall contain the following statement, signed by a responsible corporate
26 official of a Settling Work Defendant or Settling Work Defendants' Project
27 Coordinator:

1
2 I certify under penalty of law that this document and all attachments
3 were prepared under my direction or supervision in accordance with a
4 system designed to assure that qualified personnel properly gather and
5 evaluate the information submitted. Based on my inquiry of the
6 person or persons who manage the system, or those persons directly
7 responsible for gathering the information, the information submitted
8 is, to the best of my knowledge and belief, true, accurate, and
9 complete. I am aware that there are significant penalties for
10 submitting false information, including the possibility of fine and
11 imprisonment for knowing violations.

12 If, after review of the written report, EPA, after reasonable opportunity for review
13 and comment by the State, determines that any portion of the Work has not been
14 completed in accordance with this Consent Decree, EPA will notify Settling Work
15 Defendants in writing of the activities that must be undertaken by Settling Work
16 Defendants pursuant to this Consent Decree to complete the Work provided,
17 however, that EPA may only require Settling Work Defendants to perform such
18 activities pursuant to this Paragraph to the extent that such activities are consistent
19 with the “scope of the remedy selected in the ROD,” as that term is defined in
20 Paragraph 13.b. EPA will set forth in the notice a schedule for performance of
21 such activities consistent with the Consent Decree and the SOW or require Settling
22 Work Defendants to submit a schedule to EPA for approval pursuant to Section X
23 (EPA Approval of Plans and Other Submissions). Settling Work Defendants shall
24 perform all activities described in the notice in accordance with the specifications
25 and schedules established therein, subject to their right to invoke the dispute
26 resolution procedures set forth in Section XIX (Dispute Resolution).

1 or threatened release of Waste Material on, at, or from the Site, (b) to direct or
2 order such action, or seek an order from the Court, to protect human health and the
3 environment or to prevent, abate, respond to, or minimize an actual or threatened
4 release of Waste Material on, at, or from the Site, or (c) to seek recovery of
5 response costs for actions taken pursuant to this Paragraph.

6 XV. OBLIGATIONS OF SETTLING CASH DEFENDANTS

7 48. a. No later than thirty (30) days following the Effective Date of
8 this Consent Decree, all funds to be paid by or on behalf of each Settling Cash
9 Defendant shall be deposited into a Qualified Settlement Fund under Treas. Reg.
10 §1.468(b) and Treas. Reg. §301.7701-4(e) or such other funding mechanism
11 established and designated by mutual agreement of the Settling Defendants, in
12 contribution toward the Work, toward payment of Past Response Costs and Future
13 Response Costs, and fulfilling legal obligations related to the Work.
14 Notwithstanding the foregoing sentence, one Settling Cash Defendant, listed on
15 Appendix E hereto, has negotiated an arrangement with the Settling Work
16 Defendants whereby, rather than making a lump sum payment, it will make
17 payments according to the payment schedule set forth on Appendix E attached
18 hereto. Such Settling Cash Defendant who is making periodic payments shall be
19 subject to the provisions pertaining to the failure to make such payments in the
20 manner and at such times as agreed upon. Each Settling Cash Defendant's
21 obligations under this Consent Decree shall be limited to its obligations under
22 Section VIII (Access and Institutional Controls), Section XXV (Retention of
23 Records), and the payment of its requisite amount as agreed to by the Settling Cash
24 Defendants in that certain settlement agreement entered into with those Settling
25 Work Defendants eligible to sign, and who do sign, such agreement. No Settling
26 Cash Defendant shall be responsible for any payment required of any other party.
27 The name of each Settling Cash Defendant shall be submitted by the Settling Work

1 Defendants to the United States as provided in Section XXVI (Notices and
2 Submissions) upon execution of the Consent Decree. The name of each Settling
3 Cash Defendant is appended as Appendix C to this Consent Decree at the time of
4 lodging.

5 b. The failure of any Settling Cash Defendant to satisfy its
6 payment obligation pursuant to this Paragraph shall not defer the obligations of the
7 Settling Work Defendants under this Consent Decree.

8 c. Each Settling Cash Defendant shall enter into, and remain in
9 compliance with, that certain settlement agreement with those Settling Work
10 Defendants eligible to sign, and who do sign, such agreement.

11 d. Each Settling Defendant shall cooperate with the other Settling
12 Defendants in good faith to effect the obligations and provisions set forth in this
13 Consent Decree.

14 XVI. PAYMENTS FOR RESPONSE COSTS

15 49. Payment for Past Response Costs.

16 a. Within 30 days of the Effective Date, Settling Work Defendants
17 shall pay to EPA \$1,500,000 in payment for Past Response Costs. Payment shall
18 be made in accordance with Paragraphs 51.a and 51.c (Payment Instructions).

19 b. The total amount to be paid by Settling Work Defendants
20 pursuant to Paragraph 49.a shall be deposited by EPA in the Omega Chemical
21 Superfund Site Special Account to be retained and used to conduct or finance
22 response actions at or in connection with the Site, or to be transferred by EPA to
23 the EPA Hazardous Substance Superfund.

24 50. Payments for Future Response Costs. Settling Work Defendants shall
25 pay to EPA all Future Response Costs not inconsistent with the NCP.

26 a. On a periodic basis, the United States will send Settling Work
27 Defendants a bill requiring payment that includes a Regionally-prepared itemized

1 cost summary and DOJ-prepared cost summary, which reflects costs incurred by
2 DOJ and its contractors, if any. Settling Work Defendants shall make all payments
3 within 45 days of Settling Work Defendants' receipt of each bill requiring
4 payment, except as otherwise provided in Paragraph 52, in accordance with
5 Paragraphs 51.b and 51.c (Payment Instructions).

6 b. The total amount to be paid by Settling Work Defendants
7 pursuant to Paragraph 50.a shall be deposited by EPA in the Omega Chemical
8 Superfund Site Special Account to be retained and used to conduct or finance
9 response actions at or in connection with the Site, or to be transferred by EPA to
10 the EPA Hazardous Substance Superfund.

11 51. Payment Instructions.

12 a. Instructions for Past Response Costs Payments. All payments
13 required, elsewhere in this Consent Decree, to be made in accordance with this
14 Paragraph 51.a shall be made by FedWire Electronic Funds Transfer ("EFT") to
15 the U.S. Department of Justice account in accordance with current EFT
16 procedures, and in accordance with instructions provided to Settling Work
17 Defendants by the Financial Litigation Unit of the United States Attorney's Office
18 for the Central District of California following lodging of the Consent Decree.

19 b. Instructions for Future Response Costs Payments and Stipulated
20 Penalties. All payments required, elsewhere in this Consent Decree, to be made in
21 accordance with this Paragraph 51.b shall be made by EFT to the EPA Regional
22 Superfund Lockbox in accordance with current EFT procedures, and in accordance
23 with instructions provided to Settling Work Defendants by EPA following lodging
24 of the Consent Decree.

25 c. Instructions for All Payments. All payments made under
26 Paragraph 51.a or 51.b shall reference the EPA Site/Spill ID Number 09BC and
27 DOJ Case Number 90-11-3-06529. At the time of any payment required to be
28

1 made in accordance with Paragraphs 51.a or 51.b, Settling Work Defendants shall
2 send notice that payment has been made to the United States, to EPA and to the
3 Regional Financial Management Officer, in accordance with Section XXVI
4 (Notices and Submissions), and to the EPA Cincinnati Finance Office by mail at
5 26 Martin Luther King Drive, Cincinnati, Ohio 45268, and by email at
6 acctsreceivable.cinwd@epa.gov.

