

1 penalties in the amount of \$ 3,750 per day for each such day of  
2 noncompliance.

3 d. At any time after the first sixty (60) days  
4 after an analytical sample result shows that the concentration of  
5 a contaminant in the treated water other than a VOC or nitrate is  
6 greater than the MCL in effect at that time for such contaminant,  
7 Settling Work Defendant shall be considered to have been out of  
8 compliance for each day for which the representative treated  
9 water sample indicates that the concentration of that contaminant  
10 was greater than the MCL in effect, provided that the MCL in  
11 effect was promulgated on or before the Effective Date of this  
12 Consent Decree. Settling Work Defendant shall be subject to  
13 stipulated penalties in the amount of \$ 2,250 per day for each  
14 such day of noncompliance.

15 E. Class I Violations

16 Stipulated penalties shall accrue in the following amounts  
17 for the violations described in this Paragraph, and a Settling  
18 Defendant subject to such penalties may not dispute the amount of  
19 stipulated penalties due per type of violation:

20 Period of Noncompliance    Penalty Per Day Per Violation

21        Days 1 - 5	\$ 750
22        Days 6 - 30	\$ 2,250
23        After 30 Days	\$ 3,750

24            1. Each failure to comply in a timely and adequate  
25 manner with the terms of this Consent Decree or any work plan  
26 implemented in whole or in part by this Consent Decree, that is  
27 not specifically listed as a violation elsewhere under this  
28

1 Section, and specifically including any failure to comply with  
2 the substantive standards of any applicable or relevant and  
3 appropriate requirement ("ARAR") identified in the ROD (as  
4 modified by the ESD and SOW) and not identified as a violation  
5 under Paragraphs D through F of this Section.

6 2. Failure by Settling Work Defendant to submit any  
7 of the following:

- 8 i. Draft Second Stage Operations and Maintenance Work  
9 Plan
- 10 ii. Draft Second Stage Operations and Maintenance  
11 Staffing Plan
- 12 iii. Draft Second Stage Operations and Maintenance Time  
13 Line and Schedule
- 14 iv. Draft Quality Assurance Project Plan
- 15 v. Draft Health and Safety Plan

16 3. Violation by Settling Work Defendant of ARARs,  
17 other than MCL violations, and South Coast Air Quality Management  
18 District Regulation XIII.

19 F. Class II Violations

20 Stipulated penalties shall accrue in the following amounts  
21 for the violations described in this Paragraph, and a Settling  
22 Defendant subject to such penalties may not dispute the amount of  
23 stipulated penalties due per type of violation:

24 <u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
25 Days 1 - 5	\$ 1,500
26 Days 6 - 30	\$ 3,500
27 After 30 Days	\$ 10,000
28	

1 Each violation by Settling Work Defendant of the following:

2 i. Obligation to hold Final Inspection(s)

3 Failure by Settling Work Defendant to submit any of the  
4 following:

5 i. Second Stage Operations and Maintenance Work Plan

6 ii. Second Stage Operations and Maintenance Staffing  
7 Plan

8 iii. Second Stage Operations and Maintenance Time Line  
9 and Schedule

10 iv. Notification of Selection of O&M  
11 Contractors/Subcontractors

12 v. Quality Assurance Project Plan

13 vi. Health and Safety Plan

14 Failure by Settling Work Defendant to comply with any of the  
15 following:

16 i. Quality Assurance Project Plan

17 ii. Health and Safety Plan

18 iii. Second Stage O&M Work Plan

19 G. Payments of stipulated penalties shall be made by a  
20 Settling Defendant as follows:

21 1. Stipulated penalties assessed for failure to make  
22 full and timely payment to the O&M Trust Account pursuant to  
23 Section XIV (Funding of Response Activities) or to the United  
24 States pursuant to Section XVII (Reimbursement of Response Costs)  
25 shall be paid by Lockheed Martin. Lockheed Martin shall not be  
26 subject to stipulated penalties for failure to fund insurance  
27 costs for insurance coverages described solely in Exhibit 3 to  
28

1 | this Consent Decree.

2 |           2. Stipulated penalties for failure to make full and  
3 | timely payment pursuant to Paragraph M of Section XIV (Funding of  
4 | Response Activities) of this Consent Decree shall be paid by  
5 | Lockheed Martin or the UAO Parties according to the EPA  
6 | Preliminary Finding and/or Further Determination required by that  
7 | Section and Paragraph. Stipulated penalties for failure to make  
8 | payments pursuant to Paragraph N of Section XIV (Funding of  
9 | Response Activities) shall be paid by Lockheed Martin, the  
10 | Settling Cash Defendants or the City of Burbank in accordance  
11 | with their obligations under that Section and Paragraph.

