PART I. CLAIMANT INFORMATION – GENERAL

United States Bankruptcy Court for the District of Delaware	CONTAMINANT-RELATED PROPERTY DAMAGE PROOF OF CLAIM
Exide Technologies et al , Case Number 02-11125 (KJC) Jointly Administered	

This form should be used to assert a CONTAMINANT-RELATED PROPERTY DAMAGE CLAIM against any of the Debtor(s) To assert such a claim, YOU MUST COMPLETE AND EXECUTE THIS FORM SO THAT IT IS ACTUALLY RECEIVED BY THE DEBTORS' CLAIM AGENT, BANKRUPTCY MANAGEMENT CORPORATION, AT P O BOX 1063, EL SEGUNDO, CALIFORNIA 90245 **FOR MAIL DELIVERIES** OR 1330 E FRANKLIN AVENUE, EL SEGUNDO, CALIFORNIA 90245 **FOR HAND DELIVERY OR COURIER DELIVERY** ON OR BEFORE 4 00 P M PREVAILING EASTERN TIME ON AUGUST 15, 2003 (THE ' CONTAMINANT BAR DATE") OR YOU WILL BE FOREVER BARRED FROM ASSERTING THE CLAIM

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim Attach a copy of statement giving particulars

☐ Check box if you have never received any notices from the Bankruptcy Court in this case
— Did not receive notice of this bar date, to our knowledge

☐ Check box if your current address differs from the address on the envelope sent to you by the Bankruptcy Court and/or Bankruptcy Management Corporation

☐ Check here if this claim

☐ Replaces
☐ Amends a previously filed claim, dated

DTSC reserves right to amend – lack of notice to DTSC.

Name of Debtor against which this claim is asserted Exide Technologies, Inc (formerly CNB Batteries Inc)

Name of Claimant (the person or other entity to whom the debtor owes money or property)

California Department of Toxic Substances Control

FILING OF THIS FORM DOES NOT WAIVE 11th AMENDMENT IMMUNITY

Name and address where notices should be sent

Craig Thompson, Supervising Deputy Atty Gen'l, Atty Gen's Office,
P.O. Box 944255, 1300 "I" Street, Sacramento, CA 94244-2550

Telephone Number	(916) 327-7851
Facsimile Number	(916) 327-2319
E-Mail Address	craig.thompson@doj.ca.gov
Claimant's Age	N/A
Birth Date	N/A
Social Security Number	N/A

10 45 AM QV

FILED
AUG 15 2003
BMC

Exide Technologies
05352

PART II· CLAIMS RELATING TO ENVIRONMENTAL CONTAMINATION OR THE OPERATION OF THE DEBTORS' BUSINESSES

IF YOU BELIEVE THAT YOUR ALLEGED PROPERTY DAMAGE IS THE RESULT OF ENVIRONMENTAL CONTAMINATION OR FROM THE OPERATION OF THE DEBTORS' BUSINESSES, YOU MUST BEGIN ON QUESTION 1 IF YOU BELIEVE THAT YOUR ALLEGED PROPERTY DAMAGE CLAIM IS THE RESULT OF A DEFECT IN THE DEBTORS' PRODUCTS, PLEASE SKIP TO QUESTION 17

QUESTIONS 1-16 AND 37-55 BELOW MUST BE COMPLETED FOR <u>EACH SITE OR BUILDING OR STRUCTURE (THE "SITE")</u> THAT IS THE BASIS OF A CONTAMINANT-RELATED PD CLAIM IF YOU ARE ASSERTING A CONTAMINANT-RELATED PD CLAIM FOR MORE THAN ONE SITE, THEN YOU MUST FILE A SEPARATE CLAIM FOR EACH SITE

1 What is the exact location, including, if applicable, the name and street address, of the Site

Name San Gabriel Basin Groundwater Superfund Site
Address Puente Valley Operable Unit Covers most of City of Industry, CA and portions of City of La Puente, N/A

2 What is your property interest in the Site (for example, owner, operator, lessee) and when did you acquire that interest?

Interest Regulatory agency of jurisdiction
Date Acquired

3 Is the Site developed? N/A - Groundwater basin Debtor's GNB Batteries site is developed. If yes, when was the Site developed? (Please check)

Before 1968 ☐ Between 1968 and 1973 ☐ After 1973 ☐

4 What is the address or location of the Debtor's facility or property which you believe caused the contamination of your Site?

GNB Batteries Inc
14500 E. Nelson Avenue
City of Industry, CA 91744

5 Describe the basis for your belief that the Debtor's facility caused contaminant-related damage to your property interest

U.S EPA has named the Debtor as a Responsible Party for the site, as has claimant DTSC.

6 Specify the contaminant(s) causing the damage May include: Lead, cadmium, arsenic, Polycyclic aromatic hydrocarbons, benzene, chloroform, tetrachloroethane, PCBs

7 Does the property have plumbing?

☐ Yes ☐ No N/A - site is a groundwater basin

If yes, has the plumbing been tested or examined for lead or lead-containing pipes, joints, or solder? Please attach the test reports If you did not perform or request the tests and do not have the reports, please identify the person who obtained the test report

N/A - site is a groundwater basin

8 Identify the current use of the property Please be specific, detailed and complete
Groundwater basin - provides water for drinking and for other beneficial uses

9 Identify each prior use of the property Please be specific, detailed and complete
Same as #8

10 Has the property been tested for lead paint?

☐ Yes ☐ No N/A - site is a groundwater basin

If yes, please attach copy of report

11 Does the property contain Venetian blinds?

☐ Yes ☐ No N/A - site is a groundwater basin

12 Has coal ever been used as fuel at the Site?

☐ Yes ☐ No N/A - site is a groundwater basin.

13 Has coal ash ever been used on the Site?

☐ Yes ☐ No N/A - site is a groundwater basin

14 Have you made complaints about your claim(s) against any of the Debtors to any federal, state or local environmental or public health agency?

☐ Yes ☐ No Claimant is state environmental agency.

If yes, please identify each complaint by describing the details of the complaint, agency to whom addressed, and date of complaint Please attach copies of the complaint and any subsequent correspondence sent by you or received from the agency

15 Have you had an appraisal of your Site performed? If yes, when and by whom? Please attach copies of each appraisal report

16 Have you (or anyone else, including, but not limited to, a lender or prospective purchaser) ever had an environmental assessment done for your property? This includes what are called Phase 1 or Phase 2 assessments, or any property evaluation done for the purpose of identifying potential environmental concerns US EPA and DTSC assessments are proceeding.

If yes, please attach each and every evaluation If you do not have the evaluation, identify the person who has the evaluation For further information about environmental property assessments, see, for example, American Society for Testing and Materials (ASTM) Standard No E-1527-00

PLEASE SKIP TO QUESTION 37 AND COMPLETE QUESTIONS 37-55

PART III CLAIMS RELATED TO PRODUCT DEFECT

QUESTIONS 17-36 AND 37-55 MUST BE COMPLETED FOR EACH CLAIM THAT IS THE RESULT OF A DEFECT IN THE DEBTORS' PRODUCTS. IF YOU ARE ASSERTING A CONTAMINANT-RELATED PD CLAIM FOR MORE THAN ONE OF THE DEBTORS' PRODUCTS, THEN YOU MUST FILE A SEPARATE CLAIM FOR EACH PRODUCT

17 What is the name, trade name and/or number of the exact Exide product?_____

_____

18 Describe the product by content (example, lead-acid battery, nickel cadmium battery, etc), size, shape and color?_____

_____

19 What is the make, model number and year of the vehicle or machinery in which the product was being used (or in which you intended to use the product)?_____

_____

20 What is the name and address of the store or person from whom you purchased or obtained the Exide product?_____

_____

21 What is the exact date that you purchased or obtained the product?_____

_____

22 Describe the packaging for the product _____

_____

23 When you purchased or obtained the product, was it new or used?_____

24 Was the product ever installed into any vehicle or equipment?_____

If so, identify the name and address of the person who installed the product (including yourself), the date of installation, and the vehicle or machinery into which it was installed _____

_____

If the product was installed in more than one vehicle or piece of equipment, identify each _____

_____

25 Was any maintenance by anyone ever performed on the product?_____

26 If so, what is the name and address of the person performing that maintenance (including yourself)?_____

_____

27 What maintenance was performed?_____

_____

28 Specify each of the dates that maintenance was performed on the product _____

_____

29 Did you or anyone else ever pour water or any other fluid or substance into the product? If so, what was poured into the product, how much was poured, and under what circumstances? Please describe why this was done _____

_____

30 Was any maintenance or repair done to the starter/ignition system or electrical system of the vehicle or machinery (at a time when the product was installed)? _____

If so, describe the repair/maintenance that was done, and the date(s) on which such repair/maintenance work was done _____

31 Was the vehicle or equipment (in which you were using the product) ever involved in any accidents?____

_____

If so, describe the accident, the exact location where it occurred (streets, name of town and state/province), the date of the accident, and whether any accident report was filled out and by whom Please attach copies of any such accident report _____

32 In what location(s) have you operated the vehicle or equipment (in which the product was installed)?____

_____

33 Describe the basis for your belief that the product is defective _____

_____

34 Did you witness any incident involving the product?_____

_____

If so, please describe it fully _____

_____

35 Describe the damage or injury which occurred that you contend resulted from the product defect _____

_____

_____

36 Have you made complaints about your claims against Exide to any federal, state, local or consumer product safety agency or authority?