7 52. Settling Work Defendants may contest any Future Response Costs
8 billed under Paragraph 50 if they determine that the United States has made a
9 mathematical or accounting error, included a cost item that is not within the
10 definition of Future Response Costs, or if they believe EPA incurred excess costs
11 as a direct result of an EPA action that was inconsistent with a specific provision or
12 provisions of the NCP. Such objection shall be made in writing within 45 days of
13 receipt of the bill and must be sent to the United States pursuant to Section XXVI
14 (Notices and Submissions). Any such objection shall specifically identify the
15 contested Future Response Costs and the basis for objection. In the event of an
16 objection, Settling Work Defendants shall pay all uncontested Future Response
17 Costs to the United States within 45 days of Settling Work Defendants' receipt of
18 the bill requiring payment. Simultaneously, Settling Work Defendants shall
19 establish an interest-bearing escrow account in a federally-insured bank duly
20 chartered in the State of California and remit to that escrow account funds
21 equivalent to the amount of the contested Future Response Costs. Settling Work
22 Defendants shall send to the United States, as provided in Section XXVI (Notices
23 and Submissions), a copy of the transmittal letter and check paying the uncontested
24 Future Response Costs, and a copy of the correspondence that establishes and
25 funds the escrow account, including, but not limited to, information containing the
26 identity of the bank and bank account under which the escrow account is
27 established as well as a bank statement showing the initial balance of the escrow

1 account. Simultaneously with establishment of the escrow account, Settling Work
2 Defendants shall initiate the Dispute Resolution procedures in Section XIX
3 (Dispute Resolution). If the United States prevails in the dispute, Settling Work
4 Defendants shall pay the sums due (with accrued interest) to the United States
5 within five days of the resolution of the dispute. If Settling Work Defendants
6 prevail concerning any aspect of the contested costs, Settling Work Defendants
7 shall pay that portion of the costs (plus associated accrued interest) for which they
8 did not prevail to the United States within five days of the resolution of the dispute.
9 Settling Work Defendants shall be disbursed any balance of the escrow account.
10 All payments to the United States under this Paragraph shall be made in
11 accordance with Paragraphs 51.b and 51.c (Payment Instructions). The dispute
12 resolution procedures set forth in this Paragraph in conjunction with the procedures
13 set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms
14 for resolving disputes regarding Settling Work Defendants' obligation to reimburse
15 the United States for its Future Response Costs.

16 53. In the event that any payment for Past Response Costs or for Future
17 Response Costs required under this Section is not made by the date required,
18 Settling Work Defendants shall pay Interest on the unpaid balance. The Interest to
19 be paid on Past Response Costs under this Paragraph shall begin to accrue on the
20 Effective Date. The Interest on Future Response Costs shall begin to accrue on the
21 date of the bill. The Interest shall accrue through the date of Settling Work
22 Defendants' payment. Payments of Interest made under this Paragraph shall be in
23 addition to such other remedies or sanctions available to Plaintiff by virtue of
24 Settling Work Defendants' failure to make timely payments under this Section
25 including, but not limited to, payment of stipulated penalties pursuant to Paragraph
26 69.

27 XVII. INDEMNIFICATION AND INSURANCE

1 55. Settling Defendants covenant not to sue and agree not to assert any
2 claims or causes of action against the United States for damages or reimbursement
3 or for set-off of any payments made or to be made to the United States, arising
4 from or on account of any contract, agreement, or arrangement between any one or
5 more of the Settling Work Defendants and any person for performance of Work on
6 or relating to the Site, including, but not limited to, claims on account of
7 construction delays. In addition, Settling Work Defendants shall indemnify and
8 hold harmless the United States with respect to any and all claims for damages or
9 reimbursement arising from or on account of any contract, agreement, or
10 arrangement between any one or more of Settling Work Defendants and any
11 person for performance of Work on or relating to the Site, including, but not
12 limited to, claims on account of construction delays.

13 56. No later than 15 days before commencing any on-Site Work, Settling
14 Work Defendants shall secure, and shall maintain until the first anniversary of
15 EPA's Certification of Completion of the Remedial Action pursuant to Paragraph
16 45.b of Section XIII (Certification of Completion) commercial general liability
17 insurance with limits of five million dollars, for any one occurrence, and
18 automobile liability insurance with limits of five million dollars, combined single
19 limit, naming the United States as an additional insured with respect to all liability
20 arising out of the activities performed by or on behalf of Settling Work Defendants
21 pursuant to this Consent Decree. In addition, for the duration of this Consent
22 Decree, Settling Work Defendants shall satisfy, or shall ensure that their
23 contractors or subcontractors satisfy, all applicable laws and regulations regarding
24 the provision of worker's compensation insurance for all persons performing the
25 Work on behalf of Settling Work Defendants in furtherance of this Consent
26 Decree. Prior to commencement of the Work under this Consent Decree, Settling
27 Work Defendants shall provide to EPA certificates of such insurance and a copy of
28

1 each insurance policy. Settling Work Defendants shall resubmit such certificates
2 and copies of policies each year on the anniversary of the Effective Date. If
3 Settling Work Defendants demonstrate by evidence satisfactory to EPA that any
4 contractor or subcontractor maintains insurance equivalent to that described above,
5 or insurance covering the same risks but in a lesser amount, then, with respect to
6 that contractor or subcontractor, Settling Work Defendants need provide only that
7 portion of the insurance described above that is not maintained by the contractor or
8 subcontractor.

9 **XVIII. FORCE MAJEURE**

10 57. "Force majeure," for purposes of this Consent Decree, is defined as
11 any event arising from causes beyond the control of Settling Work Defendants, of
12 any entity controlled by Settling Work Defendants, or of Settling Work
13 Defendants' contractors, that delays or prevents the performance of any obligation
14 under this Consent Decree despite Settling Work Defendants' best efforts to fulfill
15 the obligation. The requirement that Settling Work Defendants exercise "best
16 efforts to fulfill the obligation" includes using best efforts to anticipate any
17 potential force majeure event and best efforts to address the effects of any potential
18 force majeure event (1) as it is occurring and (2) following the potential force
19 majeure event, such that the delay is minimized to the greatest extent possible.
20 "Force Majeure" does not include financial inability to complete the Work or a
21 failure to attain the Performance Standards.

22 58. If any event occurs or has occurred that may delay the performance of
23 any obligation under this Consent Decree, whether or not caused by a force
24 majeure event, Settling Work Defendants shall notify orally EPA's Project
25 Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in
26 the event both of EPA's designated representatives are unavailable, the Director of
27 the Superfund Division, EPA Region 9, within ten (10) days of when Settling
28

1 Work Defendants first knew that the event might cause a delay. Within ten (10)
2 days thereafter, Settling Work Defendants shall provide in writing to EPA an
3 explanation and description of the reasons for the delay; the anticipated duration of
4 the delay; all actions taken or to be taken to prevent or minimize the delay; a
5 schedule for implementation of any measures to be taken to prevent or mitigate the
6 delay or the effect of the delay; Settling Work Defendants' rationale for attributing
7 such delay to a force majeure event if they intend to assert such a claim; and a
8 statement as to whether, in the opinion of Settling Work Defendants, such event
9 may cause or contribute to an endangerment to public health, welfare or the
10 environment. Settling Work Defendants shall include with any notice all available
11 documentation supporting their claim that the delay was attributable to a force
12 majeure. Failure to comply with the above requirements shall preclude Settling
13 Work Defendants from asserting any claim of force majeure for that event for the
14 period of time of such failure to comply, and for any additional delay caused by
15 such failure. Settling Work Defendants shall be deemed to know of any
16 circumstance of which Settling Work Defendants, any entity controlled by Settling
17 Work Defendants, or Settling Work Defendants' contractors knew or should have
18 known.

19 59. If EPA agrees that the delay or anticipated delay is attributable to a
20 force majeure event, the time for performance of the obligations under this Consent
21 Decree that are affected by the force majeure event will be extended by EPA for
22 such time as is necessary to complete those obligations. An extension of the time
23 for performance of the obligations affected by the force majeure event shall not, of
24 itself, extend the time for performance of any other obligation. If EPA does not
25 agree that the delay or anticipated delay has been or will be caused by a force
26 majeure event, EPA will notify Settling Work Defendants in writing of its
27 decision. If EPA agrees that the delay is attributable to a force majeure event, EPA

1 will notify Settling Work Defendants in writing of the length of the extension, if
2 any, for performance of the obligations affected by the force majeure event.

