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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF: Lorentz Barrel and Drum Site San Jose, California Proceeding under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9622(g)(4)	U.S. EPA Docket No. 97-10 ADMINISTRATIVE ORDER ON CONSENT

I. JURISDICTION

1. This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, ("CERCLA"), Pub. L. No. 99-499, 42 U.S.C. § 9622(g)(4), in order to settle specified United States Environmental Protection Agency ("EPA") claims under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), further delegated to the Regional Administrators of EPA by EPA Delegation No. 14-14-E (issued May 11, 1994, amended by memorandum May 19, 1995). Within EPA Region IX, this authority has been delegated to the Hazardous Waste Management Division Director by Regional Order R290.45 (October 26, 1988). The State has jurisdiction over the matters set forth herein pursuant to the California Hazardous Substance Account Act, California Health and Safety Code Section 25300 et seq. ("the California Hazardous Substance Account Act") and Section 121(f) of CERCLA, 42 U.S.C. § 9621(f). The State has claims against the Settling Parties pursuant to CERCLA Section 107(a), 42 U.S.C. § 9607(a).

2. This Administrative Order on Consent is issued to each person identified in Appendix 1 ("Respondents"). Appendix 1 is incorporated herein by reference. The list of Respondents who submit executed signature pages to this Administrative Order on Consent by the date specified by EPA is contained in Appendix 2 (the "Settling Parties"). Appendix 2 is incorporated herein by reference. Each of the Settling Parties identified in Appendix 2 certifies that, to the best of its knowledge, it contributed no more than 1.0% (25,784 barrels) of the total hazardous substances sent to the Lorentz Barrel and Drum Site in San Jose, California ("the Site"), as this information is reflected in the July 29, 1994, waste-in list, and that it contributed waste of minimal toxic and hazardous effect in comparison to the other waste at the Site. This Consent Order provides for the reimbursement of response costs which have been or may be incurred in response to releases or threatened releases of hazardous substances, pollutants or contaminants at the Site.

3. This Consent Order was executed by the Parties in good faith to avoid the expense and delay of litigation over the matters addressed by this Consent Order. Each Settling Party agrees to undertake all actions required by the terms and conditions of this Consent Order. Each Settling Party further consents to and will not contest EPA jurisdiction to issue this Consent Order or to implement or enforce its terms.

4. The Parties agree that this Consent Order is entered into without any admission of liability for any purpose as to any matter arising out of the transactions or occurrences alleged in the Order.

II. STATEMENT OF PURPOSE

5. By entering into this Consent Order, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site that allows the Settling Parties to settle their alleged liability for response costs that EPA and the State incurred or may incur at or in connection with the Site, in exchange for a release from further civil liabilities in connection with the Site, thereby avoiding difficult, prolonged, and complicated litigation among the Parties;

b. to simplify the remaining enforcement activities concerning the Site by eliminating a substantial number of parties from further involvement in the case; and

c. to reimburse EPA and the State for the Settling Parties' share of liabilities in connection with the Site and to reduce the alleged potential liabilities of the other potentially responsible parties without waiving EPA and the State's assertion of joint and several liability against any persons who are not signatories to this settlement.

III. PARTIES BOUND

6. This Consent Order shall apply to and be binding upon the Parties and their successors. Each signatory to this Consent Order represents that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party represented by him or her. Any change in ownership, political configuration or corporate status of a Settling Party, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Party's responsibilities under this Consent Order. In the event of a conflict between this Order and any appendix, the Order shall control.

IV. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Order, including the attached appendices, the following definitions shall apply:

a. "Administrative Order on Consent" shall mean this "Consent Order" or "Order" and all appendices attached hereto; provided, however, that any reference to "EPA Order 92-29" is meant as a reference to that preexisting administrative order for removal work, and any reference to "EPA Order 95-01" or "EPA Order 96-01" is meant as a reference to those preexisting administrative orders for de minimis settlement.

