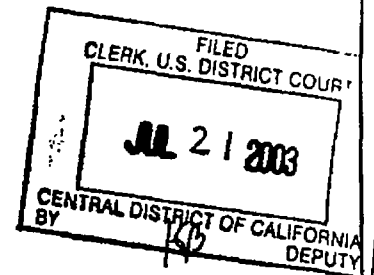


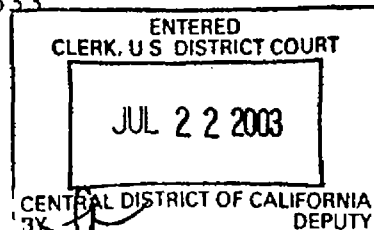
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Priority ☒
Send ☒
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JS-5/JS-6 NO
JS-2/JS-3 NO
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17 IN THE UNITED STATES DISTRICT COURT
18 FOR THE CENTRAL DISTRICT OF CALIFORNIA
19 WESTERN DIVISION

20
21 UNITED STATES OF AMERICA

22 BY Plaintiff,

23 v.

24 SAMSON HYDROCARBONS
25 COMPANY et al.,

26 Defendants.

203-1078

CIVIL ACTION NO. _____

CONSENT DECREE AS TO
BAUMGARTNER OIL
AND GAS Co.

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

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1 I. BACKGROUND

2 A. The United States of America ("United States"), on
3 behalf of the Administrator of the United States Environmental
4 Protection Agency ("EPA"), filed a complaint in this matter
5 pursuant to Sections 106 and 107 of the Comprehensive
6 Environmental Response, Compensation, and Liability Act
7 ("CERCLA"), 42 U.S.C. §§ 9606, 9607, as amended, seeking
8 reimbursement of response costs incurred and to be incurred for
9 response actions taken at or in connection with the release or
10 threatened release of hazardous substances at and from the
11 Casmalia Resources Hazardous Waste Disposal site located in Santa
12 Barbara County, California.

13 B. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,
14 EPA proposed the Site for the National Priorities List, set forth
15 at 40 C.F.R. Part 300, by publication in the Federal Register on
16 June 14, 2001, 66 Fed. Reg. 32287.

17 C. The Settling Defendants do not admit any liability to
18 the United States arising out of the transactions or occurrences
19 alleged in the complaint.

20 D. This Consent Decree provides for the Settling
21 Defendants to pay a cash payment of \$2,309,085 as specified in
22 Section VII (Cash Payment) of the Consent Decree. In accordance
23 with the National Contingency Plan, 40 C.F.R. part 300, and
24 Section 121(f)(1)(F) of CERCLA,
25 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of California
26 ("State") of negotiations with potentially responsible parties,
27 and EPA has provided the State with an opportunity to participate

1 in such negotiations.

2 E. The United States and the Settling Defendants agree,
3 and this Court by entering this Consent Decree finds, that this
4 Consent Decree has been negotiated by the parties in good faith,
5 that settlement of this matter will avoid prolonged and
6 complicated litigation between the parties, and that this Consent
7 Decree is fair, reasonable, and in this public interest.

8 NOW, THEREFORE, with the consent of the parties to this
9 Decree it is hereby ORDERED, ADJUDGED, and DECREED:

10 II. JURISDICTION

11 1. This Court has jurisdiction over the subject matter of
12 this action pursuant to 28 U.S.C. §§ 1331 and 1345, and
13 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has
14 personal jurisdiction over the Settling Defendants. Settling
15 Defendants shall not challenge the terms of this Consent Decree
16 or this Court's jurisdiction to enter and enforce this Consent
17 Decree.

18 III. PARTIES BOUND

19 2. This Consent Decree applies to and is binding upon the
20 United States and upon Settling Defendants and their heirs,
21 successors and assigns. Any change in ownership or corporate
22 status of a Settling Defendant including, but not limited to, any
23 transfer of assets or real or personal property shall in no way
24 alter any individual Settling Defendant's responsibilities under
25 this Consent Decree.

26

27

IV. DEFINITIONS

1 3. Unless otherwise expressly provided herein, terms used
2 in this Consent Decree that are defined in CERCLA or in
3 regulations promulgated under CERCLA shall have the meaning
4 assigned to them in CERCLA or in such regulations. Whenever
5 terms listed below are used in this Consent Decree or in the
6 appendices attached hereto and incorporated hereunder, the
7 following definitions shall apply:

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

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

14 "Day" shall mean a calendar day unless expressly stated to
15 be a working day. In computing any period of time under this
16 Consent Decree, where the last day would fall on a Saturday,
17 Sunday, or federal holiday, the period shall run until the close
18 of business of the next working day.

19 "DOJ" shall mean the United States Department of Justice and
20 any successor departments, agencies or instrumentalities of the
21 United States.

22 "Effective Date" shall be the effective date of this Consent
23 Decree as provided in Paragraph XIX.

24 "EPA" shall mean the United States Environmental Protection
25 Agency and any successor departments or agencies of the United
26 States.

27 "Escrow Account" shall mean the escrow account for the Site,

1 which was established pursuant to the Consent Decree entered by
2 the United States District Court for the Central District of
3 California on June 27, 1997 in United States v. ABB Vetco Gray,
4 Inc., et al., Civ. No. 96-6518-KMW (Jgx) ("Casmalia Consent
5 Decree") or any future escrow account designated by EPA.

6 "Escrow Trustee" shall mean the trustee of the Escrow
7 Account.