3 60. If Settling Work Defendants elect to invoke the dispute resolution
4 procedures set forth in Section XIX (Dispute Resolution), they shall do so no later
5 than 15 days after receipt of EPA's notice. In any such proceeding, Settling Work
6 Defendants shall have the burden of demonstrating by a preponderance of the
7 evidence that the delay or anticipated delay has been or will be caused by a force
8 majeure event, that the duration of the delay or the extension sought was or will be
9 warranted under the circumstances, that best efforts were exercised to avoid and
10 mitigate the effects of the delay, and that Settling Work Defendants complied with
11 the requirements of Paragraphs 57 and 58. If Settling Work Defendants carry this
12 burden, the delay at issue shall be deemed not to be a violation by Settling Work
13 Defendants of the affected obligation of this Consent Decree identified to EPA and
14 the Court.

15 **XIX. DISPUTE RESOLUTION**

16 61. Unless otherwise expressly provided for in this Consent Decree, the
17 dispute resolution procedures of this Section shall be the exclusive mechanism to
18 resolve disputes arising under or with respect to this Consent Decree. However,
19 the procedures set forth in this Section shall not apply to actions by the United
20 States to enforce obligations of Settling Defendants that have not been disputed in
21 accordance with this Section.

22 62. Any dispute which arises under or with respect to this Consent Decree
23 shall in the first instance be the subject of informal negotiations between the parties
24 to the dispute. The period for informal negotiations shall not exceed twenty (20)
25 days from the time the dispute arises, unless it is modified by written agreement of
26 the parties to the dispute. The dispute shall be considered to have arisen when one
27 party sends the other parties a written Notice of Dispute.

1 64. Record Review. Formal dispute resolution for disputes pertaining to
2 the selection or adequacy of any response action and all other disputes that are
3 accorded review on the administrative record under applicable principles of
4 administrative law shall be conducted pursuant to the procedures set forth in this
5 Paragraph. For purposes of this Paragraph, the adequacy of any response action
6 includes, without limitation: (1) the adequacy or appropriateness of plans,
7 procedures to implement plans, or any other items requiring approval by EPA
8 under this Consent Decree; and (2) the adequacy of the performance of response
9 actions taken pursuant to this Consent Decree. Nothing in this Consent Decree
10 shall be construed to allow any dispute by Settling Work Defendants regarding the
11 validity of the ROD's provisions.

12 a. An administrative record of the dispute shall be maintained by
13 EPA and shall contain all statements of position, including supporting
14 documentation, submitted pursuant to this Section. Where appropriate, EPA may
15 allow submission of supplemental statements of position by the parties to the
16 dispute.

17 b. The Director of the Superfund Division, EPA Region 9, will
18 issue a final administrative decision resolving the dispute based on the
19 administrative record described in Paragraph 64.a. This decision shall be binding
20 upon Settling Work Defendants, subject only to the right to seek judicial review
21 pursuant to Paragraphs 64.c and 64.d.

22 c. Any administrative decision made by EPA pursuant to
23 Paragraph 64.b. shall be reviewable by this Court, provided that a motion for
24 judicial review of the decision is filed by Settling Work Defendants with the Court
25 and served on all Parties within ten (10) days of receipt of EPA's decision. The
26 motion shall include a description of the matter in dispute, the efforts made by the
27 parties to resolve it, the relief requested, and the schedule, if any, within which the
28

1 dispute must be resolved to ensure orderly implementation of this Consent Decree.
2 The United States may file a response to Settling Work Defendants' motion.

3 d. In proceedings on any dispute governed by this Paragraph,
4 Settling Work Defendants shall have the burden of demonstrating that the decision
5 of the Superfund Division Director is arbitrary and capricious or otherwise not in
6 accordance with law. Judicial review of EPA's decision shall be on the
7 administrative record compiled pursuant to Paragraph 64.a.

8 65. Formal dispute resolution for disputes that neither pertain to the
9 selection or adequacy of any response action nor are otherwise accorded review on
10 the administrative record under applicable principles of administrative law, shall be
11 governed by this Paragraph.

12 a. Following receipt of Settling Work Defendants' Statement of
13 Position submitted pursuant to Paragraph 63, the Director of the Superfund
14 Division, EPA Region 9, will issue a final decision resolving the dispute. The
15 Superfund Division Director's decision shall be binding on Settling Work
16 Defendants unless, within ten days of receipt of the decision, Settling Work
17 Defendants file with the Court and serve on the parties a motion for judicial review
18 of the decision setting forth the matter in dispute, the efforts made by the parties to
19 resolve it, the relief requested, and the schedule, if any, within which the dispute
20 must be resolved to ensure orderly implementation of the Consent Decree. The
21 United States may file a response to Settling Work Defendants' motion.

22 b. Notwithstanding Paragraph O (CERCLA Section 113(j) Record
23 Review of ROD and Work) of Section I (Background), judicial review of any
24 dispute governed by this Paragraph shall be governed by applicable principles of
25 law.

26 66. The invocation of formal dispute resolution procedures under this
27 Section shall not extend, postpone or affect in any way any obligation of Settling
28

1 Work Defendants under this Consent Decree, not directly in dispute, unless EPA or
 2 the Court agrees otherwise. Stipulated penalties with respect to the disputed matter
 3 shall continue to accrue but payment shall be stayed pending resolution of the
 4 dispute as provided in Paragraph 75. Notwithstanding the stay of payment,
 5 stipulated penalties shall accrue from the first day of noncompliance with any
 6 applicable provision of this Consent Decree. In the event that Settling Work
 7 Defendants do not prevail on the disputed issue, stipulated penalties shall be
 8 assessed and paid as provided in Section XX (Stipulated Penalties).

9 **XX. STIPULATED PENALTIES**

10 67. Settling Work Defendants shall be liable for stipulated penalties in the
 11 amounts set forth in Paragraphs 68 and 69 to the United States for failure to
 12 comply with the requirements of this Consent Decree specified below, unless
 13 excused under Section XVIII (Force Majeure). Settling Cash Defendants shall be
 14 liable for stipulated penalties in the amounts set forth in Paragraph 69.b for late or
 15 inadequate payment as set forth in Paragraph 69.b. "Compliance" by Settling
 16 Work Defendants shall include completion of the activities under this Consent
 17 Decree or any work plan or other plan approved under this Consent Decree
 18 identified below in accordance with all applicable requirements of law, this
 19 Consent Decree, the SOW, and any plans, reports or other deliverables approved
 20 by EPA pursuant to this Consent Decree and within the specified time schedules
 21 established by and approved under this Consent Decree.

22 68. Stipulated Penalty Amounts - Work (other than Plans, Reports, or
 23 Other Deliverables).

24 a. The following stipulated penalties shall accrue per violation per
 25 day for any noncompliance identified in Paragraph 68.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day

1 to be submitted pursuant to work plans prepared pursuant to this Consent Decree,
 2 except as specified in Paragraph 68 above:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,250	15th through 30th day
\$2,500	31st day and beyond

7 b. Each Settling Cash Defendant shall be liable for stipulated
 8 penalties for: (1) late or inadequate payment pursuant to Paragraph 48
 9 (Obligations of Settling Cash Defendants) of this Consent Decree; (2) a violation
 10 of Section VIII (Access and Institutional Controls); or (3) a violation of Section
 11 XXIV (Retention of Records). The stipulated penalty for any late payment or
 12 payment of less than the full amount due as set forth in Paragraph 48 for each
 13 Settling Cash Defendant making such late payment or inadequate payment shall be
 14 \$5,000 per day. Upon written demand by EPA, payment shall be made in
 15 accordance with Paragraph 73 of this Section.

16 70. In the event that EPA assumes performance of a portion or all of the
 17 Work pursuant to Paragraph 83 (Work Takeover) of Section XXI (Covenants Not
 18 to Sue by Plaintiff), Settling Work Defendants shall be liable for a stipulated
 19 penalty in the amount of five hundred thousand dollars (\$500,000).

