

CASMALIA

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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA )  
19 )  
20 Plaintiff, )  
21 v. )  
22 )  
23 ABB VETCO GRAY INC.; )  
AEROCHEM, INC.; )  
24 AEROJET GENERAL CORPORATION; )  
ATLANTIC RICHFIELD COMPANY (ARCO); )  
CASPIAN INC.; )  
25 CHEVRON CORPORATION; )  
CITY OF LOS ANGELES; )  
26 DEPARTMENT OF WATER & POWER )  
OF THE CITY OF LOS ANGELES; )  
27 CITY OF LOS ANGELES HARBOR )  
DEPARTMENT, acting by and )  
28 its BOARD OF HARBOR )

CIVIL ACTION NO. CV 96-6518-KMW(JG:

CONSENT DECREE

FILED  
CLERK, U.S. DISTRICT COURT  
JUN 23 1997  
CENTRAL DISTRICT OF CALIFORNIA  
DEPUTY

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JUN 27 1997  
CENTRAL DISTRICT OF CALIFORNIA  
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Casmalia Consent Decree

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22 )  
23 ABB VETCO GRAY INC.; )  
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AEROJET GENERAL CORPORATION; )  
24 ATLANTIC RICHFIELD COMPANY (ARCO); ) CONSENT DECREE  
CASPIAN INC.; )  
25 CHEVRON CORPORATION; )  
CITY OF OXNARD; )  
26 CLAIROL, INC.; )  
COASTAL OIL & GAS CORPORATION; )  
27 CONOCO INC.; )  
DEUTSCH COMPANY; )  
28 THE DOW CHEMICAL COMPANY; )

Casmalia Consent Decree

1 | EVEREST & JENNINGS INTERNATIONAL; )  
| EXXON CORPORATION; )  
2 | GEMINI INDUSTRIES, INC.; )  
| GENERAL DYNAMICS CORPORATION; )  
3 | GENERAL ELECTRIC COMPANY; )  
| GENERAL MOTORS CORPORATION; )  
4 | HUGHES AIRCRAFT COMPANY, and its )  
| subsidiaries; )  
5 | LEVER BROTHERS COMPANY; )  
| LOCKHEED MARTIN CORPORATION, )  
6 | (merged entity for LOCKHEED )  
| CORPORATION and MARTIN MARIETTA )  
7 | CORPORATION); )  
| McDONNELL DOUGLAS CORPORATION; )  
8 | MOBIL OIL CORPORATION; )  
| NEW VICI, INC. (for GONZALES/ )  
9 | MONTEREY VINEYARD); )  
| NORTHROP GRUMMAN CORPORATION; )  
10 | OIL & SOLVENT PROCESS COMPANY, a )  
| subsidiary of CHEMICAL WASTE )  
11 | MANAGEMENT, INC.; )  
| PACIFIC GAS & ELECTRIC COMPANY; )  
12 | PACIFIC OFFSHORE PIPELINE COMPANY; )  
| THE PROCTOR & GAMBLE MANUFACTURING )  
13 | COMPANY; )  
| REYNOLDS METALS COMPANY; )  
14 | R.G.G.L. CORPORATION; )  
| RHONE-POULENC INC.; )  
15 | ROCKWELL INTERNATIONAL )  
| CORPORATION; )  
16 | ROHR, INC., formerly ROHR )  
| INDUSTRIES, INC. )  
17 | ROMIC ENVIRONMENTAL TECHNOLOGIES )  
| CORPORATION; )  
18 | SHELL OIL COMPANY; )  
| SHIPLEY COMPANY, INC.; )  
19 | SOUTHERN CALIFORNIA GAS COMPANY; )  
| SOUTHERN PACIFIC TRANSPORTATION )  
20 | COMPANY; )  
| SQUARE D COMPANY; )  
21 | TELEFLEX INCORPORATED; )  
| TEXACO INC.; )  
22 | TODD PACIFIC SHIPYARDS CORP.; )  
| UNION OIL COMPANY OF CALIFORNIA, )  
23 | INC. dba UNOCAL; )  
| UNION PACIFIC RESOURCES COMPANY; )  
24 | UNION PACIFIC RAILROAD COMPANY; )  
| USPCI for SOLVENT SERVICE; )  
25 | ZENECA INC.; and )  
| ZYCON CORPORATION, )  
26 | )  
| Defendants. )  
27 | )  
28 | \_\_\_\_\_ )

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1 CASMALIA CONSENT DECREE

2 WHEREAS, the United States of America ("United States"), on  
3 behalf of the Administrator of the United States Environmental  
4 Protection Agency ("EPA"), has filed concurrently with this  
5 Consent Decree ("Consent Decree" or "Decree") a complaint in this  
6 matter pursuant to the Comprehensive Environmental Response,  
7 Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as  
8 amended by the Superfund Amendments and Reauthorization Act of  
9 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA"),  
10 seeking to compel the Settling Defendants in this action to  
11 perform certain response actions and to pay certain response  
12 costs that may be incurred by the United States in response to  
13 alleged releases and threatened releases of hazardous substances  
14 from a facility as defined in Section 101(9) of CERCLA, 42 U.S.C.  
15 § 9601(9), known as the Casmalia Resources Hazardous Waste  
16 Management Facility ("the Casmalia facility" or "the facility"),  
17 located in Santa Barbara County, California; and

18 WHEREAS, the United States' complaint also seeks to compel  
19 the Settling Defendants to take certain actions under the  
20 Resource Conservation and Recovery Act, as amended ("RCRA"),  
21 pursuant to Section 7003, 42 U.S.C. §§ 6973; and

22 WHEREAS, pursuant to CERCLA § 121(f)(1)(F), the State of  
23 California was given notice of EPA's negotiations with the  
24 Settling Defendants and was provided with opportunities to  
25 participate in such negotiations and be a Party to this Consent  
26 Decree; and

27 WHEREAS, the State of California has indicated its support  
28 of EPA in acting as the lead governmental regulatory and

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1 enforcement agency with respect to matters relating to the Site  
2 as provided herein notwithstanding that the State is authorized  
3 to implement portions of the federal RCRA program in lieu of EPA;  
4 and

5 WHEREAS, this Consent Decree is intended to govern all Site  
6 regulatory and enforcement activities; and

7 WHEREAS, the United States contends that the presence of  
8 solid wastes, hazardous wastes, hazardous constituents and/or  
9 hazardous substances in the soil, groundwater, surface water and  
10 air at the facility resulted from the past or present handling,  
11 storage, treatment and/or disposal of solid wastes, hazardous  
12 wastes, hazardous constituents and/or hazardous substances at the  
13 facility, and may present an imminent and substantial  
14 endangerment to health or the environment, within the meaning of  
15 Section 7003 of RCRA, 42 U.S.C. § 6973; and

16 WHEREAS, the United States contends that the presence of  
17 hazardous wastes, hazardous constituents, and/or hazardous  
18 substances at the facility constitutes a release from the  
19 facility, as defined in Section 101(22) of CERCLA, 42 U.S.C.  
20 § 9601(22), which release may present an imminent and substantial  
21 endangerment to the public health or welfare or the environment,  
22 within the meaning of Section 106 of CERCLA, 42 U.S.C. § 9606,  
23 and the actions required by this Consent Decree are necessary to  
24 protect public health, welfare and the environment; and

25 WHEREAS, the Settling Defendants are "persons" subject to  
26 liability under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),  
27 and Section 7003 of RCRA, 42 U.S.C. § 6973; and

28 WHEREAS, pursuant to Section 122 of CERCLA, 42 U.S.C.

1 § 9622, and Section 7003 of RCRA, 42 U.S.C. § 6973, the United  
2 States and the Settling Defendants have stipulated and agreed to  
3 the making and the entry of this Consent Decree prior to the  
4 taking of any testimony, and in settlement of the claims alleged  
5 against the Settling Defendants in the complaint; and

6 WHEREAS, these agreements have been made without any  
7 admission or finding of liability or fault as to any allegation  
8 or matter; and

9 WHEREAS, the United States and the Settling Defendants  
10 agree, and the Court by entering this Consent Decree finds, that  
11 the settlement of these claims is made in good faith and in an  
12 effort to avoid expensive and protracted litigation, and that  
13 this Consent Decree is fair, reasonable, and in the public  
14 interest;

15 NOW, THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as  
16 follows:

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1 I. DEFINITIONS

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

9 "Administrative Costs" shall mean, with respect to the  
10 Settling Defendants, the costs associated with the Casmalia  
11 Resources Site Steering Committee ("CRSSC") organization and  
12 administration or any successor organization and its  
13 administration, including attorneys fees and legal support costs  
14 associated with such organization and administration.