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

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

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies.

e. "EPA's Future Response Costs" shall mean those costs incurred by the United States in connection with the Site on or after January 1, 1994, including but not limited to direct and indirect costs that the United States incurs in implementing or overseeing the remedy, or in enforcing this Consent Order.

f. "EPA's Past Response Costs" shall mean those costs, including but not limited to direct and indirect costs and interest, incurred by the United States prior to January 1, 1994, in connection with the Site.

g. "Paragraph" shall mean a portion of this Consent Order identified by an Arabic numeral.

h. "Parties" shall mean "EPA," the "State" and the "Settling Parties."

i. "Prior Settlors" shall mean those de minimis parties that had entered into one of the two settlements described in Paragraphs 19 or 20 of this Order (the judicial Consent Decree and EPA Order Number 92-29).

j. "Respondents" shall mean those individuals, corporations and other entities listed in Appendix 1.

k. "Section" shall mean a portion of this Consent Order identified by a Roman numeral.

l. "Settling Parties" shall mean those entities listed in Appendix 2, who submit executed signature pages to this Administrative Order on Consent by the date specified by EPA.

m. "Site" shall mean the Lorentz Barrel and Drum Superfund Site, located in San Jose, California, including all land previously used for the Lorentz Barrel and Drum operations ("LB&D operations") and all areas where contamination emanating from the LB&D operations has come to be located.

n. "State" shall mean DTSC, California's Hazardous Substance Account and California's Hazardous Substance Cleanup Fund.

o. The "State's Future Response Costs" shall mean those costs incurred by the State in connection with the Site on or after January 1, 1994, including but not limited to direct and indirect costs that the State incurs in implementing and overseeing the remedy, or in enforcing this Consent Order.

p. The "State's Past Response Costs" shall mean those costs, including but not limited to direct and indirect costs and interest, incurred by the State prior to January 1, 1994, in connection with the Site.

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

V. STATEMENT OF FACTS

8. The Lorentz Barrel and Drum ("LB&D") Superfund Site is located approximately 13 miles southeast of the southern tip of the San Francisco Bay, in San Jose, California. The Site is defined as all land previously used for LB&D operations and all areas where contamination emanating from the LB&D operations has come to be located. The Site includes a contaminated shallow groundwater plume area and properties containing contaminated soil, structures, debris and residues.

9. In 1984, EPA completed a Preliminary Assessment and Site Investigation, and proposed the Site for the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the NPL on October 4, 1987. The Site is listed in DTSC's Expenditure Plan for the Hazardous Substance Cleanup Bond Act of 1984, pursuant to Health and Safety Code Section 25356.

10. The Site was operated as a barrel and drum recycling facility from 1947 to 1987. Empty or nearly empty barrels and drums, many of which contained residues of hazardous substances, were to sent to the LB&D Site by over 3,000 private and public sources throughout California and Nevada. LB&D Company personnel at the LB&D operations then cleaned, resealed and repainted the barrels and drums for resale or reuse. Private sources included companies and individuals from the chemical, electronics, paint, ink, paper, health care and food industries. Public sources

included military bases, research laboratories, cities and counties. Many drums and barrels arrived at the Site containing residual aqueous wastes, organic solvents, acids, oxidizers and oils. The soil and shallow aquifer at the Site are contaminated with the residual contents of the recycled barrels and drums, as well as with the chemicals used in the recycling operation.

11. In 1968, a City of San Jose industrial waste inspector ordered the LB&D Company to switch sump discharge from the Coyote Creek storm drain to the sanitary sewer. In the 1980's, various local, State, and Federal agencies investigated the LB&D operations and cited the owner for numerous violations of environmental laws. In response, the owner of the LB&D Company performed some clean-up work, but failed to remediate the Site adequately. The California Department of Health Services ("DHS") took over the clean-up of the Site in May, 1987. (DTSC is a successor agency to DHS. Prior to 1991, the jurisdiction of DTSC pursuant to Health and Safety Code, division 20, chapters 6.5 and 6.8 was carried out first as a program and then as a division of DHS. In 1991, through the Governor's Reorganization Plan No. 1, dated May 17, 1991 this jurisdiction was transferred to DTSC. All references to DTSC in this Consent Order include jurisdiction exercised by and actions conducted by the Toxic Substances Control Program and Toxic Substances Control Division of the Department of Health Services prior to the enactment of this reorganization plan.) In late 1987 and early 1988, DTSC and EPA conducted emergency response actions at the Site, including the removal of approximately 3,000 cubic yards of soils and sludge at the main sump area that were highly contaminated with polychlorinated biphenyls ("PCBs") and other hazardous substances. These wastes were transported to Kettlemen Hills, a permitted hazardous waste facility, for disposal. More than 26,000 drums and barrels were also crushed and transported to Kettlemen Hills for disposal. In December, 1987, DTSC turned over the lead role at the Site to EPA.

12. Hazardous substances within the definitions of both Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and Sections 25316 and 25317 of the California Health and Safety Code, have been or threaten to be released into the environment at or from the Site. The contaminants at the Site are primarily volatile organic compounds ("VOCs"), pesticides, PCBs and some heavy metals.