20 71. All penalties shall begin to accrue on the day after the complete
 21 performance is due or the day a violation occurs, and shall continue to accrue
 22 through the final day of the correction of the noncompliance or completion of the
 23 activity. However, stipulated penalties shall not accrue: (1) with respect to a
 24 deficient submission under Section X (EPA Approval of Plans and Other
 25 Submissions), during the period, if any, beginning on the 31st day after EPA's
 26 receipt of such submission until the date that EPA notifies Settling Work
 27 Defendants of any deficiency; (2) with respect to a decision by the Director of the

1 Superfund Division, EPA Region 9, under Paragraph 64.b or 65.a of Section XIX
2 (Dispute Resolution), during the period, if any, beginning on the 31st day after the
3 date that Settling Work Defendants' reply to EPA's Statement of Position is
4 received until the date that the Director issues a final decision regarding such
5 dispute; or (3) with respect to judicial review by this Court of any dispute under
6 Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st
7 day after the Court's receipt of the final submission regarding the dispute until the
8 date that the Court issues a final decision regarding such dispute. Nothing in this
9 Consent Decree shall prevent the simultaneous accrual of separate penalties for
10 separate violations of this Consent Decree.

11 72. Following EPA's determination that Settling Work Defendants have
12 failed to comply with a requirement of this Consent Decree, EPA may give
13 Settling Work Defendants written notification of the same and describe the
14 noncompliance. EPA may send Settling Work Defendants a written demand for
15 the payment of the penalties. However, penalties shall accrue as provided in the
16 preceding Paragraph regardless of whether EPA has notified Settling Work
17 Defendants of a violation.

18 73. All penalties accruing under this Section shall be due and payable to
19 the United States within 45 days of Settling Defendants' receipt from EPA of a
20 demand for payment of the penalties and written notification of EPA's
21 determination that Settling Work Defendants failed to comply with a requirement
22 of this Consent Decree, including a description of the noncompliance, if not
23 already provided, unless Settling Defendants invoke the Dispute Resolution
24 procedures under Section XIX (Dispute Resolution). All payments to the United
25 States under this Section shall indicate that the payment is for stipulated penalties,
26 and shall be made in accordance with Paragraphs 51.b and 51.c (Payment
27 Instructions).

1 74. The payment of penalties shall not alter in any way Settling Work
2 Defendants' obligation to complete the performance of the Work required under
3 this Consent Decree.

4 75. Penalties shall continue to accrue as provided in Paragraph 71 during
5 any dispute resolution period, but need not be paid until the following:

6 a. If the dispute is resolved by agreement of the Parties or by a
7 decision of EPA that is not appealed to this Court, accrued penalties determined to
8 be owing shall be paid to EPA within 15 days of the agreement or the receipt of
9 EPA's decision or order;

10 b. If the dispute is appealed to this Court and the United States
11 prevails in whole or in part, Settling Work Defendants shall pay all accrued
12 penalties determined by the Court to be owed to EPA within 60 days of receipt of
13 the Court's decision or order, except as provided in Paragraph 75.c;

14 c. If the District Court's decision is appealed by any Party,
15 Settling Work Defendants shall pay all accrued penalties determined by the District
16 Court to be owing to the United States into an interest-bearing escrow account
17 within 15 days of receipt of the Court's decision or order. Penalties shall be paid
18 into this account as they continue to accrue, at least every 30 days. Within 15 days
19 of receipt of the final appellate court decision, the escrow agent shall pay the
20 balance of the account to EPA or to Settling Work Defendants to the extent that
21 they prevail.

22 76. If Settling Work Defendants fail to pay stipulated penalties when due,
23 the United States may institute proceedings to collect the penalties, as well as
24 Interest. Settling Work Defendants shall pay Interest on the unpaid balance, which
25 shall begin to accrue on the date of demand made pursuant to Paragraph 73.

26 77. Nothing in this Consent Decree shall be construed as prohibiting,
27 altering, or in any way limiting the ability of the United States to seek any other
28

1 remedies or sanctions available by virtue of Settling Work Defendants' violation of
2 this Decree or of the statutes and regulations upon which it is based, including, but
3 not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. §
4 9622(l), provided, however, that the United States shall not seek civil penalties
5 pursuant to Section 122(l) of CERCLA for any violation for which a stipulated
6 penalty is provided in this Consent Decree, except in the case of a willful violation
7 of this Consent Decree.

8 78. Notwithstanding any other provision of this Section, the United States
9 may, in its unreviewable discretion, waive any portion of stipulated penalties that
10 have accrued pursuant to this Consent Decree.

11 XXI. COVENANTS NOT TO SUE BY PLAINTIFF

12 79. In consideration of the actions that will be performed and the
13 payments that will be made by Settling Work Defendants under the terms of the
14 Consent Decree, and except as specifically provided in Paragraph 81 of this
15 Section, the United States covenants not to sue or to take administrative action
16 against Settling Work Defendants pursuant to Sections 106 and 107(a) of
17 CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA for
18 performance of the Work, for recovery of Past Response Costs, for recovery of
19 Future Response Costs. The covenant not to sue with respect to the performance
20 of Work shall take effect upon the Certification of Completion of the Work by
21 EPA pursuant to Paragraph 45 of Section XIII (Certification of Completion); the
22 covenant not to sue with respect to the Past Response Costs shall take effect upon
23 payment of such costs by the Settling Work Defendants pursuant to Paragraph 49.a
24 (Payments for Response Costs). The covenant not to sue with respect to the
25 performance of Work is conditioned upon satisfactory performance by the Settling
26 Work Defendants of their obligations under this Consent Decree, including all
27
28

1 O&M required under the Operation and Maintenance Manual approved or
2 developed by EPA pursuant to this Consent Decree and the SOW.

3 80. In consideration of the payments made and costs incurred to date,
4 including payments made or to be made pursuant to this Consent Decree by or on
5 behalf of each Settling Cash Defendant, except as specifically provided in
6 Paragraph 82 of this Section, the United States covenants not to sue or to take
7 administrative action pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C.
8 §§ 9606 and 9607(a), and Section 7003 of RCRA against the Settling Cash
9 Defendants for performance of the Work, for recovery of Past Response Costs, for
10 recovery of Future Response Costs. These covenants are conditioned upon the
11 satisfactory performance by each individual Settling Cash Defendant of its
12 respective obligations under this Consent Decree.

13 81. General Reservations of Rights as to the Settling Work Defendants.

14 The United States reserves, and this Consent Decree is without prejudice to, all
15 rights against Settling Work Defendants with respect to all matters not expressly
16 included within Plaintiff's covenant not to sue. Notwithstanding any other
17 provision of this Consent Decree, the United States reserves all rights against
18 Settling Work Defendants with respect to:

- 19 a. claims based on a failure by the Settling Work Defendants to
20 meet a requirement of this Consent Decree;
- 21 b. liability arising from the past, present, or future disposal,
22 release, or threat of release of Waste Material outside of the Phase 1a Area;
- 23 c. liability based on Settling Work Defendants' transportation,
24 treatment, storage, or disposal, or the arrangement for the transportation, treatment,
25 storage, or disposal of Waste Material at or in connection with the Site, other than
26 as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of
27 this Consent Decree by Settling Defendants;

- 1 c. liability for damages for injury to, destruction of, or loss of
- 2 natural resources, and the costs of any natural resource damage assessments;
- 3 d. criminal liability;
- 4 e. liability for additional operable units at the Site or the final
- 5 response action; and
- 6 f. liability for costs that the United States will incur related to the
- 7 Site but which are not within the definition of Future Response Costs.

8 83. Work Takeover.

9 a. In the event EPA determines that Settling Work Defendants

10 have (1) ceased implementation of any portion of the Work, or (2) are seriously or

11 repeatedly deficient or late in their performance of the Work, or (3) are

12 implementing the Work in a manner that may cause an endangerment to human

13 health or the environment, EPA may issue a written notice (“Work Takeover

14 Notice”) to Settling Work Defendants. Any Work Takeover Notice issued by EPA

15 will specify the grounds upon which such notice was issued and will provide

16 Settling Work Defendants a period of ten days within which to remedy the

17 circumstances giving rise to EPA’s issuance of such notice.

