

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

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA	)	CIVIL ACTION NO.
	)	
Plaintiff,	)	CIVS-86-0063-EJG
	)	
vs.	)	
	)	
AEROJET-GENERAL CORPORATION	)	
and CORDOVA CHEMICAL COMPANY,	)	
	)	
Defendants.	)	
<hr/>		
PEOPLE OF THE STATE OF CALIFORNIA, ET AL.	)	CIVIL ACTION NO.
	)	
Plaintiffs,	)	CIVS-86-0064-EJG
	)	
	)	Stipulation and Order
	)	Modifying Partial Consent
	)	Decree
vs.	)	
	)	
AEROJET-GENERAL CORPORATION	)	
and CORDOVA CHEMICAL COMPANY,	)	
	)	
Defendants.	)	
<hr/>		

WHEREAS, this Court entered a Partial Consent Decree ("Decree") on June 23, 1989 by and among Plaintiffs, on the one hand, and Defendants Aerojet-General Corporation and Cordova

1 Chemical Company (together, for reference purposes, "Aerojet"), on  
2 the other hand;

3 WHEREAS, Paragraph 5 of the Decree establishes certain  
4 obligations for the completion of a Remedial  
5 Investigation/Feasibility Study ("RI/FS") more fully described in  
6 that Paragraph and in Exhibit II, RI/FS Program Plan;

7 WHEREAS, Paragraphs 5(F) and 5(G) allow the parties to the  
8 Decree (the "Parties") to propose changes to the RI/FS work to be  
9 performed;

10 WHEREAS, Aerojet has substantially completed the Phase I,  
11 Stage 1, Remedial Investigation as required under Exhibit II of  
12 the Decree;

13 WHEREAS, based upon the Phase I, Stage 1 Remedial  
14 Investigation, the Parties have determined that the RI/FS should  
15 be completed on an operable unit basis rather than a Site-wide  
16 basis to enable acceleration of the study and resulting remedy  
17 implementation for areas having higher priority;

18 WHEREAS, the Parties accordingly have agreed to substitute a  
19 new Exhibit II Operable Unit Remedial Investigation Feasibility  
20 Study Program Plan ("Operable Unit RI/FS Program Plan") for the  
21 existing Exhibit II Program Plan;

22 WHEREAS, the Parties have agreed that certain land (defined  
23 in the next sentence as the "Carve-Out Lands") shall no longer be  
24 part of the Aerojet Site as defined in Paragraph 5(A)(2) of the  
25 Decree, and thus no longer shall be subject to the requirements of  
26 the Decree except as set forth in this Stipulation and Order  
27 Modifying Partial Consent Decree ("Stipulation and Order").  
28

1 "Carve-Out Lands" shall mean for all purposes under this  
2 Stipulation and Order, the areas in Exhibit G attached hereto,  
3 except for contaminated groundwater and associated contaminated  
4 media beneath the surface of these areas. A "Site Assessment  
5 Report for Candidate Carve-Out Lands" (ERM West, 2001), prepared  
6 by Aerojet and reviewed and accepted by Plaintiffs, has concluded  
7 that the Carve-Out Lands are not contaminated and pose no threat  
8 to public health or the environment, and therefore no further  
9 response or remedial action is required or appropriate with  
10 respect to the Carve-Out Lands. Moreover, Plaintiffs have  
11 determined that the Carve-Out Lands should not be considered part  
12 of the Aerojet Site as listed on EPA's National Priorities List  
13 ("NPL") as set forth more fully in the letter from EPA to Aerojet  
14 (attached hereto as Exhibit H). Notwithstanding the foregoing,  
15 contaminated groundwater and associated contaminated media beneath  
16 the surface of the Carve-Out Lands shall continue to be a part of  
17 the Aerojet Site for all purposes under the Partial Consent  
18 Decree, as well as the NPL, and Aerojet shall retain all interests  
19 in said groundwater when it conveys title to the Carve-Out Lands  
20 in accordance with the terms of the Grant Deed (as hereinafter  
21 defined). The Carve-Out Lands shall be subject to use  
22 restrictions as set forth in the attached Declaration of Covenants  
23 and Environmental Restrictions and the Declaration of Covenants  
24 and Environmental Restrictions Related to Groundwater (see  
25 Exhibits I and J);

26 WHEREAS, Exhibit L contains a map prepared by Plaintiffs  
27 showing the approximate location of groundwater plumes at and  
28

1 emanating from the Aerojet Site. Exhibit L is for informational  
2 purposes. Aerojet does not agree that Exhibit L is an accurate  
3 depiction of the alleged groundwater plumes or that it is liable  
4 for all, or any portion, of such alleged groundwater plumes.  
5 Aerojet makes no admission of fact or law, or of liability, and  
6 reserves all of its claims, objections and defenses, with respect  
7 to Exhibit L.