If yes, please identify each complaint by describing the details of the complaint, the agency/authority to whom it was addressed, and date of complaint Please attach copies of the complaint and any subsequent correspondence sent by you or received from the agency

QUESTIONS 37-55 MUST BE COMPLETED BY ALL CLAIMANTS FILING THIS FORM

PART IV: LITIGATION

37 Has any contaminant-related lawsuit ever been filed on behalf of this injured party?

☒ Yes ☐ No

If Yes, answer the rest of this section If No, skip to Part VI

a Give the two-letter mail code of the state/province where this suit is or was pending CA

b Give the Court in which the case was filed US District Court - Central Ct

c Give the case number CV98-0760 TJH; CV 97-8230 TJH; CV 96-6634 TJH

d Has a judgment or verdict been entered?

☐ Yes ☒ No

e If Yes, provide the verdict amount and the names of each defendant to the litigation

Verdict Amount _____

Defendants(s) _____

f Who represents you or represented you in the matters?

_____

PART V: SETTLEMENTS

38 Has any contaminant-related property damage claim been submitted on behalf of the injured party to any bankruptcy trust or other claim facility or entity?

☐ Yes ☒ No

39 Who represented you in the matter? _____

40 Has any such claim been settled?

☐ Yes ☒ No

If Yes, please provide aggregate amount of settlements $ _____

41 Has the injured party settled any contaminant-related personal injury claim with any of the Debtors?

☐ Yes ☐ No N/A

If Yes, answer the rest of this section If No, skip to Part VII

42 Date of settlement

Month Day Year

43 Were there any others named in the lawsuit?

☐ Yes ☐ No

44 Were others named in separate lawsuits, claims or demands for the same property?

☐ Yes ☐ No

If Yes, please identify (a) the court in which the case was filed, (b) the case number, (c) the names of all defendants to the lawsuit, claim or demand, and (d) the date of filing

_____

45 If the matter is settled or concluded, please describe when and how the matter was settled or concluded, including, the total amount of such settlement and the amounts paid by each defendant Attach any final documents, releases, etc

46 Please check all that apply regarding the status of the settlement

☐ Release executed by or on behalf of injured party and submitted to any of the Debtors prior to April 15, 2002

If yes, please attach executed release

☐ Settlement agreement executed by or on behalf of injured party and submitted to any of the Debtors prior to April 15, 2002

If yes, please attach executed settlement agreement

☐ Settlement paid in full

If Yes, amount $ _____ Date of Payment _____ *Month Day Year*

☐ Settlement paid in part

If Yes, amount $ _____ _____ *Month Day Year*

Settlement documents submitted to any of the Debtors or on behalf of the injured party Date of Submission _____ *Month Day Year*

Release executed by or on behalf of injured party and any of the Debtors authorizing additional claim for certain diseases manifesting after date of settlement (known as a limited disease release)

Date of Execution

_____

Month *Day* *Year*

PART VI: DEPENDENT OR RELATED PARTY CLAIM

- This section is to be completed only by dependents or related parties (such as spouse or child) of an injured party who believes he/she has a current contaminant-related claim against any of the Debtors that does not involve property damage to himself/herself If a dependent or related party has a current claim against any of the Debtors for contamment-related damages that does involve property damage to his/her property as the result of contaminants then such dependent or related party is considered a separate "injured party" and he/she or the legal representative must fill out a separate Exide Contaminant-Related Property Damage Proof of Claim Form
- This section is to be used by only one dependent or related party If you wish to submit more than one dependent or related-party claim, please photocopy this page prior to filling it out and complete a separate page for each person making a claim
- This claim form must be signed by the dependent or related party or the person filing the claim on his/her behalf (such as the personal representative or his/her attorney)

47 Dependent or Related Party Name

Last Name *First Name* *MI*

48 Address

Street Address

City *State/ Province* *Zip Code/ Postal Code*

Country (if not U S)

49 Social Security Number

50 Financially Dependent ☐ Yes ☐ No

51 Date of Birth

Month *Day* *Year*

52 Relationship to Injured Party ☐ Spouse ☐ Child ☐ Other, specify

53 Injured Party Name

Last Name *First Name* *MI*

54 Injured Party Social Security Number

Please state the nature of the claim specifically, providing any test information required You must include all available information responding to the previous parts of this Form

PART VII: SUPPORTING DOCUMENTATION

55 **Supporting Documents and Materials**

This space is for the Court Use Only

Attach copies of all supporting documents or materials, including, but not limited to, purchase orders, invoices, contracts, specifications, architectural drawings, appraisals, environmental reports, product samples or test results, relating or referring to your claim DO NOT SEND ORIGINAL DOCUMENTS

If the documents are not available, explain why not If the documents are too voluminous to attach, attach a summary of the documents identifying and providing a brief description of each document, identifying the location of the document and who has possession and control of it

If you provide a summary of documents rather than the documents themselves, you are required to consent to the production and release of those documents to the Debtors upon the Debtors' further request

See attached sheet.

THIS FORM IS FILED UNDER PROTEST, AND DOES NOT WAIVE 11TH AMENDMENT SOVEREIGN IMMUNITY OF THE STATE OF CALIFORNIA OR OF THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL DEPARTMENT (DTSC) AS A CALIFORNIA STATE AGENCY DTSC did not, to the best of counsel's knowledge, receive notice of the bar date for claims related to contamination, despite having asked to receive all notices DTSC does not admit or agree that its claim, attached hereto, falls within the scope of this notice and bar date Because of its lack of notice, DTSC has not had adequate time to identify, locate, retrieve, and attach all relevant documents Attached is documentation of the existence of the claim DTSC possesses, and consents to provide upon Debtors' future request, documentation of site assessments, mitigation activities overseen or carried out by DTSC, and a summary of costs incurred by DTSC by activity

PART VIII: SIGNATURE PAGE

All claims must be signed by the injured party or the person filing on his/her behalf (such as the personal representative or attorney)

1 I have reviewed the information submitted on this Form and all documents submitted in support of my claim To the best of my knowledge, the information is accurate and complete

2a I hereby authorize and request each medical professional listed in this claim form and all other parties with custody of any documents or information concerning the injured party's medical history and treatment disclose any and all records concerning the injured party's medical history, diagnoses and treatment to the Debtors or their representatives

2b I hereby authorize the release of the injured party's Social Security Number for use in comparing information provided separately to other trusts or claims facilities to verify the completeness and accuracy of the information contained in this form

2c I hereby authorize and consent to the production and release of any and all documents that I have not attached to this Form that support my claim

Craig Thompson — 8 (Month) 14 (Day) 2003 (Year)

SIGNATURE OF INJURED PARTY, REPRESENTATIVE, OR ATTORNEY

IF THE SIGNATURE IS NOT THAT OF THE INJURED PARTY, PLEASE PRINT THE NAME OF THE SIGNATORY ABOVE AND INDICATE THE RELATIONSHIP TO THE INJURED PARTY

THE PENALTY FOR SUBMITTING A FRAUDULENT CLAIM IS A FINE OF UP TO $500,000 OR IMPRISONMENT FOR UP TO 5 YEARS, OR BOTH 18 U.S C. §§ 152, 3571

KEEP A COPY OF THIS PROOF OF CLAIM FORM AND ALL ATTACHMENTS FOR YOUR FILES AND MAIL AN ORIGINAL PROOF OF CLAIM FORM AND COPIES OF ALL ATTACHMENTS TO **BANKRUPTCY MANAGEMENT CORPORATION**, AT P O BOX 1063, EL SEGUNDO, CALIFORNIA 90245 **FOR MAIL DELIVERIES** OR 1330 E FRANKLIN AVENUE, EL SEGUNDO, CALIFORNIA 90245 **FOR HAND DELIVERY OR COURIER DELIVERY**

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Attorneys for California Department of Toxic Substances Control

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
EXIDE TECHNOLOGIES, et al.,	CASE NO 02-11125(KJC)
Debtors.	Jointly Administered

