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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. SIMS GROUP USA CORPORATION Defendant.	Civil Action No. [_____] **CONSENT DECREE**

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WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint in this action concurrently with this Consent Decree alleging that Defendant Sims Group USA Corporation, which does business as Sims Metal Management ("Sims" or "Defendant"), violated Sections 301 and 402 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§ 1311 and 1342.

WHEREAS, Sims, a Delaware corporation, owns a metal recycling facility ("Facility") located at the Port of Redwood City ("Port"), in San Mateo County, California. At the Facility, Sims receives, sorts, separates, shreds, and stores bulk metal scrap (ferrous and non-ferrous) for sale and export. These activities occur on a 13-acre parcel of land located east of a public right-of-way at the Port known as Herkner Road. Sims, along with other unrelated bulk cargo shippers, also conducts industrial activity at a Port-owned wharf ("Wharf 3") located on the west side of Herkner Road. Specifically, Sims operates a ship-loading conveyor ("Conveyor") to deliver shredded specification-grade ferrous steel scrap into the hulls of ships berthed at Wharf 3. Wharf 3 is located along the bank and shipping channel of Redwood Creek. The initial portion of the Conveyor is located on the Facility, but the remainder of the Conveyor spans Herkner Road and a concrete pier and apron located on pilings above the edge of Redwood Creek. The concrete apron is located directly beneath the Conveyor and extends from the shoreline to the edge of Wharf 3. The primary purpose of the apron is to catch material that may fall from the Conveyor during ship-loading operations. The concrete apron was installed in 1991, and was improved in 2002 to include additional screening material along the sides. Other Port tenants use Wharf 3 (but not the Conveyor) for loading and unloading of bulk materials, including bauxite and gypsum.

WHEREAS, the Complaint alleges, among other things, that Sims violated the Act and its implementing regulations, and General Storm Water Permit issued thereunder, by: (1) discharging materials potentially containing pollutants during the operation of its Conveyor directly or in storm water to Redwood Creek; (2) allowing water used for dust control at the Facility to overspray onto Herkner Road, potentially washing pollutants on the road into the Port's municipal separate storm sewer system; and (3) discharging storm water to Redwood Creek, in the form of runoff from the Conveyor and concrete apron, without documentation of best management practices and quarterly visual observations in the Facility's storm water pollution prevention plan, and without reference to this intermittent use area in the Facility's storm water sampling and monitoring plan.

WHEREAS, on December 16, 2011, EPA issued a Findings of Violation, Order for Compliance, and Request for Information ("Order") to Sims pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a). The Order contained allegations similar to those set forth in the Complaint and required Sims to provide EPA with certain information relating to its operations at the Facility; to implement a variety of corrective actions to eliminate unauthorized discharges; and to conduct storm water sampling at drain inlets located on Herkner Road that could be affected by Sims' operations in the Port-owned, non-exclusive use area to the west of the Facility. Sims claims that it contains all storm water that falls directly on the Facility to prevent the discharge of pollutants in storm water from the Facility to waters of the United States; and claims that it prevents the discharge of pollutants and other wastewater directly from the Facility to waters of the United States. Sims also claims that, prior to full enclosure of the Conveyor in 2012, the concrete apron installed beneath the Conveyor and other best management practices

employed by Sims acted to substantially contain incidental spillage that may have occurred during ship-loading operations.

WHEREAS, Sims timely completed all obligations of the Order to the satisfaction of EPA and EPA terminated the Order, as confirmed by a letter to Sims dated August 26, 2013.

WHEREAS, Sims claims it is in compliance with all applicable requirements of the Act and the General Storm Water Permit.

WHEREAS, Sims neither admits nor denies the specific factual allegations, and does not admit to any liability, as alleged in the Order for Compliance, the Complaint or this Consent Decree.

WHEREAS, the Plaintiff takes no position and may disagree with the claims made above by Sims in these Recitals.