15 Administrative Costs shall not include the costs of the Settling  
16 Defendants' Supervising Contractor or Project Coordinators,  
17 unless such Supervising Contractor or Project Coordinator is an  
18 active employee of a Settling Defendant.

19 "Cashout Settlement(s)" shall mean the procedure(s) to be  
20 implemented by EPA whereby substantially all remaining  
21 potentially responsible parties associated with the Casmalia Site  
22 are notified by EPA and provided with an opportunity to pay  
23 specified sums toward resolution of their potential Casmalia Site  
24 liabilities under CERCLA and RCRA. Settlement proceeds from the  
25 Cashout Settlement(s) shall be deposited to the Casmalia Consent  
26 Decree Escrow Account to be used to pay for performance of  
27 certain Work and to pay for certain Response Costs in accordance  
28 with the terms of this Consent Decree.

1 "Casmalia Consent Decree Escrow Account" or "Escrow Account"  
2 shall mean the Accounts, together with any and all Sub-Accounts,  
3 established pursuant to Section XVII. (Escrow Accounts/Financing  
4 The Work), for the purpose of holding and allocating funds  
5 received from the Cashout Settlements; proceeds of any actions,  
6 claims, settlements, or other efforts pursuant to Section XXIII.  
7 (Coordinated Enforcement Recovery); and funds from other sources  
8 not precluded by this Consent Decree, to be used to pay for  
9 performance of the Initial Phase II Work and O&M and for  
10 specified Response Costs.

11 "Casmalia Entities" shall mean Casmalia Resources; Hunter  
12 Resources; and Kenneth Hunter, Jr., and any related entities or  
13 individuals with potential liability in connection with the  
14 ownership or operation of the Casmalia Site.

15 "CERCLA" shall mean the Comprehensive Environmental  
16 Response, Compensation, and Liability Act of 1980, 42 U.S.C.  
17 §§ 9601 et seq., as amended by the Superfund Amendments and  
18 Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613  
19 (1986).

20 "Consent Decree" shall mean this Decree, all appendices  
21 attached hereto (listed in Section XXXII.), and any additions and  
22 modifications to this Consent Decree and its appendices made in  
23 accordance with its terms. In the event of conflict between this  
24 Consent Decree and any appendix, this Consent Decree shall  
25 control.

26 "Day" shall mean a calendar day, unless expressly stated to  
27 be a Working Day. "Working Day" shall mean a day other than a  
28 Saturday, Sunday, or Federal holiday. In computing any period of

1 time under this Consent Decree, where the last day would fall on  
2 a Saturday, Sunday, or Federal holiday, the period shall run  
3 until the close of business of the next Working Day.

4 "Defendants" shall mean Settling Defendants.

5 "Deliverable" shall mean all submissions and/or milestone  
6 events required of the Settling Defendants under Section 4.0. of  
7 the SOW, including any additions and modifications to this  
8 Section of the SOW made in accordance with the terms of this  
9 Consent Decree.

10 "DTSC" shall mean the Department of Toxic Substances Control  
11 of the State of California and any successor departments or  
12 successor agencies.

13 "Element(s) of Work" shall mean the specific work elements  
14 as set forth in the Statement of Work attached at Appendix A.  
15 Each Element of Work may have multiple Components as specified in  
16 the SOW.

17 "EPA" shall mean the United States Environmental Protection  
18 Agency or its authorized representative(s) and any successor  
19 departments or successor agencies of the United States.

20 "Escrow Account" -- See Casmalia Consent Decree Escrow  
21 Account.

22 "Final Cost Estimate" shall mean the final revision of the  
23 cost estimates established pursuant to Section XVIII. Paragraph  
24 A.3. (Cost Estimates and Fund Transfers) and Section 2.15 of the  
25 SOW of the total present worth costs to be incurred to complete  
26 30-Year O&M Work and Post-30 Year O&M Work and associated  
27 governmental/regulatory oversight determined in accordance with  
28 the terms of this Consent Decree and the SOW. The Final Cost

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1 Estimate shall be separated into sub-components of cost as set  
2 forth in Section 2.15. of the SOW.

3 "Final Past Response Costs Summary" shall mean the  
4 accounting of the United States' Past Response Costs, pursuant to  
5 Section XIX. Paragraph B.1. (Reimbursement of Response Costs),  
6 that shall supersede the Initial Past Response Costs Estimate for  
7 purposes of establishing the Escrow Account Funding Limits  
8 pursuant to Section XVII. Paragraph E. (Escrow Accounts/Financing  
9 The Work).

10 "Full Funding Option(s)" shall mean the Settling Defendants'  
11 right to obtain a covenant not to sue for 30-Year O&M and/or  
12 Post-30 Year O&M as provided under Section XXV. Paragraphs A.3.a.  
13 or A.3.b. and A.4.a. or A.4.b. (Covenants Not To Sue/Reservations  
14 of Rights) of this Consent Decree.

15 "Funded Future Response Costs" -- see Future Response Costs.

16 "Funding Limit(s)" shall mean the authorized monetary  
17 limits, as provided in Section XVII. Paragraph E. (Escrow  
18 Accounts/Financing The Work), to which each Account and Sub-  
19 Account in the Casmalia Consent Decree Escrow Account may be  
20 funded from proceeds of the Cashout Settlements, if available;  
21 proceeds of actions, claims, settlements, or other efforts  
22 pursuant to Section XXIII. (Coordinated Enforcement Recovery); or  
23 other funding sources not precluded by this Consent Decree. The  
24 Funding Limits for Work Phases shall be established on the basis  
25 of cost estimates for performance of the Work pursuant to Section  
26 XVIII. Paragraph A. (Cost Estimates and Fund Transfers). The  
27 Funding Limit for Past Response Costs shall be established  
28 pursuant to Section XIX. Paragraph B.2. and Paragraph E.

1 (Reimbursement of Response Costs). The Funding Limit for the  
2 Phase II Future Response Costs Sub-Account of the Phase II  
3 Account shall be established in accordance with the terms of  
4 Section XIX. Paragraph D. (Reimbursement of Response Costs) and  
5 Section XVIII. Paragraph A. (Cost Estimates and Fund Transfers).  
6 The Funding Limits for the 30-Year and Post-30 Year O&M Oversight  
7 Sub-Accounts shall be established in accordance with the terms of  
8 Section XVIII. Paragraph A. (Cost Estimates and Fund Transfers).

9 "Future Response Action(s)" shall mean those activities  
10 undertaken by the United States and its authorized  
11 representatives associated with removal and remedial action in  
12 connection with the Casmalia Site, including but not limited to,  
13 enforcement and governmental/regulatory oversight of any tasks  
14 and activities undertaken by Settling Defendants and other  
15 response actions performed pursuant to this Consent Decree or  
16 otherwise in connection with the Site.

17 "Future Response Costs" shall mean all costs of response,  
18 including but not limited to direct and indirect costs and  
19 interest, that the United States will incur in connection with  
20 the Site beginning on the thirtieth (30th) day following entry of  
21 this Consent Decree. Future Response Costs may be either Funded  
22 or Unfunded. "Funded Future Response Costs" shall mean any costs  
23 payable and paid to EPA (a) by Settling Defendants pursuant to  
24 Section XIX. Paragraph C. (Reimbursement of Response Costs) and  
25 (b) from the Phase II Account of the Casmalia Consent Decree  
26 Escrow Account pursuant to Section XIX. Paragraph D.  
27 (Reimbursement of Response Costs). "Unfunded Future Response  
28 Costs" shall mean all Future Response Costs that are not Funded

Casmalia Consent Decree

1 Future Response Costs and shall include any unreimbursed or  
2 uncollected costs of response associated with the United States'  
3 Future Response Actions, including costs that the United States  
4 incurs in actions against Third Parties that are not reimbursed  
5 pursuant to Section XXIII. (Coordinated Enforcement).

