



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

IN THE MATTER OF:)

Casmalia Disposal Site)
Santa Barbara County, 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. 99-02(e)(supp)

[PROPOSED]

**ADMINISTRATIVE ORDER ON CONSENT
DE MINIMIS CONTRIBUTORS**

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I. JURISDICTION

1. This Administrative Order on Consent (“Consent Order” or “Order”) is entered into 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, Pub. L. No. 99-499 and by the Small Business Liability Relief and Brownfields Revitalization Act of 2002, Pub. L. No. 107-118 (“CERCLA”), 42 U.S.C. § 9601 et seq., in particular the authority under CERCLA section 122(g)(4), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (“U.S. EPA”) by Executive Order 12580, 52 Fed. Reg. 2923 (January 29, 1987), and further delegated to the Regional Administrators of U.S. EPA by Delegation No. 14-14-E (issued May 11, 1994, amended by memorandum May 19, 1995). Within Region IX, this authority has been delegated to the Superfund Division Director by Regional Order No. 1290.21-A, entitled “De Minimis Settlements,” dated November 23, 1998. This Consent Order is also entered into pursuant to the authority of the United States on behalf of the United States Fish and Wildlife Service (“FWS”), United States Department of Interior (“DOI”); and the National Oceanic and Atmospheric Administration (“NOAA”), United States Department of Commerce (“Commerce”), each of whom, by Executive Order 12580, as amended by Executive Order 13016, 61 Fed. Reg. 45872 (August 30, 1996), has been delegated with the authority vested in the President as a Federal Trustee for natural resources that may have been, or in the future may be, injured by the release of hazardous substances at or from the Casmalia Disposal Site, as defined herein. This Consent Order is also entered into pursuant to CERCLA section 113(f)(2), 42 U.S.C. § 9613(f)(2).

2. Agencies of the State of California (“State”) are authorized pursuant to CERCLA to undertake response actions at hazardous substance release sites and to recover from responsible

parties the costs related to those response actions, including costs for the oversight of response work performed by the responsible parties. In addition, state statutes authorize various state agencies to undertake response actions and recover response costs and oversight costs. Those statutes and responsible agencies include, but are not necessarily limited to, the following: the California Health and Safety Code sections 25300 et seq., implemented by the Department of Toxic Substance Control (“DTSC”); Porter-Cologne Water Quality Control Act, California Water Code sections 13000 et seq., implemented by the Regional Water Quality Control Boards; and the California Fish and Game Code, sections 5650 and 5650.1, implemented by the Department of Fish and Game (“DFG”). DTSC acts as the coordinator for the State Regulatory Entities for State response and oversight work at the Casmalia Disposal Site.

3. CERCLA authorizes state agencies to act on behalf of the public as trustees for the natural resources within a state’s boundaries or for the resources belonging to, controlled by, or appertaining to the state. *See* 40 C.F.R. § 300.605. The Governor of California has named the following designated State trustees for the CERCLA Natural Resources Damage (“NRD”) program: the Secretary of the California Resources Agency and the Secretary of the California Environmental Protection Agency (“California EPA”). These entities, in turn, can delegate and have delegated their authority as trustees to “appropriate agencies and local governmental entities of the State of California.” The Secretary of the California Resources Agency has sub-delegated its authority to DFG. DFG also has independent California statutory authority to pursue natural resource damages, pursuant to California Fish and Game Code sections 2014, 5650, 711.7 and 12016.

4. DTSC, the California Regional Water Quality Control Board, Central Coast Region (“Regional Board”), and DFG (collectively “State Regulatory Entities”) and DFG acting as the State Trustee for purposes of this Consent Order, consent to the use of this Consent Order of U.S. EPA for the purposes of resolving their respective claims against the State Settling Parties

regarding the Site based on the Parties' agreement that the State Regulatory Entities and the State Trustee can fully enforce the applicable provisions of this Consent Order against the State Settling Parties.

5. It is the intent of the Parties that this AOC contain two separate settlements, which may be entered into and enforced separately. Any individual party may settle with the United States, or with the State Regulatory Entities and the State Trustee, or with both the United States and the State Regulatory Entities and the State Trustee. This Consent Order is issued to the persons, corporations or other entities identified in Appendix A ("U.S. Settling Parties"), and Appendix C ("State Settling Parties"), collectively referred to as "Settling Parties." Each Settling Party agrees to undertake all actions required of it by this Consent Order. Each Settling Party further consents to and will not contest the United States' jurisdiction to issue this Consent Order or the authority of the United States, the State Regulatory Entities or the State Trustee to implement or enforce its applicable terms.

6. The United States, the U.S. EPA, the State Regulatory Entities, the State Trustee, and Settling Parties, as those terms are defined below ("Parties"), agree that the actions undertaken by Settling Parties in accordance with this Consent Order do not constitute an admission of any liability by any Settling Party. Settling Parties do not admit, and retain the right to controvert in any proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts or the Determinations contained in Sections IV (Statement of Facts) and V (Determinations), respectively, of this Consent Order.

II. STATEMENT OF PURPOSE

7. By entering into this Consent Order, the mutual objectives of the U.S. EPA, the United States, and the Settling Parties, as more precisely described in the terms of this Consent Order, are:

- a. to reach a final settlement among the Parties with respect to the Casmalia

Disposal Site (defined as “Site,” below), pursuant to section 122(g) of CERCLA, 42 U.S.C. § 9622(g) (“De minimis settlements”), that allows U.S. Settling Parties (whether or not they choose to settle with the State Regulatory Entities and State Trustee, as set forth below) to make cash payments, including a premium, to resolve their alleged civil liability under sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and section 7003 of RCRA, 42 U.S.C. § 6973, for injunctive relief with regard to the Site, and for response costs and, for some parties, Natural Resource Damages, incurred and to be incurred by the U.S. EPA or the Federal Trustees at or in connection with the Site, thereby reducing litigation relating to the Site;

- b. to provide the U.S. Settling Parties with two options for resolution of such liability: Settlement Option A, for which the U.S. Settling Parties pay a greater premium and that affords greater finality (including, for example, a covenant not to sue for Natural Resource Damages and for response costs incurred and to be incurred by the Federal Trustees at or in connection with the Site); and Settlement Option B, for which the U.S. Settling Parties pay a lower premium and that contains less finality and greater risks for the U.S. Settling Parties. The terms of Options A and B are more fully described within;
- c. to resolve any alleged claims of the U.S. Settling Parties that could have been asserted against the United States with regard to the Site;
- d. to simplify any remaining administrative and judicial enforcement activities concerning the Site by resolving the alleged liability of a substantial number of potentially responsible parties (“PRPs”) with respect to the Site;
- e. to obtain settlement with U.S. Settling Parties for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA

Hazardous Substances Superfund, by other persons (but not including the State Regulatory Entities and the State Trustee), and with respect to U.S. Settling Parties that elect Settlement Option A, response costs incurred by the Federal Trustees; and

- f. to provide for full and complete contribution protection for U.S. Settling Parties with regard to the Site pursuant to sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2), 9622(g)(5).

8. By entering into this Consent Order, the mutual objectives of the State Regulatory Entities, the State Trustee, and the State Settling Parties, as more precisely described in the terms of this Consent Order, are:

- a. to reach a final settlement with respect to the Casmalia Disposal Site, that allows State Settling Parties (whether or not they choose to settle with the United States, as set forth herein) to make cash payments, including a premium, to resolve their alleged civil liability under section 107 of CERCLA, 42 U.S.C. §9607, and section 7002 of RCRA, 42 U.S.C. § 6972, and the State Statutes, including California Health and Safety Code Section 25360.6, for injunctive relief with regard to the Site, for the State Natural Resource Damages Claim and for response costs incurred and to be incurred by the State Regulatory Entities and the State Trustee at or in connection with the Site, thereby reducing litigation relating to the Site;
- b. to resolve any alleged claims of the State Settling Parties against the State Regulatory Entities and the State Trustee with regard to the Site;
- c. to simplify any remaining administrative and judicial enforcement activities concerning the Site by resolving the alleged liability of a substantial number of PRPs with respect to the Site;

- d. to obtain settlement with State Settling Parties for their fair share of response costs incurred and to be incurred at or in connection with the Site by the State Regulatory Entities (“State Response Costs”); and
- e. to provide for contribution protection for State Settling Parties with regard to the Site pursuant to section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and California Health and Safety Code § 25360.6(b) for State Response Costs and the State Natural Resource Damages Claim.

III. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Consent Order, including the attached appendices, 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 Consent Order, the following definitions shall apply:

“Casmalia Consent Decree” shall mean the consent decree entered by the United States District Court for the Central District of California on June 27, 1997 in United States of America v. ABB Vetco Gray, Inc., et al., Civ No. CV96-6518 KMW(Jgx).

“Casmalia Resources Closure/Post-Closure Trust Fund” shall mean the trust fund established by Casmalia Resources, as grantor, on or about October 24, 1985, to address closure/post-closure requirements established by the State of California, Department of Health Services and applicable to the Casmalia Resources Hazardous Waste Management Facility.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Small Business Liability Relief and Brownfields Revitalization Act of 2002, Pub. L. No. 107-118, 42 U.S.C. § 9601, et seq.

