

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
San Francisco, CA 94105-3901**

IN THE MATTER OF:)

U.S. EPA Docket No. 2010-04

Operating Industries, Inc. Site)

Proceeding under Section 122(g)(4)
of the Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980, as amended,
42 U.S.C. 9622(g)(4))

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER
ON CONSENT**

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I. JURISDICTION

1. This Administrative Settlement Agreement and Order on Consent (“Settlement Agreement”) is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (“EPA”) by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-E. Within EPA Region IX, this authority has been delegated to the Superfund Division Director by a Regional Order 1290.21A entitled “De Minimis Settlements,” dated November 23, 1998 and redelegated to the Superfund Branch Chief (now titled, Assistant Director) by EPA Regional Order R9 1290.21B. The State has jurisdiction over the matters set forth herein pursuant to the Hazardous Substances Account Act, Health and Safety Code § 25300 et seq., and California Civil Code § 3494.

2. This Settlement Agreement is issued to the persons, corporations, or other entities identified in Appendices A and B (“Respondents”). Each Respondent agrees to undertake all actions required by this Settlement Agreement. Each Respondent further consents to and will not contest EPA's jurisdiction to issue this Settlement Agreement or to implement or enforce its terms.

3. EPA and Respondents agree that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability by any Respondent. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the Statement of Facts or Determinations contained in Sections IV and V, respectively, of this Settlement Agreement.

II. STATEMENT OF PURPOSE

4. By entering into this Settlement Agreement, the mutual objectives of the Parties are:

a. With respect to the Respondents identified in Appendix A, “Tier I Respondents,” as provided in Section X (Tier I De Minimis Covenants), and subject to the applicable reservations and conditions of this Settlement Agreement:

(1). to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows Respondents to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6973, for injunctive relief with regard to the Site and for

response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

(2). to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a substantial number of potentially responsible parties from further involvement at the Site; and

(3). to obtain settlement with Respondents for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by other persons, and to provide for full and complete contribution protection for Respondents with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

b. With respect to the Respondents identified in Appendix B, “Tier II Respondents,” as provided in Section XI (Tier II De Minimis Covenants), and subject to the applicable reservations and conditions of this Settlement Agreement:

(1). to reach a settlement among the Parties with respect to the Site pursuant to Section 122(g), that allows these Respondents to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607 and Section 7003 of RCRA, 42 U.S.C. § 6973, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, subject to certain reservations regarding unknown conditions or information, thereby reducing litigation relating to the Site;

(2). to simplify the remaining administrative and judicial enforcement activities concerning the Site by significantly reducing the further involvement of a substantial number of parties;

(3). to obtain settlement with these Respondents for their fair share of response costs incurred and to be incurred at or in connection with the Site by the Hazardous Substance Superfund and by private parties, and to provide for contribution protection for these Respondents with regard to the Site, subject to certain reservations regarding unknown conditions or information, pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Settlement Agreement, the following definitions shall apply:

- a. “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. “Day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- c. “De Micromis” party shall mean any person (i) whose liability with respect to the Site is based solely on CERCLA 107(a)(3) or (4), 42 U.S.C. 9607(a)(3) or (4), and (ii) who the U.S. EPA determines arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of less than 4,200 gallons of materials containing hazardous substances, except where the U.S. EPA determines that the hazardous substances contributed by such person are significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.
- d. “De Minimis” party shall mean any person (i) whose liability with respect to the Site is based solely on CERCLA 107(a)(3) or (4), 42 U.S.C. 9607(a)(3) or (4), and (ii) who the U.S. EPA determines arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of less than 110,000 gallons of materials containing hazardous substances, except where the U.S. EPA determines that the hazardous substances contributed by such person are significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.
- e. “Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XX.
- f. “EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.
- g. “EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- h. “Final Remedy” shall mean the remedies selected in the Final ROD and the Gas Control and Cover ROD for the OII Site, including any amendments or modifications that may have been or may be made to those RODs.
- i. “Final ROD” shall mean the Final Record of Decision for the OII Site, signed by the Region IX Superfund Division Director on September 30, 1996.
- j. “Gas Control and Cover ROD” shall mean the Record of Decision relating to the Gas Migration Control and Landfill Cover operable unit at the OII Site, signed by the Region IX Deputy Regional Administrator on September 30, 1988, as amended on September 28, 1990.

k. "Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

l. "HSAA" shall mean the California Hazardous Substance Account Act, California Health and Safety Code Sections 25300 et seq.

m. "HWCL" shall mean the Hazardous Waste Control Law, California Health & Safety Code Section 25100 et seq.