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law, except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the Act, 33 U.S.C.§ 1319(b), and over the Parties. Venue lies in this District pursuant to Section 309(b) of the Act, 33 U.S.C.§ 1319(b), and 28 U.S.C. §§ 1391(b) and (c), and 1395(a), because Sims resides and is located in this judicial district and because the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Sims consents to the Court's jurisdiction over this Decree and any such action and over Sims and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Sims agrees that the Complaint states claims which, if true, are claims upon which relief may be granted pursuant to Sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a) and 1342.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Sims and any successors, assigns, or other entities or persons otherwise bound by law.

4. No transfer of its leasehold interest or operation of the Facility by Sims, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Sims of its obligation to ensure that the terms of the Decree are implemented. At least 30 Days prior to such transfer , Sims shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of

the proposed written agreement to EPA Region 9, and the United States Department of Justice, in accordance with Section XIII of this Decree (Notices). Any attempt by Sims to transfer its leasehold interest or operation of the Facility without complying with this Paragraph constitutes a violation of this Decree.

5. Sims shall provide a copy of this Consent Decree to all officers and managers of Sims whose duties might reasonably include compliance with any substantive provision of this Decree, as well as to any general contractor retained to perform work required under this Consent Decree. Sims shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Sims shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Clean Water Act" or "CWA" or "Act" shall mean the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387.

b. "Complaint" shall mean the complaint filed by the United States in this action.

c. "Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto.

d. "Day" shall mean a calendar day unless expressly stated to be a business 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 business day.

e. "Defendant" or "Sims" shall mean Sims Group USA Corporation, dba Sims Metal Management.

f. "Effective Date" shall have the definition provided in Section XIV.

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

h. "Facility" shall mean Sims' metal recycling Facility located at the Port of Redwood City, California.

i. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral.

j. "Parties" shall mean the United States and Sims.

k. "Permit" or "General Storm Water Permit" shall mean the NPDES permit No. CAS000001 issued by the State of California through its State Water Resources Control Board for storm water associated with industrial activity, Water Quality Order No. 97-03-DWQ.

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

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

n. "United States" or "Federal Plaintiff" shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

8. Within 30 Days after the Effective Date of this Consent Decree, Sims shall pay the sum of One Hundred Eighty-Nine Thousand, Five Hundred Dollars ($189,500.00) as a civil penalty, together with interest accruing on a daily basis from and after the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

9. Sims shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with written instructions to be provided to Sims, following entry of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of California, Federal Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, (415) 436-7200. At the time of payment, Sims shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. Sims USA Group Corporation, and shall reference the civil action number and DOJ case number *90-5-1-1-10706*, to the United States in accordance with Section XIII of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

10. Sims shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating its federal income tax.

V. COMPLIANCE REQUIREMENTS

11. Sims shall comply with all applicable CWA requirements, including those set forth in the General Storm Water Permit.

12. Sediment Sampling and Analysis Plan: Within 90 days of the Effective Date of this Consent Decree, Sims shall submit for EPA's review and approval a draft Sediment Sampling and Analysis Plan (SSAP) to characterize the marine sediment within Redwood Creek to determine if the area underneath and proximate to Sims' ship-loading Conveyor located at Wharf 3 at the Port of Redwood City has been impacted by total metals and PCBs associated with Sims' scrap metal ship-loading activities. This SSAP shall, at a minimum:

a. Be prepared by a qualified independent consultant.

b. Conform to or be consistent with EPA's Quality Assurance Guidance G-5 which can be found at the following website: http://www.epa.gov/quality/qs-docs/g5-final.pdf.

c. Utilize EPA-approved methods for metals (including mercury) and PCBs.

d. Investigate the area 50 feet to either side of the Conveyor, between the mean high tide line and Wharf 3. Should the investigation indicate that scrap metal associated with Sims' operations extends beyond the 50 foot extent of the investigation area on either side of the Conveyor, Sims shall expand the investigation area laterally along the shoreline, incrementally, at a minimum of 50

foot intervals until evidence of scrap metal associated with Sims' operations is no longer observed.