“Commerce” shall mean the United States Department of Commerce and any successor departments, agencies, or instrumentalities of the United States.

“Consent Order” or “Order” shall mean this Administrative Order on Consent and all

appendices attached hereto (listed in Section XVI). In the event of conflict between this Consent Order and any Appendix, this Consent Order shall control.

“Contaminants List” shall mean those contaminants identified to date at the Site and listed in Appendix E.

“CSC” shall mean the Casmalia Steering Committee.

“Day” shall mean a calendar day. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or a federal holiday, the period shall run until the close of business on the next working day.

“De Minimis Party” shall mean any Potentially Responsible Party that the U.S. EPA has determined sent no more than 8.5 million pounds of waste to the Site.

“DFG” shall mean the California Department of Fish and Game and any successor entity. DFG is both a State Regulatory Entity and the State Trustee for the purposes of this Consent Order.

“DTSC” shall mean the California Department of Toxic Substances Control and any successor entity.

“DOI” shall mean the United States Department of the Interior and any successor departments, agencies, or instrumentalities of the United States.

“Escrow Account” shall mean the escrow account for the Site, which was established pursuant to the Consent Decree entered by the United States District Court for the Central District of California on June 27, 1997 in United States of America v. ABB Vetco Gray Inc. et al., Civ. No. CV 96-6518-KMW (Jgx) (“Casmalia Consent Decree”). The Escrow Account holds money collected, inter alia, from this and other settlements and enforcement activities, and which shall be used for response actions at and concerning the Site.

“Escrow Trustee” shall mean the trustee of the Escrow Account.

“Facility” shall mean the former permitted Casmalia Resources Hazardous Waste

Management facility, encompassing approximately 252 acres, located approximately ten (10) miles southwest of Santa Maria and one and a half miles north of Casmalia in Santa Barbara County, California, and depicted generally on the map attached as Appendix D.

“Federal Trustees” shall mean the Departments of Interior and Commerce, on behalf of the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, respectively.

“Interest” shall mean interest at the rate specified for interest on investments of the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“Natural Resources” shall have the meaning provided in section 101(16) of CERCLA, 42 U.S.C. § 9601(16), and under applicable provisions of State law.

“Natural Resource Damages” or “NRD” means damages, including costs of damages assessment, recoverable under section 107 of CERCLA, 42 U.S.C. § 9607, and applicable provisions of State law, for injury to, destruction of, or loss of any and all Natural Resources at the Site.

“Paragraph” shall mean a portion of this Consent Order identified by an Arabic numeral.

“Parties” shall mean the United States, on behalf of the Federal Trustees; the U.S. EPA; the State Regulatory Entities; the State Trustee; and the Settling Parties.

“Person” shall mean an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, state, municipality, commission, political subdivision of a state, or any interstate body.

“Phase 1 Work” and “Phase 2 Work” shall have the meaning assigned to them in the Casmalia Consent Decree. However, if the Casmalia Consent Decree is no longer in effect, the

term “Phase 1 Work” shall mean all work performed and paid for by the CSC, and the term “Phase 2 Work” shall mean all remaining response actions at the Site up to and including the first five years of operation and maintenance (“O&M”).

“Regional Board” shall mean the California Regional Water Quality Control Board, Central Coast Region, and any successor entity.

“Response Costs” shall mean all costs of “response” as that term is defined by Section 101(25) of CERCLA 42 U.S.C. § 9601 (25).

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Consent Order identified by a Roman numeral.

“Settling Parties” shall mean those entities listed in Appendices A and C.

“Site” or “Casmalia Disposal Site” shall mean the Facility, as defined herein, and the areal extent of contamination that is presently located in the vicinity of the Facility, and any related “facility” as defined in CERCLA section 101(9), 42 U.S.C. 9601(9), and all suitable areas in very close proximity to the contamination necessary for the implementation of the response action(s), and any areas to which such contamination migrates.

“State Natural Resource Damages Claim” or “State NRD Claim” shall mean the claim for natural resources damages asserted by DFG and the amount of natural resource damages for the Site that DFG has estimated as its current or future claim for the purposes of this Consent Order only. That current claim is sixteen million dollars (\$16,000,000).

“State Regulatory Entities” shall collectively refer to DTSC, DFG, and the Regional Board.

“State Response Costs” shall refer to response costs incurred and to be incurred at or in connection with the Site by the State Regulatory Entities.

“State Settling Parties” shall mean those parties listed on Appendix C.

“State Statutes” shall mean the California Health and Safety Code, sections 25300 et seq., and 25189.1; the Porter-Cologne Water Quality Control Act, California Water Code sections 13000 et seq.; the California Fish and Game Code, sections 5650, 5650.1, 2014, 711.7 and 12016; and the California Government Code, sections 8670.56.5 and 8670.61.5.

“State Trustee” shall mean the California Department of Fish and Game, acting through its Director.

“United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

“U.S. Settling Parties” shall mean those entities listed in Appendix A.

“U.S. EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

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

IV. STATEMENT OF FACTS

10. Paragraphs 11 through 33 below contain a summary of the Site background as alleged by U.S. EPA which, for purposes of this Consent Order, the Settling Parties neither admit nor deny.

11. The Site encompasses (among other areas, as defined above) the former Casmalia Resources Hazardous Waste Management Facility, an inactive commercial hazardous waste treatment, storage, and disposal facility, which accepted large volumes of hazardous substances from 1973 to 1989. Located on a 252-acre parcel in Santa Barbara County, California, the former Casmalia Resources Hazardous Waste Management Facility consists of six landfills, numerous surface impoundments, disposal trenches, injection wells, waste spreading areas and tank treatment systems.

12. The location of the Site is near the southern end of the Casmalia Hills in coastal

California, approximately ten (10) miles southwest of the town of Santa Maria and one and a half miles north of the town of Casmalia. The Site is situated within the Shuman Canyon drainage sub-basin on a southern facing slope traversed by three small canyons. Casmalia Creek, about 500 feet west, is the surface water body nearest to the abandoned Facility. This creek flows to the southwest to join Shuman Creek about one mile southwest of the town of Casmalia. Shuman Creek continues southward and westward, discharging eventually into the Pacific Ocean.

13. Hazardous substances within the definition of CERCLA Section 101(14) have been, or are threatened to be, released at or from the Site. These hazardous substances include a wide variety of organic and inorganic compounds.

14. During the Facility's sixteen (16) years of operation, the owner(s)/operator(s) accepted approximately 5.6 billion pounds of documented liquid and solid wastes from thousands of generators, including numerous large and small private businesses and federal, state, and local governmental entities.

15. From 1980 to 1989, the Facility had interim status pursuant RCRA, 42 U.S.C. § 6925(e), by operation of law. Because of continuing deficiencies in operations, no final RCRA permit was granted. The Facility has not been closed adequately in accordance with the requirements of RCRA.

16. In late 1989, the owner(s)/operator(s) ceased accepting off-Site waste shipments to the Facility and, in the early 1990s, the owner(s)/operator(s) stopped all active efforts to properly close the Facility and remediate the Site, asserting that they had insufficient monies to pay for closure or remediation.

17. The Casmalia Resources Closure/Postclosure Trust Fund is insufficient to pay for the total estimated costs of closure and post-closure activities at the Site.

18. After the owner(s)/operator(s) ceased accepting off-Site waste, the

owner(s)/operator(s) curtailed maintenance activities, and Site conditions deteriorated and became unstable.

19. As a result of the release or threatened release of hazardous substances, U.S. EPA has undertaken response actions at or in connection with the Site under section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. In August 1992, U.S. EPA commenced a removal action under CERCLA to implement certain Site stabilization actions, prevent further deterioration of Site conditions, and control the most immediate threats. The Site continues to pose an imminent and substantial endangerment within the meaning of section 106 of CERCLA, 42 U.S.C. § 9606, and section 7003 of RCRA, 42 U.S.C. § 6973.

20. In performing these response actions, U.S. EPA has incurred and will continue to incur response costs at or in connection with the Site. As of August 1, 1999, U.S. EPA had incurred at least \$19.19 million in response costs at this Site.

21. Because the owner(s)/operator(s) had failed to perform sufficient closure and remediation activities at the Site, in March 1993, U.S. EPA, under CERCLA and RCRA authorities, notified a group of approximately sixty-five (65) waste generators, representing some of the PRPs that arranged for disposal of the largest quantities of hazardous substances at the Site, of their potential liability for Site remediation. Approximately fifty-four (54) of the first sixty-five (65) notified generators formed the CSC. U.S. EPA negotiated with the CSC and other PRPs to secure implementation of response actions at or in connection with the Site.

22. On September 17, 1996, the United States filed a complaint against the CSC pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and section 7003 of RCRA, 42 U.S.C. § 6973, seeking cleanup of the Site and payment of certain response costs incurred by the U.S. EPA and the United States Department of Justice ("U.S. DOJ") in connection with the Site. On this same date, the United States lodged the Casmalia Consent Decree in the Central District of California, United States District Court, resolving the claims in that complaint. On

June 27, 1997, the Court entered the Casmalia Consent Decree.