13. Based on preliminary site assessment studies, EPA determined that contamination of the shallow groundwater aquifer at the Site presented an imminent hazard to human health and the environment, requiring an expedited cleanup. The shallow aquifer overlies the local municipal drinking water aquifer. EPA studies showed that the VOC-contaminated shallow groundwater plume had migrated nearly 2,000 feet to the north of the original LB&D operations. In May 1988, EPA completed an Engineering Evaluation/Cost Analysis and determined that a groundwater pumping and treatment system would be necessary to clean up the shallow

aquifer at the Site. This determination was set forth in a Record of Decision dated September 25, 1988.

14. In 1988, EPA began conducting a Remedial Investigation and Feasibility Study to define the extent of additional contamination at the Site and to evaluate methods to address the remaining problems. EPA issued its Record of Decision regarding the additional cleanup necessary at the Site on August 26, 1993. This selected remedy is to include removal of additional contaminated soils and debris, construction of an asphaltic concrete "cap" over the Site and in-situ treatment of VOC-contaminated soil with soil vapor extraction.

15. In response to a release or threatened release of hazardous substances into the environment, EPA has undertaken response action at the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response action in the future.

16. In response to a release or threatened release of hazardous substances into the environment, DTSC has undertaken response action at the Site under California Health and Safety Code Sections 25355 and 25358.3, and will undertake response action in the future.

17. In performing this response action, the United States has incurred and will continue to incur response costs at or in connection with the Site. As of December 31, 1993, the United States had incurred at least $8,957,680.00 in past costs.

18. In performing this response action, the State has incurred and will continue to incur response costs at or in connection with the Site. As of December 31, 1993, the State had incurred at least $4,653,382.00 in past costs.

19. In 1990, EPA entered into a judicial Consent Decree with the following eleven potentially responsible parties: E.I. duPont de Nemours & Company, Union Oil Company of California, KTI Chemicals Inc., Ashland Oil, Inc., International Business Machines Corp., Romic Chemical Corporation, Vi-Tex Packaging, Inc., Esselte Pendaflex Corporation, H.H. Robertson Company, Great Western Chemical Company, and A.J. Daw Printing Ink Company, Inc. U.S. v. E.I. duPont de Nemours & Co., et al., (N.D. Cal.) C-90-0488. The signatories to the Decree, which was entered on July 9, 1990, have constructed and are currently operating the treatment system that will clean up the shallow groundwater aquifer. The Decree also provides that these parties will pay response costs related to the United States' oversight of the work performed under the Decree. The work performed and to be performed by this group and the costs to be paid pursuant to the Decree will total an estimated $7,022,877.00. See Appendix 3. The barrels attributed to these parties by EPA total in the aggregate 237,737 in the July 29, 1994, waste-in list. Therefore, this group of parties has agreed to

perform work and pay costs, the value of which collectively represents approximately $29.54 per barrel.

20. On October 7, 1992, EPA entered into a separate administrative settlement agreement with the following seven companies: Eastman Kodak Company, Grace Sierra Horticultural Products Company, Hewlett-Packard Company, Minwax Company, Inc., National Semiconductor Corporation, National Starch and Chemical Corporation and Solvent Service Company, Inc. EPA Order No. 92-29. That agreement requires the companies to remove contaminated buildings, contaminated sumps, debris, drums with residues of hazardous substances, and asbestos wastes from the Site. The settlement also provides that these parties will pay response costs related to the United States' oversight of the work performed under the agreement. The work performed and to be performed by this group and the costs to be paid pursuant to this settlement will total an estimated $1,631,271.00. See Appendix 3. The barrels attributed to these parties by EPA total in the aggregate 53,867 in the July 29, 1994 waste-in list. Therefore, this group of parties has agreed to perform work and pay costs, the value of which collectively represents approximately $30.28 per barrel.

21. On May 23, 1995, EPA entered into a separate administrative settlement agreement with 88 parties that qualified for a de minimis settlement under §122(g)(4). EPA Order No. 95-01. These 88 parties included 15 of the 16 de minimis parties that had entered into one of the two settlements described in Paragraphs 19 and 20 ("Prior Settlors"), three agencies of the federal government, and 70 other parties that had not entered into one of the prior settlements. That agreement requires the settling parties that are not "Prior Settlors" to pay their allocated share of the total past and projected future response costs at the Site, plus a premium to cover the risk of potential cost overruns and remedy failure that EPA assumes in entering into a de minimis settlement. The parties that settled in EPA Order 95-01 that are not Prior Settlors are paying $19.54 for each barrel they sent to the Site that may have contained hazardous substances. The Prior Settlors that joined the de minimis settlement, EPA Order 95-01, will pay $1,000 each to enter the de minimis settlement since they have undertaken cleanup work at the Site the value of which collectively represents approximately $30.00 per barrel.