e. Establish background concentrations of metals and PCBs within Redwood Creek sediments by collecting sediment samples from locations outside the area of observed scrap metal impacts as identified in subparagraph (d), including but not limited to the areas between the mean high tide line and Wharf 2 and between the mean high tide line and Wharf 4. Given the long term, historical industrial uses of the Channel, for purposes of this Consent Decree, "background concentrations" shall be assumed to be the concentrations of metals and PCBs that are present in the sediments due to industrial activities or other sources unrelated to Sims. Sims shall collect a sufficient number of sediment samples from each area to establish a statistically reliable basis for the identification of background concentrations.

f. Identify a statistical analysis method that Sims will employ to determine if the population of samples taken underneath and proximate to the Conveyor in accordance with subparagraph (g) below show concentrations of metals and PCBs at levels statistically different from the population of samples taken in accordance with subparagraph (e) above to determine "background concentrations" of these constituents.

g. Sims shall collect a sufficient number of sediment samples from each side of the Conveyor within the area of observed scrap metal impacts associated with Sims' ship-loading activities, as determined according to subparagraph (d), and shall compare those sample results to the "background concentrations" established

pursuant to subparagraph (e). If the concentration of any constituent associated with Sims' operations exceeds the background concentration of that constituent at the outermost edges of the area of observed scrap metal impacts associated with Sims' operations, Sims shall extend its sediment investigation incrementally on either side of the Conveyor until the concentrations of metals and PCBs is no longer statistically distinguishable from "background concentrations" of metals and PCBs determined pursuant to subparagraph (e) above.

h. Be designed so that all sediment characterization work, including laboratory analysis, statistical analysis, and delineation, is completed within 120 days of EPA's approval of the SSAP.

13. Approval of Sediment Sampling and Analysis Plan. EPA shall timely review the draft SSAP and shall: a) approve the SSAP; b) approve the SSAP upon specified conditions; c) approve part of the SSAP and disapprove the remainder; or d) disapprove the SSAP. The basis for any conditional approval or disapproval shall be clearly stated by EPA.

14. If the SSAP is approved pursuant to Paragraph 13.a, Sims shall commence work and take all actions required by the SSAP in accordance with the schedules and requirements of the SSAP as approved. If the SSAP is conditionally approved or approved only in part, pursuant to Paragraph 13.b or 13.c., Sims shall, upon written direction from EPA, take all actions required by the SSAP that EPA determines are technically severable from any disapproved portions, subject to Sims' right to dispute only the specified conditions or the disapproved portions, under Section IX of this Decree (Dispute Resolution).

15. If the SSAP is disapproved in whole or in part pursuant to Paragraph 13.c or 13.d, Sims shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the SSAP for approval, in accordance with the preceding Paragraphs. If the SSAP resubmission is approved in whole or in part, Sims shall proceed in accordance with the preceding Paragraph.

16. Subject to Sims' right to invoke dispute resolution, any stipulated penalties applicable to the original submission, as provided in Section VII of this Decree, shall accrue during the 45-Day period or other specified period for resubmittal, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Sims' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

17. If a resubmitted SSAP is disapproved in whole or in part, EPA may again require Sims to correct any deficiencies, in accordance with the preceding Paragraphs, subject to Sims' right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

18. Sediment Remediation Plan. Should the SSAP sediment characterization work conducted by Sims pursuant to Paragraph 12 indicate that its ship-loading operations have resulted in sediment concentrations of heavy metals or PCBs that exceed background concentrations or any applicable sediment quality standard, whichever is higher, on a statistically significant basis, Sims shall submit for EPA's review and approval a draft Sediment Remediation

Plan (SRP) within 90 Days of completing the work required by the SSAP describing how Sims intends to remediate the sediment within the SSAP sampling area.