SUPPLEMENTAL STATEMENT OF CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL IN SUPPORT OF PROOF OF CLAIM

I INTRODUCTION

Subject to and without waiving its sovereign immunity, the California Department of Toxic Substances Control ("DTSC" or "Department"), by and through its attorneys, submits this Supplemental Statement in Support of DTSC's Proof of Claim in the captioned bankruptcy proceeding of the named Debtors DTSC submits this proof of claim on its own behalf, and not on behalf of the State of California or any other state agency or local agency, which are separate legal entities Presently, DTSC submits a claim against the Debtors in the amount of **$64,050,527 98** with the express reservation of rights to amend this amount

II DTSC'S AUTHORITY TO ASSERT CLAIMS AGAINST THE DEBTORS

A The Comprehensive Environmental Response, Compensation, and Liability Act and the California Hazardous Substance Account Act

The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U S C §§ 9601 *et seq* , and the California Hazardous Substance Account Act ("HSAA"), Cal Health & Safety Code ("Health and Safety Code") §§ 25300 *et seq* , enable DTSC to recover from responsible parties its direct, indirect, administrative, and oversight costs for responding to a release or threatened release of hazardous substances 42 U S C § 9607(a), Health and Safety Code §§ 25312, 25360

DTSC is the state agency that administers the Hazardous Substance Account Act ("HSAA"), Cal Health & Safety Code § 25300 et seq The HSAA establishes a comprehensive program for cleanup of hazardous substances which have been released or threatened to be released into the environment Health and Safety Code section 25355 5 authorizes DTSC to spend public funds to investigate, remove and/or remedy environmental contamination at a site Health and Safety Code section 25360 also directs DTSC to recover costs it incurs in connection with such clean-up activities from "liable parties

Under CERCLA, any person (including corporations) who (1) is the owner or operator of a facility where there is a release or threat of release of a hazardous substance, (2) was the owner or operator of a facility at the time of the disposal of a hazardous substance, (3) arranged for such disposal, or (4) accepted a hazardous substance for transport to a facility, is strictly, jointly, and severally liable for the government's response costs 42 U S C § 9607(a), *FMC Corp v United States Dep't of Commerce*, 29 F 3d 833, 835 (3rd Cir 1994) The HSAA incorporates by reference CERCLA's definition of liable or responsible parties Health & Safety Code § 25323 5(a)(1)

As will be discussed further below, the Debtors are responsible parties under CERCLA and the HSAA at various sites in California Accordingly, DTSC has claims against the Debtor that arise under both statutes

//

B The California Hazardous Waste Control Law

Under California law, hazardous wastes are regulated pursuant to the California Hazardous Waste Control Law ("HWCL"), Health and Safety Code §§ 25100 *et seq* The HWCL is a "cradle to grave" regulatory scheme for handling hazardous wastes in California and provides for strict, joint and several liability *Liquid Chem v Dep't of Health Services*, 227 Cal App 3d 1682, 1706-07, 270 Cal Rptr 103 (Cal App 1991) The HWCL designates DTSC as the lead state agency with jurisdiction for promulgating and enforcing the standards and regulations regarding management of hazardous wastes Health & Safety Code § 25180(a)

The HWCL requires every owner and operator of a hazardous waste management facility to prepare and eventually implement a plan for the ultimate closure and past closure of the facility Health and Safety Code §§ 25246-25249 At closure, the owner or operator must control, minimize, or eliminate, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents to the ground or surface waters or to the atmosphere Cal Code of Regs tit 22, §§ 66264 110-148, 66265 110-148 The closure must comply with detailed specifications to ensure that to the maximum extent possible all hazardous waste and hazardous waste constituents have been removed from the facility *Id* The owner or operator of a hazardous waste facility must also maintain financial assurances sufficient to provide for the closure and at least thirty years of post-closure maintenance of the facility in a manner that protects human health and the environment and minimizes or eliminates the escape of hazardous waste constituents to ground and surface waters and to the atmosphere Health & Safety § 25245 In the event that the owner or operator is unable to properly fund and implement closure of one or more of their facilities, the Department has the authority to implement closure itself or through contractors, and to seek reimbursement from the Debtor or from the guarantor of the Debtor's financial assurances *Id* Additionally, an owner or operator's liability under the HWCL for closure or post-closure costs does not diminish its liability under CERCLA *Id* , Cal Code of Regs tit 22, §§ 66264 110-148, 66265 110-148

Pursuant to Health and Safety Code sections 25187 and 25200 10, DTSC retains jurisdiction to promulgate and enforce the standards and regulations regarding hazardous waste management

activities and release of hazardous waste in the environment Health and Safety Code section 25187 authorizes DTSC to issue an order to require corrective action when DTSC determines that there is or has been a release of hazardous waste or hazardous waste constituents into the environment from a hazardous waste facility Health and Safety Code section 25187 2 and 25205 7(b) authorize DTSC to recover its costs incurred in overseeing corrective action required at hazardous waste facilities Cal Public Resources Code section 21089 authorizes DTSC to recover its costs incurred in complying with CEQA These costs include, but are not limited to, staff or designated consultant time for preparation and review of CEQA documents, required fees, expenses for public notice of determinations, and public hearings and meetings

As will be discussed further below, the Debtor is the owner or operator of various hazardous waste facilities in California Accordingly, DTSC has claims against the Debtor that arise under the HWCL

III DTSC'S CLAIMS AGAINST THE DEBTORS

A San Gabriel Basin Groundwater Site, Puente Valley Operable Unit

The San Gabriel Basin Groundwater Superfund Site ("Site") includes four (4) areas of contamination in the San Gabriel Valley, Los Angeles County The Puente Valley Operable Unit (OU) is located in Area Four of the Superfund Site, which covers a contaminated groundwater area that runs along San Jose Creek in La Puente The Puente Valley Operable Unit includes most of the City of Industry and portions of the City of La Puente

The U S Environmental Protection Agency ("U S EPA"), is the lead regulatory agency, and DTSC is the support agency overseeing the investigation and remediation of hazardous substance releases at the Site As of March 2003, U S EPA issued Special Notice letters to 74 responsible parties (RPs) In one of these Special Notice letters, U S EPA formally identified the Debtors, (formerly GNB Batteries Inc), 14500 E Nelson Avenue, City of Industry, CA 91744 as Responsible Parties for the Puente Valley Operable Unit

The Site remedy selected by the regulatory agencies includes extraction, containment and treatment of contaminated groundwater in the shallow and intermediate zones at the mouth of Puente Valley The remedy is currently in the design phase, and design is expected to be completed by mid

to late 2003 U S EPA estimated the total clean up costs will cost roughly **$47,220,000 00** DTSC has incurred pre-petition oversight costs associated with the Site in the amount of **$61,687 00** DTSC has not calculated future oversight costs at this time for the Site **Accordingly, DTSC's claim for the Puente Valley OU is $47,281,687.00** (*DTSC reserves the right to amend this amount*)

B The Vernon Facility

The Vernon Facility ("Site") is located at 2700 S Indiana Street, Vernon, Los Angeles County The Site occupies approximately 24 acres of land on the north corner of Bandini Boulevard and South Indiana Avenue The Debtors operate the Site as a battery recycling facility

DTSC has determined that there is a release of hazardous waste or hazardous waste constituents into the environment from the Site Pursuant to Health and Safety Code sections 25187, and 25200 10, DTSC retains jurisdiction to promulgate and enforce the standards and regulations regarding hazardous wastes management activities and release of hazardous waste in the environment Health and Safety Code section 25187 authorizes DTSC to issue an order to require corrective action when DTSC determines that there is or has been a release of hazardous waste or hazardous waste constituents into the environment from a hazardous waste facility Health and Safety Code sections 25187 2 and 25205 7(b) authorize DTSC to recover its costs incurred in overseeing corrective action required at hazardous waste facilities On February 25, 2002, DTSC and the Debtors entered into a consent order to implement a corrective action program at the Site The Corrective Action Consent Order (CACO), Docket No P3-01/02-010, became effective on February 25, 2002

Cal Public Resources Code section 21089 authorizes DTSC to recover its costs incurred in complying with CEQA These costs include, but are not limited to, staff or designated consultant time for preparation and review of CEQA documents, required fees, expenses for public notice of determinations, and public hearings and meetings

State law and regulations require the owner and operator of a hazardous waste facility to provide financial assurances to cover responses to damage and injury claims arising out of the operation of the facility and to provide for the closure and post-closure maintenance of the site *See Cost Estimates attached as Exhibit A* DTSC estimates future financial assurance mechanism costs

to include **$9,038,504 00** Also, by enforcing the State's Hazardous Waste Control laws, DTSC charges hazardous waste fees DTSC estimates these fees to include **$1,099,947 00** *See Cost Estimates attached as Exhibit A* DTSC estimates its unpaid pre-petition charges to be **$40,458 48** and its unpaid post-petition charges to be **$2,465.04.** DTSC estimates its future CEQA costs for permit applications to be **$585,432.00** DTSC estimates its future corrective action oversight costs to be **$865,282 00** DTSC's total claim in this proceeding for the Vernon Site is in the amount of **$11,632,088.52** *See Cost Estimates attached as Exhibit A* **Accordingly, DTSC's claim for the Vernon Site is $11,632,088.52.** (*DTSC reserves the right to amend this amount.*)