8  
9 NOW, THEREFORE, in light of the foregoing recitals,  
10 IT IS HEREBY STIPULATED by the Parties through their  
11 respective attorneys of record that:

- 12 1. The following changes be made to the Decree:
- 13 a) Substitute "Aerojet" for "United States" on page 4,  
14 line 18,
  - 15 b) Substitute new pages 9 through 17A, which pages are  
16 attached hereto as Exhibit A, for existing pages 9 through 17,
  - 17 c) Substitute new pages 24 and 25, which pages are  
18 attached hereto as Exhibit B, for existing pages 24 and 25,
  - 19 d) Substitute new pages 27 and 27A, which pages are  
20 attached hereto as Exhibit C, for existing page 27,
  - 21 e) Substitute new pages 54 and 54-A, which pages are  
22 attached hereto as Exhibit D, for existing page 54,
  - 23 f) Substitute new page 136, which page is attached  
24 hereto as Exhibit E, for existing page 136,
  - 25 g) Substitute Exhibit II, Operable Unit Remedial  
26 Investigation/Feasibility Study Program Plan, which is attached  
27 hereto as Exhibit F, for existing Exhibit II, RI/FS Program Plan,  
28

1           h)     Substitute Exhibit I-6, which is attached hereto as  
2 Exhibit M, for existing Exhibit I-6.

3           2.     The Court shall modify the Decree as specified in this  
4 Stipulation and Order.

5           3.     Following Court entry of this Stipulation and Order,  
6 Aerojet shall only transfer the Carve-Out Lands subject to the  
7 Declaration of Covenants and Environmental Restrictions and  
8 Declaration of Covenants and Environmental Restrictions Related to  
9 Groundwater attached hereto as Exhibits I and J respectively (the  
10 "Covenants and Environmental Restrictions"). The deeds conveying  
11 title to the Carve-Out Lands (or any portion thereof) shall be in  
12 the form of the Grant Deed attached hereto as Exhibit K (the  
13 "Grant Deed").

14           4.     No later than thirty (30) days of Court entry of this  
15 Stipulation and Order, Aerojet shall provide Plaintiffs with a  
16 current title commitment confirming that Aerojet owns all of the  
17 Carve-Out Lands. Title to the Carve-Out Lands must be reviewed  
18 and approved in accordance with 40 U.S.C. § 255. If there is any  
19 deficiency in said title that would interfere with the rights and  
20 restrictions identified in the Covenants and Environmental  
21 Restrictions attached hereto as Exhibits I and J, Aerojet shall  
22 use best efforts to obtain a subordination, quitclaim deed, or  
23 other documentation necessary to correct that deficiency.

24           5.     Within thirty (30) days after approval of title as set  
25 forth in Paragraph 4 above, Aerojet shall provide to Plaintiffs an  
26 updated title commitment showing all changes in title, if any,  
27 that have occurred and shall record in the Official Records of  
28

1 Sacramento County, California, the Covenants and Environmental  
2 Restrictions attached hereto as Exhibits I and J. As soon as  
3 reasonably practicable after recording, Aerojet shall provide to  
4 Plaintiffs a copy of the recorded Covenants and Environmental  
5 Restrictions and a title insurance policy that complies with the  
6 requirements set forth in the United States Department of Justice  
7 Title Standards (2001) and the United States Attorney General's  
8 Title Regulations Promulgated Pursuant to Public Law 91-393 (40  
9 U.S.C. § 255).

10 6. Within thirty (30) days of Court entry of this  
11 Stipulation and Order, Aerojet shall prepare and present to the  
12 Court for its signature, and also within said thirty (30) days  
13 record in the Official Records of Sacramento County, California,  
14 an amendment to the Order Re: Partial Consent Decree that the  
15 Court signed on July 7, 1989 setting forth a copy of Paragraph 11  
16 from the Decree (which Order was recorded in said Official  
17 Records), which amendment shall modify the descriptions of real  
18 property set forth in said recorded Order to exclude the Carve-Out  
19 Lands.

20 7. Commencing on the date of lodging with the Court of this  
21 Stipulation and Order, and until the recordation of the Covenants  
22 and Environmental Restrictions required by this Stipulation and  
23 Order, Aerojet shall continue to provide Plaintiffs, and their  
24 representatives, agents, contractors, subcontractors, and  
25 employees, with access to the Carve-Out Lands as required by the  
26 Decree.

1           8.     Within thirty (30) days of conveyance of the Carve-Out  
2 Lands (or any portion thereof), Aerojet shall submit to Plaintiffs  
3 a copy of the applicable recorded Grant Deed.