18 b. If, after expiration of the ten-day notice period specified in

19 Paragraph 82.a, Settling Work Defendants have not remedied to EPA’s satisfaction

20 the circumstances giving rise to EPA’s issuance of the relevant Work Takeover

21 Notice, EPA may at any time thereafter assume the performance of all or any

22 portion(s) of the Work as EPA deems necessary (“Work Takeover”). EPA will

23 notify Settling Work Defendants in writing (which writing may be electronic) if

24 EPA determines that implementation of a Work Takeover is warranted under this

25 Paragraph 82.b.

26 c. Settling Work Defendants may invoke the procedures set forth

27 in Section XIX (Dispute Resolution), to dispute EPA’s implementation of a Work

1 Takeover under Paragraph 83.b. However, notwithstanding Settling Work
2 Defendants' invocation of such dispute resolution procedures, and during the
3 pendency of any such dispute, EPA may in its sole discretion commence and
4 continue a Work Takeover under Paragraph 83.b until the earlier of (1) the date
5 that Settling Work Defendants remedy, to EPA's satisfaction, the circumstances
6 giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date
7 that a final decision is rendered in accordance with Section XIX (Dispute
8 Resolution) requiring EPA to terminate such Work Takeover.

9 d. After commencement and for the duration of any Work
10 Takeover, EPA shall have immediate access to and benefit of any performance
11 guarantee(s) provided pursuant to Section XII, in accordance with the provisions of
12 Paragraph 43. Any unreimbursed costs incurred by EPA in performing Work
13 under the Work Takeover shall be considered Future Response Costs that Settling
14 Work Defendants shall pay pursuant to Section XVI (Payments for Response
15 Costs).

16 84. Notwithstanding any other provision of this Consent Decree, the
17 United States retains all authority and reserves all rights to take any and all
18 response actions authorized by law.

19 XXII. COVENANTS BY SETTLING DEFENDANTS

20 85. Covenant Not to Sue. Subject to the reservations in Paragraph 86,
21 Settling Defendants covenant not to sue and agree not to assert any claims or
22 causes of action against the United States with respect to the Work, past response
23 actions regarding the Site, Past Response Costs, Future Response Costs, and this
24 Consent Decree, including, but not limited to:

25 a. any direct or indirect claim for reimbursement from the
26 Hazardous Substance Superfund (established pursuant to the Internal Revenue
27

1 Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113
2 or any other provision of law;

3 b. any claims against the United States, including any department,
4 agency or instrumentality of the United States under CERCLA Sections 107 or 113
5 related to the Work, past response actions regarding the Omega Property, Past
6 Response Costs, Future Response Costs, and this Consent Decree; or

7 c. any claims arising out of the response actions at or in
8 connection with the Site, including any claim under the United States Constitution,
9 the California Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to
10 Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

11 86. Settling Defendants reserve, and this Consent Decree is without
12 prejudice to, claims against the United States, subject to the provisions of Chapter
13 171 of Title 28 of the United States Code, for money damages for injury or loss of
14 property or personal injury or death caused by the negligent or wrongful act or
15 omission of any employee of the United States while acting within the scope of his
16 or her office or employment under circumstances where the United States, if a
17 private person, would be liable to the claimant in accordance with the law of the
18 place where the act or omission occurred. However, any such claim shall not
19 include a claim for any damages caused, in whole or in part, by the act or omission
20 of any person, including any contractor, who is not a federal employee as that term
21 is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on
22 EPA's selection of response actions, or the oversight or approval of Settling
23 Defendants' plans, reports, other deliverables or activities. The foregoing applies
24 only to claims which are brought pursuant to any statute other than CERCLA and
25 for which the waiver of sovereign immunity is found in a statute other than
26 CERCLA.

1 87. Nothing in this Consent Decree shall be deemed to constitute
2 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42
3 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

4 88. Claims Against *De Minimis* and Ability to Pay Parties. Settling
5 Defendants agree not to assert any claims or causes of action and to waive all
6 claims or causes of action (including but not limited to claims or causes of action
7 under Sections 107(a) and 113 of CERCLA) that they may have for all matters
8 relating to the Site against any person that has entered or in the future enters into a
9 final CERCLA Section 122(g) *de minimis* settlement, or a final settlement based on
10 limited ability to pay, with EPA with respect to the Site. This waiver shall not
11 apply with respect to any defense, claim, or cause of action that a Settling
12 Defendant may have against any person if such person asserts a claim or cause of
13 action relating to the Site against such Settling Defendant.

14 XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

15 89. Except as provided in Paragraph 88, nothing in this Consent Decree
16 shall be construed to create any rights in, or grant any cause of action to, any
17 person not a Party to this Consent Decree. Except as provided in Paragraph 88,
18 each of the Parties expressly reserves any and all rights (including, but not limited
19 to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims,
20 demands, and causes of action which each Party may have with respect to any
21 matter, transaction, or occurrence relating in any way to the Site against any person
22 not a Party hereto.

23 90. The Parties agree, and by entering this Consent Decree this Court
24 finds, that this settlement constitutes a judicially-approved settlement for purposes
25 of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Settling
26 Defendant is entitled, as of the Effective Date, to protection from contribution
27 actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be

1 otherwise provided by law, for “matters addressed” in this Consent Decree. With
2 respect to the Settling Work Defendants and the Settling Cash Defendants
3 identified in Part A of Appendix C, the “matters addressed” in this Consent Decree
4 are the Work, Past Response Costs and Future Response Costs. With respect to the
5 Settling Cash Defendants identified in Part B of Appendix C, the “matters
6 addressed” in this Consent Decree are the Work, Future Response Costs, and only
7 that portion of Past Response Costs attributable to direct and indirect costs that the
8 United States has incurred at or in connection with OU-1.

9 91. Settling Defendants shall, with respect to any suit or claim brought by
10 them for matters related to this Consent Decree, notify the United States in writing
11 no later than 60 days prior to the initiation of such suit or claim.

12 92. Settling Defendants shall, with respect to any suit or claim brought
13 against them for matters related to the Site, notify in writing the United States
14 within ten days of service of the complaint on Settling Defendants. In addition,
15 Settling Defendants shall notify the United States within ten days of service or
16 receipt of any Motion for Summary Judgment and within ten days of receipt of any
17 order from a court setting a case for trial.

18 93. Res Judicata and Other Defenses. In any subsequent administrative or
19 judicial proceeding initiated by the United States for injunctive relief, recovery of
20 response costs, or other appropriate relief relating to the Site, Settling Defendants
21 shall not assert, and may not maintain, any defense or claim based upon the
22 principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-
23 splitting, or other defenses based upon any contention that the claims raised by the
24 United States in the subsequent proceeding were or should have been brought in
25 the instant case; provided, however, that nothing in this Paragraph affects the
26 enforceability of the covenants not to sue set forth in Section XXI (Covenants Not
27 to Sue by Plaintiff).

1 XXIV. ACCESS TO INFORMATION

2 94. Settling Work Defendants shall provide to EPA, upon request, copies
3 of all records, reports, documents and other information (including records,
4 reports, documents and other information in electronic form) (hereinafter referred
5 to as “Records”) within their possession or control or that of their contractors or
6 agents relating to activities at the Site or to the implementation of this Consent
7 Decree, including, but not limited to, sampling, analysis, chain of custody records,
8 manifests, trucking logs, receipts, reports, sample traffic routing, correspondence,
9 or other documents or information related to the Work. Settling Work Defendants
10 shall also make available to EPA, for purposes of investigation, information
11 gathering, or testimony, their employees, agents, or representatives with
12 knowledge of relevant facts concerning the performance of the Work.

13 95. Business Confidential and Privileged Documents.