22. On May 31, 1996, EPA entered into a separate administrative settlement agreement with 60 parties that qualified for a de minimis settlement under §122(g)(4). EPA Order No. 96-01. These 60 parties included Romic Chemical, the only remaining Prior Settlor that qualified as a de minimis party. EPA Order No. 96-01 required the settling parties that were not "Prior Settlors" to pay $19.54 for each barrel they sent to the Site that may have contained hazardous substances. Romic Chemical paid $1,000 to enter the de minimis settlement since it had undertaken cleanup work at the Site the value of which represents approximately $30.00

per barrel.

23. Information currently known to EPA and DTSC indicates that each Settling Party listed in Appendix 2 to this Consent Order arranged for disposal or treatment at the Site, or arranged with a transporter for disposal or treatment at the Site, of a hazardous substance owned or possessed by such Settling Party, or accepted a hazardous substance for transport to the Site.

24. Information currently known to EPA and DTSC indicates that the amount of hazardous substances contributed to the Site individually by each Settling Party is minimal in comparison to other hazardous substances at the facility, and that the hazardous substances contributed by each Settling Party to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

25. In developing the settlement embodied in this Consent Order, EPA and the State have considered:

a. the costs already incurred or committed in connection with remediating the Site, including EPA's Past Response Costs, the State's Past Response Costs, the costs incurred or committed pursuant to both the Consent Decree in U.S. v. E.I. duPont de Nemours & Co., et al. (N.D. Cal.) C-90-0488 and the administrative settlement embodied in EPA Order 92-29, and the administrative settlements with the de minimis parties embodied in EPA Orders 95-01 and 96-01. The specific amounts or estimates calculated for each of these items is set forth in Appendix 3;

b. the potential costs of remediating the remaining contamination at the Site, including (i) reasonably ascertainable future response costs, including but not limited to the cost of implementing the remedial action consistent with the second Record of Decision for this Site (issued August 26, 1993) and costs for oversight of long term operation and maintenance of the overall remedy for the Site; (ii) possible cost overruns in implementing the second Record of Decision; and (iii) costs which may be incurred if EPA determines that the remedial action consistent with the Record of Decision is not protective of human health and the environment. The specific premiums or estimates calculated for each of these items are forth in Appendix 3; and

c. the price per barrel amount paid by the settling de minimis parties to the administrative settlements with EPA and DTSC embodied in EPA Orders 95-01 and 96-01.

26. Any Respondents identified with a # sign next to their name in Appendix 2 have demonstrated to EPA and DTSC that they are unable to pay their allocated share. EPA has analyzed these Respondents' financial condition and has reduced the settlement amounts these Respondents are required to pay to join this de

minimis settlement as reflected in Appendix 2.

27. The payment required to be made by each Settling Party pursuant to this Consent Order is a minor portion of the total response costs at the Site.

VI. DETERMINATIONS

28. Based upon the Findings of Fact set forth above, EPA has made the following determinations:

a. The Lorentz Barrel and Drum Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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

c. Each Settling Party is a potentially responsible party within the meaning of Sections 107(a) and 122(g)(1) of CERCLA, 42 U.S.C. §§ 9607(a) and 9622(g)(1).

d. There has been an actual or threatened "release" of a hazardous substance from the Site as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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

f. The amount of hazardous substances contributed to the Site by each Settling Party and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Settling Party does not exceed 1.0% (25,784 barrels) of the total hazardous substances sent to the Site as reflected in the July 29, 1994 waste-in list and therefore is minimal in comparison to other hazardous substances at the Site, as required by Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

VII. ORDER

29. Based upon the Findings of Fact and Determinations set forth above, and in consideration of the promises and covenants set forth herein, it is hereby AGREED AND ORDERED as follows.

VIII. PAYMENT

30. Each Settling Party shall pay the amount opposite its name in Appendix 2 to this Consent Order, as required under this Section. In the payment instruction letter issued to Settling Parties pursuant to Paragraph 53 (the "Payment Instruction Letter"), EPA shall instruct the Settling Parties to make their

payments in the following way: the amount in column B of Appendix 2 to EPA (68% of the total in Column A) and the amount in column C of Appendix 2 to the Cashier, DTSC (32% of the total in Column A).