6 "Initial Cost Estimate" shall mean the preliminary estimates  
7 established pursuant to Section XVIII. Paragraph A.1. (Cost  
8 Estimates and Fund Transfers) and Section 2.15. of the SOW of the  
9 total present worth costs to be incurred to complete all Site  
10 Work and Future Response Actions determined in accordance with  
11 the terms of this Consent Decree and the SOW. The Initial Cost  
12 Estimate shall be separated into sub-components of cost as set  
13 forth in Section 2.15. of the SOW.

14 "Initial Past Response Costs Estimate" shall mean the United  
15 States' estimate of Past Response Costs, pursuant to Section XIX.  
16 Paragraph B.1. (Reimbursement of Response Costs), incurred in  
17 connection with the Casmalia Site up to, but not including, the  
18 thirtieth (30th) day following entry of this Consent Decree. The  
19 Initial Past Response Costs Estimate shall be effective for the  
20 purpose of establishing the Funding Limits for Section XVII.  
21 Paragraph E. (Escrow Accounts/Financing The Work) until  
22 superseded by EPA's Final Past Response Costs Summary and/or any  
23 adjustments, pursuant to Section XIX. Paragraphs B.2. and E.  
24 (Reimbursement of Response Costs).

25 "Initial Phase II Work" shall mean all Phase II Work, except  
26 for the O&M Base Period Work. Initial Phase II Work shall be  
27 complete as of the date set forth in EPA's written acceptance of  
28 the Initiation of Operation Report, O&M Base Period Component of

1 Work, pursuant to Section 5.7.4. of the SOW.

2 "Interim Cost Estimate" shall mean the revised cost  
3 estimates established pursuant to Section XVIII. Paragraph A.2.  
4 (Cost Estimates and Fund Transfers) and Section 2.15. of the SOW  
5 of the total present worth costs to be incurred to complete all  
6 Site Work and Future Response Actions determined in accordance  
7 with the terms of this Consent Decree and the SOW. The Interim  
8 Cost Estimate shall be separated into sub-components of cost as  
9 set forth in Section 2.15. of the SOW.

10 "National Contingency Plan" or "NCP" shall mean the National  
11 Oil and Hazardous Substances Pollution Contingency Plan, dated  
12 March 8, 1990 (55 Fed. Reg. 8813), promulgated pursuant to  
13 Section 105 of CERCLA, 42 U.S.C. § 9605.

14 "Operation and Maintenance" or "O & M" shall mean all tasks  
15 and activities required to maintain the effectiveness of the  
16 response actions implemented under the Phase I and Initial Phase  
17 II Work. For purposes of this Consent Decree, O&M will be  
18 divided into three time periods: (a) O&M activities performed by  
19 Settling Defendants during the first five (5) years of O&M ("O&M  
20 Base Period Work"); (b) O&M activities performed for the next  
21 thirty (30) years (i.e. years 6 through 35 of O&M ("30-Year O&M  
22 Work"); and (c) O&M activities to be performed after the 30-Year  
23 O&M Work ("Post-30 Year O&M Work"). Except as set forth in  
24 Section XVII. (Escrow Accounts/Financing The Work), Section  
25 XVIII. (Cost Estimates and Fund Transfers), Paragraphs A.3. and  
26 A.4. of Section XXV. (Covenants Not To Sue/Reservations of  
27 Rights), and Section XXVI. (Effect of Settlement/Contribution  
28 Protection), Operation and Maintenance (O&M) shall not include

1 the costs or performance of governmental/regulatory oversight,  
2 including enforcement, of the O&M Work.

3 "O&M Base Period" shall mean the five (5) year period  
4 beginning on the date set forth in EPA's written acceptance of  
5 the Initiation of Operation Report, Operation and Maintenance  
6 Base Period Component of Work, pursuant to Section 5.7.4. of the  
7 SOW.

8 "O&M Base Period Work" shall mean the implementation of all  
9 tasks and activities of the Operation and Maintenance Base Period  
10 Component of Work, pursuant to Section 2.10.5. of the SOW,  
11 necessary to complete the O&M performed during the O&M Base  
12 Period.

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

15 "Parties" shall mean the signatories to this Consent Decree  
16 -- the United States and the Settling Defendants.

17 "Past Response Costs" shall mean all costs of response,  
18 including but not limited to direct and indirect costs and  
19 interest, that the United States incurs in connection with the  
20 Site from March 1, 1992 up to, but not including, the thirtieth  
21 (30th) day following entry of this Consent Decree. Past Response  
22 Costs shall also include Unfunded Future Response Costs that may  
23 periodically be added as an adjustment to the Past Response Costs  
24 Funding Limit pursuant to Section XIX. Paragraph E.

25 (Reimbursement of Response Costs).

26 "Performance Standards" shall mean those cleanup standards,  
27 standards of control, and other substantive requirements,  
28 criteria or limitations to be achieved by the Settling Defendants



1 in implementing the Elements and Components of Work. The  
2 Performance Standards for the Phase I and Phase II Work are  
3 specified in Section 2.0. of the SOW. To the extent not defined  
4 in the attached SOW, Performance Standards shall be set forth, as  
5 appropriate, in a future EPA ROD or other response action  
6 decision document(s), later amendment(s) to the SOW, or in EPA  
7 approvals and decisions made under the SOW.

8 "Phase I Work" shall mean the performance of all tasks and  
9 activities necessary to implement the Elements and Components of  
10 Work listed in Section 1.2.13. of the SOW, and any modifications  
11 thereto, in accordance with the requirements of this Consent  
12 Decree. The completion of all tasks and activities in Phase I  
13 Work is not a pre-requisite to initiating tasks and activities in  
14 the Phase II Work.

15 "Phase II Work" shall mean any Work to be implemented at the  
16 Site that is not within Phase I Work or 30-Year and Post-30 Year  
17 O&M Work. Phase II Work shall mean the performance of all tasks  
18 and activities necessary to implement the Elements and Components  
19 of Work listed in Section 1.2.14. of the SOW; any modifications  
20 thereto, in accordance with the requirements of this Consent  
21 Decree; and any response actions selected by EPA under a future  
22 ROD or other response action decision document(s), as appropriate  
23 and necessary. Except as set forth in Section XVII. (Escrow  
24 Accounts/Financing The Work) and Section XVIII. (Cost Estimates  
25 and Fund Transfers), Phase II Work shall not include the costs or  
26 performance of governmental/regulatory oversight, including  
27 enforcement.

28 "Plaintiff" shall mean the United States.

1 "Post-30 Year O&M Work" -- See Operation and Maintenance.

2 "RCRA" shall mean the Solid Waste Disposal Act, as amended,  
3 42 U.S.C. §§ 6901 et seq. (also known as the Resource  
4 Conservation and Recovery Act).

5 "RCRA Trust Fund" shall mean any trust fund, and any  
6 amendments thereto, established pursuant to the financial  
7 responsibility provisions of RCRA § 3004(t), 42 U.S.C.  
8 § 6924(t), as promulgated in regulations at 40 C.F.R. § 265.143,  
9 for the benefit of the Casmalia Site, or any superseding account  
10 holding monies from any such Trust Fund.

11 "Record of Decision" or "ROD" shall mean the EPA decision  
12 document(s) prepared after completion of the Remedial  
13 Investigation/Feasibility Study Component of Work pursuant to  
14 Section 2.10.2. of the SOW.

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

17 "Settling Defendants" shall mean all Parties listed in  
18 Appendix C and any related entities specifically identified  
19 therein and in Appendix D, as provided in Section IV. (Parties  
20 Bound).

21 "Site" or "Casmalia Site" shall mean generally the Casmalia  
22 Resources Hazardous Waste Management Facility, encompassing  
23 approximately 252 acres, located approximately 10 miles southwest  
24 of Santa Maria and one and a half miles north of Casmalia in  
25 Santa Barbara County, California and depicted generally on the  
26 map attached at Appendix B. Site shall include the areal extent  
27 of contamination that is presently located in the vicinity of the  
28 Casmalia facility and all suitable areas in very close proximity

Casmalia Consent Decree

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1 to the contamination necessary for the implementation of the  
2 response action and any areas to which such contamination  
3 migrates.