23. The Casmalia Consent Decree establishes a comprehensive framework in which to address: (1) the remediation of the Site to protect public health, welfare and the environment from the release or threatened release of hazardous substances at the Site; and (2) the performance and financing of the response actions to be undertaken at the Site. The Casmalia Consent Decree contemplates that a significant portion of the work at the Site will be paid for by funds obtained through future enforcement efforts, including, but not limited to, settlements such as this de minimis Consent Order, and various enforcement and settlement efforts directed toward the prior owner(s)/operator(s) of the Site and other PRPs.

24. On November 26, 2002, the District Court for the Central District of California entered two Consent Decrees pertaining to the Site: one entered into by Casmalia Resources, Hunter Resources and the estate of Kenneth H. Hunter, Jr. (the "Hunter Parties"), who have paid \$6.957 million and agreed to transfer certain real property to an entity to be identified later by the U.S. EPA, and the other entered into by the State of California, which has paid \$15 million. Neither the Hunter Parties nor the State of California admitted liability and both Consent Decrees provide contribution protection. In addition, on June 29, 2006, U.S. EPA entered into an administrative Agreement for Recovery of Response Costs with certain limited partners of Kenneth H. Hunter, Jr. ("Castagnola Parties"). Under this Agreement, the Castagnola Parties have paid U.S. EPA \$400,000. The Castagnola Parties did not admit liability, and the Agreement provides contribution protection.

25. In October 1998, U.S. EPA began notifying de minimis PRPs of their potential liability in connection with the Site and providing settlement offers to them. An opportunity to settle has been offered to approximately 1,500 PRPs since 1999. U.S. EPA may enter into additional settlements such as this one with other de minimis PRPs in the future with respect to this Site.

26. Information currently known to U.S. EPA indicates that each Settling Party arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such Settling Party, by any other person or entity, at the Site, or accepted a hazardous substance for transport to the Site, which was selected by such Settling Party.

27. Information currently known to U.S. EPA indicates that each Settling Party contributed less than 8.5 million pounds of materials containing hazardous substances to the Site, and 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. For the purposes of this Consent Order, these Settling Parties are De Minimis Parties. The volume of materials attributed by U.S. EPA to each Settling Party is specified in Appendices A and C. Appendix E, entitled Contaminants List, provides a list of contaminants identified to date at the Site.

28. An estimate of the total cost of response actions at the Site has been developed for this and future de minimis settlements, enforcement activities, and other purposes ("1999 Cost Estimate"). The 1999 Cost Estimate (which does not include response costs to be incurred by the Federal Trustees or by the State Regulatory Entities and the State Trustee) is \$284 million, which includes \$12 million that was, at the time of the 1999 Cost Estimate, in the RCRA Closure and Post-Closure Trust Fund established by the former owner/operator of the Site. The payment required to be made by each U.S. Settling Party pursuant to this Consent Order is a minor portion of this total amount. The required payment to the United States (for Settlement Option A or B) for each U.S. Settling Party is specified in Appendix A.

29. Information currently known to the United States indicates the presence of one or more Natural Resources at or near the Site which may have been, or which may be, injured by release(s) of hazardous substances or which may have been or which may be injured by response

actions. U.S. EPA shall seek to coordinate assessments, investigations and planning with the Federal and State Natural Resource Trustees pursuant to CERCLA section 104(b)(2), 42 U.S.C. § 9604(b)(2).

30. As a result of the release or threatened release of hazardous substances at or near the Site, the State Regulatory Entities have undertaken response actions at or in connection with the Site pursuant to state and federal law, and will undertake response actions in the future, that have been and will be consistent with the response actions undertaken by U.S. EPA.

31. The State Regulatory Entities estimate, for the purposes of this Consent Order only, that the total response costs incurred and to be incurred by the State Regulatory Entities at or in connection with the Site, excluding NRD, are \$11,474,062. The payment required to be made by each State Settling Party pursuant to this Consent Order is a minor portion of this total amount. The required payment to the State Regulatory Entities for each State Settling Party is specified in Appendix C.

32. Furthermore, the State Trustee currently estimates, for the purposes of this Consent Order only, that the State Natural Resource Damages at the Site are \$16,000,000, which includes approximately \$400,000 incurred by DFG in response costs prior to October 1, 1999. The payment required to settle such State Natural Resource Damages is specified for each State Settling Party in Appendix C.

33. The formula for U.S. Settling Parties' payments is identified in Paragraph 38. The formula for State Settling Parties' payments is identified in Paragraph 39.

V. DETERMINATIONS

34. Based upon the Statement of Facts set forth above and on the administrative record for this Site, U.S. EPA, the United States (on behalf of the Federal Trustees), the State Regulatory Entities, and the State Trustee, have determined that:

- a. The 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 potentially liable pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is a "potentially responsible party" within the meaning of section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).
- d. There has been an actual or threatened "release" of a "hazardous substance" from the Site as those terms are defined in section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).
- e. The actual or threatened release of a hazardous substance from the Site caused and may cause the incurrence of response costs and may have injured, or may injure, Natural Resources within the meaning of section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
- f. Prompt settlement is "practicable" and in the "public interest" within the meaning of section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).
- g. As to each Settling Party, this Consent Order involves only a minor portion of the total response costs at the Site within the meaning of section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).
- h. The amount of material containing hazardous substances and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Settling Party is minimal in comparison to other hazardous substances at the Site as set forth in the Contaminants List attached as Appendix E, within the meaning of section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).
- i. The State Regulatory Entities and the State Trustee are entering into this Consent Order under the authority of 107(a) of CERCLA, 42 U.S.C. § 9607(a) and the

State Statutes.

VI. ORDER

35. Based upon the administrative record for the Site, the Statement of Facts and the Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby AGREED TO AND ORDERED:

VII. SETTLEMENT OPTIONS

36. As to the claims of U.S. EPA and the United States, on behalf of the Federal Trustees, U.S. Settling Parties may choose between Settlement Options A and B as set forth in this Section and in Sections XI (Covenants and Reservations of Rights by United States) and XIV (Effect of Settlement/Contribution Protection). Except where this Consent Order specifies particular Sections or Paragraphs as pertaining to Settlement Option A or B, in which case those provisions apply only to U.S. Settling Parties that elect Settlement Option A or B, respectively, all other terms of this Consent Order referring to U.S. Settling Parties or Settling Parties apply equally to all U.S. Settling Parties, regardless of which settlement option they choose. However, because parties may choose to settle with either the United States or the State Regulatory Entities and the State Trustee, or all, terms referring to U.S. Settling Parties do not apply to any State Settling Party unless that State Settling Party is also a U.S. Settling Party. Likewise, terms referring to State Settling Parties do not apply to any U.S. Settling Party unless that U.S. Settling Party is also a State Settling Party.

37. General Description of Options

- a. As between the two settlement options, Settlement Option A is designed to provide U.S. Settling Parties with a higher degree of finality and certainty. Under Settlement Option A, the payment includes an amount for (i) past costs incurred at or in connection with the Site; (ii) projected future response costs to be incurred at or in connection with the Site; and (iii) a premium to cover, the risks

and uncertainties associated with this settlement, including, but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any other person (but not including the State Regulatory Entities and the State Trustee), will exceed the estimated total response costs upon which Settling Parties' payments are based. The premium for Option A is 100%. Pursuant to Section XI (Covenants and Reservations of Rights by United States), U.S. Settling Parties that choose Settlement Option A will receive more protective covenants (including a covenant not to sue for Natural Resource Damages and Federal Trustees' response costs), and these Settlement Option A covenants have more limited reservations.

- b. Under Settlement Option B, which offers less finality than Settlement Option A, the premium is 50%. Pursuant to Section XI (Covenants and Reservations of Rights by United States), U.S. Settling Parties that choose Settlement Option B do not receive a covenant not to sue for Natural Resource Damages or Federal Trustees' response costs and risk liability for additional future payments.
- c. The Settling Parties also have the option to settle with the State Regulatory Entities and State Trustee, as set forth in Paragraph 39, resolving certain potential liability to the State Regulatory Entities and the State Trustee.

38. Calculation of Payment to U.S. EPA and Federal Trustees

- a. Each U.S. Settling Party's payment is based on its share, by weight, of the total waste disposed of at the Site multiplied by the U.S. EPA's estimated total response costs incurred or to be incurred at or in connection with the Site.
- b. For U.S. Settling Parties that elect Settlement Option A, U.S. EPA's cost estimate is \$284 million that have been or will be incurred by U.S. EPA for response actions at the Site and by the CSC for response actions at the Site, as required by

the Casmalia Consent Decree, which includes \$12 million that, at the time U.S. EPA prepared the 1999 Cost Estimate, was in the RCRA Closure and Post-Closure Trust Fund established by the former owner/operator of the Site. This figure also includes an estimate of \$193,417 for certain response costs that have been, or will be, incurred by the Federal Trustees at the Site. A portion of the money paid by U.S. Settling Parties that elect Settlement Option A will be provided to the Federal Trustees to perform activities that support both the response action and the assessment of potential injuries to natural resources in accordance with CERCLA sections 104(b)(2), 107(f)(1) and 122(j)(2), 42 U.S.C. §§ 9604(b)(2), 9607(f)(1) and 9622(j)(2). The payment amounts for each U.S. Settling Party are set forth in Appendix A.