19. The SRP shall include an evaluation of various alternatives for removal of scrap metal and PCBs from the sediment in the SSAP sampling area, such as by dredging. The SRP shall also consider the potential environmental impacts associated with disturbance of the sediment, and Sims may propose to leave the sediments and agglomerated scrap metal in place if supported by the results of an ecological risk assessment. The SRP shall contain an evaluation of alternatives for recycling or disposal of any scrap metal removed from the sediment and for disposition of any sediment that is removed. The SRP shall also contain a schedule and estimated timetable for obtaining all Federal, State and local permits required for the SRP.

20. Approval of Sediment Remediation Plan. After EPA's timely review of the draft SRP, EPA shall: a) approve the SRP; b) approve the SRP upon specified conditions; c) approve part of the SRP and disapprove the remainder; or d) disapprove the SRP. The basis for any conditional approval or disapproval shall be clearly stated by EPA.

21. If the SRP is approved pursuant to Paragraph 20.a, Sims shall commence work and take all actions required by the SRP in accordance with the schedules and requirements of the SRP as approved, and complete all work under the SRP within 12 months of the SRP's approval, as may be extended under Paragraph 26. If the SRP is conditionally approved or approved only in part, pursuant to Paragraph 20.b or 20.c, Sims shall, upon written direction from EPA, take all actions required by the SRP that EPA determines are technically severable from any disapproved portions in accordance with the applicable schedules and requirements of

the SRP, subject to Sims' right to dispute only the specified conditions or the disapproved portions under Section IX of this Decree (Dispute Resolution).

22. If the SRP is disapproved in whole or in part pursuant to Paragraph 20.c or 20.d, Sims shall, within 45 Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the SRP for approval, in accordance with the preceding Paragraphs. If the SRP resubmission is approved in whole or in part, Sims shall proceed in accordance with the preceding Paragraph.

23. Subject to Sims' right to invoke dispute resolution, any stipulated penalties applicable to the original submission, as provided in Section VII of this Decree, shall accrue during the 45-Day period or other specified period , but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Sims' obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

24. If a resubmitted SRP is disapproved in whole or in part, EPA may again require Sims to correct any deficiencies, in accordance with the preceding Paragraphs, subject to Sims' right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties as provided in the preceding Paragraphs.

25. Not later than 30 days of completing the work under the SRP, Sims shall certify to EPA that sediment remediation has been completed in accordance with the requirements of the approved SRP.

26. Permits. Where any compliance obligation under this Section requires Sims to obtain federal, state, or local permits or approvals, Sims shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Sims may seek relief under the provisions of Section VIII of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Sims has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

VI. REPORTING REQUIREMENTS

27. Reports of Permit Violations. If Sims violates any requirement of the Permit, except a notification or reporting requirement, related to the ship-loading area, Sims shall notify the United States and the California Regional Water Quality Control Board, San Francisco Bay Region, of such violation in accordance with Section XIII of this Consent Decree (Notices). Nothing in this Paragraph or the following Paragraph relieves Sims of its obligation to provide the notice required by Section VIII of this Consent Decree (Force Majeure).

28. Whenever any violation of this Consent Decree or the Permit, or other event affecting Sims' performance under this Decree, may pose an imminent threat to the public health or welfare or the environment, Sims shall notify EPA and the California Regional Water Quality Control Board, San Francisco Bay Region, orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Sims first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

29. All reports shall be submitted to the persons designated in Section XIII of this Consent Decree (Notices).

30. Each report submitted by Sims under this Section shall be signed by an official of the submitting party and include the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

31. The reporting requirements of this Consent Decree do not relieve Sims of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

32. Any information provided by Sims pursuant to this Consent Decree may be used by the United States in any civil or administrative proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

33. Sims shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this

Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree, as such schedules may be modified by agreement of the Parties without need for approval by the Court.

34. Late Payment of Civil Penalty

If Defendant fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of $2,000 per Day for each Day that the payment is late.