C Alco Pacific, Inc Site

The Site is located at 16902, 16908, 16916, 16920, 16928, and 16932 South Broadway, Carson, California The Debtors are Responsible Parties because they are successors to GNB Technologies and GNB Industrial Battery These corporations arranged for the treatment or disposal of hazardous substances at the Alco Pacific site, including lead dross and slag DTSC has named the Debtors as defendant in State of California, Department of Toxic Substances Control v Alco Pacific, Inc , et al, United States District Court, Central District of California, Civ No 01-09294 MMM (FMOx) *See attached Complaint as Exhibit B*

Lead reclamation operations were conducted on this site from approximately 1950 until 1990 Alco Pacific Inc operated at the site from approximately 1972 to 1992 Lead was reclaimed from spent lead acid batteries, lead dross, slag, battery mud, battery dust, and other materials The reclaimed lead was melted and mixed with other metals to produce lead alloys During the course of lead reclamation operations, hazardous substances were released on the site Hazardous substances that have been found at the site include lead, cadmium, arsenic, polycylic aromatic hydrocarbons, benzene, chloroform, tetrachloroethene and polychlorinated biphenyls DTSC has completed a remedial investigation at the site and is in the process of developing a proposed remedy DTSC's unpaid pre-petition costs include **$976,761 13** DTSC's unpaid post-petition costs include **$457,542.21** DTSC has not estimated any future site investigation costs at this time DTSC estimates its future oversight costs to be **$200,000** and its future cleanup costs to be **$1,300,000**

DTSC estimates its total future costs to be **$1,957,542.21 Accordingly, DTSC's total claim for the Alco Site is $2,934,303 34** *(DTSC reserves the right to amend this amount)*

D Exide Technologies Consent Order

DTSC and the Debtors entered into a Consent Order ("Order") in January 8, 2003 regarding the Debtors' facility located at 2700 South Indiana Avenue, Vernon, California 90023 Docket No HWCA 01/02-3027 *See attached Consent Order as Exhibit C* The Debtors violated Health and Safety Code section 25201(a) in that on or about March 20, 2000, the Debtors stored hazardous waste (used lead-acid batteries) at Diversified Warehouse and Distribution located at 2415 Firestone Boulevard, Southgate, California and from February 1, 2000 to March 20, 2000, the Debtors stored hazardous waste (used lead-acid batteries) at Pacific States Logistics Management, LLC, located at 3000 Walnut Avenue, Long Beach, California, without authorization from the Department to use such locations for storage of hazardous waste

Jurisdiction exists pursuant to Health and Safety Code section 25187 The Debtors waived the right to a hearing in this matter The Order constitutes full settlement of all causes of action, claims and liabilities arising out of the factual matters or violations alleged The Debtors agreed to immediately cease storing used lead-acid batteries at the above-mentioned two locations unless otherwise authorized by the Department The Debtors agreed they were liable to DTSC for a penalty in the amount of $40,000 In addition, the Order acknowledged that the Debtors filed a petition under Chapter 11 of the U S Bankruptcy Code on April 15, 2002 and that $40,000 shall be treated as a prepetition unsecured claim against the Debtors The Debtors agreed to not object to DTSC's claim in its bankruptcy proceedings In addition, the Order provided that the claim shall be paid in accordance with the terms of any approved Plan of Reorganization in the Debtors' Chapter 11 case **Accordingly, DTSC's total claim for this Consent Order is $40,000.** *(DTSC reserves the right to amend this amount)*

E Visalia Site

The Debtors own and operated, a lead-acid automotive battery manufacturing plant and hazardous waste management facility at 8127 Avenue 304, Visalia, California In June of 1995 and again in October of 1998, the Debtors and DTSC entered into consent agreements for Debtors to

undertake corrective action to address releases of hazardous waste at the Site DTSC has incurred costs overseeing the corrective action work at the Site

DTSC's unpaid pre-petition oversight costs include **$4,229 01** DTSC's unpaid post-petition oversight costs include **$3,793 11** DTSC estimates future site investigation costs to be **$303,089.00** DTSC estimates its future oversight costs to be **$316,640 00** and its future cleanup costs to be **$1,509,282.00** DTSC estimates its future costs related to complying with CEQA to be **$25,416 00** DTSC estimates its total future costs to be **$2,158,220.11** **Accordingly, DTSC's total claim for theVisalia Site is $2,162,449 12** (*DTSC reserves the right to amend this amount*)

F Unidentified Claims

Finally, DTSC reserves the right to assert claims against the Debtor under CERCLA or the Health and Safety Code for response and oversight costs at facilities where Debtor is a potential responsible party This type of claim against the Debtor arises pre-petition where the existence of such claims are fairly contemplated by the parties *See, e g In re Jensen*, 995 F 2d 925, 931 (9th Cir 1993), *In re Chateaugay Corp* , 944 F 2d 997, 1005 (2nd Cir 1991), *NCL Corp v Lone Star Building Centers, Inc* , 144 B R 170 (S D Fla 1992) A primary determinant of whether a claim has been fairly contemplated by the parties is knowledge by the parties of a site where a potentially responsible party may be liable *In re Jensen*, 995 F 2d at 931 Accordingly, DTSC reserves the right to assert presently unidentified claims for response costs that DTSC has incurred or will incur at sites where there has been a release or threatened release of hazardous substances, and where the Debtor may be a responsible party

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IV CONCLUSION

DTSC submits a Proof of Claim in the amount of **$64,050,527 98**, which includes several significant contingent and/or unliquidated claims The basis for these claims is discussed in this Supplemental Statement DTSC reserves the right to amend its Proof of Claim if the need arises

All correspondence pertaining to this Proof of Claim should be directed to the attention of Deputy Attorney General Shawnee Shahroody

Dated April 11, 2003

Respectfully submitted,

BILL LOCKYER
Attorney General

THEODORA BERGER
Senior Assistant Attorney General

CRAIG THOMPSON
Supervising Deputy Attorney General

SHAWNEE SHAHROODY
Deputy Attorney General

Attorneys for California Department of Toxic Substances Control

Exhibit A

COST ESTIMATE
The Vernon Site - located at 2700 S Indiana Street, Vernon, Los Angeles County

SUMMARY OF COST REIMBURSEMENT AND RECOVERY

ITEMS		AMOUNT
I	**Unpaid Charges**	
1	Unpaid Charges by April 15, 2002 (CEQA)	$ 40,458 48
2	Unpaid Charges from April 16 to December 31, 2002 (CEQA $ CACO)	$ 2,465 04
	Total Unpaid Charges	**$ 42,923 52**
II	**Future CEQA (EIR) Costs for Permit Application**	**$ 585,432 00**
III.1	**Projected CACO Oversight Costs**	**$ 865,282 00**
III 2	**Estimate of Future Financial Assurance Mechanisms Costs.**	
	A Closure Cost Estimates (in Year 2002 dollars)	$6,476,566 00
	B Post-Closure Cost Estimate (in Year 2002 dollars)	$2,561,938 00
	Subtotal	**$9,038,504.00**
III 3	**Hazardous Waste Fee (Based in CY 2003 Fee):**	
A	Activity Fees Post Closure Facility Permit	$ 44,702 00
B	Annual Environmental Fee (for 10 years, $813 00 x 10)	$ 8,130 00
C	Annual Full Permit Large Facility Fees (for 10 years) ($70,374 00 x 10)	$ 703,740 00
D	Annual Postclosure Large Facility Fees (for 30 years) ($17,175 00 x 5 + 10,300 00 x 25)	$ 343,375 00
	Subtotal	**$ 1,099,947 00**
Total		**$ 11,632,088 52**

Exhibit B

CONFORMED COPY

FILED
2001 OCT 29 PM 3 49

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Attorneys for Plaintiff State of California
Department of Toxic Substances Control

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MMM

STATE OF CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL,

Plaintiff,

v

ALCO PACIFIC, INC , MORRIS P KIRK, ALLIED PRECIOUS METALS RECYCLING COMPANY, INC , DAVIS WIRE CORPORATION, EXIDE TECHNOLOGIES, P KAY METAL SUPPLY, INC , LEAD PRODUCTS COMPANY, INC , PASMINCO, INCORPORATED, QUEMETCO, INC , RSR CORPORATION, J L SHEPHERD AND ASSOCIATES, and DOES 1 through 10, inclusive,

Defendants

CIV NO 01- 09294 FMOx

COMPLAINT FOR RECOVERY OF RESPONSE COSTS AND DECLARATORY RELIEF UNDER CERCLA

(42 U S C Section 9601 et seq)