- c. For U.S. Settling Parties that elect Settlement Option B, U.S. EPA's cost estimate is \$284 million that have been or will be incurred by U.S. EPA for response actions at the Site and by the CSC for response actions at the Site, as required by the Casmalia Consent Decree, which includes \$12 million that, at the time U.S. EPA prepared the 1999 Cost Estimate, was in the RCRA Closure and Post-Closure Trust Fund established by the former owner/operator of the Site. This figure does not include an estimate for any response costs that will be incurred by the Federal Trustees.
- d. Each payment amount by U.S. Settling Parties includes a premium to cover the risks and uncertainties associated with this Consent Order. The premium (100% for Settlement Option A, 50% for Settlement Option B) is applied to each U.S. Settling Party's volumetric share of all estimated "non-fixed Site response costs" but is not applied to U.S. EPA's and the CSC's calculation of "fixed Site response costs." Fixed Site response costs include \$16.38 million in Past Response Costs

(as defined in the Casmalia Consent Decree) incurred by the United States between March 1, 1992 and July 22, 1997, and response costs of \$2.81 million incurred by the United States between July 23, 1997, and August 1, 1999 (the date U.S. EPA selected as the “cutoff” for the calculation of costs that have already been incurred for purposes of the cost estimate used for this Consent Order and future enforcement efforts). Fixed Site response costs also include response costs of \$13.68 million incurred by the CSC for response actions between April 1993 and August 1998 for Phase 1 Work in accordance with the Casmalia Consent Decree. U.S. EPA’s and the CSC’s fixed Site response costs together total \$32.86 million. Under Settlement Option A or Settlement Option B, the premium is not assessed against this \$32.86 million. Under Settlement Option A or Settlement Option B, the premium is applied to U.S. EPA’s and the CSC’s “non-fixed” estimated Site response costs, or estimated response costs incurred and to be incurred at the Site after August 1, 1999. This amount totals \$239.07 million. Under Settlement Option A, the 100% premium is also applied to estimated non-fixed Site response costs of \$193,417 incurred or to be incurred by the Federal Trustees, described in subparagraph b, above.

- e. The mathematical formula for calculating each U.S. Settling Party’s payment amount to the U.S. EPA under Settlement Option A is as follows:

U.S. Settling Party's <u>Waste Quantity</u> Total Site Waste Quantity 5.6 Billion lbs.	X	Non-Fixed Site Response Costs \$239.07 Million	+	Natural Resources Trustees' Costs \$193,417	X	Premium (100%) 2.0	=	Payment Amount	
+								=	Payment Amount
U.S. Settling Party's <u>Waste Quantity</u> Total Site Waste Quantity 5.6 Billion lbs.	x	Fixed Site Response Costs \$32.86 Million			x	[No Premium Assessed]			

f. The mathematical formula for calculating each U.S. Settling Party's payment amount to the U.S. EPA under Settlement Option B is as follows:

U.S Settling Party's <u>Waste Quantity</u> Total Site Waste Quantity 5.6 Billion lbs.	X	Non-Fixed Site Response Costs \$239.07 Million	X	Premium (50%) 1.5	=	Payment Amount		
+						=	Payment Amount	
U.S. Settling Party's <u>Waste Quantity</u> Total Site Waste Quantity 5.6 Billion lbs.	X	Fixed Site Response Costs \$32.86 Million			x	[No Premium Assessed]		

- g. In the event that the actual costs exceed those identified in the Option A formula above, the United States agrees that this shall not be a basis for seeking additional costs from the Option A U.S. Settling Parties. Further, in the event the actual costs are less than those identified in the formulas above, the U.S. Settling Parties -- both Option A Settling Parties and Option B Settling Parties -- agree that they shall not be entitled to a refund of any payments made or modification of the formula for any payments owing to the United States.
- h. Each Option A U.S. Settling Party's payment amount for Settlement Option A is set forth in the appropriate column opposite that Option A U.S. Settling Party's name on Appendix A. Each Option B U.S. Settling Party's payment amount for Settlement Option B is set forth in the appropriate column opposite that Option B U.S. Settling Party's name on Appendix A.

39. Calculation of Payment to State Regulatory Entities and State Trustee

- a. For Settling Parties that select the State Settlement ("State Settling Parties"), identified in Appendix C, the State Regulatory Entities' response cost estimate for purposes of this settlement is \$11,474,062 . The response cost estimate is based on the assumption by the State Regulatory Entities that U.S. EPA will retain lead agency status for all phases of response action that must be taken at the Site, including operation and maintenance ("O&M"). In the event that U.S. EPA does not retain lead agency status throughout the response action, including O&M, the State Regulatory Entities agree that such change in lead agency shall not be a basis for seeking additional response costs from the State Settling Parties.
- b. In addition, for the purposes of this Consent Order with the State Settling Parties only, the State Trustee currently estimates the State Natural Resource Damages Claim at \$16,000,000. In the event that the actual State Natural Resource Damages Claim exceeds \$16,000,000, the State Trustee agrees that this shall not

be a basis for seeking additional costs from the State Settling Parties. Further, in the event the actual State Natural Resource Damages Claim is less than \$16,000,000, the State Settling Parties agree they shall not be entitled to a refund of any percentage paid to settle the State Natural Resource Damages Claim over and above the actual State Natural Resource Damages Claim.

c. Each payment amount for response costs includes a premium to cover the risk and uncertainties associated with the settlement of the State Regulatory Entities' estimated future response costs of \$8,459,570. The premium of 100%, is consistent with U.S. EPA's Settlement Option A. The premium is applied to each State Settling Party's volumetric share of the State Response Costs estimate for costs already incurred or to be incurred after June 30, 2003. June 30, 2003 is the cut-off date selected by State Regulatory Entities for the calculation of costs that have already been incurred for the purposes of the cost estimate prepared for this Consent Order and future enforcement efforts with other de minimis potentially responsible parties. Costs incurred on or before June 30, 2003, which the State Regulatory Entities can document at this time, total \$2,765,392. For purposes of this settlement, the estimated future costs of \$249,100 for DFG are included in the \$16million State Natural Resource Damages Claim. The estimated future costs for the State Regulatory Entities are $\$8,708,670 - \$249,100 = \$8,459,570$, and the premium is applied to this amount.

d. The following formula is used to calculate the payment for each State Settling Party to settle claims for the State Response Costs:

(State Settling Party's Waste Volume / Total Site Waste Quantity of 5.6 billion lbs.)
x \$2,765,392 [which represents past response costs]

+

(State Settling Party's Waste Volume / Total Site Waste Quantity of 5.6 billion lbs.)

x \$8,459,570 x 2 [100% premium][which represents estimated future response costs of DTSC and the Regional Board and a settlement premium].

- e. The following formula is used to calculate the payment for each State Settling Party to resolve the State Natural Resource Damages Claim:

(State Settling Party's Waste Volume / Total Site Waste Quantity of 5.6 billion lbs.)
x \$16 million

- f. Each State Settling Party's payment amount for settlement of State Response Costs is set forth in the appropriate column opposite that State Settling Party's name in Appendix C. Each State Settling Party's payment amount for settlement of State Natural Resource Damages Claim is set forth in the appropriate column opposite that State Settling Party's name in Appendix C.

VIII. PAYMENT

40. Signature by Settling Parties

- a. Each U.S. Settling Party has submitted to U.S. EPA a fully and properly executed original signature page for this Consent Order entitled "Consent and Authorization for Agreement to Settle with the United States," electing either Settlement Option A or Settlement Option B, and paid to the Escrow Account the payment specified for that U.S. Settling Party in the appropriate column opposite that U.S. Settling Party's name in Appendix A in accordance with the instructions provided in Paragraph 41(a).
- b. Each State Settling Party shall have provided to the State Regulatory Entities' and State Trustee's designated representative a fully and properly executed original signature page for this Consent Order, entitled "Consent and Authorization for Agreement to Settle with the State Regulatory Entities and the State Trustee."

41. Payment Provisions

a. Payment to the U.S. EPA

Each U.S. Settling Party made payment in full by one of the following methods to the U.S. EPA:

(1) By Cashier's or Certified Check

Cashier's check or certified check, made payable to "Smith Barney as Custodian for Casmalia Resources Site" mailed to the following address:

Sally A. Fisher
The Fisher Group
First Vice President-Wealth Management
Smith Barney
1111 Northshore Dr. #N-160
Knoxville, TN 37919
Re: Casmalia Custody Account

and including an original completed Payment Invoice.

(2) By Wire Transfer

Funds wired to:
Citibank, N.A.
ABA: 021000089
FBO: Citigroup Global Markets/Smith Barney
A/C: 30604518
New York, NY 10004
Further Credit to: 726-71330-10
Ref: Casmalia Resources Site Custodial Agreement
Payor: the name of the Settling Party exactly as it appears at the top of the "Consent and Authorization for Agreement to Settle with the United States" page.