12 |           3. Except for stipulated penalties which arise due to  
13 | Lockheed Martin's or the UAO Parties' failure to comply with  
14 | their obligations under Section XIV (Funding of Response  
15 | Activities) as described in this Paragraph, all other stipulated  
16 | penalties assessed for failure to comply with Section VI  
17 | (Performance of the Work By Settling Defendants) shall be the  
18 | responsibility of and be paid by the City of Burbank. No such  
19 | stipulated penalties shall be paid or reimbursed from the O&M  
20 | Trust Account.

21 |           H. If a Settling Defendant fails to pay stipulated  
22 | penalties in accordance with this Section, the United States may  
23 | institute proceedings in this action or a new action to collect  
24 | the penalties and any Interest due. Notwithstanding the  
25 | stipulated penalties provided for in this Section, and to the  
26 | extent authorized by law, EPA may elect to assess civil penalties  
27 | or bring an action in District Court to enforce the provisions of  
28 |

1 this Consent Decree. Payment of stipulated penalties shall not  
2 preclude EPA from electing to pursue any other remedy or sanction  
3 it may have to enforce this Consent Decree, and nothing in this  
4 Decree shall preclude EPA from seeking statutory penalties  
5 against a Settling Defendant who violates statutory or regulatory  
6 requirements, except that the total civil penalties (including  
7 stipulated penalties) collected by EPA for any such violation  
8 shall not exceed \$ 25,000 per day per violation.

9 I. A Settling Defendant may dispute any notice of  
10 deficiency issued to it. Penalties shall continue to accrue as  
11 provided in this Section but need not be paid until the  
12 following:

13 1. If the dispute is resolved by agreement or by  
14 decision or order of EPA which is not appealed to this Court,  
15 accrued penalties, plus Interest, shall be paid to EPA within  
16 thirty (30) days of the agreement or Settling Defendant's receipt  
17 of EPA's decision or order;

18 2. If the Settling Defendant appeals EPA's decision  
19 pursuant to Section XX (Dispute Resolution) and prevails upon  
20 final resolution of the dispute, no stipulated penalties or  
21 Interest thereon will be payable and any assessment of stipulated  
22 penalties and Interest thereon shall be set aside in writing by  
23 EPA;

24 3. If the Settling Defendant appeals EPA's decision  
25 pursuant to Section XX (Dispute Resolution) and does not prevail  
26 upon final resolution of the dispute, all accrued stipulated  
27 penalties, plus Interest shall be paid within thirty (30) days of  
28

1 a final Court order.

2 4. If a Settling Defendant appeals EPA's decision to  
3 this Court and the Court's decision is appealed by any Party, the  
4 Settling Defendant shall pay all accrued penalties determined by  
5 the District Court to be owing to the United States into an  
6 interest-bearing escrow account within sixty (60) days of receipt  
7 of the Court's decision or order. Penalties determined by the  
8 Court to be accruing shall be paid into this account as they  
9 continue to accrue, at least every sixty (60) days. Within  
10 fifteen (15) days of receipt of the final appellate court  
11 decision, the escrow agent shall pay the balance of the account  
12 to EPA or to the Settling Defendant to the extent that it  
13 prevails.

14 J. In the event that EPA assumes performance of a portion  
15 or all of the O&M Activities pursuant to Paragraph F of Section  
16 XXII (Covenants Not to Sue by Plaintiffs), Settling Work  
17 Defendant shall remain liable for any stipulated penalties that  
18 have accrued or that may accrue under this Consent Decree.

19 K. All penalties owed to the United States under this  
20 section shall be due and payable within thirty (30) days of the  
21 Settling Defendant's receipt from EPA of a demand for payment of  
22 the penalties, unless the Settling Defendant invokes the dispute  
23 resolution procedures under Section XX (Dispute Resolution). All  
24 payments under this Section shall be transmitted via EFT to the  
25 U.S. Department of Justice Lockbox, and shall reference CERCLA  
26 Number SSID # L6, DOJ Case Number 90-11-2-442 and USAO File NO.  
27 91-03-463. Written verification of EFTs pursuant to this Section  
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1 shall be sent to the United States as provided in Section XXVII  
2 (Notices and Submissions).