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

o. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

p. "Parties" shall mean EPA and the Respondents.

q. "RCRA" shall mean the Resource Conservation and Recovery Action, as amended ("RCRA"), 42 U.S.C. § 6901 et. seq.

r. "Remedial Action" shall mean those activities taken or to be undertaken to implement the Gas Control and Cover ROD and/or the Final ROD for the OII Site, in accordance with the Statements of Work, the final Remedial Designs and Remedial Action Work Plans and other plans approved or to be approved by the U.S. EPA.

s. "Respondents" shall mean those persons, corporations, or other entities listed in Appendix A and Appendix B.

t. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

u. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

v. "Settlement Agreement" shall mean this Settlement Agreement and Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

w. "State" shall mean the State of California on behalf of the Department of Toxic Substances Control.

x. "State Accounts" shall mean the California Hazardous Substance Account, the California Hazardous Waste Control Account, the California Toxic Substances Control Account and the California Site Remediation Account, and any predecessors and successors to those accounts, to the extent that funds have been or will be expended from those accounts on behalf of DTSC.

y. "OII Site" or the "Site" shall mean the "facility," as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. 9601(9), and shall mean the landfill located at 900 Potrero Grande Drive in Monterey Park, California, and all associated areas where contamination emanating from the landfill has come or comes to be located.

z. "Tier I De Minimis Covenants" shall mean the Covenants Not to Sue by the United States in Section X(Tier I De Minimis Covenants Not to Sue by the United States).

aa. "Tier II De Minimis Covenants" shall mean the Covenants Not to Sue by the United States in Section XI (Tier II De Minimis Covenants Not to Sue by the United States).

bb. "United States" shall mean the United States of America, and each department, agency and instrumentality of the United States, including EPA.

IV. STATEMENT OF FACTS

6. The Operating Industries, Inc. landfill is a 190 acre facility located at 900 Potrero Grande Drive, Monterey Park, California.

a. The Site operated from 1948 through 1984. Over the course of its operation, the landfill accepted industrial solid, liquid and hazardous wastes, as well as municipal solid waste. Wastes accepted by the landfill include hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and California Health and Safety Code §§ 25316 and 25317. The list of contaminants found at the site include, but are not limited to, contaminants attached to and incorporated into this Settlement Agreement as Appendix D.

b. The Site is located on the southwestern flank of the La Merced Hills (also called the Montebello Hills) and is divided by California Highway 60 (Pomona Freeway), which runs roughly east-west through the Site, dividing it into a 45 acre North Parcel and 145 acre South Parcel. The Site is located at the boundary between the San Gabriel groundwater basin to the north and the Los Angeles Central groundwater basin to the south. The important water-bearing units underlying the Los Angeles and San Gabriel Basins, as well as the Site, are from oldest to youngest: upper Pliocene Pico Formation; lower Pleistocene San Pedro Formation; upper Pleistocene older alluvium (including "terrace gravels"); and the Recent Alluvium. The San Pedro Formation contains the five major aquifers of the Los Angeles Central Basin and the San Gabriel Basin: the Jackson, Hollydale, Lynwood, Silverado and Sunnyside aquifers. The lower Pliocene Repetto formation and older formations are found at depths greater

than 1500 feet. The Site is approximately one mile west of the Whittier Narrows groundwater recharge area and the Rio Hondo River.

c. The Site was proposed for inclusion on the National Priorities List ("NPL") in October 1984 and was subsequently placed on the NPL in May 1986, in accordance with Section 105(a)(8) of CERCLA, 42 U.S.C. § 9605(a)(8), as set forth at 40 C.F.R. Part 300, Appendix B.

d. There have been releases of hazardous substances from the Site, and the Site poses numerous threats to human health and the environment. The population in proximity to the Site includes the nearby residents of the City of Montebello and the City of Monterey Park, those who travel on the section of the Pomona Freeway that transects the Site, and workers in the several businesses located on or near the Site.

e. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA has completed the Remedial Investigation ("RI"), the Feasibility Study ("FS"), the Proposed Plan, and the Final Record of Decision (the "Final ROD") for the Site, pursuant to 40 C.F.R. § 300.430.

f. EPA has identified four operable units to date: Site Control and Monitoring ("SCM"); Leachate Management ("LM"); Gas Migration Control and Landfill Cover ("Gas Control and Cover"); and Final Remedy ("Final Remedy Operable Unit"), this last of which incorporates perimeter liquids control, natural attenuation of contaminated groundwater, and long-term operation and maintenance. The first two operable units (SCM and LM) were the subject of two interim Records of Decision ("RODs"). The work required by those interim RODs was the subject of two prior settlements, memorialized in two partial consent decrees. The first settlement is captioned United States et al. v. Chevron Chemical Company, et al., No. CV 88-7196-MRP(Kx), and was entered by the Court on May 11, 1989 (the "First Decree"). The second settlement is captioned United States, et al. v. American Petrofina Exploration Co., et al., No. CV 88-7196-MRP(Kx), and was entered on September 17, 1991 (the "Second Decree").

g. A third partial consent decree, captioned United States, et al. v. Chevron Chemical Company, et al., No. CV 91-6520-MRP(Kx), was entered by the court on March 30, 1992 (the "Third Decree"). The Third Decree addresses a portion of the work required by the Record of Decision for the Gas Control and Cover Operable Unit (the "Gas Control and Cover ROD"). The Gas Control and Cover ROD, unlike the previous two interim RODs, is a final ROD and represents a significant portion of the final remedy for the Site. Parties to the Third Decree are performing a major portion of the Gas Control and Cover ROD and some operation and maintenance as provided in that ROD. At the termination of the Third Decree, additional operation and maintenance provided in that ROD will be performed under the eighth partial consent decree.

h. On December 21, 1992, EPA, the State and the United States Department of the Navy ("Navy") entered into an Administrative Settlement (EPA CERCLA Docket No. 92-19), under which the Navy resolved its liability for matters addressed in the First Decree and the Third Decree.

i. On November 2, 1993, EPA issued a unilateral administrative order ("UAO 94-01") pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, requiring certain response activities at the Site in cooperation with EPA and the other persons performing work at the Site.

j. A fourth partial consent decree, resolving the alleged liability of certain municipalities and transporters and the California Department of Transportation for arranging for disposal or for transport for disposal of municipal solid waste, was entered on April 4, 1995, captioned United States, et al. v. City of Monterey Park, et al., No. CV 94-8685 WMB(GHKx) (the "Fourth Decree").

k. A fifth partial consent decree, addressing the same subject matter as the First Decree and the Third Decree, incorporating new defendants, including the recipients of UAO 94-01, was entered on July 10, 1996, captioned United States, et al. v. IT Corporation, et al., No. CV 96-1959 WMB(JRx) (the "Fifth Decree").

l. On March 7, 1997, EPA issued a unilateral administrative order ("UAO 97-02") pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, requiring certain response activities at the Site in cooperation with EPA and the other persons performing work at the Site.

m. A sixth partial consent decree, captioned United States et al. v. Air Products and Chemicals, Inc., et al., Action No. CV 97-5440 MRP, resolving the liability of certain operator defendants, was entered on September 23, 1997 (the "Sixth Decree").

n. A seventh partial consent decree, captioned United States et al. v. Operating Industries, Inc., et al., Action No. CV00-08794 SVW, resolving the liability of certain owner/operator defendants and incorporating provisions for redevelopment of a portion of the Site, was entered on October 10, 2000 (the "Seventh Decree").

o. An eighth partial consent decree, captioned United States et al. v. Chevron Environmental Management Company, et al., Action No. CV 01-11162 MMM (JWJx) ("Eighth Decree") was entered on May 28, 2002. The Eighth Decree addressed, among other things, the work required by the Final ROD for the Final Remedy Operable Unit, including the long-term operation and maintenance of facilities constructed under the Gas Control and Cover ROD, to the extent those activities were not addressed under the Third Decree and the Seventh Decree. The Eighth Decree also resolved the liability of certain generators of waste's liability for the Matters Addressed by the Eighth Decree.

7. Hazardous substances have been or are threatened to be released at or from the Site.

8. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future.

9. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site.