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

11 "Facility" shall mean the former permitted Casmalia
12 Resources Hazardous Waste Disposal facility, encompassing
13 approximately 252 acres, located approximately ten (10) miles
14 southwest of Santa Maria and one and a half miles north of
15 Casmalia in Santa Barbara County, California, and depicted
16 generally on the map attached as Appendix A.

17 "Interest" shall mean interest at the current rate specified
18 for interest on investments of the Hazardous Substance Superfund
19 established by 26 U.S.C. § 9507, compounded annually on October 1
20 of each year, in accordance with 42 U.S.C. § 9607(a).

21 "Municipal sewage sludge" shall mean any solid, semi-solid,
22 or liquid residue removed during the treatment of municipal waste
23 water or domestic sewage and may include residue removed, all or
24 in part, during the treatment of wastewater from manufacturing or
25 processing operations, provided that such residue has essentially
26 the same characteristics as residue removed during the treatment
27 of domestic sewage.

1 "Municipal solid waste" shall mean household waste and solid
2 waste collected from non-residential sources that is essentially
3 the same as household waste. While the composition of such
4 wastes may vary considerably, municipal solid waste generally is
5 composed of large volumes of non-hazardous substances (e.g., yard
6 waste, food waste, glass, and aluminum) and can contain small
7 amounts of such other wastes as typically may be accepted in RCRA
8 Subtitle D landfills.

9 "National Contingency Plan" or "NCP" shall mean the National
10 Oil and Hazardous Substances Pollution Contingency Plan
11 promulgated pursuant to Section 105 of CERCLA,
12 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any
13 amendments thereto.

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

16 "Parties" shall mean the United States and the Settling
17 Defendants.

18 "Plaintiff" shall mean the United States of America.

19 "Record of Decision" or "ROD" shall mean the EPA Record of
20 Decision relating to the Site to be signed in the future by the
21 Director, Superfund Division, EPA Region IX, or his/her
22 delegatee, and all attachments thereto.

23 "Remedial Action" shall mean those activities relating to
24 the Site as defined in Section 101(24) of CERCLA,
25 42 U.S.C. § 9601(24).

26 "Response Costs" shall mean all direct and indirect costs
27 relating to Response Actions taken and to be taken relating to

1 the Site.

2 "Response Actions" shall mean those activities relating to
3 the Site as defined in Section 101(25) of CERCLA,
4 42 U.S.C. § 9601(25).

5 "RCRA" shall mean the Solid Waste Disposal Act (also known
6 as the Resource Conservation and Recovery Act),
7 42 U.S.C. § 6901 et seq.

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

10 "Settling Defendants" shall mean Baumgartner Oil and Gas
11 Company, Baumgartner Oil Company, and Franklin W. Baumgartner.

12

13 "Site" shall mean Facility together with the areal extent of
14 contamination that is presently located in the vicinity of the
15 Facility and all suitable areas in very close proximity to the
16 contamination necessary for the implementation of the response
17 action and any areas to which such contamination migrates.

18 "United States" shall mean the United States of America,
19 including all of its departments, agencies and instrumentalities.
20

21 "Waste Material" shall mean (1) any "hazardous substance"
22 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any
23 pollutant or contaminant under Section 101(33),
24 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section
25 1004(27) of RCRA, 42 U.S.C. § 6903(27).

26

V. SITE BACKGROUND

27 4. Paragraphs 5 through 14 below contain a summary of the

1 Site background as alleged by the United States which, for
2 purposes of this Consent Decree, Settling Defendants neither
3 admit nor deny.

4 5. The Facility is the former Casmalia Resources Hazardous
5 Waste Management Facility, an inactive commercial hazardous waste
6 treatment, storage, and disposal facility, which accepted large
7 volumes of hazardous substances from 1973 to 1989. Located on a
8 252-acre parcel in Santa Barbara County, California, the Site
9 consisted of six landfills, numerous surface impoundments,
10 disposal trenches, injection wells, waste spreading areas and
11 tank treatment systems.

12 6. The Facility is located near the southern end of the
13 Casmalia Hills in the Santa Maria Basin of coastal California.
14 The Facility is situated within the Shuman Canyon drainage sub-
15 basin on a southern facing slope traversed by three small
16 canyons. Casmalia Creek, about 500 feet west, is the surface
17 water body nearest to the Facility. This creek flows to the
18 southwest to join Shuman Creek approximately one mile southwest
19 of the town of Casmalia. Shuman Creek continues southward and
20 westward, discharging eventually into the Pacific Ocean.

21 7. Hazardous substances within the definition of Section
22 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been, or threaten
23 to be, released into the environment at and from the Facility.
24 These hazardous substances include a wide variety of organic and
25 inorganic compounds.

26 8. During the Facility's sixteen years of operation, the
27 owner(s)/operator(s) accepted in excess of 5.5 billion documented

1 pounds of liquid and solid wastes for disposal and treatment at
2 the Site.

3 9. From 1980 to 1989, the Facility had interim status
4 pursuant to RCRA. Because of continuing deficiencies in facility
5 operations, no final RCRA permit was granted. The Facility has
6 not been closed in accordance with the requirements of RCRA.

7 10. In late 1989, the owner(s)/operator(s) ceased accepting
8 off-site waste shipments to the Facility and, in the early 1990s,
9 the owner(s)/operator(s) stopped all active efforts to properly
10 close and remediate the Facility.

11 11. After the Facility's owner(s)/operator(s) ceased all
12 active efforts to properly close and remediate the Facility,
13 conditions at the Facility deteriorated and became unstable.