4           9.     Effective upon Court entry of this Stipulation and  
5 Order, Aerojet shall reimburse Plaintiffs for all their reasonable  
6 and necessary costs incurred in: (1) reviewing and evaluating the  
7 Site Assessment and related supporting documentation for the  
8 Carve-Out Lands; (2) conducting field reviews of the Carve-Out  
9 Lands; (3) reviewing and evaluating the Covenants and  
10 Environmental Restrictions and the Grant Deed prepared by Aerojet;  
11 (4) reviewing all encumbrances relating to the Aerojet Site and  
12 proposed modifications thereto; (5) modifying the Decree as  
13 required for Carve-Out; and (6) undertaking any activities  
14 required of the Plaintiffs under the Covenants and Environmental  
15 Restrictions. Reimbursement for agency oversight activities  
16 following the termination of the Decree will be covered by a  
17 subsequent agreement containing substantially the same terms.  
18 Aerojet also agrees that Plaintiffs' costs under this paragraph  
19 are not subject to the cap provision of Paragraph 13(E) (2) of the  
20 Decree. Plaintiffs are consenting to conveyance of the Carve-Out  
21 Lands in consideration of the agreements contained in the attached  
22 Grant Deed and Covenants and Environmental Restrictions.

23           10.  If Aerojet violates any of the provisions of this  
24 Stipulation and Order or the Covenants and Environmental  
25 Restrictions, Plaintiffs shall recover, in addition to any other  
26 relief ordered by the Court, all fees (including attorney fees)  
27 and costs they incur in ensuring compliance with or otherwise  
28

1 enforcing this Stipulation and Order or the Covenants and  
2 Environmental Restrictions.

3 11. In no event shall the conveyance of the Carve-Out Lands  
4 release or otherwise affect the obligation of Aerojet to comply  
5 with the provisions of the Decree as modified by this Stipulation  
6 and Order.

7 12. Neither the United States nor the State of California,  
8 nor any agency of either government, assumes any liability by  
9 entering into this Stipulation and Order or by virtue of  
10 consenting to the release of the Carve-Out Lands from the  
11 requirements of the Decree.

12 13. Effective upon Court entry of this Stipulation and  
13 Order, Aerojet shall indemnify, defend and hold harmless the State  
14 of California, and its agencies, boards, departments, officials,  
15 agents, employees, contractors, subcontractors and representatives  
16 (the "Indemnified Parties"), from and against any and all actions,  
17 causes of action, claims, liabilities, damages, judgments,  
18 settlement amounts, costs, expenses, and fees (including  
19 litigation costs, attorney's fees, and expert witness and  
20 consulting fees), arising from, or on account of the following  
21 Indemnified Matters: 1) all causes of action brought by any third  
22 party challenging whether the Indemnified Parties have or properly  
23 exercised the requisite authority to enter into this Stipulation  
24 and Order or to consent to the release of the Carve-Out Lands from  
25 the requirements of the Decree; 2) any act or omission of Aerojet,  
26 its officers, directors, employees, agents, contractors,  
27 subcontractors, or any persons acting on its behalf or under its  
28

1 control, to comply with the provisions of this Stipulation and  
2 Order, the Declaration of Covenants and Environmental Restrictions  
3 (Exhibit I), or the Declaration of Covenants and Environmental  
4 Restrictions Related to Groundwater (Exhibit J), with respect to  
5 the Carve-Out Lands; or 3) the Indemnified Parties' exercise or  
6 enforcement of any environmental restrictions or right of access  
7 which the Indemnified Parties have pursuant to the Declaration of  
8 Covenants and Environmental Restrictions (Exhibit I) or the  
9 Declaration of Covenants and Environmental Restrictions Related to  
10 Groundwater (Exhibit J).

11 (a) The Indemnified Parties promptly shall give Aerojet  
12 written notice of any claim regarding an Indemnified Matter and  
13 deliver to Aerojet a copy of each document or other writing which  
14 the Indemnified Parties receive from the claimant or claimants in  
15 connection therewith. Aerojet shall notify the Indemnified Parties  
16 of any insurers (if applicable) who may be responsible for the  
17 defense or indemnification of the Indemnified Parties in  
18 connection with such Indemnified Matter. The Indemnified Parties  
19 shall consult and cooperate with Aerojet and any applicable  
20 insurers in the defense, settlement or other resolution of any  
21 such Indemnified Matter; provided, however, that the Indemnified  
22 Parties each shall control the conduct of its own defense. To the  
23 extent that the Indemnified Parties determine to use counsel other  
24 than the California Department of Justice to defend any  
25 Indemnified Matter, Aerojet shall be entitled to approve the  
26 selection of such counsel. Aerojet shall cooperate with the  
27  
28