At the time of payment, each U.S. Settling Party submitted a copy of the completed Payment Invoice to:

Casmalia Case Team
U.S. EPA Region IX
75 Hawthorne Street (SFD-7)
San Francisco, California 94105-3901

b. Payment to State Regulatory Entities for State Response Costs

Within fifteen (15) days after receipt of notice from the Office of the California

Attorney General of the effective date of this Consent Order, each State Settling Party shall pay the sum for State Response Costs set forth next to its name in Appendix C as follows:

i) Payment to DTSC shall be made by one of the following methods:

(a) by Cashier's or Certified Check sent to:

California Department of Toxic Substances Control
Accounting Section - Cashiering Unit (FLR 21-1)
Attention: Cashier
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806

If payments are made by cashier's or certified check, the check shall be made payable to the California Department of Toxic Substances Control. The payment shall indicate the name of this Consent Order and its U.S. EPA Docket Number.

or

(b) by Wire Transfer to the California Department of Toxic Substances Control, including the following information:

1. Name and address of the California Department of Toxic Substances Control's banking institution to which the transfer is to be made:

Bank of America, Sacramento Government Services, Unit 1436
555 Capitol Mall, Suite 1555
Sacramento, CA 95814

2. Account number to which the wire transfer should be sent:

Financial Institution:	Bank of America, San Francisco, CA
ABA Routing Number:	0260-0959-3
Beneficiary:	State of California
Beneficiary Information:	State Treasurer's Demand Deposit Account
Beneficiary Account No.:	14993-24597

3. Attn: Ellen Day
Government Services
(916) 321-4677

If payment to DTSC is made by wire transfer, the State Settling Party will need to

call the DTSC Accounting Office at (916) 322-5539 or (916) 324-3099 to notify them that a wire transfer will be sent and provide the State Settling Party's name, the amount of the transfer, the name of this Consent Order and the U.S. EPA Docket Number.

ii) Payment to the Regional Board shall be made by one of the following methods:

(a) by wire transfer, including the following information:

1. Name and address of the California Department of Justice's banking institution to which the transfer is to take place:

Bank of America, Sacramento Government Services, Unit 1436
555 Capitol Mall, Suite 1555
Sacramento, CA 95814

2. Account number to which the wire transfer should be sent:

Financial Institution:	Bank of America, San Francisco, CA
ABA Routing No.:	0260-0959-3
Beneficiary:	State of California, Dept. of Justice
Beneficiary Information:	Casmalia Disposal Site/RWQCB
Beneficiary Account No.:	01482-80005

3. Attn: Marilyn Goodridge
Government Services
(916) 321-4803

(b) or by cashier's or certified check, sent to:

California Department of Justice
Accounting Section – Cashiering Unit
Attention: Michelle Lewis
1300 "I" Street, Suite 810
P.O. Box 944255
Sacramento, California 94244-2550

The payments shall indicate the name of this Consent Order and its U.S. EPA Docket Number. Any payment received by any of the State Regulatory Entities or the California Department of Justice after 5:00 p.m. Pacific Time will be credited the next business day. At the time of the payments to DTSC and the Regional Board, each State Settling Party shall submit copies of the completed cost payment invoices for DTSC and the Regional Board and a copy of each check or

wire confirmation to:

Kimberly Kelley Espinoza
Senior Legal Analyst
Office of the Attorney General, Environment Section
California Department of Justice
110 W. A Street, Suite 1100
San Diego, California 92101

c. Payment to the State Trustee

Within fifteen (15) days after the receipt of notice from the Office of the California Attorney General of the effective date of this Consent Order, each State Settling Party shall pay the sum for the State Natural Resource Damages Claim set forth next to its name in Appendix C by cashier's or certified check payable to California Department of Fish and Game to the following address:

John Holland
Legal Department
Office of Spill Prevention and Response
Department of Fish and Game
P.O. Box 160362
Sacramento, California 95816-0362

Any payment received by the California Department of Fish and Game after 5:00 p.m. Pacific Time will be credited the next business day. At the time of the payment, each State Settling Party shall submit a copy of the completed State Natural Resources Damages Claim Payment Invoice and a copy of the check to:

Kimberly Kelley Espinoza
Senior Legal Analyst
Office of the Attorney General, Environment Section
California Department of Justice
110 W. A Street, Suite 1100
San Diego, California 92101

42. Refunds from the Escrow Account.

In the event that this Consent Order does not become effective, then U.S. EPA shall direct the Escrow Trustee, within thirty (30) days of receipt of notice of such event from U.S.

EPA, to refund the U.S. Settling Parties' payment(s). Any refunds made under this Paragraph shall include the interest accrued on the payment, if any, minus a pro rata share of the costs of administering the Escrow Account to that date and taxes payable by the Escrow Trustee with respect to payments made by the U.S. Settling Parties under this Consent Order.

43. Disqualification.

If the U.S. EPA determines, in its sole and unreviewable discretion, that one or more of the statements of facts made in Paragraph 27 or the determinations made in Subparagraphs 34(g) or (h) no longer apply(ies) to a Settling Party, U.S. EPA may, in its sole and unreviewable discretion, disqualify such Settling Party from participation in this Consent Order, or may proceed in accordance with Paragraph 53 herein. If U.S. EPA determines that a Settling Party is disqualified, U.S. EPA will notify the Escrow Trustee. The Escrow Trustee shall, within thirty (30) days of receipt of written notification by U.S. EPA of such disqualification, refund the payment made to the U.S. EPA by such U.S. Settling Party. U.S. EPA will timely notify the Project Coordinator for the State Regulatory Entities of any such disqualification or determination to proceed in accordance with Paragraph 53. The State Regulatory Entities and the State Trustee reserve the right also to disqualify the disqualified Settling Party or to proceed in accordance with Paragraph 59 herein. The State Regulatory Entities will inform U.S. EPA in writing of a change in Project Coordinator for the State Regulatory Entities.

IX. FAILURE TO MAKE TIMELY PAYMENTS

44. Interest on Late Payments to the United States

- a. Because all U.S. Settling Parties electing Settlement Option A have remitted payment to the U.S. EPA in full as required by Paragraph 41 prior to the effective date of this Consent Order, no Interest shall accrue on any such payment.
- b. U.S. Settling Parties electing Settlement Option B who fail to pay their share of increased costs as set forth in Paragraph 56 shall pay Interest on the unpaid balance, commencing on the date that payment is due and accruing through the

date of the payment.

- c. Interest shall be paid by a separate check in the amount of the Interest owed and shall be sent simultaneously with the payment required in Paragraph 56. Payment of Interest shall be made and a copy of the cashier's or certified check shall be sent as provided in paragraph 41(a).

45. Stipulated Penalties

- a. In addition to the Interest required by Paragraph 44, if an Option B U.S. Settling Party fails to remit the payment required by Paragraph 56 when due, then that Option B U.S. Settling Party shall also pay stipulated penalties to U.S. EPA of \$1,000 per day for each day that the payment is late.
- b. Penalties shall begin to accrue from the day when payment by an Option B U.S. Settling Party is due pursuant to Paragraph 56 and shall continue to accrue until all payments required by this Consent Order for that Option B U.S. Settling Party have been paid in full (e.g., when all payments, Interest, and stipulated penalties are paid in full). Penalties shall accrue regardless of whether U.S. EPA or the Escrow Trustee has notified the Option B U.S. Settling Party of a violation.
- c. Interest on penalties shall begin to accrue on the unpaid balance at the end of thirty (30) days from the date that payment was due under Paragraph 56.
- d. Stipulated penalties due to U.S. EPA shall be paid contemporaneously with the payment of the amount required by Paragraph 56 and the Interest thereon required by Paragraph 44. However, stipulated penalties, including any Interest owed on the stipulated penalties pursuant to subparagraph c of this Paragraph, shall be paid by a separate certified or cashier's check made payable to "U.S. EPA Hazardous Substances Superfund," and shall be mailed to:

U.S. EPA - Region IX
Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the U.S. Settling Party making payment and U.S. EPA Regional Site Spill ID Number 09-3H.

- e. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Order.
- f. Notwithstanding any other provision of this Section, the United States may, in its sole and unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Order.

46. Interest and Stipulated Penalties on Late Payments to State Regulatory Entities or State Trustee

- a. State Settling Parties who fail to make full payment to the State Regulatory Entities and the State Trustee as required in Paragraph 41(b) and (c) shall pay Interest on the unpaid balance, commencing on the date that payment is due and accruing through the date of the payment.
- b. Interest shall be paid by a separate check to the respective payee in the amount of the Interest owed. Payment of Interest shall be made and a copy of the cashier's or certified check shall be sent as provided in Paragraph 41(b) and (c).
- c. In addition to the Interest required by this Paragraph, if a State Settling Party fails to remit the payments required by Paragraph 41(b) and (c) when due, the State Regulatory Entities or State Trustee may, at their respective discretion, order State Settling Party to pay stipulated penalties up to \$500 per day for each calendar day that a payment required pursuant to paragraph 41(b) and 41(c) is late. Stipulated penalty payments and copies of payments shall be mailed to the contact person(s) and addresses set forth in Paragraph 41(b) and (c).

47. The releases and covenants set forth in Sections XI (Covenants and Reservations of

Rights by United States), XII (Covenants and Reservations of Rights by State Regulatory Entities and State Trustee) and XIII (Covenants by Settling Parties Not to Sue), and the contribution protection set forth in Section XIV (Effect of Settlement/Contribution Protection) are conditional upon compliance with all the terms of this Consent Order, including – for U.S. Settling Parties electing Settlement Option B – payment pursuant to Paragraph 56.