Plaintiff State of California Department of Toxic Substances Control alleges as follows

1 This is a civil action by the State of California Department of Toxic Substances Control ("DTSC") for recovery of response costs and declaratory relief, pursuant to Sections 107 and 113(g)(2), respectively, of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U S C

§§ 9607 and 9613(g)(2), as amended

2 The response costs for which recovery is sought were incurred in connection with actions taken pursuant to CERCLA in response to soil and groundwater contamination at and from a site consisting of six parcels of real property located at 16902, 16908, 16916, 16920, 16928, and 16932 Broadway, in the city of Carson, Los Angeles County, California, Assessor's Parcel Numbers 6126-004-020, 6126-004-019, 6126-004-018, 6126-004-017, 6126-004-016, and 6126-004-015, respectively (collectively referred to as the "Alco Pacific Site"), on which a lead reprocessing business operated continuously from approximately 1950 through 1990

JURISDICTION AND VENUE

3 This court has jurisdiction over the subject matter of, and the parties to, this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U S C §§ 9607(a), 9613(b), and 28 U S C §§ 1331 and 1345

4 Venue is proper in this judicial district pursuant to Section 113(b) of CERCLA, 42 U S C § 9613(b), and 28 U S C §1391(b) and (c), because the releases or threatened releases of hazardous substances that give rise to these claims occurred in this district and because various defendants may be found in this district

PARTIES

5 Plaintiff is the State of California Department of Toxic Substances Control, a Department of the government of the State of California

6 Defendant Morris P Kirk is an individual domiciled in the State of California Mr Kirk has been an owner and operator of the Alco Pacific Site from approximately 1972 through the present day

7 Defendant Alco Pacific, Inc is a corporation, organized under the laws of the State of California, which has been suspended and thus has lost all rights and powers under California law for failure to meet statutory filing requirements of either the Secretary of State's Office or the Franchise Tax Board Alco Pacific, Inc was an owner

and operator of the Alco Pacific Site at the time of disposal and treatment of hazardous substances at the Alco Pacific Site

8 Defendant Allied Precious Metals Recycling Company, Inc is a corporation organized and existing under the laws of the State of Arizona Allied Precious Metals Recycling Company, Inc or its predecessor-in-interest Allied Precious Metals Recycling Company arranged for disposal or treatment of hazardous substances at the Alco Pacific Site

9 Defendant Davis Wire Corporation is a corporation organized and existing under the laws of the State of Delaware, and is authorized to do business under the laws of the State of California Davis Wire Corporation is the same corporation as, or a successor corporation to, Davis Walker Corporation, which arranged for disposal or treatment of hazardous substances at the Alco Pacific Site

10 Defendant Exide Technologies is a corporation organized and existing under the laws of the State of Delaware, and is authorized to do business under the laws of the State of California Exide Technologies is a successor corporation to GNB Technologies and GNB Industrial Battery, which arranged for disposal or treatment of hazardous substances at the Alco Pacific Site

11 Defendant P Kay Metal Supply, Inc is a corporation organized and existing under the laws of the State of California P Kay Metal Supply, Inc arranged for disposal or treatment of hazardous substances at the Alco Pacific Site

12 Defendant Lead Products Company, Inc is a corporation organized and existing under the laws of the State of Texas Lead Products Company, Inc arranged for disposal or treatment of hazardous substances at the Alco Pacific Site

13 Defendant Quemetco, Inc is a corporation organized and existing under the laws of the State of Delaware, and is authorized to do business under the laws of the State of California Quemetco, Inc arranged for disposal or treatment of hazardous substances at the Alco Pacific Site

14 Defendant PASMINCO, Incorporated is a corporation organized and existing under the laws of the State of California PASMINCO, Incorporated is a successor corporation to Pasco Zinc Corporation and Pacific Smelting Corporation, which arranged for disposal or treatment of hazardous substances at the Alco Pacific Site

15 Defendant RSR Corporation is a corporation organized and existing under the laws of the State of Delaware RSR Corporation arranged for disposal or treatment of hazardous substances at the Alco Pacific Site

16 Defendant J L Shepherd and Associates is a corporation organized and existing under the laws of the State of California J L Shepherd and Associates arranged for disposal or treatment of hazardous substances at the Alco Pacific Site

17 DOES 1 through 10 are entities that arranged for disposal or treatment of hazardous substances at the Alco Pacific Site or that owned or operated the Alco Pacific Site The true names and capacities of Defendants DOES 1 through 10 are unknown to Plaintiff at this time When the names of these defendants have been ascertained, DTSC will seek leave to amend the complaint to substitute the true name of each Doe defendant in place of the fictitious name

GENERAL ALLEGATIONS

18 The Alco Pacific Site was used for lead reclamation from approximately 1950 until 1990 Alco Pacific, Inc and its predecessors-in-interest operated a business at the Alco Pacific Site that involved reclaiming lead from various lead-containing materials generated by other parties The operations at the Alco Pacific Site in turn generated lead-bearing wastes as well Alco Pacific, Inc held legal title to the Alco Pacific Site from approximately 1972 through 1984, and continued to own and operate a business at the Alco Pacific Site until at least 1992

19 Morris P Kirk was an owner, operator and principal of Alco Pacific, Inc while it operated at the Alco Pacific Site Mr Kirk also held legal title to the entire Alco Pacific Site from approximately 1984 through 1997, and currently holds legal title to the

parcels at 16902, 16908, 16916, 16920, and 16928 South Broadway

20 Surface soil sampling has revealed the presence of lead, cadmium, arsenic, and antimony in excess of hazardous waste concentrations at the Alco Pacific Site Moreover, groundwater samples taken from an existing groundwater well on the site contained levels of lead, tetrachloroethene (PCE), and trichloroethylene (TCE) in excess of the Maximum Contaminant Level ("MCL") allowable for those constituents

21 During the ownership and operation of the Alco Pacific Site by Mr Kirk and Alco Pacific, Inc hazardous substances, including but not limited to substances set forth in Paragraph 20 above, were accidentally spilled, discharged and otherwise released onto the property These discharges and releases continue through the present day The discharges and releases of hazardous substances have resulted in the disposal of hazardous substances at and from the Alco Pacific Site Each of the defendants set forth in paragraphs 8 through 17 of this Complaint ("Generator Defendants"), or its predecessor in interest, arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances it owned or possessed, at the Alco Pacific Site

CLAIM FOR RELIEF

(Claim for Recovery of Response Costs and Declaratory Relief Pursuant to Sections 107(a) and 113(g)(2) of CERCLA)

22 Paragraphs 1 through 21 are incorporated herein by reference as if fully set forth below

23 The Alco Pacific Site constitutes a "facility" within the meaning of CERCLA Section 101, 42 U S C § 9601(9)

24 Defendant Morris P Kirk is a current owner and operator of the Alco Pacific Site, and was an owner and operator of the Alco Pacific Site at the time of disposal of hazardous substances at the Alco Pacific Site, within the meaning of Sections 101(9) and 107(a)(1) and (2) of CERCLA, 42 U S C §§ 9601(9), 9607(a)(1) and (2)

25 Defendant Alco Pacific, Inc was the owner and operator of the Alco Pacific Site at the time of disposal of hazardous substances at the Alco Pacific Site, within the meaning of Sections 101(9) and 107(a)(1) and (2) of CERCLA, 42 U S C §§ 9601(9), 9607(a)(1) and (2)

26 Each of the Generator Defendants, or its predecessor in interest, arranged for disposal or treatment, or arranged with a transporter for disposal or treatment, of hazardous substances it owned or possessed, at the Alco Pacific Site, within the meaning of CERCLA Section 107(a)(3), 42 U S C § 9607(a)(3)

27 Lead, cadmium, arsenic, antimony, PCE, and TCE are "hazardous substances," as defined in Section 101(14) of CERCLA, 42 U S C § 9601(14)

28 There have been releases or threatened releases of hazardous substances, including but not limited to those substances set forth in paragraph 20, from the Alco Pacific Site into the environment, within the meaning of Sections 101(8) and 101(22) of CERCLA, 42 U S C §§ 9601(8) and 9601(22)

29 The releases or threatened releases of hazardous substances from the Alco Pacific Site have caused the State to incur, and to continue to incur, response costs, within the meaning of Section 101(25) of CERCLA, 42 U S C § 9601(25) Costs incurred by the State at the site through June 30, 2001, total at least $851,840

30 The response actions taken by the State to date include, but have not been limited to, the following review and comment on investigations and studies to determine the nature and extent of contamination and to evaluate remedial alternatives to remedy that contamination, developing workplans to determine the nature and extent of contamination and to evaluate remedial alternatives to remedy that contamination, review and oversight of interim removal action at the site, conducting interim removal action and investigation at the site (including but not limited to expending funds to pay contractors or consultants), monitoring conditions and security at the site, and enforcement activities