1 Indemnified Parties in connection with the defense of each such  
2 Indemnified Matter.

3 (b) Should the Indemnified Parties propose to settle or  
4 otherwise resolve an Indemnified Matter, then the Indemnified  
5 Parties shall notify and seek the consent of Aerojet, at least  
6 thirty (30) days prior to entering into a settlement or other  
7 resolution of such Indemnified Matter, which consent shall not be  
8 unreasonably withheld. In the event Aerojet withholds its consent  
9 and the Indemnified Parties, or any of them, still intend to  
10 settle or otherwise resolve any such Indemnified Matter, then the  
11 Indemnified Party shall notify Aerojet of its intent and the  
12 reasons therefor at least fifteen (15) days prior to entering into  
13 such settlement or other resolution. Aerojet may thereafter  
14 initiate dispute resolution pursuant to Paragraph 20 of the  
15 Decree, in which case the Indemnified Party shall not enter into  
16 or effectuate the settlement or other resolution until the Court  
17 resolves the dispute. The Court shall determine if the proposed  
18 settlement or other resolution is reasonable, not collusive, and  
19 entered into in good faith. Aerojet shall not be required to pay  
20 the portion of any litigation expenses, costs, or settlement  
21 payments which the Court determines to be unreasonable, collusive,  
22 or entered into in bad faith. The decision of the Court shall be  
23 binding on each of the Parties without right of appeal and shall  
24 be the exclusive mechanism for Aerojet to challenge any such  
25 settlement or other resolution of an Indemnified Matter.

26 (c) Notwithstanding subparagraph (b) above, Aerojet may  
27 settle or otherwise resolve each Indemnified Matter at any time on  
28

1 any basis acceptable to Aerojet, so long as such settlement or  
2 other resolution imposes no liability on any of the Indemnified  
3 Parties, does not commit any of the Indemnified Parties to any  
4 legal position, and, except for ministerial actions necessary to  
5 effectuate any such settlement or other resolution, imposes no  
6 other obligations on any of the Indemnified Parties. Aerojet  
7 shall give the Indemnified Parties notice of such a proposed  
8 settlement or other resolution at least thirty (30) days prior to  
9 entering into such a settlement or other resolution of an  
10 Indemnified Matter. If the Indemnified Parties contend that such  
11 settlement or other resolution is contrary to the terms of this  
12 subparagraph (c), the Indemnified Parties may initiate dispute  
13 resolution pursuant to Paragraph 20 of the Decree, in which case  
14 Aerojet shall not enter into or effectuate the settlement or other  
15 resolution until the Court resolves the dispute. If the Court  
16 finds that the disputed settlement is contrary to the terms of  
17 this subparagraph (c), Aerojet shall not settle or otherwise  
18 resolve the Indemnified Matter pursuant to the terms of the  
19 disputed settlement or other resolution.

20 14. Effective upon Court entry of this Stipulation and  
21 Order, the Carve-Out Lands (as defined in the recitals above)  
22 shall no longer be part of the Aerojet Site as defined in  
23 Paragraph 5(A)(2) of the Decree, and thus no longer shall be  
24 subject to the requirements of the Decree except as set forth in  
25 this Stipulation and Order. Moreover, the Carve-Out Lands shall  
26 no longer be considered part of the Aerojet Site as listed on  
27 EPA's National Priorities List.

1           15. Following Court entry of this Stipulation and Order,  
2 Aerojet shall conduct the balance of the remedial investigation  
3 and feasibility study at the Site in accordance with the revised  
4 Exhibit II to the Decree, which is attached hereto as Exhibit F.

5           16. Effective upon Court entry of this Stipulation and  
6 Order, in addition to the financial assurances set forth in  
7 Paragraph 9 of the Decree, Aerojet shall provide the following  
8 financial assurances:

9           (a) Aerojet shall provide to the Plaintiffs for their  
10 review and approval, by July 1 of each year that the Decree  
11 remains in effect, a Report that identifies for the upcoming  
12 fiscal year (December 1 to November 30) all response, removal or  
13 remedial actions required under the Decree or any other valid  
14 order or decree issued by Plaintiffs or the Court related to the  
15 Aerojet Site which Aerojet proposes to undertake during that  
16 upcoming fiscal year (hereinafter "Aerojet/Sacramento  
17 Environmental Projects"), and the estimated costs associated with  
18 such Aerojet/Sacramento Environmental Projects. Such Report also  
19 shall identify for the upcoming fiscal year (December 1 to  
20 November 30), all contracts, joint ventures, and binding  
21 agreements providing for reimbursement of environmental  
22 remediation costs pursuant to the Global Advance Agreement for  
23 Environmental Remediation Costs by and between the United States  
24 and Aerojet and the 29 November 1992 Settlement Agreement between  
25 the United States and Aerojet-General Corporation and Modification  
26 1 thereto (together the "DOD Agreement"). Each Report also shall  
27  
28

1 contain the following information for such upcoming fiscal year  
2 (December 1 to November 30):

3 (1) Estimated dollar value of each such contract,  
4 joint venture, and binding agreement;

5 (2) Duration of each such contract, joint venture,  
6 and binding agreement;

7 (3) Dollar amount of such contracts, joint  
8 ventures, and binding agreements providing for environmental  
9 remediation costs at the Aerojet Site;