35. Non-Compliance with Injunctive Relief

a. The following stipulated penalties shall accrue per Day for each day Sims fails to submit the SSAP and/or SRP by the deadlines established in Paragraphs 12 and 18 above:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th Day
$2,000	15th through 30th Day
$3,000	31st Day and beyond

b. The following stipulated penalties shall accrue per Day for each day Sims fails to complete the work required by the EPA-approved SSAP and/or Sediment Remediation Plan within the deadlines established in the SSAP and Sediment Remediation Plan:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th Day
$2,000	15th through 30th Day
$3,000	31st Day and beyond

36. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section VI of this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$250	1st through 14th Day
$500	15th through 30th Day
$750	31st Day and beyond

37. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

38. Subject to Sims' right to invoke dispute resolution, Sims shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

39. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

40. Stipulated penalties shall continue to accrue as provided in Paragraph 36, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Sims shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Sims shall pay all accrued penalties determined by the Court to be owing, together with interest, within 60 Days of receiving the Court's decision or order, except as provided in subparagraph (c) below.

c. If any Party appeals the District Court's decision, Sims shall pay all accrued penalties determined to be owing, together with interest, within 15 Days of receiving the final appellate court decision.

41. Sims shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

42. If Sims fails to pay stipulated penalties according to the terms of this Consent Decree, Sims shall be liable for interest on such penalties, as provided for in 28 U.S.C.§ 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Sims' failure to pay any stipulated penalties.

43. Subject to the provisions of Section XI of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Sims' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the CWA, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

44. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the reasonable control of Sims, of any entity controlled by Sims, or of Sims' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Sims' best efforts to fulfill the obligation. The requirement that Sims exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

45. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Sims shall provide notice orally or by electronic or facsimile transmission to EPA Region 9 within 5 business days of when Sims first knew that the event might cause a delay. Within 14 business days thereafter, Sims shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Sims' rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Sims, such event may cause or contribute to an endangerment to public health or welfare or the environment. Sims shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply

with the above requirements shall preclude Sims from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Sims shall be deemed to know of any circumstance of which Sims, any entity controlled by Sims, or Sims' contractors knew or should have known.

46. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Sims in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

47. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Sims in writing of its decision.

48. If Sims elects to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), it shall do so no later than 30 days after receipt of EPA's notice. In any such proceeding, Sims shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Sims complied with the requirements of Paragraphs 45 and 46, above. If Sims carries this burden, the delay at issue shall be deemed not to be a violation by Sims of the affected obligation of this Consent Decree identified to EPA.

IX. DISPUTE RESOLUTION

49. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Sims' failure to seek resolution of a dispute under this Section shall preclude Sims from raising any such issue as a defense to an action by the United States to enforce any obligation of Sims arising under this Decree.

50. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Sims sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 45 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 45 Days after the conclusion of the informal negotiation period, Sims invokes formal dispute resolution procedures as set forth below, or the Parties agree in writing to extend the deadline.

51. Formal Dispute Resolution. Sims shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Sims' position and any supporting documentation relied upon by Sims.

52. The United States shall serve its Statement of Position within 45 Days of receipt of Sims' Statement of Position. The United States' Statement of Position shall include,

but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Sims, unless Sims files a motion for judicial review of the dispute in accordance with the following Paragraph.

53. Sims may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Sims' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

54. The United States shall respond to Sims' motion within the time period allowed by the Local Rules of this Court. Sims may file a reply memorandum, to the extent permitted by the Local Rules.

55. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 51 pertaining to the adequacy or appropriateness of the SSAP or Sediment Remediation Plan, procedures to implement the SSAP or Sediment Remediation Plan, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken

pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Sims shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 51, Sims shall bear the burden of demonstrating that its position complies with this Consent Decree, and better furthers the objectives of the Consent Decree.

56. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Sims under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 40. If Sims does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

57. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Sims or its representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data,; and

e. assess Sims' compliance with this Consent Decree.