31 The actions taken by the State in response to releases or threatened releases

of hazardous substances from the Alco Pacific Site are not inconsistent with the National Contingency Plan ("NCP"), 40 C F R Part 300

32 Pursuant to Section 107(a) of CERCLA, 42 U S C § 9607(a), defendants are jointly and severally liable to the State for all response costs incurred by the State in response to releases or threatened releases of hazardous substances from the Alco Pacific Site

33 Pursuant to section 113(g)(2) of CERCLA, 42 U S C § 9613(g)(2), Plaintiff is entitled to a declaratory judgment that each defendant is jointly and severally liable to plaintiff in any subsequent action brought by plaintiff to recover further response costs or damages incurred in response to the release and/or threatened release of hazardous substances at and from the Alco Pacific Site

PRAYER FOR RELIEF

WHEREFORE, plaintiff State of California Department of Toxic Substances Control prays for judgment against each of the defendants as follows

1 For a judgment that each defendant is jointly and severally liable to DTSC for all response costs, including without limitation investigative costs, oversight costs, enforcement costs, and costs of work performed by contractors and consultants, incurred by DTSC in response to the release and/or threatened release of hazardous substances at and from the Alco Pacific Site, and interest, in an amount to be determined at trial,

2 For a declaration that each defendant is jointly and severally liable to DTSC for all future response costs, including without limitation investigative costs, oversight costs, enforcement costs, and costs of work performed by contractors and consultants, to be incurred by DTSC in response to the release and/or threatened release of hazardous substances at and from the Alco Pacific Site,

3 For costs of this suit,

4 For attorneys' fees, and

///

5 For such other and further relief as the Court deems just and proper

Dated October 29, 2001

Respectfully submitted,

BILL LOCKYER, Attorney General of the
State of California

By Sean B Hecht
SEAN B HECHT
Deputy Attorney General

Attorneys for Plaintiff State of California
Department of Toxic Substances Control

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL PLAINTIFF(S), v ALCO PACIFIC, INC. (See attachment for additional defendants.) DEFENDANT(S)	CASE NUMBER CV- 01- 09294 MMM FMOx SUMMONS

TO THE ABOVE-NAMED DEFENDANT(S)

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney

SEAN B. HECHT, whose address is

CALIFORNIA DEPARTMENT OF JUSTICE
300 South Spring Street, Suite 5000
Los Angeles, California 90013
Tel. No. (213) 897-0628

COPY

An answer to the ☒ COMPLAINT, ☐ _____ AMENDED COMPLAINT,
(1st 2nd etc)
☐ COUNTERCLAIM, ☐ CROSS-CLAIM which is herewith served upon you within 20 days after service of this summons upon you, exclusive of the day of service If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint

CLERK, U S DISTRICT COURT

DATE OCT 29 2001

By A. FEDUNAK SEAL
Deputy Clerk

(SEAL OF THE COURT)

ATTACHMENT TO SUMMONS

STATE OF CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL
v ALCO PACIFIC, INC

ADDITIONAL DEFENDANTS

MORRIS P KIRK, ALLIED PRECIOUS METALS RECYCLING COMPANY, INC , DAVIS WIRE CORPORATION, EXIDE TECHNOLOGIES, P KAY METAL SUPPLY, INC , LEAD PRODUCTS COMPANY, INC , PASMINCO, INCORPORATED, QUEMETCO, INC , RSR CORPORATION, J L SHEPHERD AND ASSOCIATES, and DOES 1 through 10, inclusive

Exhibit C

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of	)	Docket No HWCA 01/02-3027
	)	
Exide Technologies	)	Consent Order
2700 South Indiana Avenue	)	
Vernon, California 90023	)	Health and Safety Code
	)	Section 25187
Respondent	)	
	)	

The State Department of Toxic Substances Control (Department) and Exide Technologies (Respondent) enter into this Consent Order (Order) and agree as follows

1 A dispute exists regarding the following violation alleged by the Department

1 1 Respondent violated Health and Safety Code section 25201 (a) in that on or about March 20, 2000, Respondent stored hazardous waste (used lead-acid batteries) at Diversified Warehouse and Distribution located at 2415 Firestone Boulevard, Southgate, California, and from February 1, 2000 to March 20, 2000, Respondent stored hazardous waste (used lead-acid batteries) at Pacific States Logistics Management, LLC, located at 3000 Walnut Avenue, Long Beach, California, without authorization from the Department to use such locations for storage of hazardous waste

2 The parties wish to avoid the expense of further litigation and to ensure prompt compliance with the applicable State hazardous waste management requirements

3 Jurisdiction exists pursuant to Health and Safety Code section 25187

Dated 1/02/2003

Signature of Respondent's Representative

Neal S Lebo
Vice President
Global Environment, Health & Safety
Typed or Printed Name and Title of Respondent's Representative

Dated 1/08/2003

Mukul Agarwal, Unit Chief
Statewide Compliance Division
Department of Toxic Substances Control

ENTER JUL 16 2003
SEND.
Miller
CMR

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

THOMAS L SANSONETTI
Assistant Attorney General
Environment & Natural Resources Division

SOROUSH RICHARD SHEHABI
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Attorneys for Plaintiff United States of America
(See next page for additional counsel)

FILED
CLERK, U S DISTRICT COURT
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JUL 14 2003
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

CV 97-8230

ENTERED
CLERK, U S DISTRICT COURT
JUL 16 2003
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d)

2003 JUL -3 AM 11:47

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, and STATE OF CALIFORNIA, on behalf of the Department of Toxic Substances Control, Plaintiffs,	Consolidated Cases (1) CV 98-0760 TJH (JGx) (2) CV 97-8230 TJH (RNBx) (3) CV 96-6634 TJH (RNBx)
v	Partial Consent Decree For Fairchild Holding Corporation
OIL & SOLVENT PROCESS COMPANY, CHEMICAL WASTE MANAGEMENT, INC., FAIRCHILD HOLDING CORPORATION, and R H PETERSON COMPANY, Defendants	Hon. Terry J Hatter

33

BILL LOCKYER
Attorney General of the State of California

THEODORA BERGER
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Attorneys for Plaintiff State of California Department of Toxic Substances Control

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PARTIAL CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed two complaints in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred and to be incurred by the United States for response actions taken at or in connection with the release or threatened release of hazardous substances at the Suburban Operable Unit of the San Gabriel Valley Superfund Sites, Areas 1-4, located in Los Angeles County, California.

B The State of California ("State"), on behalf of the State Department of Toxic Substances Control ("DTSC"), also filed a complaint in this matter pursuant to Section 107 of CERCLA, 42 U S C § 9607 DTSC in its complaint seeks judgment against all defendants, jointly and severally, for all costs incurred by the state including legal expenses and interest, in connection with a release or threatened release of hazardous substances at the Suburban Operable Unit of the San Gabriel Valley Superfund Sites. DTSC also seeks declaratory judgment pursuant to § 113(g)(2) of CERCLA, 42 U S C. § 9613(g)(2), that the defendants, jointly and severally, are liable for all future response costs to be incurred by DTSC at this site

C Defendant Fairchild Holding Corporation ("Settling Defendant") does not admit and expressly deny any liability to

Plaintiffs arising out of the transactions or occurrences alleged in the complaints The Plaintiffs and Settling Defendant agree that neither this Consent Decree, nor entry into settlement, nor any payments pursuant to this Consent Decree shall constitute or be construed as a finding or an admission, adjudication or acknowledgment of any fact or law, or of any liability, fault or wrongdoing, or evidence of such, or an admission of violation of any law, rule or regulation by Settling Defendant.

D. The purpose of this Consent Decree is to avoid prolonged litigation and to provide for Settling Defendant's payment of specified amounts of the past response costs for the Suburban Operable Unit of the San Gabriel Valley Superfund Sites. The parties to this Consent Decree recognize that Settling Defendant's payment represents only a part of the total past costs of the Suburban Operable Unit and of the past costs of basin-wide investigations relating to their former properties located within the Suburban Operable Unit. In entering into this Consent Decree, the Plaintiffs have considered the circumstances of the releases and threatened releases of hazardous substances in the Basin, the involvement of Settling Defendant in the ownership and operation of a facility located in the Suburban Operable Unit, and litigation risks in connection with the Settling Defendant.