10 (4) Any pending or completed revisions,  
11 modifications, or amendments to the DOD Agreement;

12 (5) Estimated total dollar value of such  
13 contracts, joint ventures, and binding agreements needed to  
14 support Aerojet/Sacramento Environmental Projects (as defined  
15 above), and any response, removal or remedial actions required by  
16 any valid order or decree issued by a government agency or court  
17 related to any other site owned or operated by Aerojet which  
18 Aerojet agrees to undertake during that upcoming fiscal year  
19 (hereinafter "Aerojet/Other Site Environmental Projects");

20 (6) Estimate of the cash amount Aerojet commits to  
21 setting aside in the upcoming fiscal year for the  
22 Aerojet/Sacramento Environmental Projects and the Aerojet/Other  
23 Site Environmental Projects (as defined above);

24 (7) An itemized three-year projection, including  
25 the upcoming fiscal year, of the costs of response, removal or  
26 remedial actions required under the Decree or any other valid  
27 order or decree issued by Plaintiffs or the Court related to the  
28

1 Aerojet Site which Aerojet proposes to undertake during that  
2 three-year period, and the sources of funding for such costs.  
3 Such cost projections shall incorporate the latest operable unit  
4 or engineering evaluation and cost analysis cost projections data  
5 approved by the Plaintiffs; and

6 (8) Aerojet's most recent audited financial  
7 statements, including auditor's opinion, balance sheet, income  
8 statement, statement of cash flows, and supporting notes and  
9 schedules.

10 (b) Plaintiffs and Aerojet shall meet no later than  
11 thirty (30) days after Plaintiffs receive the Report (that is, by  
12 July 31) to resolve any disputes concerning the Report, including  
13 (without limitation) any disputes concerning the  
14 Aerojet/Sacramento Environmental Projects (as defined above)  
15 Aerojet proposes to undertake in the upcoming fiscal year, and the  
16 estimated costs associated with such Projects. If the parties are  
17 unable to resolve all disputes concerning the Report within forty-  
18 five (45) days after Plaintiffs receive the Report (that is, by  
19 August 15), then the position advanced by Plaintiffs regarding the  
20 list and cost estimates of Aerojet/Sacramento Projects to be  
21 included in the Report shall be considered binding unless, within  
22 fifteen (15) days after the conclusion of the informal negotiation  
23 period, Aerojet invokes the formal dispute resolution procedures  
24 of this subparagraph (b) by serving on Plaintiffs a written  
25 Statement of Position on the matter in dispute, including, but not  
26 limited to, any factual data, analysis or opinion supporting  
27  
28

1 Aerojet's position and any supporting documentation relied upon by  
2 Aerojet.

3 (1) Within fifteen (15) days after receipt of  
4 Aerojet's Statement of Position, Plaintiffs will serve on Aerojet  
5 their Statement of Position, including, but not limited to, any  
6 factual data, analysis, or opinion supporting Plaintiffs' position  
7 and all supporting documentation relied upon by Plaintiffs.  
8 Within seven (7) days after receipt of Plaintiffs' Statement of  
9 Position, Aerojet may submit a Reply.

10 (2) Formal dispute resolution for disputes arising  
11 under this subparagraph (b) shall be accorded review on the  
12 administrative record under applicable principles of  
13 administrative law as set forth herein and shall be conducted  
14 pursuant to the procedures set forth in this subparagraph (b).

15 (3) An administrative record of the dispute shall  
16 be maintained by EPA and shall contain all Statements of Position,  
17 including supporting documentation, submitted pursuant to this  
18 subparagraph (b). Where appropriate, EPA may allow submission of  
19 supplemental statements of position by the parties to the dispute.

20 (4) The Director of the Superfund Division, EPA  
21 Region 9, will issue a final administrative decision resolving the  
22 dispute based on the administrative record described in  
23 subparagraph (b) (3). This decision shall be binding upon Aerojet  
24 and Plaintiffs, subject only to Aerojet's right to seek judicial  
25 review pursuant to subparagraph (b) (5) below.

26 (5) Any administrative decision made by EPA  
27 pursuant to subparagraph (b) (4) above shall be reviewable by the  
28

1 Court, provided that a motion for judicial review of the decision  
2 is filed by Aerojet with the Court and served on all Parties  
3 within fifteen (15) days of receipt of EPA's decision. The motion  
4 shall include a description of the matter in dispute, the efforts  
5 made by the parties to resolve it, other pertinent facts and legal  
6 argument, the relief requested, and the schedule, if any, within  
7 which the dispute must be resolved to ensure orderly  
8 implementation of the Decree. Plaintiffs may file a response to  
9 Aerojet's motion, and Aerojet may file a reply, within the time  
10 periods set in the applicable Federal Rules of Civil Procedure and  
11 the Court's Local Rules.