10. Each Respondent listed on Appendix A and Appendix B arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such Respondent, by any other person or entity, at the Site, or accepted a hazardous substance for transport to the Site which was selected by such Respondent.

11. The amount of hazardous substances contributed to the Site by each Respondent does not exceed 110,000 gallons of materials containing hazardous substances, and the hazardous substances contributed by each Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

12. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by other persons is approximately \$700 million. The payment required to be made by each Respondent pursuant to this Settlement Agreement is a minor portion of this total amount.

V. DETERMINATIONS

13. Based upon the Statement of Facts set forth above and on the administrative record for this Site, EPA has determined that:

a. The Operating Industries, Inc., site is a “facility” as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Each Respondent is a “person” as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. Each Respondent is a “potentially responsible party” within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

d. There has been an actual or threatened “release” of a “hazardous substance” from the Site as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).

e. The actual or threatened “release” caused the incurrence of response costs.

f. Prompt settlement with each Respondent is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

g. As to each Respondent, this Settlement Agreement involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

h. The amount of hazardous substances contributed to the Site by each Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Respondent are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

VI. SETTLEMENT AGREEMENT AND ORDER

14. Based upon the administrative record for the Site and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby AGREED TO AND ORDERED:

VII. PAYMENT

15. Within 30 days after the effective date of this Settlement Agreement, each Respondent shall pay the amount opposite its, her, or his name in Appendix C to this Settlement Agreement, in accordance with the provisions of this Section.

16. Each Respondent's payment includes an amount for: a) past response costs incurred at or in connection with the Site; b) projected future response costs to be incurred at or in connection with the Site; and c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any other person, will exceed the estimated total response costs upon which Respondents' payments are based.

17. Each Respondent shall make her, his or its respective payment as set forth in the payment instructions that will be provided by EPA.

18. At the time of payment, each Respondent shall send notice that such payment has been made to: Keith Olinger, EPA Enforcement Officer, U.S. EPA Region 9, 75 Hawthorne Street, SFD-7-5, San Francisco, CA 94105.

Such notice shall reference the Site/Spill ID Number 0958 and EPA docket number for this action.

VIII. FAILURE TO MAKE PAYMENT

19. If any Respondent fails to make full payment within the time required by Paragraph 15, that Respondent shall pay Interest on the unpaid balance. In addition, if any Respondent fails to make full payment as required by Paragraph 15, the United States may, in addition to any

other available remedies or sanctions, bring an action against that Respondent seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), for failure to make timely payment.

IX. CERTIFICATION OF RESPONDENT

20. By signing this Settlement Agreement, each Respondent certifies, individually, that, to the best of its knowledge and belief, it:

a. has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. has and will comply fully with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

X. TIER I DE MINIMIS COVENANT NOT TO SUE BY UNITED STATES

21. In consideration of the payments that will be made under the terms of this Settlement Agreement by the Respondents identified in Appendix A, "Respondents Selecting Tier I Covenants", and except as specifically provided in Section XIII (Reservations of Rights by United States), the United States covenants not to sue or take administrative action against such Respondents pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, and Section 7003 of the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. § 6973, relating to the Site. These covenants not to sue shall take effect for each Respondent identified in Appendix A, "Respondents Selecting Tier I Covenants," upon receipt of that Respondent's payment as required by Section VII. With respect to each Respondent identified in Appendix A, "Respondents Selecting Tier I Covenants," individually, this covenant not to sue is conditioned upon: a) the satisfactory performance by Respondent of all obligations under this Settlement Agreement; and b) the veracity of the information provided to EPA by Respondent relating to Respondent's involvement with the Site. This covenant not to sue extends only to Respondents identified in Appendix A, "Respondents Selecting Tier I Covenants" and does not extend to any other person.

XI. TIER II DE MINIMIS COVENANT NOT TO SUE BY UNITED STATES

22. In consideration of the payments that will be made under the terms of this Settlement Agreement by the Respondents identified in Appendix B, “Respondents Selecting Tier II Covenants,” and except as specifically provided in Paragraph 23 of this Section and in Section XIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against such Respondents pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. These covenants not to sue shall take effect with respect to each Respondent identified in Appendix B, “Respondents Selecting Tier II Covenants,” upon the receipt of the entire payment required of that Respondent pursuant to Section VII (Payment) of this Settlement Agreement. With respect to each Respondent identified in Appendix B, “Respondents Selecting Tier II Covenants,” these covenants not to sue are conditioned upon: a) the complete and satisfactory performance by that Respondent of her, his or its obligation under this Settlement Agreement and (b) the veracity of the information provided to the U.S. EPA by that Respondent relating to that Respondent’s involvement with the OII Site. These covenants not to sue extend only to the Respondents identified in Appendix B, “Respondents Selecting Tier II Covenants,” and their successors, and do not extend to any other person.