4 "State" shall mean the State of California, including all of  
5 its departments, agencies, boards, and divisions.

6 "Statement of Work" or "SOW" shall mean the document  
7 appended to and incorporated into this Consent Decree at Appendix  
8 A, and any modifications and amendments thereto made in  
9 accordance with this Consent Decree, detailing the requirements  
10 for performance of the Work.

11 "Supervising Contractor" shall mean the principal contractor  
12 retained by the Settling Defendants to supervise and direct the  
13 implementation of the Phase I and Phase II Work under this  
14 Consent Decree.

15 "Support Costs" shall mean those costs incurred by the  
16 Settling Defendants to implement the tasks and activities  
17 required in Section 2.14. of the Statement of Work and shall not  
18 include any Administrative Costs.

19 "Third Party" shall mean any potentially responsible party  
20 who is not a signatory to this Consent Decree or who is a  
21 signatory and has not resolved its liability hereunder.

22 "30-Year O&M Work" -- See Operation and Maintenance.

23 "Unfunded Future Response Costs" -- see Future Response  
24 Costs.

25 "United States" shall mean the United States of America.

26 "Waste Material" shall mean (1) any "hazardous substance"  
27 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any  
28 pollutant or contaminant under Section 101(33), 42 U.S.C.

1 § 9601(33); (3) any hazardous waste under Section 1004(5) of RCRA  
2 or hazardous constituent as defined at 40 C.F.R. § 260.10  
3 pursuant to RCRA; (4) any "solid waste" under Section 1004(27) of  
4 RCRA, 42 U.S.C. § 6903(27); and (5) any hazardous substance under  
5 California Health and Safety Code §§ 25316 and 25317.

6 "Work" shall mean any or all tasks and activities included  
7 or to be included in Phase I Work, Initial Phase II Work and O&M  
8 under this Consent Decree, except those required by Section  
9 XXVII. (Retention of Records). Except as provided otherwise in  
10 this Consent Decree, Work shall not include the costs or  
11 performance of governmental/regulatory oversight, including  
12 enforcement.

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II. JURISDICTION

This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §§ 9606, 9607, and 9613(b); 42 U.S.C. § 6973; and 28 U.S.C. §§ 1331 and 1345. This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of the entry and enforcement of this Consent Decree, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

1 III. DENIAL OF LIABILITY

2 The Settling Defendants deny any and all legal or equitable  
3 liability under any federal, state, or local statute, regulation  
4 or ordinance, or common law, for any claim related to the Site.  
5 Except as otherwise provided, nothing in this Consent Decree  
6 shall constitute an admission or waiver of any kind. Nothing in  
7 this Section shall alter Settling Defendants' agreement not to  
8 challenge the Court's jurisdiction as set forth in Section II.  
9 (Jurisdiction).

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1 IV. PARTIES BOUND

2 A. The Parties to this Consent Decree are its signatories  
3 -- the United States of America and the Settling Defendants.

4 B. This Consent Decree applies to and is binding upon the  
5 United States and upon Settling Defendants and their successors  
6 and assigns. Any change in ownership or corporate status of a  
7 Settling Defendant shall in no way alter such Settling  
8 Defendant's responsibilities under this Consent Decree.

9 C. Other parties potentially responsible for the Casmalia  
10 Site are identified in a customer data base and associated  
11 records that had previously been maintained by Casmalia Resources  
12 at the Casmalia facility. A complete listing of such parties has  
13 been reviewed by an authorized representative of each Settling  
14 Defendant, and affiliated or otherwise related entities to the  
15 Settling Defendants have been identified and listed in Appendix

16 D. To the extent an affiliate of, or entity otherwise related  
17 to, any Settling Defendant is not specifically identified in  
18 Appendix D, it shall not be deemed to be a Party to this Consent  
19 Decree, and shall not be subject to any of the rights, benefits,  
20 obligations, or requirements of this Consent Decree.

21 D. Settling Defendants shall provide a copy of this  
22 Consent Decree, as entered, and all relevant additions and  
23 modifications to this Consent Decree, as appropriate, to each  
24 person, including all contractors retained by Settling Defendants  
25 to perform the Work required by this Consent Decree and to each  
26 person representing any Settling Defendant with respect to the  
27 Site or the Work within thirty (30) days of retention. Settling  
28 Defendants shall require all such persons to perform their duties

1 with respect to the Site and the Work in compliance with the  
2 terms of this Consent Decree. Settling Defendants, or their  
3 contractors, shall provide written notice of the Consent Decree,  
4 and any additions or modifications, to all subcontractors  
5 retained or assigned to perform any portion of the Work required  
6 by this Consent Decree. Settling Defendants shall nonetheless be  
7 responsible for ensuring that their contractors and  
8 subcontractors perform the Work contemplated herein in accordance  
9 with this Consent Decree.

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1 V. SITE BACKGROUND

2 The following is a summary of the Site background as alleged  
3 by the United States which, for purposes of this Consent Decree,  
4 the Parties neither admit nor deny:

5 A. The Casmalia Resources Hazardous Waste Management  
6 Facility in northern Santa Barbara County, California is an  
7 inactive commercial hazardous waste treatment, storage and  
8 disposal facility, which accepted large volumes of Waste  
9 Materials from 1973 to 1989. The facility is located on  
10 approximately 252 acres and consists of former surface  
11 impoundments, a number of inactive waste landfills, on-site  
12 treatment systems used during the facility operating period, and  
13 several engineering control structures put in place during the  
14 facility's operational years. See Appendix B.

15 B. The Site is located in the Santa Maria Basin of coastal  
16 California near the southern end of the Casmalia Hills and about  
17 a mile and a half north of the town of Casmalia. The facility  
18 itself, located within the Shuman Canyon drainage sub-basin, is  
19 on a southern facing slope traversed by three small canyons.  
20 Casmalia Creek, about 500 feet west, is the nearest surface water  
21 to the Site. This creek flows to the southwest to join Shuman  
22 Creek about one mile southwest of the town of Casmalia. Shuman  
23 Creek continues southward and westward, eventually discharging to  
24 the Pacific Ocean. See Appendix B.

25 C. The uppermost water bearing formation underlying the  
26 Site is the Todos Santos Claystone Member of the Sisquoc  
27 Formation. The upper weathered claystone layer is highly  
28 fractured and ranges in thickness between 30 to 60 feet. The

1 lower unweathered claystone beneath the weathered layer is less  
2 fractured. The pervasive fracturing of the upper claystone layer  
3 results in localized flow variations throughout the Site, but the  
4 hydraulic conductivity of the unweathered claystone is  
5 significantly less than that found in the weathered claystone.

6 D. There have been and continue to be actual and  
7 threatened releases of Waste Materials at the Site. The Site now  
8 presents and may continue to present a threat to human health and  
9 the environment.

10 E. During the facility's operation, the owners/operators  
11 accepted billions of pounds of commercial and industrial wastes  
12 from thousands of generators that include large and small private  
13 entities and numerous federal, state, local and municipal  
14 government entities.

15 F. From 1980 to 1989, the Casmalia facility was operated  
16 under federal interim status pursuant to RCRA. Because of  
17 continuing deficiencies in the facility operations, no final RCRA  
18 permit has been granted, and the facility has not been adequately  
19 closed in accordance with requirements of RCRA.

20 G. In late 1989, the owners/operators ceased accepting  
21 shipments of off-site waste and, in 1991, ceased all active  
22 efforts to clean up and close the facility asserting that they  
23 have insufficient monies to pay for cleanup or closure  
24 activities.

25 H. The facility's closure trust fund, the RCRA Trust Fund,  
26 which as of June 1996 totals approximately \$10 million, set aside  
27 by the facility owners/operators, is insufficient to cover  
28 closure and post-closure activities at the Site.

1 I. Since the facility ceased accepting waste in 1989, the  
2 owners/operators have progressively reduced site maintenance  
3 activities. In response to unstable and deteriorating conditions  
4 at the Site, in August 1992, EPA initiated a removal action,  
5 pursuant to CERCLA section 104, 42 U.S.C. § 9604, to implement  
6 certain interim stabilization actions, prevent further  
7 deterioration of site conditions, and control the most immediate  
8 threats. The Site continues to pose an imminent and substantial  
9 endangerment within the meaning of Section 106 of CERCLA and  
10 Section 7003 of RCRA. 42 U.S.C. § 9606, 42 U.S.C. § 6973.