12 (6) In proceedings on any dispute governed by this  
13 subparagraph (b), Aerojet shall have the burden of demonstrating  
14 that the decision of the Director of the Superfund Division, EPA  
15 Region 9, is arbitrary and capricious or otherwise not in  
16 accordance with law. Judicial review of EPA's decision shall be  
17 on the administrative record compiled pursuant to subparagraph  
18 (b) (3) above.

19 (c) GenCorp shall guarantee to the Plaintiffs that if  
20 Aerojet is unable to fund the Aerojet/Sacramento Environmental  
21 Projects set forth in the Report, as adjusted, if at all, by the  
22 Court following Dispute Resolution pursuant to subparagraph (b)  
23 above, for any given fiscal year, then GenCorp shall make  
24 available all funds necessary to meet such obligations, subject to  
25 the following conditions and limitations:

26 (1) GenCorp shall not be obligated to contribute  
27 in any fiscal year more than Ten Million Dollars (\$10 million) in  
28

1 funds net of any amounts that are reimbursed to Aerojet under the  
2 DOD Agreement for that fiscal year;

3 (2) GenCorp shall not be obligated to contribute  
4 more than a maximum aggregate amount of Seventy-Five Million  
5 Dollars (\$75 million) in funds net of any amounts that are  
6 reimbursed to Aerojet under the DOD Agreement, which shall be in  
7 addition to the existing Twenty Million Dollar (\$20 million)  
8 guarantee required by Paragraph 9 of the Decree;

9 (3) Notwithstanding subparagraph (c)(2) above, the  
10 \$75 million GenCorp guarantee may be offset, during the first  
11 three years this Stipulation and Order is in effect, by the  
12 amounts of letters of credit or other financial assurance  
13 mechanisms that may be provided by Aerojet to fund its obligations  
14 under EPA's Administrative Order for Remedial Design and Remedial  
15 Action concerning the Baldwin Park Operable Unit of the San  
16 Gabriel Valley Superfund Sites (EPA Docket No. 2000-13), and any  
17 amendments, supplements or modifications thereto; provided,  
18 however, the amount of the offset in each fiscal year shall not  
19 reduce GenCorp's annual \$10 million guarantee under subparagraph  
20 (c)(1) above;

21 (4) Both the \$10 million annual maximum and the  
22 \$75 million aggregate maximum shall be adjusted annually for  
23 inflation in accordance with the DRI McGraw CPI Index (All Urban,  
24 All Items), on or about the beginning of each fiscal year;

25 (5) GenCorp's responsibility to satisfy the  
26 guarantee set forth in this subparagraph (c) shall take effect in  
27 the event of a claim by Aerojet that it cannot fund the  
28

1 Aerojet/Sacramento Environmental Projects set forth in the Report,  
2 as adjusted, if at all, by the Court following Dispute Resolution  
3 pursuant to subparagraph (b) above. The extent of GenCorp's  
4 guarantee in a particular fiscal year shall be the difference  
5 between the costs associated with the Aerojet/Sacramento  
6 Environmental Projects for that fiscal year set forth in the  
7 Report, as adjusted, if at all, by the Court following Dispute  
8 Resolution pursuant to subparagraph (b) above, and the total  
9 associated costs Aerojet has been able to fund, to date, for that  
10 fiscal year, subject to the limitations on amounts set forth above  
11 in subparagraphs (c) (1) to (4) above; and

12 (6) Neither GenCorp's agreement to provide this  
13 guarantee nor any action taken thereunder shall constitute for  
14 GenCorp an admission of liability, an admission of law or fact, or  
15 evidence of any violation of law or regulation.

16 (d) The financial assurance requirements of this  
17 Paragraph 16 shall not terminate under Paragraph 26 of the Decree,  
18 but shall remain in effect upon completion of all Aerojet Site  
19 remedial investigation and feasibility study work. The financial  
20 assurance requirements of this Paragraph 16 may be superseded by  
21 financial assurance provisions contained in valid decrees or  
22 orders related to operable units at the Aerojet Site. The  
23 aggregate value of the financial assurance provisions contained in  
24 such decrees or orders must at least equal the sum of the value of  
25 the financial assurances required under Paragraph 9 of the Decree  
26 and this Paragraph 16. Notwithstanding the foregoing, in the  
27 event that Plaintiffs, or any of them, issue a valid order or  
28

1 enter into a consent order or decree with Aerojet for remedial  
2 action at the Aerojet Site, Plaintiffs may seek additional  
3 financial assurance pursuant to such orders or decrees as deemed  
4 necessary and appropriate.

5 (e) As used in this Paragraph 16, the term "order"  
6 shall mean any administrative order issued by any state or federal  
7 agency with authority, or any judicial order issued by any state  
8 or federal court with jurisdiction, related to the Aerojet Site.  
9 The term "decree" shall mean any federal consent decree or its  
10 state court equivalent related to the Aerojet Site. Aerojet  
11 reserves any rights it has to challenge the validity of any such  
12 orders or decrees.