58. Upon request, Sims shall provide EPA or its authorized representatives splits of any samples taken by Sims, including those taken pursuant to the terms of this Consent Decree. Upon request, EPA shall provide Sims splits of any samples taken by EPA.

59. Until three years after the termination of this Consent Decree, Sims shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all material documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Sims' performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Sims shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

60. At the conclusion of the information-retention period provided in the preceding Paragraph, Sims shall notify the United States at least 30 Days prior to the destruction

of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Sims shall deliver any such documents, records, or other information to EPA. Sims may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Sims asserts such a privilege, it shall provide 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 each 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, which description shall be sufficient to inform the reader of the nature and basis of the assertion of privilege and (6) the privilege asserted by Sims. However, no documents, records, or other information required to be prepared or submitted pursuant to this Consent Decree shall be withheld on grounds of privilege.

61. Sims may also assert that information required to be provided under this Section is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any information that Sims seeks to protect as CBI, Sims shall follow the procedures set forth in 40 C.F.R. Part 2.

62. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Sims to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

63. This Consent Decree fully and conclusively resolves the civil claims of the United States arising under the Clean Water Act for the violations alleged in the Complaint filed in this action through the date of lodging.

64. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 63. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 63. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Sims' Facility, whether related to the violations addressed in this Consent Decree or otherwise.

65. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Sims' violations, Sims shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 63 of this Section.

66. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Sims is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Sims' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Sims' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. §1251 *et seq.*, or with any other provisions of federal, State, or local laws, regulations, or permits.

67. This Consent Decree does not limit or affect the rights of Sims or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Sims, except as otherwise provided by law.

68. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XII. COSTS

69. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Sims.

XIII. NOTICES

70. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-10706

and

Rich Campbell
Office of Regional Counsel
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street (ORC-2)
San Francisco, CA 94105

To Sims:

Chief Corporate Counsel (Compliance)
16 West 22nd Street, 10th Floor
New York, New York 10010

and

Margaret Rosegay, Esq.
Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, Suite 2200
San Francisco, CA 94111

71. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

72. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. EFFECTIVE DATE

73. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XV. RETENTION OF JURISDICTION

74. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX and XVI, or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

75. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court. Changes to work schedules incorporated by reference into this Consent Decree shall be considered non-material modifications.

76. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX of this Decree (Dispute Resolution), provided, however, that, instead of

the burden of proof provided by Paragraph 55 (Standard of Review), the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

77. After Sims has completed the requirements of Section V (Compliance Requirements) of this Decree, has thereafter maintained continuous and satisfactory compliance with this Consent Decree and the General Storm Water Permit for a period of one year, has complied with all other requirements of this Consent Decree and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Sims may serve upon the United States a Request for Termination, stating that Sims has satisfied those requirements, together with all necessary supporting documentation.

78. Following receipt by the United States of Sims' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Sims has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

79. If the United States does not agree that the Decree may be terminated, Sims may invoke Dispute Resolution under Section IX of this Decree. However, Sims shall not seek Dispute Resolution of any dispute regarding termination, under Paragraph 51 (Formal Dispute Resolution) of Section IX, until at least 60 days after service of its Request for Termination.

XVIII. PUBLIC PARTICIPATION

80. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R.§ 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Sims consents to entry of this Consent Decree as lodged with the Court without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Sims in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

81. Each undersigned representative of Sims and the United States certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

82. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Sims agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XX. INTEGRATION

83. This Consent Decree, including the recitals thereto, constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXI. FINAL JUDGMENT

84. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Sims. 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.

Dated and entered this __ day of _____, 2014.

_____
UNITED STATES DISTRICT JUDGE
Northern District of California

FOR PLAINTIFF UNITED STATES OF AMERICA:

For the U.S. Department of Justice:

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

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For the U.S. Environmental Protection Agency:

9/15/14

SYLVIA QUAST
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U.S. Environmental Protection Agency, Region 9

FOR SIMS GROUP USA CORPORATION:

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