14 12. As a result of the release or threatened release of
15 hazardous substances at or from the Facility, EPA has undertaken
16 Response Actions pursuant to Section 104 of CERCLA,
17 42 U.S.C. § 9604, and will undertake additional Response Actions
18 in the future. In August 1992, EPA commenced a removal action
19 under CERCLA to implement certain Facility stabilization actions,
20 prevent further deterioration of Facility conditions, and control
21 the most immediate threats. The Facility continues to pose an
22 imminent and substantial endangerment to the public and the
23 environment.

24 13. In performing the Response Actions, the United States
25 had incurred and will continue to incur Response Costs relating
26 to the Facility. As of October 31, 1999, the United States has
27 incurred in excess of \$22 million in Response Costs relating to

1 the Facility.

2 14. Based on current information, EPA estimates that the
3 total Response Costs incurred and to be incurred by the United
4 States and by private parties relating to the Facility is at
5 least \$271.9 million.

6 VI. PURPOSE

7 15. The mutual objectives of the Parties in entering into
8 this Consent Decree are more precisely described in the terms of
9 this Consent Decree:

10 a. to reach a final settlement that allows the
11 Settling Defendants to resolve their potential liability to the
12 United States at the Facility in accordance with the covenants
13 and subject to the reservations and reopeners set out in this
14 Consent Decree;

15 b. to resolve the claims that Settling Defendants
16 could have asserted against the United States; and

17 c. to provide for contribution protection for
18 Settling Defendants with regard to matters addressed in this
19 Consent Decree pursuant to Section 113(f)(2) of CERCLA,
20 42 U.S.C. § 9613(f)(2).

21 VII. CASH PAYMENT

22 16. Payment by Settling Defendants

23 a. Deadline for Payment: Within thirty (30) days of entry
24 of this Consent Decree, the Settling Defendants shall pay
25 \$2,309,085 to the Escrow Account in accordance with the
26 instructions provided in Paragraph 16(b) (Payment Instructions).
27 Settling Defendants' obligation to make this payment is joint and

1 several, and the insolvency or other failure of any Settling
2 Defendant to implement this requirement shall not relieve the
3 other Settling Defendants of the obligation to pay the entire
4 amount owed to the United States.

5 b Payment Instructions. Payment shall be made by wire
6 transfer to:

7 Bankers Trust Co.
8 c/o Mr. Thomas Hacker
9 4 Albany Street
10 New York , N.Y. 10006
11 ABA/Locator #: 021-001-033
12 Acct. #: 01-419-647
13 REF: Casmalia Resources Site Custodial Agreement
14 Payor: _____

15 Payment shall reference Settling Defendants names precisely. Any
16 payments received by the Escrow Account after 5:00 p.m. Pacific
17 Daylight Savings Time will be credited on the next business day.
18 At the time of payment, Settling Defendants shall submit a copy
19 of the completed Payment Invoice to:

20 Casmalia Case Team
21 United States Environmental Protection Agency
22 Region IX
23 75 Hawthorne Street (SFD-7-1)
24 San Francisco, CA 94105-3901.

25 Payment instructions are attached hereto as Appendix B, and a
26 Payment Invoice Form is attached hereto as Appendix C. This
27 Payment Invoice should be completed by Settling Defendants and
returned to EPA.

VIII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

17. Interest on Late Payments

a. In the event the payment required by Paragraph 16 above
is not made, the Settling Defendants shall be liable to the
United States for interest on the unpaid amount accruing at the

1 Superfund Interest Rate beginning on the date that payment is due
2 and continuing through the date of payment.

3 b. Any interest due by operation of Paragraph 17(a) shall
4 be paid by a separate wire transfer and shall be sent
5 simultaneously with the payment required by Paragraph 16 (Payment
6 by Settling Defendants). Payment of interest shall be made as
7 provided in Paragraph 16(b) (Payment Instructions).

8 IX. STIPULATED PENALTY

9 18. In the event the payment required by Paragraph 16 is
10 not made, in addition to the accrual of interest on any unpaid
11 amounts as set forth in Paragraph 17(a), the Settling Defendants
12 shall be liable to the United States for a stipulated penalty in
13 the amount of \$230,908.

14 19. The stipulated penalty provided for in Paragraph 18
15 shall be due and payable within 30 days of the date of the demand
16 for payment of the penalty by EPA. Payment of this stipulated
17 penalty shall be made by separate check and shall be sent
18 simultaneously with the payments required by Paragraphs 16 and
19 17. Payment of the Stipulated Penalty shall be made by separate
20 wire transfer and shall be sent as provided in Paragraph 16(b).

21 20. If the United States brings an action to enforce this
22 Consent Decree, Settling Defendants shall reimburse the United
23 States for all costs of such action, including but not limited to
24 all enforcement and attorney time costs.

25 21. Payments made under this Section shall be in addition
26 to any other remedies or sanctions available to Plaintiff by
27 virtue of Settling Defendants' failure to comply with the

1 requirements of this Consent Decree.

2 22. The obligations of Settling Defendants to pay amounts
3 owed to the United States under this Consent Decree are joint and
4 several. In the event of the failure of any one or more Settling
5 Defendants to make the payments required under this Consent
6 Decree, the remaining Settling Defendants shall be responsible
7 for such payments.