11 J. Because the owners/operators of the Site have failed to  
12 perform sufficient closure and remediation activities, in March  
13 1993, under CERCLA and RCRA authorities, EPA notified a group of  
14 approximately 65 Casmalia waste generators, representing some of  
15 the largest disposers of waste, of their potential liability for  
16 site remediation. Approximately 50 of the first 65 notified  
17 generators formed the Casmalia Resources Site Steering Committee  
18 ("CRSSC"). EPA negotiated with the CRSSC and other potentially  
19 responsible parties ("PRPs") to secure implementation of response  
20 actions at the Site as detailed by the terms of this Consent  
21 Decree.

22 K. EPA intends that all Work performed at the Site will be  
23 consistent with the requirements of CERCLA and the National  
24 Contingency Plan ("NCP").  
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1 VI. PURPOSE AND REGULATORY FRAMEWORK

2 A. The fundamental purposes of this Consent Decree are to:

3 (1) provide a CERCLA framework for a comprehensive,  
4 coordinated and Site-wide response to all conditions at the Site  
5 that may present an imminent and substantial endangerment to  
6 public health, welfare and the environment caused by the disposal  
7 of Waste Materials at the Site and to protect public health,  
8 welfare and the environment from any releases or threatened  
9 releases of Waste Material from the Site through (a) the  
10 investigation of conditions at the Site, (b) the selection,  
11 design, construction, and implementation of response actions  
12 necessary to close or otherwise remediate the Site and to achieve  
13 applicable or relevant and appropriate requirements ("ARARs") and  
14 other performance standards described in the SOW, and in any ROD  
15 or other response action decision documents issued by EPA, as  
16 appropriate and necessary, pursuant to this Consent Decree, in  
17 order to complete remediation of the entire Site in accordance  
18 with the NCP and (c) monitoring, operation and maintenance of  
19 these response actions for a specified period of time after  
20 completion;

21 (2) provide comprehensive and integrated arrangements  
22 for funding and performance of the Work to be performed at the  
23 Site pursuant to this Consent Decree including, but not limited  
24 to, collecting funds from other potentially responsible parties  
25 to pay for certain portions of the Work; and

26 (3) except as noted in Section XXV. (Covenants Not To  
27 Sue/Reservation of Rights), provide a settlement of any and all  
28 potential civil claims among and between the Settling Defendants

1 and the United States in connection with the Casmalia Site; and  
2 provide the Settling Defendants with statutory protection against  
3 claims as provided herein.

4 B. The CERCLA framework provided by this Consent Decree  
5 incorporates the requirements of other federal and State laws  
6 through the identification and enforcement of ARARs as an  
7 integral part of the remedy for the Site. Because the Site was  
8 operated as an interim status hazardous waste management  
9 facility, potential ARARs will include RCRA closure and  
10 corrective action requirements. Accordingly, this Consent Decree  
11 shall govern all activities that take place on the Site after  
12 entry of this Consent Decree, and shall upon entry supersede or  
13 take precedence over all State or local enforcement actions or  
14 orders issued against the Settling Defendants or Third Parties  
15 who resolve their liabilities with the Parties with respect to  
16 the Site during the pendency of this Consent Decree, except for  
17 any State or local permits or other authorizations issued in  
18 accordance with applicable law for response activities undertaken  
19 pursuant to this Consent Decree that are not conducted entirely  
20 on the Site.

21 C. The Work to be performed under this Consent Decree will  
22 provide a comprehensive remedy for the Site that will address  
23 existing and anticipated future Site conditions. Based upon  
24 presently existing data, the RCRA operating and closure history  
25 of the Site, and the long-term response actions taken at similar  
26 large landfill sites, EPA believes that the likely Site remedy  
27 will consist of controlling the migration of contaminated  
28 groundwater and containing the contaminated land masses. In

Casmalia Consent Decree

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1 | order to assure that the remedy provides adequate protection of  
2 | human health and the environment and meets ARARs and other  
3 | performance standards set forth in this Consent Decree, this  
4 | early assessment shall be subject to confirmation by EPA  
5 | following completion of the early response actions, the EE/CA and  
6 | the RI/FS to be performed for the entire Site in accordance with  
7 | this Consent Decree. In accordance with the NCP, EPA's decision  
8 | concerning the final Site remedy will be set forth in a ROD taken  
9 | together, if appropriate and necessary, with other EPA decision  
10 | documents.

11 |         D. The Parties acknowledge that the Settling Defendants  
12 | are entering this Consent Decree and undertaking to perform the  
13 | Work as persons who have arranged for disposal of Waste Materials  
14 | at the Site, and neither entry into this Consent Decree nor  
15 | performance of all or part of the Work at the Site shall be  
16 | deemed to grant legal possession and control of the Site to  
17 | Settling Defendants or cause Settling Defendants to be deemed  
18 | owners or operators of the Site.

19 |         E. The State by agreement with EPA turned over the lead  
20 | agency responsibility for the management of the  
21 | closure/remediation of the Casmalia Site to EPA, notwithstanding  
22 | that, with certain exceptions, the State is authorized to  
23 | implement the federal RCRA program in lieu of EPA. EPA, after  
24 | consultation with the State, determined that the best means to  
25 | implement such closure/remediation was to establish a  
26 | comprehensive regulatory and enforcement program for the Site as  
27 | provided by this Consent Decree. The Parties intend that the  
28 | regulatory framework and relationship between EPA and the State

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1 be managed as provided herein. The State of California, pursuant  
2 to CERCLA § 121(f)(1)(F), was given notice of EPA's negotiations  
3 with the Settling Defendants and was provided with opportunities  
4 to participate in such negotiations and be a Party to this  
5 Consent Decree, to among other things, identify the rights and  
6 responsibilities between EPA and the State. Although the State  
7 declined to become a Party to the Consent Decree, the State has  
8 been consulted on the technical approach detailed in the SOW and  
9 the management of the Site pursuant to the approach in this  
10 Consent Decree. The State has indicated its support of this  
11 Consent Decree's reliance upon a CERCLA framework to implement a  
12 comprehensive response to conditions at the Site and EPA's role  
13 as the lead governmental regulatory agency.

14 F. The preservation of the RCRA Trust Fund for use toward  
15 30-Year O&M Work at the Site is an integral provision of this  
16 Consent Decree. It is intended that this Consent Decree shall  
17 govern the management and disbursement of funds from the RCRA  
18 Trust Fund. EPA agrees not to request or to otherwise use the  
19 RCRA Trust Fund for anything other than 30-Year O&M Work. This  
20 obligation shall be effective upon lodging of this Consent  
21 Decree. The Parties agree to work cooperatively to ensure that  
22 the RCRA Trust Fund is transferred to the Escrow Account and  
23 managed in a manner consistent with the terms of this Consent  
24 Decree.

1 VII. WORK TO BE PERFORMED

2 A. Phase I Work

3 1. Settling Defendants shall perform, at their  
4 expense and without limitation as to its cost or duration, the  
5 Phase I Work. The Phase I Work shall be performed in accordance  
6 with this Consent Decree, including, but not limited to, the SOW  
7 attached at Appendix A; all standards, plans, specifications, and  
8 schedules set forth in or developed pursuant to this Consent  
9 Decree and the SOW; and any modifications or amendments thereto  
10 made pursuant to the terms of this Consent Decree.