14 a. Settling Work Defendants may assert business confidentiality
15 claims covering part or all of the Records submitted to Plaintiff under this Consent
16 Decree to the extent permitted by and in accordance with Section 104(e)(7) of
17 CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined
18 to be confidential by EPA will be afforded the protection specified in 40 C.F.R.
19 Part 2, Subpart B. If no claim of confidentiality accompanies Records when they
20 are submitted to EPA, or if EPA has notified Settling Work Defendants that the
21 Records are not confidential under the standards of Section 104(e)(7) of CERCLA
22 or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records
23 without further notice to Settling Defendants.

24 b. Settling Defendants may assert that certain Records are
25 privileged under the attorney-client privilege or any other privilege recognized by
26 federal law. If Settling Defendants assert such a privilege in lieu of providing
27 Records, they shall provide Plaintiff with the following: (1) the title of the Record;

1 (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm),
2 and address of the author of the Record; (4) the name and title of each addressee
3 and recipient; (5) a description of the contents of the Record; and (6) the privilege
4 asserted by Settling Defendants. If a claim of privilege applies only to a portion of
5 a Record, the Record shall be provided to the United States in redacted form to
6 mask the privileged portion only. Settling Defendants shall retain all Records that
7 they claim to be privileged until the United States has had a reasonable opportunity
8 to dispute the privilege claim and any such dispute has been resolved.

9 c. No Records created or generated pursuant to the requirements
10 of this Consent Decree shall be withheld on the grounds that they are privileged or
11 confidential.

12 96. No claim of confidentiality or privilege shall be made with respect to
13 any data, including, but not limited to, all sampling, analytical, monitoring,
14 hydrogeologic, scientific, chemical, or engineering data, or any other documents or
15 information evidencing conditions at or around the Site.

16 XXV. RETENTION OF RECORDS

17 97. Until five years after Settling Work Defendants' receipt of EPA's
18 notification pursuant to Paragraph 45 of Section XIII (Certification of Completion
19 of the Work), each Settling Defendant shall preserve and retain all non-identical
20 copies of Records (including Records in electronic form) now in its possession or
21 control or which come into its possession or control that relate in any manner to its
22 liability under CERCLA with respect to the Site, provided, however, that Settling
23 Defendants who are potentially liable as owners or operators of the Site must
24 retain, in addition, all Records that relate to the liability of any other person under
25 CERCLA with respect to the Site. Each Settling Defendant must also retain, and
26 instruct its contractors and agents to preserve, for the same period of time specified
27 above all non-identical copies of the last draft or final version of any Records

1 (including Records in electronic form) now in its possession or control or which
2 come into its possession or control that relate in any manner to the performance of
3 the Work, provided, however, that each Settling Defendant (and its contractors and
4 agents) must retain, in addition, copies of all data generated during the
5 performance of the Work and not contained in the aforementioned Records
6 required to be retained. Each of the above record retention requirements shall
7 apply regardless of any corporate retention policy to the contrary. As to records
8 that relate to the performance of the Work and copies of data as referred to in the
9 preceding sentence, but not as to any other records, the requirement for Settling
10 Defendants to preserve and retain and to instruct their contractors and agents to
11 preserve such records may be satisfied by preservation and retention of such
12 records by the Settling Work Defendants' Project Coordinator. Paragraph 98 shall
13 apply to such copies and/or data retained by Settling Work Defendants' Project
14 Coordinator.

15 98. At the conclusion of this record retention period, Settling Defendants
16 shall notify the United States at least 90 days prior to the destruction of any such
17 Records, and, upon request by the United States, Settling Defendants shall deliver
18 any such Records to EPA. Settling Defendants may assert that certain Records are
19 privileged under the attorney-client privilege or any other privilege recognized by
20 federal law. If Settling Defendants assert such a privilege, they shall provide the
21 Plaintiff with the following: (a) the title of the Record; (b) the date of the Record;
22 (c) the name, title, affiliation (e.g., company or firm), and address of the author of
23 the Record; (d) the name and title of each addressee and recipient; (e) a description
24 of the subject of the Record; and (f) the privilege asserted by Settling Defendants.
25 If a claim of privilege applies only to a portion of a Record, the Record shall be
26 provided to the United States in redacted form to mask the privileged portion only.
27 Settling Defendants shall retain all Records that they claim to be privileged until

1 the United States has had a reasonable opportunity to dispute the privilege claim
2 and any such dispute has been resolved in the Settling Defendants' favor.
3 However, no Records created or generated pursuant to the requirements of this
4 Consent Decree shall be withheld on the grounds that they are privileged or
5 confidential.

6 99. Each Settling Defendant hereby certifies individually that, to the best
7 of its knowledge and belief, after thorough inquiry, it has not altered, mutilated,
8 discarded, destroyed or otherwise disposed of any Records (other than identical
9 copies) relating to its potential liability regarding the Site since notification of
10 potential liability by the United States or the State or the filing of suit against it
11 regarding the Site and that it has fully complied with any and all EPA requests for
12 information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§
13 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

14 XXVI. NOTICES AND SUBMISSIONS

15 100. Whenever, under the terms of this Consent Decree, written notice is
16 required to be given or a report or other document is required to be sent by one
17 Party to another, it shall be directed to the individuals at the addresses specified
18 below, unless those individuals or their successors give notice of a change to the
19 other Parties in writing. All notices and submissions shall be considered effective
20 upon receipt, unless otherwise provided. Written notice as specified in this Section
21 shall constitute complete satisfaction of any written notice requirement of the
22 Consent Decree with respect to the United States, EPA, and Settling Defendants,
23 respectively. Notices required to be sent to EPA, and not to the United States,
24 under the terms of this Consent Decree should not be sent to the U.S. Department
25 of Justice.

26
27 As to the United States: Chief, Environmental Enforcement Section
Environment and Natural Resources Division

U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

and:

Lynda Deschambault
EPA Project Coordinator
United States Environmental Protection Agency
Region 9
75 Hawthorne Street
SFD-7-1
San Francisco, CA 94105

As to EPA:

Lynda Deschambault
EPA Project Coordinator
United States Environmental Protection Agency
Region 9
75 Hawthorne Street
SFD-7-1
San Francisco, CA 94105

As to the Regional Financial Management Officer:

Regional Financial Management Officer
United States Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

As to Settling Work Defendants:

De Maximis
Settling Work Defendants' Project Coordinator
5225 Canyon Crest Drive, Building 200,
Suite 253
Riverside, California 92507

XXVII. RETENTION OF JURISDICTION

101. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution).

1 XXVIII. APPENDICES

2 102. The following appendices are attached to and incorporated into this
3 Consent Decree:

4 "Appendix A" is the ROD.

5 "Appendix B" is the SOW.

6 "Appendix C" is the complete list of the Settling Cash Defendants.

7 "Appendix D" is the complete list of the Settling Work Defendants.

8 "Appendix E" is the payment schedule for that one Settling Cash
9 Defendant.

10 "Appendix F" is the Performance Guarantee.

11 XXIX. COMMUNITY INVOLVEMENT

12 103. If requested by EPA, Settling Work Defendants shall participate in the
13 community involvement plan to be developed by EPA. EPA will determine the
14 appropriate role for Settling Work Defendants under the Plan. Settling Work
15 Defendants shall also cooperate with EPA in providing information regarding the
16 Work to the public. As requested by EPA, Settling Work Defendants shall
17 participate in the preparation of such information for dissemination to the public
18 and in public meetings which may be held or sponsored by EPA to explain
19 activities at or relating to the Site. Costs incurred by the United States in
20 accordance with this Section shall be considered Future Response Costs that
21 Settling Work Defendants shall pay pursuant to Section XVI (Payments for
22 Response Costs).

23 XXX. MODIFICATION

24 104. Material modifications to this Consent Decree, including the SOW,
25 shall be in writing, signed by the Parties, and shall be effective upon approval by
26 the Court. Non-material modifications to this Consent Decree, including the SOW,
27 shall be in writing and shall be effective when signed by the Parties. A
28 modification to the SOW shall be considered material if it fundamentally alters the
basic features of the selected remedy within the meaning of 40 C.F.R. §
300.435(c)(2)(ii). Before providing its approval to any modification to the SOW,

1 the United States will provide the State with a reasonable opportunity to review
2 and comment on the proposed modification.