8 23. Notwithstanding any other provision of this Section,
9 the United States may, in its unreviewable discretion, waive
10 payment of any portion of the stipulated penalty provided for
11 under this Section. Payment of the stipulated penalty shall not
12 excuse Settling Defendants from payment as required by Section
13 VII or from performance of any other requirements of this Consent
14 Decree.

15 X. COVENANTS BY PLAINTIFF

16 24. In consideration of the payments that will be made by
17 the Settling Defendants under the terms of the Consent Decree,
18 and except as specifically provided in Paragraphs 25, 26, and 27
19 of this Consent Decree, the United States covenants not to sue or
20 to take administrative action against Settling Defendants
21 pursuant to Sections 106 and 107(a) of CERCLA,
22 42 U.S.C. §§ 9606, 9607, and Section 7003 of RCRA,
23 42 U.S.C. §6973, relating to the Site. These covenants not to
24 sue shall take effect upon the receipt by EPA of the payments
25 required by Paragraph 16 of Section VII (Payment by Settling
26 Defendants), Paragraph 17 (Interest on Late Payments) and
27 Paragraph 18 (Stipulated Penalty) upon the entry of this Consent

1 Decree by the Court. These covenants not to sue are conditioned
2 upon the satisfactory performance by Settling Defendants of their
3 obligations under this Consent Decree. These covenants not to
4 sue extend only to the Settling Defendants and do not extend to
5 any other person.

6 XI. RESERVATION OF RIGHTS

7 25. General reservations of rights. The United States
8 reserves, and this Consent Decree is without prejudice to, all
9 rights against Settling Defendants with respect to all matters
10 not expressly included within Plaintiff's covenant not to sue.
11 Notwithstanding any other provision of this Consent Decree, the
12 United States reserves all rights against Settling Defendants,
13 with respect to:

14 a. claims based on a failure by Settling Defendants
15 to meet a requirement of this Consent Decree;

16 b. liability arising from the past, present, or
17 future disposal, release, or threat of release of Waste Material
18 outside of the Site;

19 c. liability for damages for injury to, destruction
20 of, or loss of natural resources, and for the costs of any
21 natural resource damage assessments;

22 d. criminal liability; and

23 e. liability arising from any future disposal or
24 treatment of a hazardous substance, pollutant or contaminant at
25 the Site by Settling Defendants.

26 26. United States' Pre-certification Reservations.

27 Notwithstanding any other provision of this Consent Decree, the

1 United States reserves, and this Consent Decree is without
2 prejudice to, the right to institute proceedings in this action
3 or in a new action, or to issue an administrative order, seeking
4 to compel Settling Defendants:

5 a. to perform further response actions relating to
6 the Site, or

7 b. to reimburse the United States for additional
8 costs of response if, prior to Certification of
9 Completion of the Remedial Action:

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

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

14 and EPA determines that these previously unknown conditions or
15 information together with any other relevant information
16 indicates that the Remedial Action is not protective of human
17 health or the environment.

18 27. United States' Post-certification Reservations.

19 Notwithstanding any other provision of this Consent Decree, the
20 United States reserves, and this Consent Decree is without
21 prejudice to, the right to institute proceedings in this action
22 or in a new action, or to issue an administrative order, seeking
23 to compel Settling Defendants:

24 a. to perform further response actions relating to
25 the Site, or

26 b. to reimburse the United States for additional
27 costs of response if, subsequent to Certification

1 of Completion of the Remedial Action:
2 (1) conditions at the Site, previously unknown to
3 EPA, are discovered, or
4 (2) information, previously unknown to EPA, is
5 received, in whole or in part,
6 and EPA determines that these previously unknown conditions or
7 this information together with other relevant information
8 indicate that the Remedial Action is not protective of human
9 health or the environment.

10 28. For purposes of Paragraph 26, the information and the
11 conditions known to EPA shall include only that information and
12 those conditions known to EPA as of the date the ROD is signed
13 and set forth in the Record of Decision for the Site and the
14 administrative record supporting the Record of Decision. For
15 purposes of Paragraph 27, the information and the conditions
16 known to EPA shall include only that information and those
17 conditions known to EPA as of the date of Certification of
18 Completion of the Remedial Action and set forth in the Record of
19 Decision, the administrative record supporting the Record of
20 Decision, the post-ROD administrative record, or in any
21 information received by EPA pursuant to the requirements of this
22 Consent Decree prior to Certification of Completion of the
23 Remedial Action.

24 29. Notwithstanding any other provision of this Consent
25 Decree, the United States retains all authority and reserves all
26 rights to take any and all response actions authorized by law.

27

1 XII. COVENANTS BY SETTLING DEFENDANTS

2 30. Covenant Not to Sue by Settling Defendants. Subject to
3 the reservations in Paragraph 31, Settling Defendants hereby
4 covenant not to sue and agree not to assert any claims or causes
5 of action against the United States with respect to the Site or
6 this Consent Decree, including, but not limited to:

7 a. any direct or indirect claim for reimbursement
8 from the Hazardous Substance Superfund (established pursuant to
9 the Internal Revenue Code,
10 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111,
11 112, 113 or any other provision of law;

12 b. any claims against the United States, including
13 any department, agency or instrumentality of the United States
14 under CERCLA Sections 107 or 113 related to the Site; and

15 c. any claims arising out of Response Actions at or
16 in connection with the Site, including any claim under the United
17 States Constitution; the Tucker Act, 28 U.S.C. § 1491, the Equal
18 Access to Justice Act, 28 U.S.C. § 2412, as amended; or at common
19 law. Except as provided in Paragraph 33(a) (Waiver of Claims
20 Against MSW and MSS Parties), Paragraph 33(b) (Waiver of Claims
21 Against De Micromis Parties), Paragraph 34 (Waiver of Claims
22 Against De Minimis Parties), and Paragraph 39 (Waiver of
23 Defenses), these covenants not to sue shall not apply in the
24 event that the United States brings a cause of action or issues
25 an order pursuant to the reservations set forth in Paragraphs 25,
26 26, or 27, but only to the extent that Settling Defendants'
27 claims arise from the same response action, response costs, or

1 damages that the United States is seeking pursuant to the
2 applicable reservation.