23. The covenants provided in Paragraph 22 of this Section are subject to the following reservations, in addition to the reservations set forth in Section XIII (Reservation of Rights by United States):

a. United States’ pre-certification reservations. Notwithstanding any other provision of this Settlement Agreement, the United States reserves, and this Settlement Agreement is without prejudice to, the right to institute proceedings in this action or in a new action against the Respondents identified in Appendix B, “Respondents Selecting Tier II Covenants,” or to issue an administrative order seeking to compel any of the Respondents identified in Appendix B, “Respondents Selecting Tier II Covenants,” to: (1) perform further response actions relating to the Site or (2) reimburse the United States for additional costs of response if, prior to the issuance of the Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to the EPA are discovered, or
- (ii) information, previously unknown to the EPA, is received, in whole or in part,

and these previously unknown conditions or this information, together with any other relevant information, indicate(s) that the Remedial Action is not protective of human health or the environment. If EPA makes such a determination, the State reserves, and this Settlement Agreement is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Respondents identified in Appendix B, “Respondents Selecting Tier II Covenants” to reimburse the State for additional costs of response.

b. United States' post-certification reservations. Notwithstanding any other provision of this Settlement Agreement, the United States reserves, and this Settlement Agreement is without prejudice to, the right to institute proceedings in this action or in a new action against the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants," or to issue an administrative order seeking to compel any of the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants," to: (1) perform further response actions relating to the Site or (2) reimburse the United States for additional costs of response if, subsequent to issuance of the Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to the EPA are discovered, or
- (ii) information, previously unknown to the EPA, is received, in whole or in part,

and these previously unknown conditions or this information, together with other relevant information, indicate(s) that the Remedial Action is not protective of human health or the environment. If EPA makes such a determination, the State reserves, and this Settlement Agreement is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants" to reimburse the State for additional costs of response.

c. For purposes of Paragraph 23(a), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the Final ROD was signed and set forth in the Final ROD for the Site and the administrative record supporting the Final ROD. For purposes of Paragraph 23(b) the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Final ROD, the administrative record supporting the Final ROD, and the post-ROD administrative record (if any).

XII. COVENANTS BY THE STATE OF CALIFORNIA

24. The State, the State Accounts and the Attorney General of California with respect to his Authority under Government Code Sections 12612 through 12660 (collectively the "State Covenant Providers") provide the following covenants not to sue:

A. De Minimis Covenants Not to Sue by the State for the Respondents identified in Appendix A, "Respondents Selecting Tier I Covenants"

In consideration of the actions that will be performed and the payments that will be made by the Respondents identified in Appendix A, "Respondents Selecting Tier I Covenants" under the terms of the Settlement Agreement, and except as specifically provided in Paragraph 27

(State's General Reservation of Rights), the State Covenant Providers covenant not to sue or take administrative action against the Respondents identified in Appendix A, "Respondents Selecting Tier I Covenants" pursuant to Section 107 of CERCLA, California Civil Code Section 3494, HWCL, or the HSAA, relating to the Site. With respect to present and future liability, these covenants not to sue shall take effect as to each Respondent identified in Appendix A, "Respondents Selecting Tier I Covenants" upon receipt by EPA of the entire payment required of that Respondent identified in Appendix A, Respondents Selecting Tier I Covenants," under Paragraph 15 of Section VII (Payment of Response Costs). With respect to each Respondent identified in Appendix A, "Respondents Selecting Tier I Covenants, individually, these covenants not to sue are conditioned upon: (1) the satisfactory performance by that Respondent of all its obligations under this Settlement Agreement; and (2) the veracity of the information provided to EPA by that Respondent relating to that Respondent's involvement with the Site. These covenants not to sue extend only to the Respondents identified in Appendix A, "Respondents Selecting Tier I Covenants" and do not extend to any other person.