3 105. Modifications (non-material or material) that do not affect the
4 obligations of, and that fully protect the benefits afforded to, Settling Cash
5 Defendants may be executed without the signatures of Settling Cash Defendants.

6 106. Nothing in this Decree shall be deemed to alter the Court's power to
7 enforce, supervise or approve modifications to this Consent Decree.

8 **XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

9 107. This Consent Decree shall be lodged with the Court for a period of not
10 less than 30 days for public notice and comment in accordance with Section
11 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United
12 States reserves the right to withdraw or withhold its consent if the comments
13 regarding the Consent Decree disclose facts or considerations which indicate that
14 the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants
15 consent to the entry of this Consent Decree without further notice.

16 108. If for any reason the Court should decline to approve this Consent
17 Decree in the form presented, this agreement is voidable at the sole discretion of
18 any Party and the terms of the agreement may not be used as evidence in any
19 litigation between the Parties.

20 **XXXII. SIGNATORIES/SERVICE**

21 109. Each undersigned representative of a Settling Defendant to this
22 Consent Decree and the Assistant Attorney General for the Environment and
23 Natural Resources Division of the Department of Justice certifies that he or she is
24 fully authorized to enter into the terms and conditions of this Consent Decree and
25 to execute and legally bind such Party to this document.

26 110. Each Settling Defendant hereby agrees not to oppose entry of this
27 Consent Decree by this Court or to challenge any provision of this Consent Decree

1 unless the United States has notified Settling Defendants in writing that it no
2 longer supports entry of the Consent Decree.

3 111. Each Settling Defendant shall identify, on the attached signature page,
4 the name, address and telephone number of an agent who is authorized to accept
5 service of process by mail on behalf of that Party with respect to all matters arising
6 under or relating to this Consent Decree. Settling Defendants hereby agree to
7 accept service in that manner and to waive the formal service requirements set
8 forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local
9 rules of this Court, including, but not limited to, service of a summons. Settling
10 Defendants need not file an answer to the complaint in this action unless or until
11 the Court expressly declines to enter this Consent Decree.

12 XXXIII. FINAL JUDGMENT

13 112. This Consent Decree and its appendices constitute the final, complete,
14 and exclusive agreement and understanding among the Parties with respect to the
15 settlement embodied in the Consent Decree. The Parties acknowledge that there
16 are no representations, agreements or understandings relating to the settlement
17 other than those expressly contained in this Consent Decree.

18 113. Upon entry of this Consent Decree by the Court, this Consent Decree
19 shall constitute a final judgment between and among the United States and Settling
20 Defendants. The Court finds that there is no just reason for delay and therefore
21 enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

22
23 SO ORDERED THIS 6th DAY OF OCTOBER, 2010

24
25 
26 _____
27 Honorable Terry J. Hatter, Jr.
28 United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Signature Page for Consent Decree regarding the Omega Chemical Corporation
Superfund Site OU-1 RD/RA

2 FOR PLAINTIFF UNITED STATES OF AMERICA

3
4 Date: _____

5
6 _____
ELLEN M. MAHAN
7 Deputy Chief
8 Environmental Enforcement Section
9 Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

10
11
12 Date: _____

13
14 _____
KARL J. FINGERHOOD
15 Trial Attorney
16 Environmental Enforcement Section
17 Environment and Natural Resources Division
U.S. Department of Justice
18 P.O. Box 7611
Washington, D.C. 20044-7611

1 Signature Page for Consent Decree regarding the Omega Chemical Corporation
Superfund Site OU-1 RD/RA

2 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION
3 AGENCY

4
5 Date: _____

6
7 _____
8 JANE DIAMOND
9 Director, Superfund Division
10 U.S. Environmental Protection Agency
11 Region IX
12 75 Hawthorne Street
13 San Francisco, CA 94105

14
15 Date: _____

16
17 _____
18 STEPHEN D. BERNINGER
19 Assistant Regional Counsel
20 U.S. Environmental Protection Agency
21 Region IX
22 75 Hawthorne Street
23 San Francisco, CA 94105

1 Signature Page for Consent Decree regarding the Omega Chemical Corporation
2 Superfund Site OU-1 RD/RA

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOR _____

Date

Name (print):
Title:
Address:

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print):
Title:
Address:
Phone:
email:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPENDIX A
RECORD OF DECISION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPENDIX B
RD/RA STATEMENT OF WORK

1 APPENDIX C

2 SETTLING CASH DEFENDANTS

3 Part A

4 AVX CORPORATION

5 ALLEN FOAM CORPORATION

6 ALLEN L. BENDER, INC.

7 ANZCO (FORMERLY ANZON CO.)

8 ARROWHEAD BRASS PRODUCTS INC., A DISSOLVED CALIFORNIA
CORPORATION

9 BC LABORATORIES, INC.

10 BELL INDUSTRIES, INC.

11 BOURNS, INC.

12 BOWEN PRINTING, INC.

13 BRUNTON ENTERPRISES, INC.

14 BUILDING MATERIALS CORPORATION OF AMERICA, D/B/A GAF
MATERIALS CORPORATION

15 CABOT CORPORATION

16 CATHOLIC HEALTHCARE WEST DBA ST. MARY MEDICAL CENTER
CERADYNE, INC.

17 CITY OF CARLSBAD

18 CITY OF SANTA BARBARA

19 COGNIS CORPORATION AS SUCCESSOR TO HENKEL CORPORATION

20 COLLEGE OF THE DESERT

21 COLUMBIA VENTURES CORPORATION

22 COMMAIR MECHANICAL SERVICES

23 COOPER INDUSTRIES, LLC SUCCESSOR TO MCGRAW EDISON
COMPANY

24 CRANE CO.

25 EASTMAN KODAK COMPANY

26 ENGARD COATINGS CORPORATION CORCHEM CORPORATION

27 FORT KENT HOLDINGS, INC. ON BEHALF OF DUNHAM BUSH INC.

28 FRESNO UNIFIED SCHOOL DISTRICT

GAMBOA'S BODY & FRAME INC.

GOOD-WEST RUBBER CORP.

HARTWELL CORPORATION

HEXFET AMERICA BY: INTERNATIONAL RECTIFIER CORPORATION

1 HUBBELL INCORPORATED (MARVIN ELECTRIC MANUFACTURING
CO.)

2 I & I DEBURRING

3 JOHANSON DIELECTRICS INC.

4 KEY MECHANICAL SERVICE COMPANY

5 L-3 SERVICES, INC. (FORMERLY THE TITAN CORPORATION)

6 LAMIRADA PRODUCTS COMPANY, INC. / USG CORPORATION

7 LEAR SIEGLER DIVERSIFIED HOLDINGS CORP., AS SUCCESSOR TO
LEAR SIEGLER, INC.

8 LEVAN SPECIALTY INC., A CA. CORP.

9 LUPPEN HOLDINGS, INC. & METAL PRODUCTS ENGINEERING

10 M & M PRINTED BAG INC.

11 MADISON INDUSTRIES

12 MARTEK POWER INC. FORMERLY MARTEK POWER ABBOTT, INC.

13 MAXON INDUSTRIES, INC.

14 MELLES GRIOT, INC. / BARLOWORLD USA INC.

15 NMB TECHNOLOGIES CORPORATION

16 NORTHWESTERN, INC.

17 NORTHROP GRUMMAN SYSTEMS CORPORATION (AS SUCCESSOR IN
INTEREST TO NORTHROP GRUMMAN SPACE & MISSION
SYSTEMS CORP. (F/K/A TRW INC.))