48. If U.S. EPA or U.S. DOJ brings an action to enforce this Consent Order against U.S. Settling Party(ies), such U.S. Settling Party(ies) shall reimburse the U.S. EPA and/or U.S. DOJ for all costs of such action, including but not limited to costs of attorney time.

49. If the State Regulatory Entities or the State Trustee brings an action to enforce the obligations to them under this Consent Order against State Settling Party(ies), such State Settling Party(ies) shall reimburse the State Regulatory Entities and/or State Trustee for all costs of such enforcement action, including, but not limited to, costs of attorney time.

50. If any Settling Party fails to make full payment as required, the United States, the State Regulatory Entities, and the State Trustee may, in addition to any other available remedies or sanctions, bring an action against that Settling Party seeking injunctive relief to compel payment and/or seeking civil penalties under section 122(l) of CERCLA, 42 U.S.C. § 9622(l), and under comparable State law for failure to make timely payment.

X. CERTIFICATION OF SETTLING PARTY

51. By signing this Consent Order, each Settling Party certifies, individually, that it has no reason to disagree with the U.S. EPA's determination that such Settling Party: (a) contributed less than 8.5 million pounds of materials containing hazardous substances to the Site, and (b) contributed hazardous substances of minimal toxic or other hazardous effects in comparison to other hazardous substances at the Site, as set forth in the Contaminants List attached as Appendix E.

XI. COVENANTS AND RESERVATIONS OF RIGHTS BY UNITED STATES

52. General Reservations. The covenants by the United States set forth in Paragraphs 54

and 55 of this Consent Order do not pertain to any matters other than those expressly specified in Paragraphs 54 and 55. The United States reserves, and this Consent Order is without prejudice to, all rights against U.S. Settling Parties, with respect to all matters not expressly included within the covenants by the United States in Paragraphs 54 and 55. This reservation includes, but is not limited to:

- a. liability for failure to meet a requirement of this Consent Order;
- b. criminal liability;
- c. liability based upon the ownership or operation of the Site, or upon the transportation, treatment, storage or disposal of a hazardous substance or a solid waste, as defined by Section 1004 (27) of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. §6903(27), at or in connection with the Site by that U.S. Settling Party after the effective date of this Consent Order by the U.S. Settling Party;
- d. liability arising from the past, present, or future arrangement by a U.S. Settling Party, or a subsidiary or affiliated entity of that U.S. Settling Party for transportation, treatment, storage or disposal of a hazardous substance or a solid waste at the Site that is both (1) not from a facility or specific location owned or operated by that U.S. Settling Party as specified in Appendix A, and (2) not included in the volume of waste attributed to that U.S. Settling Party as set forth in Appendix A; and
- e. with respect to Option B U.S. Settling Parties, claims by Federal Trustees for costs associated with response actions or Natural Resource Damages claims at the Site.

Except as provided in paragraph 62, the United States reserves, and this Consent Order is without prejudice to, all rights of the United States against persons who are not U.S. Settling Parties.

53. Reservation Concerning De Minimis Status. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against any individual U.S. Settling Party seeking to compel that U.S. Settling Party to perform response actions relating to the Site, and/or to reimburse the United States, for additional costs of response and/or Natural Resource Damages, if information is discovered that indicates such U.S. Settling Party no longer qualifies as a de minimis party at the Site because such U.S. Settling Party contributed more than 8.5 million pounds of materials containing hazardous substances to the Site, or contributed hazardous substances the toxic or hazardous effect of which are not minimal in comparison to other hazardous substances at the Site, as set forth in the Contaminants List attached as Appendix E. For purposes of this Section only, the volume of material contributed by a U.S. Settling Party shall not include any waste sent by an entity merged into or otherwise acquired by such U.S. Settling Party after the effective date of this Consent Order.

54. In consideration of the payments that have been made by U.S. Settling Parties that have elected to settle under the provisions of Settlement Option A (“Option A U.S. Settling Parties”) under the terms of this Consent Order, and except as specifically provided in Paragraphs 52 and 53 of this Consent Order, the United States hereby covenants not to sue or to take administrative action against any of the Option A U.S. Settling Parties pursuant to sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), and section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site, including for recovery of Natural Resource Damages and for response costs incurred or to be incurred by the Federal Trustees. With respect to present and future liability, this covenant shall take effect upon the effective date of this Consent Order as set forth in Section XX (Effective Date). With respect to each Option A U.S. Settling Party, individually, this covenant is conditioned upon: a) the satisfactory performance by that Option A U.S. Settling Party of all its obligations under this Consent Order; and b) the veracity of any information provided to U.S. EPA by that Option A U.S. Settling Party relating to Settling

Party's involvement with the Site. This covenant extends only to Option A U.S. Settling Parties and does not extend to any other person.

55. In consideration of the payments that have been and may be made by U.S. Settling Parties that have elected to settle under the provisions of Settlement Option B ("Option B U.S. Settling Parties") under the terms of this Consent Order, and except as specifically provided in Paragraphs 52, 53 and 56 of this Consent Order, the U.S. EPA hereby covenants not to sue or to take administrative action against any of the Option B U.S. Settling Parties pursuant to sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), and section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site, for the Work, Past Response Costs and Future Response Costs. With respect to present and future liability, this covenant not to sue shall take effect upon the effective date of this Consent Order as set forth in Section XX (Effective Date). With respect to each Option B U.S. Settling Party, individually, this covenant is conditioned upon: a) the satisfactory performance by Option B U.S. Settling Parties of all its obligations under this Consent Order, including, but not limited to, the obligation to make future payments pursuant to Paragraph 56; and b) the veracity of any information provided to U.S. EPA by that Option B U.S. Settling Party relating to that Option B U.S. Settling Party's involvement with the Site. This covenant not to sue extends only to Option B U.S. Settling Parties and does not extend to any other person.

56. Reservation for Increased Costs of Response Actions

- a. For Settling Parties that elect Settlement Option B, the settlement payment formula is based on estimated Site costs of \$271.9 million.
- b. Option B U.S. Settling Parties shall be liable for, and in its unreviewable discretion U.S. EPA may seek to have Option B U.S. Settling Parties pay, their volumetric share of any increase in response costs if:

- (i) after the final Record of Decision ("ROD") for the Site has been issued and prior to certification of completion of the Phase 2 Work, U.S. EPA has revised or approved the revision of, or the Court has approved a

revision of, the cost estimate for all response actions taken or to be taken at the Site (“Post-ROD Cost Estimate”); and

- (ii) the estimated total Site Response Costs exceed \$284 million; and
- (iii) based on actual expenditures at the Site and expenditures reasonably anticipated in accordance with the ROD, any other response action decision documents, and the revised cost estimate, U.S. EPA, in its unreviewable discretion, determines that the funds in the Escrow Account that are available for Phase 2 Work pursuant to the Casmalia Consent Decree will not be sufficient to pay for costs associated with performance of the Phase 2 Work or not be sufficient to allow timely continuation of such work.

c. In addition, Option B U.S. Settling Parties shall be liable for, and in its unreviewable discretion U.S. EPA may seek to have Option B U.S. Settling Parties pay, their volumetric share of any increase in response costs if:

- (i) upon certification of completion of Phase 2 Work, U.S. EPA has revised, or approved the revision of, the cost estimate for all response actions taken or to be taken at the Site (“Post-Phase 2 Cost Estimate”); and

- (ii) the Post-Phase 2 Cost Estimate has increased from either the 1999 Cost Estimate or the Post-ROD Cost Estimate, whichever is greater.

d. If U.S. EPA determines, in its unreviewable discretion, that it will require payment of amounts derived pursuant to subparagraphs b or c, above, it shall compile an administrative record to support the revised cost estimate. The record shall include, but not be limited to, any Engineering Evaluation/Cost Analysis, Remedial Investigation/Feasibility Study, ROD, or any other response action decision documents, standard cost documentation for response costs incurred by

the United States and a summary of response costs incurred by the CSC. The administrative record shall be made available to the public at U.S. EPA Region 9, Superfund Records Center, 95 Hawthorne Street, San Francisco, California 94105-3901.

- e. After compilation of the administrative record, U.S. EPA will send a notice to all Option B U.S. Settling Parties, which shall i) include the Post-ROD Cost Estimate or Post-Phase 2 Cost Estimate, as applicable, and a brief summary describing and supporting the cost estimate, ii) state the availability of the administrative record for review, and iii) notify each Option B U.S. Settling Party of the amount it will be required to pay (i.e., its volumetric share of the increased cost).
- f. U.S. EPA shall have three years from the date of certification of completion of the Phase 2 Work to send the notice described in subparagraph e, above, relating to an increase in the Post-ROD Cost Estimate described in subparagraph b, above, or an increase in the Post-Phase 2 Cost Estimate described in subparagraph c, above.
- g. Option B U.S. Settling Parties shall have thirty (30) days from the date of the notice described in subparagraph e, above, to submit comments to U.S. EPA concerning the Post-ROD Cost Estimate or the Post-Phase 2 Cost Estimate, as applicable, and/or the administrative record in support of the cost estimate. Comments shall be submitted to: Casmalia Case Team (SFD-7), 75 Hawthorne Street, San Francisco, California 94105-3901. U.S. EPA shall prepare a response to significant comments, and shall place the comments and its response in the Superfund Records Center at the address listed in subparagraph d, above. U.S. EPA shall send to the Option B U.S. Settling Parties a notice containing the response to comments, and any resulting revision to the cost estimate and corresponding adjustment to each Option B U.S. Settling Party's required payment amount. If no comments were received, U.S. EPA shall notify the

Option B U.S. Settling Parties that the prior Post-ROD Cost Estimate or Post-Phase 2 Cost Estimate, as applicable, of which the Option B U.S. Settling Parties received notice pursuant to subparagraph e, above, has become final, and shall make a demand for payment to each Option B U.S. Settling Party of the amount set forth in such notice.