B. De Minimis Covenants Not to Sue by the State for the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants"

1. In consideration of the actions that will be performed and the payments that will be made by the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants" under the terms of this Settlement Agreement, and except as specifically provided in Subparagraphs XII.B.2 and XII.B.3 of this Section and in Paragraph 27 (State's General Reservation of Rights), the State Covenant Providers covenant not to sue or take administrative actions against the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants" pursuant to Section 107 of CERCLA, California Civil Code Section 3494, HWCL, or the HSAA for the Site. With respect to present and future liability, these covenants not to sue shall take effect as to each Respondent identified in Appendix B, "Respondents Selecting Tier II Covenants" upon receipt by EPA of the entire payment required of that Respondent identified in Appendix B, "Respondents Selecting Tier II Covenants" under Paragraph 15 of Section VII (Payment). With respect to each Respondent identified in Appendix B, "Respondents Selecting Tier II Covenants," individually, these covenants not to sue are conditioned upon (1) the satisfactory performance by that Respondent of all of its obligations under this Settlement Agreement and (2) the veracity of the information provided to EPA by that Respondent relating to that Respondent's involvement with the Site. These covenants not to sue extend only to the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants" and do not extend to any other person.

2. The State's Pre-certification Reservations as to the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants"

Notwithstanding any other provision of this Settlement Agreement, subject to federal preemption law, the State Covenant Providers reserve, and this Settlement Agreement is without prejudice to, any rights that the State Covenant Providers may have under applicable law to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants":

a) to perform further response actions not inconsistent with the NCP relating to the Site,
or

b) to reimburse DTSC for additional costs of response if, prior to Certification of Completion of the Remedial Action:

1) conditions at the Site, previously unknown to the State, are discovered, or

2) information, previously unknown to the State, is received, in whole or in part, and the State determines that these previously unknown conditions or information together with any other relevant information indicates that further response actions are necessary to protect human health or the environment.

3. The State's Post-certification Reservations as to the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants"

Notwithstanding any other provision of this Settlement Agreement, subject to federal preemption law, the State Covenant Providers reserve, and this Settlement Agreement is without prejudice to, any rights that the State Covenant Providers may have under applicable law to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel the Respondents identified in Appendix B, "Respondents Selecting Tier II Covenants":

a) to perform further response actions not inconsistent with the NCP relating to the Site,
or

b) to reimburse the State Covenant Providers for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

1) conditions at the Site, previously unknown to the State, are discovered, or

2) information, previously unknown to the State, is received, in whole or in part, and the State determines that these previously unknown conditions or this information together with other relevant information indicate that further response actions are necessary to protect human health or the environment.

C. State Assertion of Reserved Rights

Notwithstanding the other provisions of this Section XII, the State reserves the following rights:

1. In the event that the State is designated the lead agency at the Site pursuant to a cooperative agreement with EPA or pursuant to any provision of federal law, the State may assert the rights reserved by the United States in Paragraph 25 (Reservation of Rights by the United States), in accordance with applicable law.

2. In the event that the United States institutes proceedings or an administrative action pursuant to its reservation of rights under Paragraph 25 (Reservation of Rights by the United States), the State Covenant Providers reserve the right (i) to participate in those proceedings to the extent allowed by law and (ii) to seek relief and cost recovery subject to the conditions and limitations set forth in Paragraph 24.

XIII. RESERVATIONS OF RIGHTS BY UNITED STATES

25. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraphs 21, 22 and 23. Notwithstanding any other provision of this Settlement Agreement, the United States reserves all rights against Respondents with respect to:

- a. liability for failure to meet a requirement of this Settlement Agreement;
- b. liability arising from the past, present, or future disposal, release, or threat of release of waste materials outside of the Site;
- c. criminal liability;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; or
- e. liability based upon the ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Respondent.