31. Within 60 days of the effective date of this Order the Settling Parties shall pay the amounts by two checks as follows:

a. One certified or cashier's check for the amount as set forth in Column B of Appendix 2 to this Order (68%) shall be made payable to "The Lorentz Superfund Site Special Account" or as otherwise directed by EPA in the Payment Instruction Letter, and the Settling Parties shall send the check to the address provided to the Settling Parties in the Payment Instruction Letter.

b. One certified or cashier's check for the amount as set forth in Column C of Appendix 2 to this Order (32%) shall be made payable to "Cashier, California Department of Toxic Substances Control," and sent to the address provided to Settling Parties in the Payment Instruction Letter.

c. Each check shall reference the site name, the name and address of the Settling Party, and the EPA docket number for this Order, 97-10.

32. The amount paid to EPA pursuant to this Agreement shall be deposited in the Lorentz Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance the response action at or in connection with the Site. Any balance remaining in the Lorentz Special Account shall be transferred by EPA to the EPA Hazardous Substance Superfund as reimbursement for past response costs incurred at or in connection with the Site.

33. Payment of money by Settling Parties into the Lorentz Site Specific Special Account, or the DTSC account is not a fine, penalty or monetary sanction.

34. At the time each Settling Party sends any check pursuant to this Section, that Settling Party shall simultaneously send a copy of such check to the two people listed below:

Ms. Diane Strassmaier, Remedial Project Manager
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (SFD 7-4)
San Francisco, California 94105

Ms. Barbara J. Cook, P.E., Chief
Site Mitigation Branch
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710

IX. CIVIL PENALTIES

35. In addition to any other remedies or sanctions available to EPA, any Settling Party who fails or refuses to comply with any term or condition of this Consent Order shall be subject to a civil penalty of up to $25,000 per day for each such failure or refusal, pursuant to Sections 109 and 122(l) of CERCLA, 42 U.S.C. §§ 9609 and 9622(l).

X. CERTIFICATIONS OF EACH SETTLING PARTY

36. Each Settling Party certifies individually that to the best of its knowledge it contributed no more than 1.0% (25,784 barrels) of the total hazardous substances sent to the Site, as that total is reflected in the July 29, 1994 waste-in list, and that it contributed waste of minimal toxic and hazardous effect in comparison to the other waste at the Site.

37. Each Settling Party further certifies individually that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site since receipt from EPA of an Information Request regarding the Site, pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Provision of false, fictitious, or fraudulent statements or representations to the United States may subject a Respondent to criminal penalties under 18 U.S.C. § 1001.

XI. COVENANTS BY EPA

38. In consideration of the payments that will be made by the Settling Parties under the terms of this Consent Order, and except as specifically provided in Section XIV of this Consent Order, EPA covenants not to sue or take administrative action against any of the Settling Parties pursuant to Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) or 9607(a), and Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6973, relating to the Site. These covenants not to sue shall take effect with respect to each Settling Party upon the receipt of the entire payment from that Settling Party as required by Section VIII of this Consent Order. With respect to each Settling Party, these covenants not to sue are conditioned upon the complete and satisfactory performance by that Settling Party of its obligations under this Consent Order. These covenants not to sue extend only to the Settling Parties and their successors and do not extend to any other person.

XII. COVENANTS BY STATE OF CALIFORNIA

39. In consideration of the payments that will be made by the Settling Parties under the terms of this Consent Order, and except as specifically provided in Section XIV of this Consent Order,

DTSC, California's Hazardous Substance Account and California's Hazardous Substance Cleanup Fund covenant not to sue or take administrative action against any of the Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and the California Hazardous Substance Account Act, California Health and Safety Code Sections 25300 et seq. relating to the Site. These covenants not to sue shall take effect with respect to each Settling Party upon the receipt of the entire payment from that Settling Party as required by Section VIII of this Consent Order. With respect to each Settling Party, these covenants not to sue are conditioned upon the complete and satisfactory performance by that Settling Party of its obligations under this Consent Order. These covenants not to sue extend only to the Settling Parties and their successors and do not extend to any other person.

XIII. COVENANTS NOT TO SUE BY SETTLING PARTIES

40. In consideration of EPA's and the State's covenants not to sue set forth in Sections XI and XII, the Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, DTSC, California's Hazardous Substance Account, or California's Hazardous Substance Cleanup Fund with respect to the Site or this Consent Order, including, but not limited to, any direct or indirect claim under 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, or any claims arising out of response activities at the Site. The covenant not to sue set forth in this Paragraph does not apply to any agencies of the United States that may have contributed hazardous substances to the Site that did not settle with EPA and DTSC in Orders 95-01 OR 96-01 and that are not listed in Appendix 2 of this Consent Order.