3 31. The Settling Defendants reserve, and this Consent
4 Decree is without prejudice to, claims against the United
5 States, subject to the provisions of Chapter 171 of Title 28 of
6 the United States Code, for money damages for injury or loss of
7 property or personal injury or death caused by the negligent or
8 wrongful act or omission of any employee of the United States
9 while acting within the scope of his office or employment under
10 circumstances where the United States, if a private person, would
11 be liable to the claimant in accordance with the law of the place
12 where the act or omission occurred. However, any such claim
13 shall not include a claim for any damages caused, in whole or in
14 part, by the act or omission of any person, including any
15 contractor, who is not a federal employee as that term is defined
16 in 28 U.S.C. § 2671; nor shall any such claim include a claim
17 based on EPA's selection of response actions, or the oversight or
18 approval of the Settling Defendants' plans or activities. The
19 foregoing applies only to claims which are brought pursuant to
20 any statute other than CERCLA and for which the waiver of
21 sovereign immunity is found in a statute other than CERCLA.

22 32. Nothing in this Consent Decree shall be deemed to
23 constitute preauthorization of a claim within the meaning of
24 Section 111 of CERCLA, 42 U.S.C. § 9611, or
25 40 C.F.R. § 300.700(d).

26 33. Settling Defendants agree not to assert any claims and
27 to waive all claims or causes of action that they may have for

1 all matters relating to the Site, including for contribution,
2 against any person where the person's liability to Settling
3 Defendants with respect to the Site is based solely on having
4 arranged for disposal or treatment, or for transport for disposal
5 or treatment, of hazardous substances at the Site, or having
6 accepted for transport for disposal or treatment of hazardous
7 substances at the Site, if:

8 a. any materials contributed by such person to the
9 Site constituting Municipal Solid Waste (MSW) or Municipal Sewage
10 Sludge (MSS) did not exceed 0.2% of the total volume of waste at
11 the Site; and

12 b. any materials contributed by such person to the
13 Site containing hazardous substances, but not constituting MSW or
14 MSS, did not exceed the greater of (i) 0.002% of the total volume
15 of waste at the Site, or (ii) 110 gallons of liquid materials or
16 200 pounds of solid materials. This waiver shall not apply to
17 any claim or cause of action against any person meeting the above
18 criteria if EPA has determined that the materials contributed to
19 the Site by such person contributed or could contribute
20 significantly to the costs of response at the Site. This waiver
21 also shall not apply with respect to any defense, claim, or cause
22 of action that a Settling Defendant may have against any person
23 if such person asserts a claim or cause of action relating to the
24 Site against such Settling Defendant.

25 34. Settling Defendants agree not to assert any claims and
26 to waive all claims or causes of action that they may have for
27 all matters relating to the Site, including for contribution,

1 against any person that has entered into a final CERCLA § 122(g)
2 *de minimis* settlement with EPA with respect to the Site as of the
3 Effective Date. This waiver shall not apply with respect to any
4 defense, claim, or cause of action that a Settling Defendant may
5 have against any person if such person asserts a claim or cause
6 of action relating to the Site against such Settling Defendant.

7 XIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

8 35. Except as provided in Paragraph 33(a) (Waiver of Claims
9 Against MSW and MSS Parties), Paragraph 33(b) (Waiver of Claims
10 Against De Micromis Parties) and Paragraph 34 (Waiver of Claims
11 Against De Minimis Parties), nothing in this Consent Decree shall
12 be construed to create any rights in, or grant any cause of
13 action to, any person not a Party to this Consent Decree. The
14 preceding sentence shall not be construed to waive or nullify any
15 rights that any person not a signatory to this decree may have
16 under applicable law. Except as provided in Paragraph 33(a)
17 (Waiver of Claims Against MSW and MSS Parties), Paragraph 33(b)
18 (Waiver of Claims Against De Micromis Parties) and Paragraph 34
19 (Waiver of Claims Against De Minimis Parties), each of the
20 Parties expressly reserves any and all rights (including, but not
21 limited to, any right to contribution), defenses, claims,
22 demands, and causes of action that each Party may have with
23 respect to any matter, transaction, or occurrence relating in any
24 way to the Site against any person not a Party hereto.

25 36. The Parties agree, and by entering this Consent Decree
26 this Court finds, that the Settling Defendants are entitled, as
27 of the Effective Date, to protection from contribution actions or

1 claims as provided by CERCLA Section 113(f)(2), 42 U.S.C.
2 § 9613(f)(2), for matters addressed in this Consent Decree. The
3 "matters addressed" in this Consent Decree are all Response
4 Actions taken and to be taken and all Response Costs incurred and
5 to be incurred by the United States at the Site, except for those
6 claims otherwise reserved in this Consent Decree.

7 37. The Settling Defendants agree that with respect to any
8 suit or claim for contribution brought by them for matters
9 related to this Consent Decree they will notify the United States
10 in writing no later than 60 days prior to the initiation of such
11 suit or claim.