26. Notwithstanding any other provision in this Settlement Agreement, the United States reserves, and this Settlement Agreement is without prejudice to, the right to institute judicial or administrative proceedings against any individual Respondent seeking to compel that Respondent to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if:

a. information is discovered which indicates that such Respondent contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Respondent no longer qualifies as a *de minimis* party at the Site because such Respondent contributed greater than 110,000 gallons of the hazardous substances at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

27. The State's General Reservations of Rights

The State Covenant Provider's covenants not to sue set forth in this Settlement Agreement do not pertain to any matters other than those expressly specified therein. The State Covenant Providers reserve, and this Settlement Agreement is without prejudice to, all rights against the Respondents with respect to all other matters, including, but not limited to, the following:

- a. liability for failure to meet a requirement of this Settlement Agreement;
- b. liability arising from the past, present, or future disposal, release, or threat of release of waste materials outside of the Site;
- c. liability based upon the ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Materials at or in connection with the Site, after signature of this Settlement Agreement by the Respondents;
- d. criminal liability; or
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

In addition, the State of California reserves, and this Settlement Agreement is without prejudice to, all rights against the Respondents with respect to claims by any agency or agent of the State of California other than DTSC or the State Accounts, except to the extent that another agency of the State of California becomes DTSC's successor-in-interest with respect to the Site.

XIV. COVENANT NOT TO SUE BY RESPONDENTS

28. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, the State Covenant Providers, or their contractors or employees with respect to the Site or this Settlement Agreement including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 30 (Waiver of Claims) and Paragraph 32 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIII (Reservation of Rights by United States), other than in Paragraph 25(a) (claims for failure to meet a requirement of the Decree) or 25(b) (criminal liability), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

29. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization or approval of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

30. Respondents agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Section 107(a) or 113 of CERCLA) that they may have for all matters relating to the Site against each other or any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against such Respondent.

XV. EFFECT OF SETTLEMENT/CONTRIBUTION

31. Except as provided in Paragraph 30 (Waiver of Claims), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Paragraph 30 (Waiver of Claims), each of the Parties expressly reserves any and all rights (including, but not limited to,

pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-3, to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

32. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraphs 21 and 22.

33. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), and that each Respondent is entitled, as of the effective date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5), or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement with respect to the Respondents identified in Appendix A, Respondents Selecting Tier I Covenants,” are as follows: all response actions taken by the United States, the State, and private parties, and all response costs incurred and to be incurred by the United States, the State, and private parties, at or in connection with the Site. The “matters addressed” in this Settlement Agreement with respect to the Respondents identified in Appendix B, “Respondents Selecting Tier II Covenants,” are as follows: all response actions taken by the United States, the State, and private parties, and all response costs incurred and to be incurred by the United States, the State, and private parties, at or in connection with the Site, subject to the reservations expressed in Paragraph 23 of Section XI (Tier II De Minimis Covenants Not to Sue by the United States). Provided, however, that if the United States exercises rights under the reservations in Section XIII (Reservations of Rights by United States), other than in Paragraph 25(a) (claims for failure to meet a requirement of the Agreement) or 25(c) (criminal liability), the “matters addressed” in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation. In the event that a Respondent’s waiver of claims becomes inapplicable in accordance with Paragraph 30, the Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which each Respondent has resolved its liability to the United States, as of the Effective Date, for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), for “matters addressed” as defined above.

34. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Respondent shall, with respect to any suit or claim brought

against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days of service of the complaint or claim upon such Respondent. In addition, each Respondent shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

XVI. PARTIES BOUND

35. This Settlement Agreement shall apply to and be binding upon EPA, the State and upon Respondents and their heirs, successors and assigns. Any change in ownership or corporate or other legal status of a Respondent, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally the party represented by him or her.

XVII. INTEGRATION/APPENDICES

36. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

“Appendix A” is the list of Tier I De Minimis Respondents.

“Appendix B” is the list of Tier II De Minimis Respondents.

“Appendix C” is the payment schedule.

“Appendix D” is the Contaminant List.

XVIII. PUBLIC COMMENT

37. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), EPA may withdraw or withhold its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XIX. ATTORNEY GENERAL APPROVAL

38. The Attorney General or his designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

XX. EFFECTIVE DATE

39. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 37 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date _____
Kathleen Salyer
Assistant Director
California Superfund Division Site Cleanup Branch
U.S. EPA Region IX
75 Hawthorne Street
San Francisco, CA 94105

FOR THE STATE OF CALIFORNIA

Date

STEVEN W. LAVINGER
Performance Manager
Chatsworth Office Cleanup Program
California Department of Toxic Substance Control
9211 Oakdale Avenue
Chatsworth, California 91311-6505

Date

DENNIS A. RAGEN
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