E. The United States, DTSC and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and

complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the parties to this Consent Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1 This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III PARTIES BOUND

2. This Consent Decree is binding upon the United States and DTSC, and upon Settling Defendant and its successors and assigns Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a "Basin-wide Response Costs" shall mean all costs, including but not limited to direct and indirect costs, together

with accrued Interest, that the United States and DTSC have paid for Basin-wide/non-operable unit specific response actions in connection with the San Gabriel Valley Superfund Sites, Areas 1-4

b "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U S C § 9601, et seq.

c. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control

d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, 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

f "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States

e. "DTSC" shall mean the California Department of Toxic Substances Control and any successor departments or agencies

g. "DTSC Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, together with accrued Interest, that DTSC, and the State on behalf of DTSC, have paid through the date of lodging of this Consent Decree in response to the release or threatened release of

hazardous substances at or in connection with the Site, but not including amounts reimbursed to DTSC by EPA.

h. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States

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

j. "Interest" shall mean interest at the current rate specified for interest on investments of the 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).

k. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

l "Parties" shall mean the United States, the DTSC, and Settling Defendant

m "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs and that portion of the Basin-wide Response Costs, that EPA, and DOJ on behalf of EPA, have paid at or in connection with the Site through the date of lodging of this Consent Decree, plus accrued Interest on all such costs through such date.

n "Plaintiffs" shall mean the United States and the California Department of Toxic Substances Control

o. "San Gabriel Valley Superfund Sites Special Account" shall mean the special account established for the Site

by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

p. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

q. "Settling Defendant" shall mean Fairchild Holding Corporation.

r. "Site" shall mean the Suburban Operable Unit of the San Gabriel Valley Superfund Sites, Areas 1,2 and 4, including the site formerly owned and operated by Fairchild Holding Corporation, located at 13001 East Temple Avenue in the City of Industry, in Los Angeles County, California, and all areas that are, or become, contaminated by past releases of chlorinated solvents and "BTEX" compounds (Benzene, Toluene, Ethylbenzene and Xylene) emanating therefrom.

s. "State" shall mean the State of California.

t. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to the EPA Hazardous Substance Superfund. Settling Defendant shall pay to the EPA Hazardous Substance Superfund $712,500 in reimbursement of Past Response Costs according to the following schedule:

a. $237,500 by January 7, 2003, or within 15 days of entry of this Consent Decree, whichever is later;

b. $237,500 by April 1, 2003,

c. $237,500 by June 30, 2003.

These payments, if timely made, include the Interest accrued from the time of settlement. Settling Defendant shall make these payments by FedWire Electronic Funds Transfer ("EFT") to the U.S Department of Justice account in accordance with current EFT procedures, referencing the San Gabriel Valley Superfund Sites, Area 1 (Suburban Operable Unit), the USAO File Number, the EPA Region and Site Spill ID Number 09-M3, and DOJ Case Number 90-11-3-1691 Settling Defendant shall make these payments in accordance with instructions provided by the Financial Litigation Unit of the U.S. Attorney's Office in the Central District of California following lodging of the Consent Decree Any payments received by the Department of Justice after 4.00 p.m. Eastern Time shall be credited on the next business day. For each payment, Settling Defendant shall send notice to EPA and DOJ that the payment has been made as specified in Section XIII (Notices and Submissions)

5 The amounts paid by Settling Defendant to the United States pursuant to Paragraph 4 shall be deposited in the San Gabriel Valley Superfund Sites Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the San Gabriel Valley Superfund Sites, or transferred by EPA to the EPA Hazardous Substance Superfund.

6 Payment of Past Response Costs to DTSC Settling Defendant shall pay to DTSC $37,500 in reimbursement of Past Response Costs according to the following schedule

a $12,500 by January 7, 2003, or within 15 days of entry of this Consent Decree, whichever is later;

b. $12,500 by April 1, 2003,

c. $12,500 by July 1, 2003.

These payments, if timely made, include the Interest accrued from the time of settlement. Settling Defendant shall make these payments by certified check or cashier's check, made payable to Cashier, Department of Toxic Substances Control, which shall be forwarded to:

Department of Toxic Substances Control
State of California
Accounting Office
1001 I Street
Sacramento, California 95814

Settling Defendant shall send a transmittal letter with its check referencing the San Gabriel Valley Superfund Sites, Areas 1-4 (Suburban Operable Unit), Project Code No 300131 Settling Defendant shall also send a copy of each check and transmittal letter to DTSC, EPA and DOJ as specified in Section XIII (Notices and Submissions).

VI FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

7. Interest on Late Payments. In the event that any payment required by Section V (Reimbursement of Response Costs), or Section VI, Paragraph 8 (Stipulated Penalties), is not received when due, Interest shall accrue on the unpaid balance beginning on the date due and through the date of payment

8. Stipulated Penalties

a If any amounts due to the United States or to DTSC under this Consent Decree are not paid by the required date,

Settling Defendant shall pay to the United States if the delayed payment is for Past Response Costs, or to DTSC if the delayed payment is for DTSC Past Response Costs, as a stipulated penalty, in addition to any Interest required by Paragraph 7, $500 per violation per day for the first 15 days and $1,000 thereafter per violation per day that Settling Defendant's payment is late.

b If Settling Defendant does not comply with Section X (Site Access), or Section XI (Access to Information), Settling Defendant shall pay to the United States, as a stipulated penalty, $1,000 per violation per day of such noncompliance

c Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA or DTSC. All payments to the United States under this Paragraph shall be made by certified or cashier's check payable to the "EPA Hazardous Substance Superfund" and shall be sent to:

U.S. Environmental Protection Agency, Region IX
Superfund Accounting
P O. Box 360863M
Pittsburgh, Pennsylvania 15251
Attention Collection Officer for Superfund

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the San Gabriel Valley Superfund Sites, Areas 1-4 (Suburban Operable Unit), the USAO File Number, EPA Region and Site Spill ID Number 09-M3, and DOJ Case Number 90-11-3-1691 Copies of the check[s] paid pursuant to this Paragraph, and any accompanying transmittal letter[s], shall be sent to EPA and DOJ as provided in Section XIII (Notices and Submissions)

d All payments to DTSC under this Paragraph shall be made by certified or cashier's check made payable to Cashier, Department of Toxic Substances Control, and shall be sent to:

Department of Toxic Substances Control
State of California
Accounting Office
1001 I Street
Sacramento, California 95814

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, and the San Gabriel Valley Superfund Sites, Areas 1-4 (Suburban Operable Unit), Project Code No. 300131. Settling Defendant shall also send a copy of its check and transmittal letter to DTSC as specified in Section XIII (Notices and Submissions)

e Penalties shall accrue as provided in Paragraph 8 regardless of whether Plaintiffs have notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. However, payment shall be considered timely so long as Settling Defendant demonstrates that it has given timely instructions to a competent financial institution for the subject EFT to be made in a timely manner, and has promptly after the transfer obtained a written verification from the financial institution that the EFT was made in accordance with Settling Defendant's instructions All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity

Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

9 If the United States or DTSC brings an action to enforce this Consent Decree against Settling Defendant, Settling Defendant shall reimburse the United States and DTSC for all costs of such action, including but not limited to costs of attorney time.

10 Payments made under Paragraphs 7 through 9 shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree

11. Notwithstanding any other provision of this Section, the United States and/or DTSC may, in their respective unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued to the respective Plaintiff pursuant to this Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFFS

12. Covenant Not to Sue by United States Except as specifically provided in Paragraph 14 (Reservation of Rights by United States and DTSC), the United States covenants not to sue Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S C § 9607(a), to recover Past Response Costs This covenant not to sue shall take effect upon payment to EPA of all amounts required from Settling Defendant by Section V, Paragraph 4 (Payment of Response Costs to the United States) and Section VI, Paragraphs 7 (Interest on Late Payments) and 8(a) (Stipulated Penalties). Settling Defendant s covenant not to sue is

conditioned upon the satisfactory performance of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and its respective employees, officers, and directors, but only to the extent that the liability of such employees, officers, and directors is based on their status, and they have acted in their capacities as employees, officers, or directors. This covenant not to sue does not extend to any other person.

13 Covenant Not to Sue by DTSC Except as specifically provided in Paragraph 14 (Reservation of Rights by United States and DTSC), DTSC covenants not to sue Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and comparable state law to recover DTSC Past Response Costs. This covenant not to sue shall take effect upon payment to DTSC of all amounts required from Settling Defendant by Section V, Paragraph 6 (Payment of Response Costs to DTSC) and Section VI, Paragraphs 7 (Interest on Late Payments) and 8(a) (Stipulated Penalties). Settling Defendant's covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and its respective employees, officers, and directors, but only to the extent that the liability of such employees, officers, and directors is based on their status, and they have acted in their capacities as employees, officers, or directors. This covenant not to sue does not extend to any other person.