11 2. Except as provided in Section XIV. Paragraphs C.  
12 and D. (Certifications of Completion), Settling Defendants'  
13 obligation to perform and pay for Phase I Work shall cease as of  
14 the effective date of EPA's written acceptance of the Completion  
15 of Phase I Work Report (Section 5.4.) of the SOW. Pursuant to  
16 Section XIV. (Certifications of Completion), the following  
17 Elements or Components of Work shall cease to be Phase I Work  
18 obligations and become Phase II Work as follows: (a) the Short-  
19 Term and Interim Collection/Treatment/ Disposal of Contaminated  
20 Liquids Components of Work shall cease to be Phase I Work as of  
21 the effective date of EPA's written acceptance of the "Phase I  
22 Completion of Obligation Report for Short-Term and Interim  
23 Collection/Treatment/Disposal of Contaminated Liquids Components  
24 of Work," as set forth in Section 5.4. of the SOW; (b) the  
25 Routine Site Maintenance Element of Work shall cease to be Phase  
26 I Work as of the effective date of EPA's written acceptance of  
27 the "Phase I Completion of Obligation Report for Routine Site  
28 Maintenance Element of Work," as set forth in Section 5.4. of the



1 SOW; (c) the Routine Groundwater Monitoring Element of Work shall  
2 cease to be Phase I Work as of the effective date of EPA's  
3 written acceptance of the "Phase I Completion of Obligation  
4 Report for Routine Groundwater Monitoring Element of Work," as  
5 set forth in Section 5.4. of the SOW; (d) the Community Relations  
6 Support Element of Work shall cease to be Phase I Work as of the  
7 effective date of EPA's written acceptance of the "Phase I  
8 Completion of Obligation Report for Community Relations Support  
9 Element of Work," as set forth in Section 5.4. of the SOW.

10 3. Settling Defendants shall begin performance of the  
11 Work, as set forth in the SOW, including its schedules, at  
12 Appendix A, no later than seven (7) days after lodging of this  
13 Consent Decree. Settling Defendants shall not, however, be  
14 required to commence construction of any permanent facilities  
15 until the Consent Decree has been entered by the Court or unless  
16 such construction is agreed to by EPA and the Settling  
17 Defendants. In the event that the Consent Decree is not entered  
18 by the District Court within twelve (12) months from the date of  
19 its lodging, the Settling Defendants' obligation to perform or to  
20 finance any Work prior to entry of this Consent Decree shall  
21 terminate, at the Settling Defendants' option, until the date of  
22 entry of this Consent Decree by the District Court. Any delay in  
23 the commencement of construction of permanent facilities or in  
24 the implementation of other tasks, activities, and obligations  
25 caused by a delay in the entry of the Consent Decree shall  
26 extend, pro tanto, the dates in the schedules under Section 5.0.  
27 of the SOW.  
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1           B.    Phase II Work

2           1.    The Settling Defendants shall perform Phase II  
3 Work, not otherwise performed by Third Parties, using monies  
4 received from the Cashout Settlement(s); from actions, claims,  
5 settlements or other efforts pursuant to Section XXIII.  
6 (Coordinated Enforcement Recovery); and/or from other sources not  
7 precluded by this Consent Decree. Settling Defendants shall not  
8 be obligated under the terms of this Consent Decree to pay for  
9 any Phase II Work, except that Settling Defendants shall pay  
10 their Administrative Costs associated with and relating to the  
11 Phase II Work and shall not be entitled to withdraw or use funds  
12 from the Casmalia Consent Decree Escrow Account to pay these  
13 Costs. Nothing in this Paragraph B. shall be construed to  
14 preclude the assessment of stipulated penalties against, or  
15 payment of stipulated penalties by, the Settling Defendants for  
16 violations related to Phase II Work as provided under Section  
17 XXII. (Stipulated Penalties).

18           2.    The detailed scope of the Elements and Components  
19 of Phase II Work shall be determined in accordance with this  
20 Consent Decree and the SOW. The full scope of response actions  
21 associated with the Phase II Work shall be set forth by EPA in an  
22 EE/CA Action Memorandum or other EPA response action decision  
23 document, after completion of the EE/CA Component of Work at  
24 Section 2.9.2. of the SOW, and a ROD, after completion of the  
25 RI/FS Component of Work at Section 2.10.2. of the SOW, which  
26 taken together and with other response action decision documents,  
27 as appropriate and necessary, will determine the final remedy for  
28 the Site. Settling Defendants shall perform Phase II Work in

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1 accordance with this Consent Decree, including, but not limited  
2 to, the SOW attached at Appendix A; all applicable standards,  
3 plans, specifications, and schedules set forth in or developed  
4 pursuant to this Consent Decree and the SOW; any applicable  
5 modifications or amendments thereto made pursuant to the terms of  
6 this Consent Decree; and any future EPA ROD or other response  
7 action decision document(s), as appropriate and necessary.

8           3.       Settling Defendants are not obligated to begin  
9 Phase II Work until \$3 million is available for performance of  
10 the Phase II Work.

11           4.       Settling Defendants are not obligated to perform  
12 Phase II Work absent the receipt of sufficient funds. However,  
13 in the event of insufficient funds, Settling Defendants shall  
14 perform that Work that can be performed with available funds  
15 pursuant to the determination in Section 1.3.10. of the SOW. The  
16 Settling Defendants shall be authorized to withdraw advance  
17 payments from the Phase II Work Account as set forth below to  
18 fund the Phase II Work.

19           a.       The Escrow Agreement shall instruct the  
20 Escrow Manager to disburse money from the Phase II Work Account  
21 to the Settling Defendants quarterly as authorized by the  
22 Annualized Phase II Work Budget Estimate, including updates  
23 thereto, required to be submitted by the Settling Defendants  
24 pursuant to Section XVII. Paragraph J.2. (Escrow  
25 Accounts/Financing The Work) and Sections 3.17., 4.1.1., and 5.4.  
26 of the SOW. Although any quarterly payment to the Settling  
27 Defendants may exceed the budgeted amount for that quarter after  
28 notice to EPA, the Escrow Agreement shall instruct the Escrow

1 Manager not to disburse money over four consecutive quarters that  
2 is in excess of the Annualized Phase II Work Budget Estimate in  
3 the absence of written approval by EPA.

4           If the Settling Defendants request money from the Phase  
5 II Work Account in excess of the Annualized Phase II Work Budget  
6 Estimate, the Settling Defendants shall submit to EPA for  
7 approval justification of the need for funds in excess of such  
8 budget and steps to be taken to bring the project back within  
9 budget, if possible, and to minimize future cost overruns.

10 Settling Defendants shall maintain records accounting for all  
11 Work expenditures paid for by money from the Escrow Account and  
12 detailing Site operations related to Escrow Account expenditures.  
13 EPA shall be entitled, upon reasonable notice to the Settling  
14 Defendants, to audit Settling Defendants accounting and  
15 operations records related to the Escrow Account expenditures.

16           b.    If insufficient money is available in the  
17 Phase II Work Account to fund the Work pursuant to Paragraph  
18 4.a., above, Settling Defendants shall notify EPA as specified in  
19 Section 5.4. of the SOW of the unavailability of funds. In the  
20 event that the insufficient funding results in suspension of  
21 performance of the unfunded Phase II Work, Settling Defendants  
22 shall re-start the Work as soon as practicable after such  
23 additional funds become available. Settling Defendants shall not  
24 unreasonably delay re-starting the Work under this Paragraph.

25           5.    Settling Defendants' obligations under this  
26 Consent Decree to perform Phase II Work will cease on the  
27 effective date, as provided in Section XIV. (Certifications of  
28 Completion), for the Phase II Work.

1 C. Failure to Perform

2 In the event Settling Defendants fail to perform all or  
3 portions of the Phase I or Phase II Work as required, the  
4 Settling Defendants shall be subject to stipulated penalties as  
5 set forth in Section XXII. Paragraph D. (Stipulated Penalties).  
6 If EPA performs all or a portion of the Work because of Settling  
7 Defendants' unauthorized failure to perform, monies in the  
8 appropriate Account of the Escrow Account shall be paid to EPA  
9 upon demand into a Casmalia Site-specific special account (a) to  
10 be used to reimburse EPA for any Work performed or (b) to be used  
11 by EPA to perform the Work. If the Settling Defendants' failure  
12 to perform Work is the subject of a dispute pursuant to Section  
13 XXI. (Dispute Resolution), the failure to perform shall not be  
14 considered unauthorized until the dispute is resolved and the  
15 Settling Defendants' position is rejected, unless Settling  
16 Defendants' specific work stoppage results in an imminent and  
17 substantial endangerment to public health, welfare or the  
18 environment beyond the general allegations in the complaint,  
19 necessitating response action, as determined by EPA, in which  
20 case, advance payments or reimbursements requested by EPA shall  
21 be payable from the appropriate Account of the Escrow Account for  
22 such response action.