12 38. The Settling Defendants also agree that with respect to
13 any suit or claim for contribution brought against them for
14 matters related to this Consent Decree they will notify in
15 writing the United States within 10 days of service of the
16 complaint on them. In addition, Settling Defendants shall notify
17 the United States within 10 days of service or receipt of any
18 Motion for Summary Judgment and within 10 days of receipt of any
19 order from a court setting a case for trial.

20 39. In any subsequent administrative or judicial proceeding
21 initiated by the United States for injunctive relief, recovery of
22 response costs, or other appropriate relief relating to the Site,
23 Settling Defendants shall not assert, and may not maintain, any
24 defense or claim based upon the principles of waiver, res
25 judicata, collateral estoppel, issue preclusion, claim-splitting,
26 or other defenses based upon any contention that the claims
27 raised by the United States in the subsequent proceeding were or

1 should have been brought in the instant case; provided, however,
2 that nothing in this Paragraph affects the enforceability of the
3 covenants set forth in Section X (Covenants by Plaintiff).

4 XIV. RETENTION OF RECORDS

5 40. Until 10 years after the Effective Date of this Consent
6 Decree, each Settling Defendant shall preserve and retain all
7 non-identical copies of records and documents (including records
8 or documents in electronic form) now in its possession or
9 control, or that come into its possession or control, that relate
10 in any manner to its liability under CERCLA or RCRA with respect
11 to the Site. No claim of confidentiality shall be made with
12 respect to any data, including but not limited to, all sampling,
13 analytical, monitoring, hydrogeologic, scientific, chemical, or
14 engineering data, or any other documents or information
15 evidencing conditions at or around the site. The above record
16 retention requirements shall apply regardless of any corporate
17 retention policy to the contrary.

18 41. At the conclusion of this document retention period,
19 Settling Defendants shall notify the United States at least 90
20 days prior to the destruction of any such records or documents
21 and, upon request by the United States, Settling Defendants shall
22 deliver any such records or documents to EPA. The Settling
23 Defendants may assert that certain documents, records and other
24 information are privileged under the attorney-client privilege or
25 any other privilege recognized by federal law. If the Settling
26 Defendants assert such a privilege, they shall provide the
27 Plaintiff with the following: (1) the title of the document,

1 record, or information; (2) the date of the document, record, or
2 information; (3) the name and title of the author of the
3 document, record, or information; (4) the name and title of each
4 addressee and recipient; (5) a description of the subject of the
5 document, record, or information; and (6) the privilege asserted
6 by Settling Defendants. However, no documents, reports or other
7 information created or generated pursuant to the requirements of
8 this Consent Decree shall be withheld on the grounds that they
9 are privileged.

10 42. Each Settling Defendant hereby certifies individually
11 that, to the best of its knowledge and belief, after thorough
12 inquiry, it has not altered, mutilated, discarded, destroyed or
13 otherwise disposed of any records, documents or other information
14 (other than identical copies) relating to its potential liability
15 regarding the Site since notification of potential liability by
16 the United States or the filing of suit against it regarding the
17 Site and that it has fully complied with any and all EPA requests
18 for information pursuant to Section 104(e) and 122(e) of CERCLA,
19 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA,
20 42 U.S.C. 6927.

21 XV. NOTICES AND SUBMISSIONS

22 43. Whenever, under the terms of this Consent Decree,
23 written notice is required to be given or other document is
24 required to be sent by one Party to another, it shall be directed
25 to the individuals at the addresses specified below, unless those
26 individuals or their successors give notice of a change to the
27 other Parties in writing. All notices and submissions shall be

1 considered effective upon receipt, unless otherwise provided.
2 Written notice as specified herein shall constitute complete
3 satisfaction of any written notice requirement of the Consent
4 Decree with respect to the United States, EPA and the Settling
5 Defendants, respectively.

6

7 As to the United States:

8 Chief, Environmental Enforcement Section
9 Environment and Natural Resources Division
10 U.S. Department of Justice
11 P.O. Box 7611
12 Washington, D.C. 20044-7611
13 Re: DJ # 90-7-1-611a

14 Director, Superfund Division
15 United States Environmental Protection
16 Agency, Region 9
17 75 Hawthorne Street
18 San Francisco, CA 94105

19 Kent Kitchingman
20 EPA Project Coordinator
21 United States Environmental Protection
22 Agency, Region 9
23 75 Hawthorne Street
24 San Francisco, CA 94105

25 As to the Settling Defendants:

26 David Wood
27 Wood, Smith, Henning & Berman LLP
801 Tower
801 Figueroa Street
9th Floor
Los Angeles, CA 90017-2573

28 XVI. RETENTION OF JURISDICTION

29 51. This Court retains jurisdiction over both the subject
30 matter of this Consent Decree and the Settling Defendants for the
31 duration of the performance of the terms and provisions of this
32 Consent Decree for the purpose of enabling any of the Parties to

1 apply to the Court at any time for such further order, direction,
2 and relief as may be necessary or appropriate for the
3 construction or modification of this Consent Decree, or to
4 effectuate or enforce compliance with its terms.

5 XVII. INTEGRATION/APPENDICES

6 52. The following appendices are attached to and
7 incorporated into this Consent Decree:

8 "Appendix A" is the description and/or map of the Site.

9 "Appendix B" is the payment instructions.

10 "Appendix C" is the Payment Invoice Form.