3 L. The payment of penalties shall not alter in any way the  
4 Settling Work Defendant's obligation to complete the performance  
5 of the O&M Activities required under this Consent Decree.

6 M. If a Settling Defendant fails to pay stipulated  
7 penalties when due, the United States may institute proceedings  
8 to collect the penalties, as well as Interest. The Settling  
9 Defendant shall pay Interest on the unpaid balance, which shall  
10 begin to accrue thirty (30) days after the date of demand made  
11 pursuant to this Section, Paragraph K.

12 N. Nothing in this Consent Decree shall be construed as  
13 prohibiting, altering, or in any way limiting the ability of the  
14 United States or the State to seek any other remedies or  
15 sanctions available by virtue of a Settling Defendant's violation  
16 of this Consent Decree or of the statutes and regulations upon  
17 which it is based, including, but not limited to, penalties  
18 pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1).

19 XXII. COVENANTS NOT TO SUE BY PLAINTIFFS

20 In consideration of the actions that will be performed  
21 and/or the payments that will be made by the Settling Defendants  
22 under the terms of the Consent Decree, and except as specifically  
23 provided in this Section, the United States covenants not to sue  
24 or to take administrative action against Settling Defendants  
25 and/or the Released Parties pursuant to Sections 106 and 107(a)  
26 of CERCLA and Section 7003 of RCRA, and the State covenants not  
27 to sue or to take administrative action pursuant Section 107(a)  
28

1 of CERCLA, and to Chapters 6.5, Sections 25100 et seq., and 6.8  
2 Sections 25300 et seq. of the California Health and Safety Code  
3 for all Covered Matters expressly specified in Section XXIV  
4 (Effect of Settlement; Contribution Protection), Paragraph C. As  
5 to each Settling Defendant and its related Released Parties,  
6 these covenants not to sue are conditioned upon the complete and  
7 satisfactory performance by such Settling Defendant of its then-  
8 current obligations under this Consent Decree and shall remain in  
9 effect as to each Settling Defendant and its related Released  
10 Parties until and unless such Settling Defendant is not in  
11 compliance with the obligations imposed upon it by this Consent  
12 Decree. As to each Settling Defendant, Related Settling  
13 Defendant, or Related Released Party, as described in Appendix 1  
14 to this Consent Decree, these covenants not to sue are  
15 conditioned upon the complete and satisfactory performance by  
16 that party's principal Settling Defendant of its then-current  
17 obligations pursuant to Section XIV (Funding of Response Actions)  
18 of this Consent Decree. These covenants not to sue extend only  
19 to each Settling Defendant and its related Released Parties.  
20 These covenants not to sue do not extend to any other person. No  
21 person otherwise liable independent of liability associated with  
22 its status as a corporate or institutional predecessor or  
23 successor to a Settling Defendant or Related Released Party shall  
24 benefit from this provision.

25 A. United States' Pre-certification Reservations.

26 Except as to the parties listed in Appendix 3, and  
27 notwithstanding any other provision of this Consent Decree, the  
28

1 United States reserves, and this Consent Decree is without  
2 prejudice to, the right to institute proceedings in this action  
3 or in a new action, or to issue an administrative order seeking  
4 to compel Settling Defendants, Released Parties, or any of them  
5 (1) to perform further response actions relating to the Site or  
6 (2) to reimburse the United States for additional costs of  
7 response if, prior to Certification of Completion of O&M  
8 Activities pursuant to Section XV (Certification of Completion)  
9 of this Consent Decree:

10 (i) conditions at the Site, previously unknown to EPA,  
11 are discovered, or

12 (ii) information, previously unknown to EPA, is  
13 received, in whole or in part,

14 and these previously unknown conditions or information together  
15 with any other relevant information indicate that the Remedial  
16 Action or the O&M Activities are not protective of human health  
17 or the environment.

18 B. Except as to the parties listed in Appendix 3, the  
19 United States also reserves the right to institute proceedings in  
20 this action or in a new action, or to issue an administrative  
21 order seeking to compel Settling Defendants, Released Parties, or  
22 any of them to (1) perform further response actions relating to  
23 the Site or (2) to reimburse the United States for additional  
24 costs of response if, prior to Certification of Completion of the  
25 O&M Activities, (a) the Settling Work Defendant substantially  
26 fails and/or refuses to perform the O&M Activities, or (b) an  
27 earthquake or Uninsurable Force Majeure Event causes Major Damage  
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1 (as defined in Section XIV (Funding of Response Activities),  
2 Paragraph N) to the Plant Facilities, and EPA has reserved its  
3 rights in such circumstances in that Section and Paragraph.