23 D. 30-Year Operation and Maintenance

24 1. The obligations to perform and to oversee the 30-  
25 Year O&M Work are not resolved by this Consent Decree.

26 2. The specific tasks and activities to be performed  
27 during the 30-Year O&M Work are not specified under the SOW or  
28 this Consent Decree.

1 E. Post-30 Year Operation and Maintenance.

2 1. The duration of, and the obligations to perform  
3 and oversee, Post-30 Year O&M Work are not resolved by this  
4 Consent Decree.

5 2. The specific tasks and activities to be performed  
6 during the Post-30 Year O&M Work are not specified under the SOW  
7 or this Consent Decree.

8 F. Oversight

9 The United States will oversee the Settling Defendants'  
10 performance of the Work until Certification of Completion of  
11 Phase II Work. The designation of the lead agency for the  
12 governmental/regulatory oversight of the 30-Year and Post-30 Year  
13 O&M Work is not resolved by this Consent Decree, but is subject  
14 to resolution as set forth in Paragraph C. of Section XXIV. (Lead  
15 Agency).

16 G. General Provisions

17 1. Notwithstanding any approvals that may be granted  
18 by the United States or other governmental entities, the Settling  
19 Defendants shall not be relieved of any liability arising from or  
20 relating to their acts or omissions or the acts or omissions of  
21 any of their contractors, subcontractors, or any other person  
22 acting on their behalf in the performance of the Work or their  
23 failure to perform or complete the Work.

24 2. The SOW, any modifications to the SOW, and any  
25 future EPA ROD or other EPA response action decision documents  
26 related to the Casmalia Site are hereby incorporated by reference  
27 and made a part of this Consent Decree and are enforceable  
28 hereunder.

1           3.    Neither the SOW, the plans, any standards,  
2 specifications, and schedules, nor any approvals, permits or  
3 other permissions that may be granted by EPA related to this  
4 Consent Decree constitute a warranty or representation of any  
5 kind by the United States that the SOW, plans, standards,  
6 specifications, schedules, or ROD or other EPA response action  
7 decision documents, when implemented, will achieve the  
8 Performance Standards established or to be established, and shall  
9 not foreclose the United States from seeking performance of all  
10 terms and conditions of this Consent Decree or any EPA ROD or  
11 other EPA response action decision, the enforcement of which is  
12 not otherwise precluded by this Consent Decree. The Work  
13 performed by the Settling Defendants pursuant to this Consent  
14 Decree shall include the obligation to achieve the Performance  
15 Standards.

16           4.    Except as otherwise permitted by law and as  
17 approved by EPA, any facilities constructed or put in place under  
18 the terms of this Consent Decree shall not be used to treat Waste  
19 Materials other than those associated with the Site.

20           5.    Settling Defendants shall be jointly and severally  
21 responsible for the performance of the Settling Defendants'  
22 obligations under this Consent Decree. In the event of the  
23 insolvency or other failure of any one or more Settling  
24 Defendants to implement the Work, tasks and activities provided  
25 for under this Consent Decree, the remaining Settling Defendants  
26 shall complete all such requirements.

27           H.    Compliance With Applicable Laws

28           All Work, tasks and activities undertaken by Settling

Casmalia Consent Decree

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1 Defendants pursuant to this Consent Decree shall be performed in  
2 accordance with the requirements of all applicable federal and  
3 state laws and regulations. Except as allowed by CERCLA and the  
4 NCP, Settling Defendants shall also comply with applicable or  
5 relevant and appropriate requirements ("ARAR") under federal  
6 environmental or state environmental or facility siting laws as  
7 determined by EPA pursuant to this Consent Decree and as  
8 authorized by law. Only those State standards that are  
9 promulgated, are identified by the State in a timely manner, and  
10 are more stringent than federal requirements may be applicable or  
11 relevant and appropriate. The Court finds that the Work and  
12 activities conducted pursuant to this Consent Decree, if approved  
13 by EPA, shall be considered to be consistent with the applicable  
14 requirements of CERCLA, RCRA, and the NCP.

15 I. Permits

16 1. As provided in Section 121(e) of CERCLA and  
17 § 300.5 of the NCP, no Federal, State or local permit shall be  
18 required for any portion of the Work conducted entirely on-site.  
19 For purposes of this Consent Decree, the term "on-site" means the  
20 areal extent of contamination and all suitable areas in very  
21 close proximity to the contamination necessary for implementation  
22 of the response action. Where any portion of the Work requires a  
23 Federal or State permit or authorization, Settling Defendants  
24 shall submit timely and complete applications and take all other  
25 actions necessary to obtain all such permits or authorizations.  
26 Settling Defendants or their designee shall be required to obtain  
27 and hold any permits needed for implementation of the Phase I and  
28 Phase II Work.



1           2.    The Settling Defendants may seek relief under the  
2 provisions of Section XX. (Force Majeure) of this Consent Decree  
3 for any delay in the performance of the Work resulting from a  
4 failure to obtain, or a delay in obtaining, any permit required  
5 for the Work.

6           3.    This Consent Decree is not, and shall not be  
7 construed to be, a permit issued pursuant to any federal or state  
8 statute or regulation.

9           J.    Selection of Work Contractor

10          1.    All aspects of the Phase I and Phase II Work to be  
11 performed by Settling Defendants pursuant to this Consent Decree  
12 shall be under the direction and supervision of the Settling  
13 Defendants' Supervising Contractor, the selection of which shall  
14 be subject to disapproval by EPA. Within five (5) days after the  
15 lodging of this Consent Decree, and at any time Settling  
16 Defendants propose to change a Supervising Contractor, Settling  
17 Defendants shall notify EPA in writing of the name, title, and  
18 qualifications of any contractor proposed to be the Supervising  
19 Contractor. Unless EPA disapproves of the proposed Supervising  
20 Contractor pursuant to Paragraph J.2., below, Settling Defendants  
21 may proceed.

22          2.    If EPA disapproves a proposed Supervising  
23 Contractor, EPA will notify Settling Defendants in writing within  
24 seven (7) days of receipt of Settling Defendants written  
25 notification to EPA in Paragraph J.1., above. Within thirty (30)  
26 days of receipt of EPA's disapproval, Settling Defendants shall  
27 notify EPA of the name and qualifications of the proposed  
28 replacement Supervising Contractor.

1           3.    If EPA disapproves of the proposed replacement  
2   Supervising Contractor and such disapproval prevents the Settling  
3   Defendants from meeting one or more deadlines in a plan,  
4   Deliverable, or other written submission approved by EPA pursuant  
5   to this Consent Decree, Settling Defendants may seek relief under  
6   the provisions of Section XX. (Force Majeure).

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1 VIII. ADDITIONAL RESPONSE ACTIONS

2 A. With respect to the Phase II Work, if EPA determines  
3 that response actions in addition to or modifying the Work  
4 specified in the ROD or other EPA decision document(s) and/or in  
5 Deliverables developed pursuant to the ROD or other EPA decision  
6 document(s) are necessary to achieve and/or maintain the  
7 Performance Standards or to carry out and/or maintain the  
8 effectiveness of the remedy set forth in a ROD or other EPA  
9 decision document(s), EPA may require that such additional or  
10 modified response action (which may include the submission of  
11 additional or modified Plans) be incorporated into the SOW and/or  
12 such Deliverables. Unless the additional or modified response  
13 actions are performed by Third Parties, Settling Defendants shall  
14 be required to complete as Phase II Work the additional or  
15 modified response actions in accordance with plans,  
16 specifications, and schedules approved or established by EPA  
17 pursuant to this Consent Decree. Provided, however, that  
18 additional or modified response actions may only be required  
19 pursuant to this Paragraph to the extent that they are consistent  
20 with the scope of the remedy selected in the ROD or other EPA  
21 decision document(s), as applicable.

22 B. If Settling Defendants object to any additional or  
23 modified response action required by EPA pursuant to Paragraph  
24 A., above, they may seek dispute resolution pursuant to Section  
25 XXI. Paragraph D. (Dispute Resolution). The SOW and/or related  
26 Deliverables shall be modified in accordance with final  
27 resolution of the dispute, and Settling Defendants shall then  
28 perform the additional or modified response actions in accordance

1 with Paragraph A., above.