41. a. The Settling Parties also agree not to make any claims for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) with respect to the Site. Nothing in this Consent Order shall be deemed to constitute preauthorization of a claim within the meaning of Sections 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 and 9612, or 40 C.F.R. § 300.700(d).

b. The Settling Parties also covenant not to sue and agree not to assert any claims or causes of action with respect to the Site or this Consent Order against any person determined by EPA to have contributed less than 25,784 barrels (1.0% of the total hazardous substances sent to the Site, based on the July 29, 1994 waste-in list) to the Site.

XIV. RESERVATIONS OF RIGHTS

42. The Covenants Not to Sue by EPA and the State set forth in Section XI and XII of this Consent Order do not pertain to any

matters other than those expressly specified therein. The United States, including EPA, and the State of California, including DTSC, reserve, and this Consent Order is without prejudice to, all rights against Settling Parties with respect to all other matters, including but not limited to the following:

a. claims based on a failure to make the payments required by Section VIII of this Consent Order;

b. criminal liability;

c. liability for damages for injury to, destruction of, or loss of natural resources;

d. liability for future disposal at the Site;

e. liability arising from the past, present, or future disposal, release or threat of release of hazardous substances outside of the Site;

f. claims by any agency or agent of the State of California other than DTSC, California's Hazardous Substance Account, or California's Hazardous Substance Cleanup Fund; or

g. liability for any failure of any respondent to comply with the terms of any prior settlement, consent decree, administrative order or other document to which that respondent was a signatory.

43. Nothing in this Consent Order constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, or the State of California, including DTSC, California's Hazardous Substance Account, and California's Hazardous Substance Cleanup Fund to seek or obtain further relief from any Settling Party if information not currently known to the EPA or the State is discovered which indicates that any Settling Party contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that the Settling Party no longer qualifies as a de minimis party at the Site because the Settling Party contributed greater than 1.0% (25,784 barrels) of the waste sent to the Site, as reflected in the July 29, 1994 waste-in list, or contributed wastes which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

44. Nothing in this Consent Order constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, to enforce the terms of the Partial Consent Decree entered on July 9, 1990, in U.S. v. E.I. duPont de Nemours & Co., et al., C-90-0488, including EPA's authority to seek and obtain penalties for violations of that Decree.

45. Nothing in this Consent Order constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, to enforce the terms of EPA Administrative Order No. 92-29, including EPA's authority to seek and obtain penalties for violations of that Order.

46. Nothing in this Consent Order constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, or the State of California, including DTSC, California's Hazardous Substance Account, and California's Hazardous Substance Cleanup Fund, to enforce the terms of EPA Administrative Orders No. 95-01 and No. 96-01, including EPA's authority to seek and obtain penalties for violations of those Orders.

XV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

47. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Order. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Order may have under applicable law. The United States, the State of California, and the Settling Parties each reserve 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, except as provided in Paragraph 41.b.

48. The Parties agree that the actions undertaken by the Settling Parties in accordance with this Consent Order do not constitute an admission of any liability for any purpose by any Settling Party.

49. The Parties agree that by entering into and carrying out all the terms of this Consent Order, each Settling Party is entitled to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Consent Order. The "matters addressed" in this Consent Order are all response actions taken by the United States, the State, and private parties, and all response costs incurred and to be incurred by the United States, the State, and private parties, at or in connection with the Site.

XVI. PUBLIC COMMENT

50. This Consent Order shall be subject to a thirty (30) day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i) and Section 7003(d) of the Resource Conservation

and Recovery Act, as amended, 42 U.S.C. § 6973(d). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), EPA may withdraw or modify consent to this Consent Order if comments received disclose facts or considerations which indicate that this Consent Order is inappropriate, improper or inadequate.

XVII. ATTORNEY GENERAL APPROVAL

51. Before issuing this Consent Order, the EPA must obtain the written approval of the U.S. Attorney General or her designee of the settlement embodied in this Consent Order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4). This Consent Order will not become effective unless and until such approval is obtained.

XVIII. NOTICE OF SETTLEMENT APPROVAL AND EFFECTIVE DATE

52. The effective date of this Consent Order shall be the date upon which EPA issues written notice of settlement approval to the Settling Parties that both of the following have occurred: (1) the public comment period pursuant to Section XVI of this Consent Order has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Consent Order; and (2) the EPA has obtained the written approval of the U.S. Attorney General or her designee. The Parties agree that Appendix 2 to this Consent Order, which contains the list of Respondents that submitted their executed signature pages to this Order by the date specified by EPA, will be the final document issued as Appendix 2 and sent to the Settling Parties on the effective date of this Consent Order.