14. Reservation of Rights by United States and DTSC. The covenants not to sue set forth in Paragraphs 12 and 13 do not pertain to any matters other than those expressly specified therein. The United States and DTSC reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to

a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;

b liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;

c criminal liability,

d. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U S.C. § 6906;

e. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs,

f. liability for costs incurred or to be incurred by DTSC that are not within the definition of DTSC Past Response Costs,

g liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances outside of the Site, and

h. liability arising from Settling Defendant's future acts or omissions regarding soil and groundwater contamination at its former facility

VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANT

15 Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or DTSC, or their contractors or employees, with respect to Past Response Costs, DTSC Past Response Costs or this Consent Decree, including but not limited to

a. any direct or indirect claim for reimbursement from the 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 claims arising under the United States Constitution, the California Constitution, State law, the Tucker Act, 28 U.S C § 1491, or common law, arising out of or relating to past or future access to, imposition of deed restrictions or easements, or other restrictions on the use and enjoyment of property identified in Paragraph 18 owned or controlled by the Settling Defendant;

c any claims for costs, fees or expenses incurred in this action (including claims arising under the Equal Access to Justice Act, as amended, 28 U S.C § 2412) or under any provision of State law.

d. any claim arising out of response actions at the Site for which the Past Response Costs or DTSC Past Response Costs were incurred, and

e. any claim against the United States or DTSC pursuant to Sections 107 and 113 of CERCLA, 42 U S.C §§ 9607 and

9613, relating to Past Response Costs or DTSC Past Response Costs

16. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S C. § 9611, or 40 C.F R § 300 700(d).

IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

17. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as expressly provided otherwise herein, each of the Parties reserves any and all rights (including, but not limited to, any right to contribution), 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

18 The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant and its respective employees, officers, and directors (but only to the extent that the liability of such employees, officers, and directors is based on their status, and they have acted in their capacities as employees, officers, or directors), are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U S C § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree shall mean all response costs incurred as a result of past

releases of chlorinated solvents and "BTEX" compounds (Benzene, Toluene Ethylbenzene and Xylene) from Settling Defendant's former facility located at 13001 East Temple Avenue, City of Industry, California, except that the "matters addressed" exclude any EPA and DTSC response costs paid after the date of lodging of this Consent Decree, and any response costs incurred in connection with future groundwater remediation for the Site, including groundwater remediation at the above facility

19. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA, DOJ and DTSC in writing no later than 30 days prior to the initiation of such suit or claim Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA, DOJ and DTSC in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA, DOJ and DTSC 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 Consent Decree.

20 In any subsequent administrative or judicial proceeding initiated by the United States or DTSC for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant 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 by the United States or DTSC in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiffs set forth in Section VII. Except as provided in Paragraph 15 and this Paragraph, Settling Defendant does not waive and expressly reserves all claims or defenses it may have.

X. SITE ACCESS

21 Commencing upon the date of lodging of this Consent Decree, Settling Defendant agrees, to the extent that it has access rights to the property identified in Paragraph 18, to provide the United States, DTSC, and their representatives, including EPA and its contractors, access at all reasonable times to such property for the purpose of conducting any response activity related to the Site, including but not limited to:

a Monitoring of investigation, removal, remedial or other activities at the Site,

b Verifying any data or information submitted to the United States or DTSC,

c. Conducting investigations relating to contamination at or near the Site,

d. Obtaining samples,

e Assessing the need for, planning, or implementing response actions at or near the Site; and

f Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling

Defendant or its agents, consistent with Section XI (Access to Information).

22 Notwithstanding any provision of this Consent Decree, the United States and DTSC retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. § 6927, and any other applicable statutes or regulations

XI. ACCESS TO INFORMATION

23 Settling Defendant shall provide to EPA and DTSC, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

24. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b) Documents or information determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B If no claim of confidentiality accompanies documents or information when they are submitted to EPA or DTSC, or if EPA

has notified Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendant.

b. Settling Defendant may assert that certain documents, records or other information are privileged under the attorney-client privilege or any other privilege recognized by federal or California state law. If Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide Plaintiffs with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information, 3) the name and title of the author of the document, record, or information, 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information, and 6) the privilege asserted However, no documents, reports or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiffs in redacted form to mask the privileged information only. Settling Defendant shall retain all records and documents that it claims to be privileged until the United States and DTSC have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendant's favor.

c. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site as provided in Section 104(e)(7)(f) of CERCLA, 42 U S.C § 9604(e)(7)(f).

XII. RETENTION OF RECORDS

25. Until 10 years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary

26 After the conclusion of the document retention period in the preceding Paragraph, Settling Defendant shall notify EPA, DOJ and DTSC at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, DOJ or DTSC, shall deliver any such records or documents to EPA or DTSC Settling Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiffs with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee

and recipient; 5) a description of the subject of the document, record, or information, and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiffs in redacted form to mask the privileged information only Settling Defendant shall retain all records and documents that they claim to be privileged until the United States and DTSC have had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendant's favor

27 By signing this Consent Decree, Settling Defendant certifies that, to the best of its knowledge and belief, it has·

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to Plaintiffs, all non-privileged 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 not altered, mutilated, discarded, destroyed or otherwise disposed of any unique 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 Settling Defendant regarding the Site, other than in the ordinary course of business in compliance with federal and state laws and not for an improper purpose; and

c. fully complied 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).

XIII. NOTICES AND SUBMISSIONS

28 Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, DTSC, and Settling Defendant, respectively

As to the United States or DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-1691)
P O. Box 7611
Washington, D C 20044-7611
202-616-8766, 202-514-2583 (fax)

As to EPA:

Remedial Project Manager, Suburban Operable Unit
San Gabriel Valley Superfund Site, Area 1
Superfund Division (SFD-7)
U.S Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

Brett P Moffatt
Assistant Regional Counsel (ORC-3)
U S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3946, (415) 947-3570 (fax)

As to the Department of Toxic Substances Control:

Ann Rushton
Deputy Attorney General, Environment Section
California Department of Justice
300 South Spring Street, #5000
Los Angeles, California 90013
213-897-2608, 213-897-2802 (fax)

Jacalyn Spiszman
Project Manager, Site Mitigation Branch
Department of Toxic Substances Control, Region 3
5796 Corporate Avenue
Cypress, California 90630
714-484-5460, 714-484-5438 (fax)

As to Settling Defendant:

Donald E Miller
General Counsel
The Fairchild Corporation
45025 Aviation Drive, Suite 400
Dulles, Virginia 20166-7516
703-478-5800; 703-478-5767 (fax)

Michael Hodge
Assistant General Counsel
The Fairchild Corporation
45025 Aviation Drive, Suite 400
Dulles, Virginia 20166-7516
703-478-5858; 703-478-5767 (fax)

XV. RETENTION OF JURISDICTION

29 This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree

XVI. INTEGRATION/APPENDICES

30 This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

31 This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate Settling Defendant consents to the entry of this Consent Decree without further notice

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

XVII. EFFECTIVE DATE

33 The effective date of this Consent Decree shall be the date upon which it is entered by the Court

XVIII. SIGNATORIES/SERVICE

34. Each undersigned representative of Settling Defendant, the Assistant Attorney General for the Environment and Natural

Resources Division of the United States Department of Justice and the Deputy Attorney General of the California Department of Justice, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document

35 Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree

36 Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of Settling Defendant with respect to all matters arising under or relating to this Consent Decree Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons

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XIX. FINAL JUDGMENT

37. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, California Department of Toxic Substances Control and Fairchild Holding Corporation. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed R Civ P. 54 and 58.

SO ORDERED THIS 14th DAY OF July, 2003.

Honorable Terry J. Hatter
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of UNITED STATES et al v OIL AND SOLVENT et al Consolidated Cases CV 98-0760-TJH, CV 97-8230, CV 96-6634 TJH, relating to the Suburban Operable Unit of the San Gabriel Valley Superfund Sites

FOR THE UNITED STATES OF AMERICA

Date 3 5.03

THOMAS L SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Date 6/20/03

SOROUSH RICHARD SHEHABI
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U S Department of Justice
202-616-8766, Fax· 202-514-2583

DEBRA W. YANG
United States Attorney
LEON W. WEIDMAN
Assistant United States Attorney
Chief, Civil Division
MONICA MILLER
Assistant United States Attorney

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FOR THE UNITED STATES OF AMERICA

Date. 10 June 2003

KEITH TAKATA
Director, Superfund Division
U.S. Environmental Protection Agency
Region IX

Date. April 11, 2003

BRETT MOFFATT
Assistant Regional Counsel, Region IX
U.S. Environmental Protection Agency

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FOR THE STATE OF CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Date: 2/28/03

THOMAS COTA
Branch Chief, Southern California Cleanup Operations
Cypress Office
California Department of Toxic Substances Control

Date - March 4 2003

ANN RUSHTON
Deputy Attorney General
California Department of Justice

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FOR DEFENDANT: Fairchild Holding Corporation

12/20/02
Date

Signature _____

Name (print). Donald E Miller

Title: Vice President

Address. 45025 Aviation Dr, #400
Dulles, VA 20166

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

Name (print) B Michael Hodge

Title Asst General Counsel

Address 45025 Aviation Dr, #400
Dulles, VA 20166

Ph Number 703-478-5858