13 17. Aerojet shall take the following actions with regard to  
14 the Western Groundwater Operable Unit Alternate Water Supply  
15 Contingency Plan ("Contingency Plan") dated April 4, 2001 and any  
16 amendments thereto approved by the Plaintiffs. The Contingency  
17 Plan will provide replacement water to address potential loss of  
18 water supply wells until implementation of the Western Groundwater  
19 Operable Unit Remedy.

20 (a) Aerojet shall implement the Contingency Plan,  
21 including document submission, according to the schedule contained  
22 within that plan, and any subsequent revisions to the Contingency  
23 Plan which are approved by Plaintiffs pursuant to this Paragraph  
24 17.

25 (b) Aerojet shall provide potable water to replace  
26 water from Arden-Cordova Water Service Well Nos. 1, 3, 4, 5, 6, 7,  
27 8, 10, 12, 14, 17, 18, 20, 21, 22, and 23, and any well in the  
28

1 adjacent Citizen Utilities and Sacramento County services areas,  
 2 if: (i) based on samples taken, analyzed, and verified in  
 3 accordance with the sampling protocol of Exhibit IV-2 of the  
 4 Decree, the well contains concentrations of contaminants exceeding  
 5 the water supply replacement levels in the Record of Decision for  
 6 the Western Groundwater Operable Unit Remedy (ROD) adopted by EPA  
 7 July 20, 2001; (ii) such contamination is caused, or contributed  
 8 to, by Aerojet; and (iii) the well is taken out of service for  
 9 drinking water supply upon provision of alternate water. In the  
 10 event that Plaintiffs require the affected wells to be modified to  
 11 prevent vertical migration of contaminants, Aerojet shall perform  
 12 the modifications with the permission of the well owner and/or  
 13 bear the reasonable expense of the modification. The water supply  
 14 replacement levels are as follows:

15	Chemical	Trigger Level in ppb
16	Perchlorate	4.0
17	NDMA	0.0013*
18	Trichloroethylene	3.33
19	Tetrachloroethene	3.33
20	1,1-Dichloroethane	3.33
21	1,2,-Dichloroethane	0.33
22	1,1,2-Trichloroethane	3.33
23	1,1-Dichloroethene	4.0
24	1,2-Dichloroethene	4.0
25	1,1,2-Trichloro-	800
26	1,2,2-trifluoroethane	
27	Chloroform	66.7
28		

Vinyl Chloride	0.33
Carbon Tetrachloride	0.33
Nitrate	6,667
Nitrite	667

\* The current Practical Quantitation Level (PQL) level is 5 ppt. Best available monitoring method technology shall be used until a PQL of 1.3 ppt is achieved.

(c) Aerojet shall submit an evaluation of the Contingency Plan no later than sixty (60) days after receiving written notice from Plaintiffs that any portion of the supply addressed by the Contingency Plan has been designated for use by Plaintiffs as interim replacement water pursuant to subparagraph 17(b), above. The evaluation, which may include the results of any modeling, shall include an analysis of (i) whether any public water supply well, within two years following the submittal date of the evaluation, will reasonably be expected to contain chemical contaminants at levels which exceed the concentrations set forth in subparagraph 17(b) and (ii) whether any remaining portion of the supply addressed by the Contingency Plan would be sufficient to replace the loss of any such well.

(d) Aerojet shall submit annual evaluations of the Contingency Plan to each of the Plaintiffs no later than January 31 of each year commencing in 2002. In addition, Aerojet shall evaluate and revise the Contingency Plan when requested by Plaintiffs. These evaluations shall provide the same information required for the evaluation set forth in subparagraph 17(c), above.

1 (e) If either of the analyses required by subparagraphs  
2 17(c) or (d) indicate that any public water supply well, not  
3 currently addressed by the Contingency Plan or otherwise  
4 anticipated to be taken out of service due to contamination, may  
5 contain chemical contaminants at levels which exceed the  
6 concentrations set forth in subparagraph 17(b), Aerojet will  
7 submit a revised contingency plan within sixty (60) days which  
8 recommends actions and provides a time schedule to complete those  
9 actions to address potential replacement of that well. Upon  
10 approval or modification of the revised contingency plan by  
11 Plaintiffs, Aerojet shall implement the plan.