53. In the document providing written notice of settlement approval as described in Paragraph 52, EPA shall provide Settling Parties with the Payment Instruction letter, which shall instruct Settling Parties, in accordance with Section VIII of this Order, to make payment as provided in Paragraph 31 of this Order. The Payment Instruction letter shall also provide Settling Parties with the name to which the check should be made payable and the name and address to which payment should be sent.

XIX. AMENDMENTS

54. This Consent Order may be amended by mutual agreement of EPA, the State and the Settling Parties. Any amendment to this Consent Order shall be in writing, signed by EPA, the State and the Settling Parties, and shall have as the effective date the date upon which EPA issues written notice to the State and the Settling Parties that the amendment is effective.

XX. COUNTERPARTS

55. This Consent Order may be executed and delivered in any

number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

IT IS SO AGREED AND ORDERED:

California Department of Toxic Substances Control

By: Barbara J Cook 9/22/97

Barbara Cook Date
Chief, Site Mitigation Branch
California Department of Toxic Substances Control

U.S. Environmental Protection Agency

By: Keith Takata 9-17-97

Keith Takata Date
Director, Superfund Division
Region IX, U.S. EPA

Consent and Authorization

American Home Foods, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Michael Kelly Maggs

TITLE: Senior Vice President & General Counsel

DATED: July 15, 1997

Consent and Authorization

Almaden Vineyards Inc., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Charles F. Daf

TITLE: Vice President and Chief Financial Officer
Millennium Petrochemicals Inc.

DATED: July 15, 1997

Consent and Authorization

APACHE ENTERPRISE, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Robert M Griswold

ROBERT GRISWOLD

TITLE: OWNER

DATED: JULY 16, 1997

Consent and Authorization

Apex Marble, Inc. and its officers, directors and shareholders including but not limited to James P. Carthy and Jean M. McCarthy, as well as James P. McCarthy and Jean M. McCarthy as individuals, McCarthy Marble, Inc. and its officers, directors and shareholders, James P. McCarthy and Jean M. McCarthy individually and dba Apex Marble Company, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: James P. McCarthy

TITLE: Former President

DATED: 7-18-97

Consent and Authorization

Armour Grocery Products Co., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: _____

TITLE: Vice President and General Counsel

DATED: June 25, 1997

Consent and Authorization

Beatrice Foods Co., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

D.T. Peters

BY: Mr. D.T. Peters

TITLE: Authorized Representative

DATED: July 18, 1997

Consent and Authorization

Borden, Inc., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Sharon L Post for Borden Chemical Inc's 209 drums

TITLE: Environmental Counsel

DATED: 7/18/97

Consent and Authorization

Borden, Inc., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Sharon L. Post for Borden, Inc.'s 901 drums

TITLE: Environmental Counsel

DATED: 7/18/97

Consent and Authorization

BRUCE CHURCH CO., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: _____
Vic Lanini

TITLE: Vice-President

DATED: July 15, 1997

Consent and Authorization

Cal Stone, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: _____

TITLE: President

DATED: 6-25-97

Consent and Authorization

CALIFORNIA CHEESE CO., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Charles L. Hylkema

TITLE: VP, FINANCE, CALIFORNIA CHEESE CO.

DATED: 8/1/97

Consent and Authorization

California Roofing Co. Inc., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Hopper P. Campbell

TITLE: Chairman of the Board

DATED: July 16, 1997

Consent and Authorization

Concrete Chemicals, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Stephen Hay

TITLE: Vice President

DATED: 7/3/97

Consent and Authorization

FMC Corp, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Robert [illegible]

TITLE: VICE PRESIDENT

FMC Corporation

DATED: JULY 17, 1997

Consent and Authorization

Four Phase Systems Inc, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Dave Marsack

TITLE: Group Controller - Motorola Computer Group

DATED: 7/17/97

Consent and Authorization

GARRATT-CALLAHAN CO.
[Settling Party], by the duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Mansfield W. Garratt, III

TITLE: Secretary and Chief Financial Officer

DATED: 7/11/97

Consent and Authorization

GIBSON HOMANS CO., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: _____

TITLE: President, Baltimore Basic Land Company, Inc.

DATED: July 9, 1997

Consent and Authorization

Globe-Union, Inc., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: _____
James T. Lucke

TITLE: General Counsel - Battery Division, Johnson Controls, Inc.