11 XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

12 53. This Consent Decree shall be lodged with the Court for
13 a period of not less than thirty (30) days for public notice and
14 comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.
15 § 9622(d)(2), 28 C.F.R. § 50.7, and Section 7003(d) of RCRA, 42
16 U.S.C. § 6973(d). Commenters may request an opportunity for a
17 public hearing in the affected area, in accordance with Section
18 7003(d) of RCRA, 42 U.S.C. § 6973(d). The United States reserves
19 the right to withdraw or withhold its consent if the comments
20 regarding the Consent Decree disclose facts or considerations
21 that indicate that the Consent Decree is inappropriate, improper,
22 or inadequate. Settling Defendants consent to the entry of this
23 Consent Decree without further notice.

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

1 the Parties.

2 XIX. EFFECTIVE DATE

3 55. The effective date of this Consent Decree shall be the
4 date upon which this Consent Decree is entered by the Court.

5 XX. SIGNATORIES/SERVICE

6 56. Each undersigned representative of a Settling Defendant
7 to this Consent Decree and the Assistant Attorney General for the
8 Environment and Natural Resources Division of the Department of
9 Justice certifies that he or she is fully authorized to enter
10 into the terms and conditions of this Consent Decree and to
11 execute and legally bind such Party to this document.

12 57. Each Settling Defendant hereby agrees not to oppose
13 entry of this Consent Decree by this Court or to challenge any
14 provision of this Consent Decree unless the United States has
15 notified the Settling Defendants in writing that it no longer
16 supports entry of the Consent Decree.

17 58. Each Settling Defendant shall identify, on the attached
18 signature page, the name, address and telephone number of an
19 agent who is authorized to accept service of process by mail on
20 behalf of that Party with respect to all matters arising under or
21 relating to this Consent Decree. Settling Defendants hereby
22 agree to accept service in that manner and to waive the formal
23 service requirements set forth in Rule 4 of the Federal Rules of
24 Civil Procedure and any applicable local rules of this Court,
25 including, but not limited to, service of a summons. The parties
26 agree that Settling Defendants need not file an answer to the
27 complaint in this action unless or until the court expressly

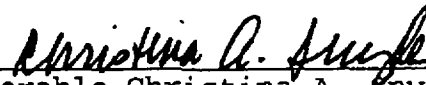
1 declines to enter this Consent Decree.

2 XXI. FINAL JUDGMENT

3 59. This Consent Decree and its appendices constitute the
4 final, complete, and exclusive agreement and understanding among
5 the parties with respect to the settlement embodied in the
6 Consent Decree. The parties acknowledge that there are no
7 representations, agreements or understandings relating to the
8 settlement other than those expressly contained in this Consent
9 Decree.

10 60. Upon approval and entry of this Consent Decree by the
11 Court, this Consent Decree shall constitute a final judgment
12 between and among the United States and the Settling Defendants.
13 The Court finds that there is no just reason for delay and
14 therefore enters this judgment as a final judgment under Fed. R.
15 Civ. P. 54 and 58.

16
17 SO ORDERED THIS 21st DAY OF July, 2002.

18
19 
20 Honorable Christina A. Snyder
21 United States District Court
22 Judge
23
24
25
26
27

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Baumgartner Oil and Gas Company
3 et al., relating to the Casmalia Resources Hazardous Waste
4 Superfund Site.

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FOR THE UNITED STATES OF AMERICA

1.10.03

Tom Sansonetti

Date Thomas Sansonetti

Assistant Attorney

General

Environment and Natural

United States Department of

Justice

Resources Division

1-16-03

Brady

Date Bradley R. O'Brien

Environmental Enforcement

Section

Environment and Natural

United States Department of

Justice

Resources Division

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Baumgartner Oil and Gas Company
3 et al., relating to the Casmalia Resources Hazardous Waste
4 Superfund Site.
5

6 9/30/2002
7 Date

Jane Diamond
Jane Diamond,
Acting Director, Superfund
Division, Region IX
United States Environmental
Protection Agency

9
10 9/26/02
11 Date

Thomas A. Bloomfield
Thomas A. Bloomfield
Assistant Regional Counsel
United States Environmental
Protection Agency

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
2 matter of United States v. Baumgartner Oil and Gas Company
3 et al., relating to the Casmalia Resources Hazardous Waste
Superfund Site.