12 (f) Any replacement of public water supplies impacted  
13 by groundwater plumes emanating from the western portion of the  
14 Site shall be addressed in the ROD. Nothing in this Paragraph 17  
15 is, nor shall be construed as, a waiver or limitation on any of  
16 Plaintiffs' or Aerojet's rights or defenses with regard to any  
17 matter addressed in the ROD. Aerojet's obligations pursuant to  
18 this Paragraph 17 shall terminate when the water supply  
19 contingency plan requirements contained in the ROD are made  
20 enforceable by any of the following enforcement mechanisms:

21 (1) A consent decree; or

22 (2) An EPA, Regional Board, or DTSC administrative  
23 order that is either not contested by Aerojet within the time  
24 required by law or, if contested, is determined to be a valid  
25 order by the court.  
26  
27  
28

1 (g) In the event of a conflict between this Paragraph  
2 17 and the Contingency Plan, the requirements of this Paragraph  
3 shall prevail.

4 18. This Stipulation and Order shall be referred to as the  
5 "2001 Stipulation and Order Modifying Partial Consent Decree."

6 19. This Stipulation and Order may be executed by the  
7 Parties in counterparts as though it were a fully integrated  
8 document. Each person executing this Stipulation and Order on  
9 behalf of a party certifies that he or she is fully authorized to  
10 enter into and execute this Stipulation and Order on behalf of  
11 that party, and to legally bind that party.

12 20. GenCorp agrees to be bound by Paragraph 16 of this  
13 Stipulation and Order, and consents to the jurisdiction of the  
14 Court for the sole purpose of any action that may be commenced by  
15 the Plaintiffs to enforce said Paragraph 16.

16 21. This Stipulation and Order shall be lodged with the  
17 Court for a period of not less than thirty (30) days to allow for  
18 public comment pursuant to 28 C.F.R. §50.7 and it shall not be  
19 submitted to the Court for execution and entry until the  
20 expiration of that period. The United States and the State of  
21 California reserve the right to withdraw or withhold their consent  
22 to entry of this Stipulation and Order if the comments regarding  
23 the Stipulation disclose facts or considerations that indicate  
24 that the Stipulation is not in the public interest or otherwise is  
25 inappropriate, improper, or inadequate. Aerojet consents to entry  
26 of this Stipulation and Order without further notice. The  
27  
28

1 effective date of this Stipulation and Order shall be the date it  
2 is signed by the Court.

3 **IT IS SO STIPULATED.**

4 FOR THE UNITED STATES:

5  
6 \_\_\_\_\_  
7 JOHN C. CRUDEN Date  
8 Acting Assistant Attorney General  
9 Environment and Natural Resources Division  
10 U.S. Department of Justice

11 \_\_\_\_\_  
12 CATHERINE M. ROJKO Date  
13 Senior Counsel  
14 Environmental Enforcement Section  
15 Environment and Natural Resources Division  
16 U.S. Department of Justice

17 \_\_\_\_\_  
18 JOHN K. VINCENT Date  
19 United States Attorney  
20 for the Eastern District of California  
21 YOSHINORI HIMEL  
22 Assistant United States Attorney

23 FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

24 \_\_\_\_\_  
25 KEITH TAKATA Date  
26 Director of the Superfund Division  
27 U.S. Environmental Protection Agency, Region IX

28 FOR THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL (as  
successor in interest to the STATE DEPARTMENT OF HEALTH SERVICES):

\_\_\_\_\_ Date  
EDWIN F. LOWRY  
Director

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

FOR THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,  
CENTRAL VALLEY REGION:

\_\_\_\_\_  
GARY M. CARLTON  
Executive Officer  
Date \_\_\_\_\_

FOR AEROJET-GENERAL CORPORATION:

\_\_\_\_\_  
BRIAN E. SWEENEY  
Assistant Secretary  
Date \_\_\_\_\_

FOR CORDOVA CHEMICAL COMPANY:

\_\_\_\_\_  
BRIAN E. SWEENEY  
Secretary  
Date \_\_\_\_\_

FOR GENCORP INC. (as to Paragraph 16 of this Stipulation and  
Order only):

\_\_\_\_\_  
CHRIS W. CONLEY  
Vice President, Environmental, Health & Safety  
Date \_\_\_\_\_

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

APPROVED AS TO FORM:

BILL LOCKYER  
Attorney General  
RICHARD M. FRANK  
Chief Assistant Attorney General  
THEODORA P. BERGER  
Senior Assistant Attorney General

By: \_\_\_\_\_ Date \_\_\_\_\_  
REED SATO  
Deputy Attorney General

Attorneys for California Department of Toxic Substances Control (as successor in interest to Plaintiff State Department of Health Services) and California Regional Water Quality Control Board, Central Valley Region

HELLER EHRMAN WHITE & McAULIFFE

By: \_\_\_\_\_ Date \_\_\_\_\_  
THOMAS M. DONNELLY  
Attorneys for Aerojet-General Corporation, Cordova Chemical Company, and GenCorp Inc.

[PROPOSED] ORDER

Having considered the foregoing Stipulation, and good cause appearing therefor,

**IT IS SO ORDERED.**

\_\_\_\_\_  
Hon. Edward J. Garcia Date \_\_\_\_\_  
United States District Court 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