18 NOVACAP, INC.

19 PENSKE MOTOR GROUP, INC.

20 PETRO LOCK, INC.

21 PNEUDRAULICS, INC.

22 POCINO FOODS CO.

23 PRIMUS, INC.

24 QUAKER CHEMICAL CORPORATION

25 QUAKER CITY PLATING LTD

26 RICOH PRINTING SYSTEMS AMERICA, INC. (F/K/A DATAPRODUCTS
CORPORATION)

27 ROCKWELL COLLINS OPTRONICS, INC., F/K/A/ KAISER ELECTRO-
OPTICS, INC.

28 SANTA FE BRAUN INC.

SHAMROCK SCIENTIFIC SPECIALTY SYSTEMS, INC.

STEELSCOPE, FKA, BHP COATED STEEL

SUPERIOR CONTROLS CO, INC.

TDY INDUSTRIES, INC.

TECH GRAPHIC INC.

TEXTRON INC.

1 THE A & T GROUP, INC. (AIR MECHANICAL INC.)
THE HERTZ CORPORATION
2 TIMEMED LABELING SYSTEMS, INC.
3 TRIBUNE COMPANY, AS SUCCESSOR IN INTEREST TO THE TIMES
MIRROR COMPANY
4 TUCSON VALLEY LIQUIDATING TRUST F/B/O CAL-MART
UCB
5 UNISTRUT INTERNATIONAL CORPORATION, FORMERLY KNOWN AS
6 UNISTRUT CORPORATION
7 UNIVERSITY OF SOUTHERN CALIFORNIA
8 VENTURA TOWNEHOUSE INC
WESTERN METAL DECORATING COMPANY
9 WESTMONT COLLEGE
YORK INTERNATIONAL CORPORATION

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Part B

1
2 AIR PRODUCTS AND CHEMICALS, INC.
3 APPROPRIATE TECHNOLOGIES
4 C RICHARD LLC, AS SUCCESSOR TO DEUTSCH ENGINEERED
CONNECTING DEVICES
5 CHEROKEE INTERNATIONAL INC., A DISSOLVED CORPORATION
6 CITY OF SANTA MARIA
7 DATATRONICS ROMOLAND, INC.
8 GAMBRO RENAL PRODUCTS, INC., FOR AND AS SUCCESSOR TO
GAMBRO, INC.
9 GSF ENERGY, LLC, SUCCESSOR TO GSF ENERGY, INC.
10 LOMA LINDA UNIVERSITY
11 MACY'S RETAIL HOLDINGS, INC., FOR BROADWAY STORES, INC. AND
THE MAY DEPARTMENT STORES COMPANY
12 MAXWELL TECHNOLOGIES, INC.
13 TYCO HEALTHCARE GROUP LP, SOLELY FOR AND ON BEHALF OF
ARMIN PLASTICS; MALLINCKRODT INC., SOLELY FOR AND AS
14 SUCCESSOR TO MALLINCKRODT/TRONMED AND
MALLINCKRODT CRITICAL CARE; AND NELLCOR PURITAN
15 BENNETT LLC SOLELY FOR AND AS SUCCESSOR BY MERGER
TO PURITAN BENNETT CORPORATION
16 RESINART
17 SHELL OIL COMPANY
18 SOUTHERN CALIFORNIA EDISON COMPANY
19 TELEDYNE TECHNOLOGIES INCORPORATED (SOLELY FOR AND ON
BEHALF OF TELEDYNE CAST PARTS, TELEDYNE CONTROLS
20 AND TELEDYNE MICROELECTRONIC TECHNOLOGIES)
TODD PACIFIC SHIPYARDS CORP
21 TRW TECHNAR INC.
UNITED PARCEL SERVICE, INC. (OH)
22
23
24
25
26
27
28

APPENDIX D

SETTLING WORK DEFENDANTS

1
2
3
4 Alcoa Inc.
5 Allied Signal, Inc. (n/k/a Honeywell International, Inc.)
6 Alpha Therapeutic Corporation
7 Anja Engineering Corp. n/k/a/ Scripto-Tokai Corporation
8 Applied Micro Circuits Corporation
9 Arlon Adhesives & Films
10 Astro Aluminum Treating Co., Inc.
11 Atlantic Richfield Company
12 BASF Corporation
13 Baxter Healthcare Corporation for Baxter/Bentley Labs
14 The Boeing Company, on behalf of itself, Boeing Satellite Systems, Inc., and
15 McDonnell Douglas Helicopter Company
16 BP Amoco Chemical Company (on behalf of Hitco Inc.)
17 California Hydroforming Co. Inc.
18 Center Line Wheel Corp.
19 Chemical Waste Management, Inc.
20 Cintas Corporation (successor to Unitog Company)
21 Coatings Resource Corporation
22 Columbia Showcase & Cabinet Co., Inc.
23 County of Los Angeles
24 Crosby & Overton, Inc.
25 C.T.L. Printing Industries Inc.
26 Dow Chemical Company
27 Dude, Inc.
28 Engraph, Inc./Patton Sonoco Products n/k/a/ Sonoco Products Company
Forenco, Inc.
General Dynamics Corporation
Gulfstream Aerospace Corporation
Harpers (n/k/a/ FHL Group)
Hercules Incorporated
Hexcel Corporation
Hitachi Home Electronics (America), Inc.
Huck Manufacturing Company n/k/a Federal-Mogul Corporation
International Paper

1
2 Johns Manville/Celite Corporation
3 K.C. Photo Engraving Co.
4 Kimberly-Clark Worldwide Inc., Fullerton Mill
5 Kinder Morgan Liquids Terminals, LLC
6 Los Angeles County Metropolitan Transportation Authority
7 Luxfer Limited USA by British Alcan Aluminum PLC
8 Majon, Inc./Hurst
9 Masco Building Products Corp.
10 Mattel, Inc.
11 Metropolitan Water District of Southern California
12 Norris Industries, Inc.
13 Northrop Grumman Guidance and Electronics Company, Inc. (F/K/A Litton
14 Systems, Inc.)
15 Ohline Corp.
16 Pacific Bell Telephone Company
17 Pilkington PLC
18 Quest Diagnostics Clinical Laboratories, Inc. (f.k.a. Bio Science Enterprises)
19 Raytheon Company
20 Raytheon Company (Hughes)
21 Regents of the University of California
22 Reichhold Chemicals, Inc./Bond-Well Adhesives
23 Robison Prezioso, Inc.
24 Safety-Kleen Sytems, Inc.
25 Schering Corporation
26 Sempra Energy Solutions
27 The Sherwin-Williams Company
28 Shiley, Inc.
Sigma Casting Corporation (n.k.a Howmet Aluminum Casting Inc.)
Signet Armorlite, Inc.
Soco West, Inc. as successor to Holchem, Inc.
Sparton Technology, Inc.
Texaco Inc.
Texas Instruments Incorporated
Trane USA, Inc. (f/k/a American Standard, Inc.)
Union Oil Company of California
Univar Corp., Univar USA Inc. (f/k/a VanWaters & Rogers Inc., Vopak
Distribution Americas Inc.)
Universal City Studios LLLP, a Delaware limited liability limited partnership
(formerly known as Universal City Studios LP, Universal City Studios

1 LLC, and Universal City Studios, Inc.); for itself and for the following
2 fictitious business names, affiliates, divisions or departments: Universal
3 City Studios; Universal Studios; Universal Studios, Inc., formerly known
4 as MCA INC.; MCA/Universal Studios; MCA/Universal; Universal Title
5 & Optical; and NBC Universal, Inc., formerly known as National
6 Broadcasting Company, Inc. (including the following fictitious business
7 names, divisions or departments: NBC Studios, N.B.C. Studios, NBC and
8 N.B.C.)

9 Vertis Communications

10 Walt Disney Pictures and Television

11 Weber Aircraft, Inc.

12 Yort, Inc. (Troy Lighting, Inc. - Tiffany Division)

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

APPENDIX E

PAYMENT SCHEDULE FOR CERTAIN SETTLING CASH DEFENDANT

Petro Lock has 15 monthly payments of \$3000 per month totaling \$45,000.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPENDIX F
PERFORMANCE GUARANTEE