4 FOR _____ COMPANY, INC. */

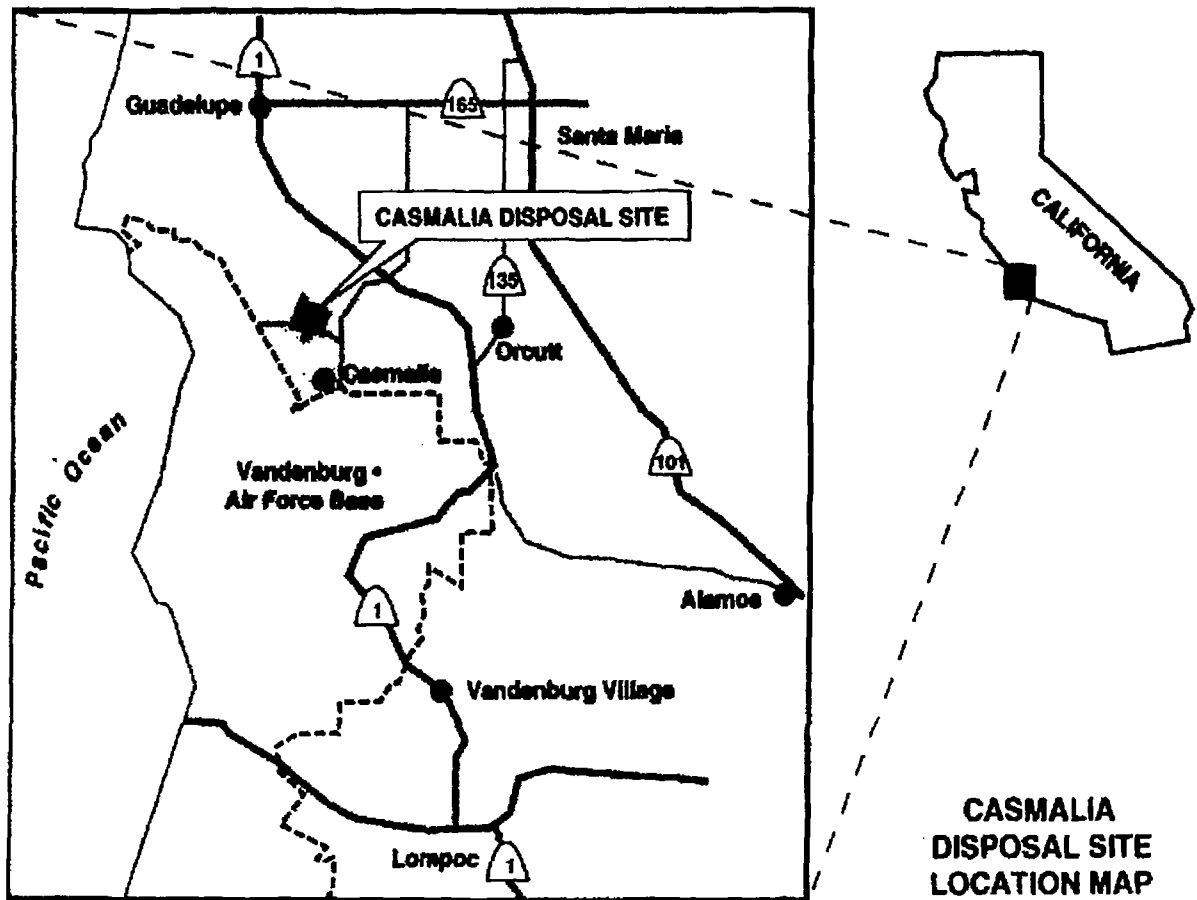
5
6 7/22/02
Date

Signature: [Signature]
Name (print): F. V. Baumgartner
Title: _____
Address: 1100 Platte Creek Ferry
5-263
Castle Rock, CO 80104

9
10 Agent Authorized to Accept Service on Behalf of Above-signed Party:

11 Name (print): _____
12 Title: _____
13 Address: _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
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24 _____
25 _____
26 _____
27 _____
Ph. Number: _____

Appendix A
Site Location Map



United States v. Baumgartner Oil and Gas Company
Appendix B - Payment Instructions



PAYMENT INSTRUCTIONS

CASMALIA DISPOSAL SITE

Step 1. Remit payment in full by wire transfer in accordance with the payment instructions in Paragraph 16 (Payment by Settling Defendant) of the Consent Decree. **Payment must be made directly to Bankers Trust, custodian of the Casmalia Consent Decree Escrow Account. EPA cannot accept checks made out directly to the Agency.**

Step 2. Complete the Payment Invoice and send it to Bankers Trust.

Please remit payment as described in Steps 1 and 2 above in the following manner:

Wire funds to:

Bankers Trust Co.
c/o Mr. Alexies Sornoza
4 Albany Street, New York, NY 10006
ABA/Locator #: 021-001-033
Acct #: 01-419-647
Ref: Casmalia Resources Site Custodial Agreement.
Payor: Crosby & Overton, Inc.

Please include all of the above information in remitting payment by wire transfer.

Mail Payment Invoice to:

"BTCo. as Custodian for Casmalia Resources Site"
Deutsche Bank Trust Company Americas
Corporate Trust and Agency Services #300201
P.O. Box 12099
Newark, NJ 07101

Please send the document identified above in Step 2 to:

Casmalia Case Team
U.S. EPA Region IX
75 Hawthorne Street (SFD-7-1)
San Francisco, CA 94105-3901

Casmalia Disposal Site

Payment Instructions



PAYMENT INVOICE CASMALIA DISPOSAL SITE

Appendix C

Please complete this form and mail the completed form to:

"BTCO. as Custodian for Casmalia Resources Site"
Deutsche Bank Trust Company Americas
Corporate Trust and Agency Services - #300201
Post Office Box 12099
Newark, NJ 07101

This form should accompany your payment if your company or organization pays by cashier's or certified check. It should be sent without your payment if your company or organization wired payment to Bankers Trust (see Settlement Instructions).

Please send a copy of your form to:

Casmalia Case Team
U.S. EPA Region IX
75 Hawthorne St. (SFD-7-1)
San Francisco, CA 94105-3901

PAYOR	Baumgartner Oil Company
COMPANY NAME IF DIFFERENT FROM Above.	
DATE	
PAYMENT AMOUNT	
MANNER IN WHICH PAYMENT IS BEING MADE (i.e., wire transfer or check)	
CHECK NUMBER (if applicable)	
SIGNATORY OF CHECK (if applicable)	
REFERENCE	Casmalia Resources Site Custodial Agreement
U.S. EPA REGIONAL SITE SPILL ID NUMBER	09-3H