- h. After U.S. EPA has responded to any comments, U.S. EPA's Post-ROD Cost Estimate or Post-Phase 2 Cost Estimate, as applicable, revised if necessary pursuant to subparagraph g, above, shall be considered final, unless within fourteen (14) days of receipt of the response to comments, the Option B U.S. Settling Parties appoint a delegation (consisting of no more than ten (10) persons) to request a meeting with the U.S. EPA Region 9 Superfund Division Director. The appointed delegation may not raise to the Division Director any issues that had not previously been raised by the written comments. (If U.S. EPA received no comments on the initial Post-ROD or Post-Phase 2 Cost Estimate, there shall be no appeal to the Division Director.) Further, the Option B U.S. Settling Parties shall not challenge any fixed Site response costs included in the 1999 Cost Estimate, and described in Paragraph 30, above.
- i. If no meeting with the Division Director was requested pursuant to subparagraph h, above, U.S. EPA shall notify the Option B U.S. Settling Party that the prior Post-ROD or Post-Phase 2 Cost Estimate, revised (if necessary) pursuant to subparagraph g, above, has become final, and shall make a demand to each Option B U.S. Settling Party for payment of the amount set forth in the notice sent to each Option B U.S. Settling Party pursuant to subparagraph g, above.
- j. If a meeting with the Division Director is held, the Division Director shall review the administrative record supporting the cost estimate (including the comments and responses thereto). The Division Director shall resolve the dispute(s)

consistent with the NCP and the terms of this Consent Order and will issue a final written administrative decision. Such decision shall be final and shall not be subject to judicial review. U.S. EPA shall send the Option B U.S. Settling Parties the Division Director's written decision, any necessary revision to the Post-ROD or Post-Phase 2 Cost Estimate, as applicable, any corresponding adjustment to each Option B U.S. Settling Party's required payment amount, and a demand for payment of such amount.

k. Option B U.S. Settling Parties' Manner of Payment and Failure to Make Timely Payment

(i) Option B U.S. Settling Parties shall make any additional payment(s) within thirty (30) days of receipt of U.S. EPA's demand for such payment under subparagraphs g, i or j, above. Payment, and notice of such payment, shall be made in the manner set forth in Paragraph 41(a).

(ii) If an Option B U.S. Settling Party fails to remit any payment(s) required by subparagraph k(i), above, when due, then that Option B U.S. Settling Party shall pay Interest on the unpaid balance in accordance with Paragraph 44. Payment of such Interest shall be made in accordance with Paragraphs 41(a) and 44.

(iii) In addition to Interest, such Option B U.S. Settling Party shall pay stipulated penalties to U.S. EPA of \$1000 per day for each day that the payment is late. Penalties and Interest on such penalties shall accrue and shall be paid as set forth in Paragraph 45.

(iv) Each Option B U.S. Settling Party hereby agrees that the running of the limitations periods in all statutes of limitations applicable to any rights, claims, causes of action, counterclaims, cross claims, and defenses regarding, based upon, or arising out of disposal of hazardous substances

at the Site that either U.S. EPA or the CSC could assert against such Option B U.S. Settling Party shall be suspended for a period commencing on the Effective Date of this Consent Order and terminating eighteen (18) months after the latest date upon which final payment would be due upon a demand made under subparagraph c, above, or three years after the certification of completion of Phase 2 Work if no demand has been made under subparagraph c, above.

(v) If U.S. EPA or U.S. DOJ brings an action to enforce this Consent Order against any Option B U.S. Settling Party, such Option B U.S. Settling Party shall reimburse U.S. EPA and/or U.S. DOJ for all costs of such action, including but not limited to costs of attorney time.

(vi) Payments made under this subparagraph shall be in addition to any other remedies or sanctions available to the United States by virtue of Option B U.S. Settling Parties' failure to comply with the requirements of this Consent Order.

1. Duty to Inform U.S. EPA of Changes in Address or Legal Status. Until eighteen (18) months after the latest date upon which final payment would be due upon a demand made under subparagraph c, above, or three years after the certification of completion of Phase 2 Work if no demand has been made under subparagraph c, above, each Option B U.S. Settling Party shall notify the Casmalia Case Team of any change in address, ownership, political configuration, or corporate or other legal status. Such notice shall be sent to the Casmalia Case Team address provided in Paragraph 41(a), above.

XII. COVENANTS AND RESERVATIONS OF RIGHTS BY STATE REGULATORY ENTITIES AND STATE TRUSTEE

57. In consideration of the payments that will be made by State Settling Parties to the

State Regulatory Entities under the terms of this Consent Order, and except as specifically provided in Paragraphs 58 and 59 of this Consent Order, the State Regulatory Entities hereby covenant not to sue or to take administrative action against any of those State Settling Parties pursuant to section 107 of CERCLA, 42 U.S.C. § 9607, and section 7002 of RCRA, 42 U.S.C. § 6972, the State Statutes, or state nuisance and trespass laws, relating to the Site. In addition, in consideration of the payments that will be made by State Settling Parties to the State Trustee under the terms of this Consent Order, the State Trustee hereby covenants not to sue or to take administrative action against any of those State Settling Parties pursuant to section 107 of CERCLA, 42 U.S.C. § 9607, and section 7002 of RCRA, 42 U.S.C. § 6972, the State Statutes, or state nuisance and trespass laws, relating to the Site, including for recovery of Natural Resource Damages and for response costs incurred or to be incurred by the State Trustee. With respect to present and future liability, these covenants shall take effect upon the effective date of this Consent Order as set forth in Paragraph 78 of Section XX (Effective Date). With respect to each State Settling Party, individually, these covenants are conditioned upon: a) the satisfactory performance by that State Settling Party of all its obligations to the State Regulatory Entities and the State Trustee under this Consent Order; and b) the veracity of any information provided to U.S. EPA by that State Settling Party relating to that State Settling Party's involvement with the Site. These covenants extend only to the State Settling Parties and do not extend to any other person.

58. The covenants by the State Regulatory Entities and the State Trustee set forth in Paragraph 57 of this Consent Order do not pertain to any matters other than those expressly specified in Paragraph 57. The State Regulatory Entities and the State Trustee reserve, and this Consent Order is without prejudice to, all rights against the State Settling Parties, with respect to all other matters, including but not limited to:

- a. liability for failure to meet a requirement of this Consent Order;
- b. criminal liability;

- c. liability based upon the ownership or operation of the Site, or upon the transportation, treatment, storage or disposal of a hazardous substance or a solid waste at or in connection with the Site by that State Settling Party after the effective date of this Consent Order; and
- d. liability arising from the past, present, or future arrangement for disposal or treatment by a State Settling Party, or a subsidiary or affiliated entity of that State Settling Party for transportation, treatment, storage or disposal of a hazardous substance or a solid waste at the Site that is both (1) not from a facility or specific location owned or operated by that State Settling Party as specific in Appendix C, and (2) not included in the volume of waste attributed to that State Settling Party as set forth in Appendix C.

Nothing in this Consent Order precludes the State Regulatory Entities and the State Trustee from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Consent Order. Nothing herein diminishes the right of the State Regulatory Entities and the State Trustee to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

59. Notwithstanding any other provision in this Consent Order, the State Regulatory Entities and the State Trustee reserve, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against any individual State Settling Party seeking to compel that State Settling Party to perform response actions relating to the Site, and/or to reimburse the State Regulatory Entities and the State Trustee, for additional costs of response and/or Natural Resource Damages, if information not currently known to the U.S. EPA, the State Regulatory Entities or the State Trustee is discovered that indicates such State Settling Party no longer qualifies as a de minimis party at the Site because such State Settling Party contributed more than 8.5 million pounds of materials containing hazardous substances to the

Site, or contributed hazardous substances the toxic or other hazardous effect of which is not minimal in comparison to other hazardous substances at the Site as set forth in the Contaminants List attached as Appendix E. For purposes of this Section only, the volume of material contributed by a State Settling Party shall not include any waste sent by an entity merged into or otherwise acquired by such State Settling Party after the effective date of this Consent Order.