4 C. United States' Post-certification Reservations. Except  
5 as to the parties listed in Appendix 3, and notwithstanding any  
6 other provision of this Consent Decree, the United States  
7 reserves, and this Consent Decree is without prejudice to, the  
8 right to institute proceedings in this action or in a new action,  
9 or to issue an administrative order seeking to compel Settling  
10 Defendants, Released Parties, or any of them (1) to perform  
11 further response actions relating to the Site or (2) to reimburse  
12 the United States for additional costs of response if, subsequent  
13 to Certification of Completion of the O&M Activities pursuant to  
14 Section XV (Certification of Completion) of this Consent Decree:

15 (i) conditions at the Site, previously unknown to  
16 EPA, are discovered, or

17 (ii) information, previously unknown to EPA, is  
18 received, in whole or in part,

19 and these previously unknown conditions or this information  
20 together with any other relevant information indicate that the  
21 Remedial Action or the O&M Activities are not protective of human  
22 health or the environment.

23 D. For purposes of this Section, Paragraph A, the  
24 information and the conditions known to EPA shall include only  
25 that information and those conditions set forth in the ROD for  
26 the Site, the administrative record supporting the ROD, and  
27 information required to be and actually submitted to EPA pursuant  
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1 to the First Consent Decree or UAO 92-12 prior to the date of  
2 lodging of this Consent Decree. For purposes of this Section,  
3 Paragraph C, the information received by and the conditions known  
4 to EPA shall include only that information and those conditions  
5 set forth in the ROD, the administrative record supporting the  
6 ROD, and any information received by or required to be and  
7 actually submitted to EPA pursuant to the requirements of the  
8 First Consent Decree, this Consent Decree or UAO 92-12 prior to  
9 Certification of Completion of the O&M Activities.

10 E. General Reservations of Rights. The covenants not to  
11 sue set forth above do not pertain to any matters other than the  
12 Covered Matters expressly specified in Section XXIV (Effect of  
13 Settlement; Contribution Protection), Paragraph C. The United  
14 States and the State reserve, and this Consent Decree is without  
15 prejudice to, all rights against a Settling Defendant or a  
16 Released Party with respect to all other matters, including but  
17 not limited to, the following:

18 (1) claims based on a failure by such Settling  
19 Defendant to meet a requirement of this Consent Decree;

20 (2) liability arising from the past, present, or  
21 future disposal, release, or threat of release of hazardous  
22 substances outside of the Site;

23 (3) liability for damages for injury to, destruction  
24 of, or loss of natural resources;

25 (4) liability for response costs that have been or may  
26 be incurred by any federal or State of California agency  
27 which is the trustee for natural resources and which has, or  
28

1 may in the future, spend funds relating to the Site;

2 (5) criminal liability;

3 (6) liability for violations of federal or State of  
4 California law which occur during or after implementation of  
5 the Remedial Action or O&M Activities;

6 (7) liability for additional response actions as may  
7 be required pursuant to Section VII (Additional Response  
8 Actions) or VIII (Periodic Review) of this Consent Decree,  
9 to the extent Settling Defendants do not agree in this  
10 Consent Decree to fund and/or perform such response actions  
11 under this Consent Decree;

12 (8) liability for additional operable units or interim  
13 remedies at the Site, for other operable units outside the  
14 Site, or any interim or final Basin-wide response action;  
15 and

16 (9) liability for Future Basin-wide Response Costs, and  
17 any costs that the United States or the State will incur or  
18 have incurred related to the Site which are not within the  
19 definition of Past Site-Specific Response Costs, Future  
20 Site-Specific Response Costs, or Past Basin-wide Response  
21 Costs.

22 F. In the event EPA determines that Settling Work  
23 Defendant has failed to implement any provisions of the O&M  
24 Activities in an adequate or timely manner, EPA may perform any  
25 and all portions of the O&M Activities as EPA determines  
26 necessary. In such event, Lockheed Martin shall fund EPA's  
27 performance of such O&M Activities pursuant to Section XIV  
28