DATED: 7/14/97

Consent and Authorization

HAL CRUMLY, INC., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: _____
LEONARD HERR

TITLE: Attorney for HAL CRUMLY, INC.

DATED: July 14, 1997

Consent and Authorization

INDUSTRIAL MODELS, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Albert R. Sanchez

TITLE: PRESIDENT

DATED: 7-16-97

Consent and Authorization

ITT Industries, Inc., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: _____ for ITT Jennings.

TITLE: Senior Counsel

DATED: 7-20-97

Consent and Authorization

L. M. Quartaroli (Ripon Canning Co), by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: L M Quartaroli, (Ripon Canning Co.)

TITLE: Pres.

DATED: July 16-1997

U.S. E.P.A. Docket No. 97-10

Worrntz Barrel & Drum Site

Consent and Authorization

LIBBY LABORATORIES, INC., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: SUSAN LIBBY

TITLE: PRESIDENT, LIBBY LABORATORIES, INC.

DATED: 7/8/97

Consent and Authorization

Monsanto Chemical Company, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Michael R. Foresman

Michael R. Foresman

TITLE: Director, Remediation Management

DATED: 6/17/97

Consent and Authorization

OLOCCO AGRICULTURAL PEST, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Ronalal Cisney

TITLE: PRESIDENT, OLOCCO AG SERVICES

DATED: 7/12/97

Consent and Authorization

Pacific Coast Lacquer, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Sandra S. Kramer

TITLE: President

DATED: July 14, 1997

Consent and Authorization

Pacific Coast Producers, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Robert Graf

TITLE: Executive Vice President

DATED: 7-7-97

Consent and Authorization

POWER & COMMUNICATION, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: _____

TITLE: PRESIDENT STRUXWELL CORP.

DATED: 7/16/97

Consent and Authorization

Precision, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: _____

TITLE: Mgr.

DATED: 9/9/97

Consent and Authorization

RACOR INDUSTRIES INC., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: _____
CHRISTOPHER H. MORGAN

TITLE: ASSISTANT GENERAL COUNSEL

DATED: JULY 11, 1997

Consent and Authorization

SAFEWAY INC., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: _____

TITLE: Senior Attorney and Assistant Secretary

DATED: July 18, 1997

Consent and Authorization

Santa Clara . Fiberglass Products Inc. dba Protect-o-top, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Mel Garcia

TITLE: Vice Pres

DATED: 7/24/97

Consent and Authorization

Savnik & Co., Inc., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Michael Savnik

TITLE: President

DATED: July 18, 1997

Consent and Authorization

SCM Corp. Glidden Div., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: _____
Thomas C. Osborne

TITLE: Chief Executive Officer, The Glidden Company

DATED: July 21, 1997

Consent and Authorization

Sears, Roebuck and Co., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Richard J. Barnett

TITLE: VICE PRESIDENT -- LAW

DATED: July 23, 1997

Consent and Authorization

Stokely-Van Camp, Inc., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: _____

John G. Jartz
Vice President

TITLE: _____

DATED: July , 1997

Consent and Authorization

Teledyne Industries, Inc. (for Teledyne Ryan Aeronautical, by the
[Settling Party] and Teledyne Semiconductor)

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Fred Walton

TITLE: Vice President, General Counsel & Secretary

DATED: July 17, 1997

Consent and Authorization

Terralite Mfg., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Ercell H. Ingram

TITLE: Sect-Treas, Tera-Lite Inc

DATED: 6-23-97

Consent and Authorization

Tri Valley Growers Packing, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Gary Hansen
Gary Hansen

TITLE: Attorney for Tri Valley Growers

DATED: July 20, 1997

Consent and Authorization

U.S. Printing Ink Corp., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: _____

TITLE: Senior Superfund Specialist

DATED: July 17, 1997

Consent and Authorization

UNITED TECHNOLOGIES CORPORATION, Chemical Systems Division, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: D. L. Miller

TITLE: Controller

DATED: July 21, 1997

Consent and Authorization

Western Farm Service, Inc, by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Nancy S Bishop

TITLE: Manager - Env, Health & Safety

DATED: July 3, 1997

Consent and Authorization

Witco Chemical Co., by the
[Settling Party]

duly authorized representative named, titled and signed below, hereby consents to this Administrative Order on Consent and agrees to be bound by the terms and conditions thereof.

BY: Dustan E. McCoy

TITLE: S.V.P. and General Counsel, Witco Corporation

DATED: July 3, 1997