XIII. COVENANTS BY SETTLING PARTIES NOT TO SUE

A. Covenants by U.S. Settling Parties

60. Except as provided in Paragraph 62, U.S. Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Order including, but not limited to:

- a. any direct or indirect claim for reimbursement from the U.S. EPA Hazardous Substance Superfund based on sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended or at common law; and;
- c. any claim pursuant to sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site;
- d. any claim pursuant to section 7002 of RCRA, 42 U.S.C. §§ 6972, or any other comparable California laws, relating to the Site;
- e. any claim asserting a "takings" or similar claim; and

Except as provided in Paragraphs 62 and 66, these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 52(c), (d) and (e), and 53, but only to the extent that Settling Parties' claims

arise from the same response actions, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

61. Nothing in this Consent Order shall be deemed to constitute preauthorization or approval of a claim within the meaning of section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

62. U.S. Settling Parties agree not to assert any claims or causes of action with regard to the Site pursuant to Sections 107 and 113(f) of CERCLA, 42 U.S.C. §§ 9607 and 9613(f), that they may have for all matters relating to the Site against each other or any other person who is a potentially responsible party under CERCLA at the Site. This agreement not to assert any claims or causes of action shall not apply with respect to any defense, claim, or cause of action that a U.S. Settling party may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against such U.S. Settling Party.

B. Covenants By State Settling Parties as to State Regulatory Entities and State Trustee

63. State Settling Parties covenant not to sue and agree not to assert any claims or causes of action against any of the State Regulatory Entities or the State Trustee or their contractors, representatives, agents, officers or employees with respect to the Site or this Consent Order including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substances Account, the State Pollution Cleanup and Abatement Account or any other account or fund managed by the State Regulatory Entities pursuant to any federal or state law;
- b. any claims arising out of response activities at the Site;
- c. any claim pursuant to sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or any other related or similar federal or state laws, including California Health and Safety Code section 25363, relating to the Site;
- d. any claim pursuant to section 7002 of RCRA, 42 U.S.C. §§ 6972, or any other

- comparable California laws, relating to the Site; and
- e. any claim asserting a "takings" or similar claim.

64. State Settling Parties covenant not to sue and agree not to assert any claims or causes of action with regard to the Site pursuant to sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, or any other comparable California law that they may have for all matters relating to the Site against each other or any other person who is a potentially responsible party under CERCLA at the Site. This covenant not to sue and agreement not to assert any claims or causes of action shall not apply with respect to any defense, claim, or cause of action that a State Settling Party may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against such State Settling Party.

XIV. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

65. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not one of the Parties to this Consent Order. Except as provided in paragraphs 62 and 64, the parties each reserve any and all rights, 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.

66. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, Natural Resource Damages, recovery of response costs or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action, provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XIII (Covenants by Settling Parties Not To Sue).

67. In any subsequent administrative or judicial proceeding initiated by the State Regulatory Entities or the State Trustee for injunctive relief, Natural Resource Damages,

are all response actions taken by the United States, except the Federal Trustees, and by private parties, and all response costs incurred and to be incurred by the United States, except the Federal Trustees, and by private parties, at or in connection with the Site; provided, however, that for Option B U.S. Settling Parties, the "matters addressed" in this Consent Order do not include

(i) those response costs or response actions as to which the United States has reserved its rights under this Consent Order, in the event that the United States asserts rights against U.S. Settling Parties coming within the scope of such reservations for failure to comply with this Consent Order; (ii) Natural Resource Damages; and (iii) response costs incurred or to be incurred by the United States Air Force.

c. For State Settling Parties, the "matters addressed" in this Consent Order are all response actions taken by the State Regulatory Entities, and all response costs incurred and to be incurred by the State Regulatory Entities, at or in connection with the Site and State Natural Resource Damages at or relating to the Site, except as to: (i) response costs or response actions for which the State Regulatory Entities and the State Trustee have reserved their rights under this Consent Order and (ii) claims for failure to comply with this Consent Order. The Parties agree that as to "matters addressed" the State Settling Parties are also entitled to contribution protection pursuant to California Health and Safety Code section 25360.6.

69. Each Settling Party agrees that with respect to any suit or claim for contribution or response costs under CERCLA brought by them for matters related to this Consent Order, it will notify U.S. EPA, the State Regulatory Entities, and the State Trustee in writing at the following addresses no later than sixty (60) days prior to the initiation of such suit or claim:

a. For the United States:
Chief, Hazardous Waste Branch
Office of Regional Counsel

recovery of response costs or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action, provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XIII (Covenants by Settling Parties Not To Sue).

68. The Parties agree that this Consent Order constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C §§ 9613(f)(2) and 9622(g)(5), and that each Settling Party is entitled, as of the effective date of this Consent Order, to protection from contribution actions or claims as provided by Sections 113(f)(2), 122(g)(5), and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2), 9622(g)(5), and 9622(h)(4) for "matters addressed" in this Consent Order.

a. For Option A U.S. Settling Parties, the "matters addressed" in this Consent Order are all response actions taken by the U.S. EPA, the Federal Trustees, and by private parties, and all response costs incurred and to be incurred by the U.S. EPA, the Federal Trustees, and by private parties, at or in connection with the Site, and Natural Resource Damages claims that could be brought by the Federal Trustees at or relating to the Site; provided, however, that for Option A U.S. Settling Parties, the "matters addressed" in this Consent Order do not include those response costs or response actions, or Natural Resource Damages, as to which the United States has reserved its rights under this Consent Order, in the event that the United States asserts rights against U.S. Settling Parties coming within the scope of such reservations for failure to comply with this Consent Order, or claims for response costs or Natural Resource Damages that may be asserted by the United States Air Force.

b. For Option B U.S. Settling Parties, the "matters addressed" in this Consent Order

U.S. Environmental Protection Agency
75 Hawthorne Street (ORC-3)
San Francisco, CA 94105-3901

b. For the State Regulatory Agencies and the State Trustee:

Senior Assistant Attorney General
Environment Section
Attorney General's Office
State of California Department of Justice
1515 Clay St., 20th Floor
Oakland, California 94612-0550

and

Caroline Rudolph
Project Coordinator for the Casmalia Disposal Site
DTSC
P.O. Box 806
Sacramento, CA 95812-0806

Each Settling Party further agrees that it will notify U.S. EPA and the State Regulatory Entities no later than thirty (30) days prior to filing a motion for summary judgment and not later than sixty (60) days prior to trial concerning any such suit or claim.

XV. PARTIES BOUND

70. This Consent Order shall apply to and be binding upon U.S. EPA, the United States, on behalf of the Federal Trustees, the State Regulatory Entities, the State Trustee and upon Settling Parties and their heirs, successors and assigns. Any change in ownership, political configuration, or corporate or other legal 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 obligations under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute this Consent Order and bind legally the Party represented by him or her.

XVI. INTEGRATION/APPENDICES

71. This Consent Order and its appendices constitute the final, complete and exclusive

agreement and understanding among the Parties with respect to the settlement embodied in this Consent Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement terms other than those expressly contained in this Consent Order. The following appendices are attached to and incorporated into this Consent Order:

“Appendix A” is the list of non-federal entity U.S. Settling Parties and their waste volumes and settlement payment amounts.

“Appendix B” is reserved.

“Appendix C” is the list of the State Settling Parties and their waste volumes and settlement payment amounts.

“Appendix D” is a map of the Site.

“Appendix E” is a list of contaminants identified to date at the Site.

XVII. PUBLIC COMMENT

72. This Consent Order shall be subject to a public comment period of not less than thirty (30) days pursuant to section 122(i) of CERCLA, 42 U.S.C. § 9622(i), and section 7003 of RCRA, 42 U.S.C. § 6973, including a public hearing in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. § 6973(d).

73. In accordance with section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), U.S. EPA or the United States, on behalf of the Federal Trustees, 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.

74. After the public comment period described in Paragraph 72, above, any of the State Regulatory Entities or the State Trustee may withdraw or modify consent to this Consent Order if comments received during the comment period disclose facts or considerations which indicate that this Consent Order as applied to that State Regulatory Entity or State Trustee is inappropriate, improper, or inadequate.

XVIII. U.S. ATTORNEY GENERAL APPROVAL

75. The Attorney General of the United States or his designee has approved the settlement embodied in this Consent Order in accordance with section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

XIX. SEVERABILITY

76. If any provision of this Consent Order is determined to be invalid, illegal, or unconstitutional, the remainder of this Consent Order shall not automatically be affected by such a ruling, unless the provisions are inextricably related.

XX. EFFECTIVE DATE

77. The effective date of this Consent Order for terms relating to the U.S. Settling Parties shall be the date upon which U.S. EPA issues written notice to Settling Parties that the public comment period pursuant to Paragraph 72 of this Consent Order has closed and that comments received, if any, do not require modification of or withdrawal from this Consent Order by U.S. EPA or the United States, on behalf of the Federal Trustees. The written notice also shall be provided to the representatives of the State Regulatory Entities and the State Trustee identified in Paragraph 69. If any provision of this Consent Order relating to State Settling Parties does not become effective or is invalidated for any reason, provisions relating to U.S. Settling Parties shall nonetheless become effective and remain in effect.

78. The effective date of this Consent Order for terms relating to the State Settling Parties shall be the date upon which the Office of the Attorney General of the State of California, on behalf of the State Regulatory Entities and the State Trustee, issues written notice to State Settling Parties and the U.S. EPA representative identified in Paragraph 69 that the settlement is effective. Such notice shall issue only after the public comment period pursuant to Paragraph 72 of this Consent Order has closed and after determining that comments received, if any, do not require modification of or withdrawal from this Consent Order by the State Regulatory Entities or the State Trustee. If any provision of this Consent Order relating to U.S. Settling Parties does

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California Department of Fish and Game

By: _____
Donald Koch,
Director