2 C. Nothing in this Section shall be construed to limit  
3 EPA's authority to require performance of additional or modified  
4 response actions as otherwise provided in this Consent Decree.

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1 IX. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

2 A. The Settling Defendants shall use quality assurance,  
3 quality control, and chain of custody procedures for all samples  
4 in accordance with Quality Assurance and Project Plans and  
5 Sampling Plans developed pursuant to Sections 3.0. and 5.0. of  
6 the SOW.

7 B. In accordance with the schedule in the SOW Section  
8 5.0., Settling Defendants shall submit for EPA's approval the  
9 Quality Assurance Project Plans ("QAPPs"), and any addenda  
10 thereto, that are consistent with the SOW, the NCP, and  
11 applicable guidance documents.

12 C. If relevant to the proceeding, validated sampling data  
13 generated in accordance with the QAPP(s) and reviewed and  
14 approved by EPA shall be admissible as evidence, without  
15 objection, in any proceeding under this Consent Decree.

16 D. Settling Defendants shall make it a requirement of  
17 their contract(s) with laboratories for Work performed pursuant  
18 to this Consent Decree that EPA be allowed access to the  
19 laboratories during normal business hours. In addition, Settling  
20 Defendants shall require such laboratories to analyze all samples  
21 submitted in connection with the Work pursuant to the approved  
22 QAPPs, and any addenda thereto, for quality assurance monitoring  
23 and to perform all analyses required in connection with the Work  
24 according to accepted EPA methods. Settling Defendants shall  
25 require all laboratories they use for analysis of samples taken  
26 pursuant to this Consent Decree to participate in an EPA or EPA-  
27 equivalent QA/QC program. Settling Defendants shall nonetheless  
28 be responsible for the Work pursuant to this Section being in

1 compliance with this Consent Decree.

2 E. Upon request, the Settling Defendants shall allow split  
3 or duplicate samples to be taken by EPA or its authorized  
4 representatives. In addition, EPA shall have the right to take  
5 any additional samples that EPA deems necessary. Upon request,  
6 EPA shall allow the Settling Defendants to take split or  
7 duplicate samples of any samples taken as part of EPA's oversight  
8 of the performance of the Phase I and Phase II Work. Settling  
9 Defendants and EPA shall notify the other not less than twenty-  
10 eight (28) days in advance of any sample collection activity  
11 unless shorter notice is agreed to by them.

12 F. Unless specified otherwise in an approved Deliverable  
13 or other written submission required by this Consent Decree,  
14 Settling Defendants shall submit to EPA three (3) copies, in  
15 accordance with the SOW, of the results of all sampling and/or  
16 tests or other data obtained or generated by or on behalf of  
17 Settling Defendants with respect to the implementation of this  
18 Consent Decree. EPA shall provide to Settling Defendants copies  
19 of its results from any split or duplicate samples taken pursuant  
20 to Paragraph E., above.

21 G. Notwithstanding any provision of this Consent Decree,  
22 the United States hereby retains all of its information gathering  
23 and inspection authorities and rights, including enforcement  
24 actions related thereto, under CERCLA, RCRA and any other  
25 applicable statutes or regulations.

1 X. SITE ACCESS

2 A. For the duration of the Settling Defendants'  
3 obligations to perform the Phase I and Phase II Work, to the  
4 extent that the Site or any other property to which access is  
5 required for the implementation of this Consent Decree is owned  
6 or controlled by persons other than those bound by this Consent  
7 Decree, the Settling Defendants shall use best efforts to secure  
8 from such persons access for Settling Defendants, as well as for  
9 the United States and its representatives including, but not  
10 limited to, their contractors, as necessary to effectuate this  
11 Consent Decree, including but not limited to access for the  
12 following activities:

- 13 1. oversight of the Work;
- 14 2. verifying any data or information submitted to the  
15 United States;
- 16 3. conducting investigations relating to contamination  
17 at or near the Site;
- 18 4. obtaining samples;
- 19 5. assessing the need for, planning, or implementing  
20 additional response actions at or near the Site;
- 21 6. inspecting and copying records, operating logs,  
22 contracts, or other documents maintained or generated by Settling  
23 Defendants or their agents, consistent with Section XXVII.  
24 (Access to Information); and
- 25 7. assessing Settling Defendants' compliance with  
26 this Consent Decree.

27 B. If any access required to complete the Phase I or Phase  
28 II Work is not obtained within forty-five (45) days of the date

1 of lodging of this Consent Decree, or within forty-five (45) days  
2 of the date EPA notifies the Settling Defendants in writing that  
3 additional access beyond that previously secured is necessary,  
4 Settling Defendants shall promptly notify the United States, and  
5 shall include in that notification a summary of the steps  
6 Settling Defendants have taken to attempt to obtain access. The  
7 United States may, as it deems appropriate, assist Settling  
8 Defendants in obtaining access. Response costs incurred by the  
9 United States to assist the Settling Defendants to obtain access  
10 shall be added to the United States' Final Past Response Costs  
11 Summary total and be reimbursed in accordance with the terms of  
12 Section XVIII. (Cost Estimates and Fund Transfers). Costs  
13 incurred by the Settling Defendants to obtain access for Phase II  
14 Work shall be considered Phase II Work costs.

15 C. Notwithstanding any provision of this Consent Decree,  
16 the United States retains all of its access authorities and  
17 rights, including enforcement authorities related thereto, under  
18 CERCLA, RCRA and any other applicable statutes or regulations.

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1 in response thereto unless all such actions were previously  
2 reported.

3 D. All Deliverables and other submissions by Settling  
4 Defendants to EPA which purport to document Settling Defendants'  
5 compliance with the terms of this Consent Decree shall be signed  
6 by an authorized representative of the Settling Defendants.

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1                   XII.   SUBMISSIONS REQUIRING AGENCY APPROVAL

2           A.    After submittal of any Deliverable or other submission  
3 that requires EPA approval pursuant to this Consent Decree, EPA  
4 shall: (1) approve in whole or in part, the submission; (2)  
5 approve the submission upon specified conditions; (3) disapprove,  
6 in whole or in part, the submission, directing that the Settling  
7 Defendants modify the submission; or (4) any combination of the  
8 above.

9           B.    Following receipt of EPA's approval or approval upon  
10 conditions, pursuant to Paragraph A. (1) or (2), above, Settling  
11 Defendants shall proceed to take any action required by the  
12 Deliverable or other submission, as approved by EPA, subject only  
13 to their right to invoke the dispute resolution procedures set  
14 forth in Section XXI. (Dispute Resolution) with respect to the  
15 modifications required or conditions imposed by EPA. Nothing in  
16 this Paragraph B., shall require the Settling Defendants to  
17 perform any Work not otherwise required pursuant to this Consent  
18 Decree.

19           C.    Following receipt of EPA's notice of disapproval  
20 pursuant to Paragraph A. (3), above, Settling Defendants shall,  
21 within fourteen (14) days, or within such other period specified  
22 by EPA in the SOW or in the notice, correct the deficiencies and  
23 resubmit the Deliverable or other submission for approval.  
24 Notwithstanding the receipt of a notice of disapproval pursuant  
25 to Paragraph A. (3), above, Settling Defendants shall proceed, at  
26 the direction of EPA, to take any action required by any non-  
27 deficient portion of the submission, as long as such action is  
28 not precluded or rendered impracticable by the disapproved

1 | portion. Implementation of any non-deficient portion of a  
2 | submission shall not relieve Settling Defendants of any liability  
3 | for stipulated penalties under Section XXII. (Stipulated  
4 | Penalties).

5 |         D. No stipulated penalties shall accrue during the first  
6 | opportunity to cure a Deliverable's or submission's  
7 | deficiency(ies). In the event that a resubmitted Deliverable or  
8 | other submission, or portion thereof, is again disapproved by  
9 | EPA, stipulated penalties shall begin to accrue from the date of  
10 | the resubmittal, and EPA may again require the Settling  
11 | Defendants to correct the deficiencies, in accordance with the  
12 | preceding Paragraphs. EPA also retains the right to amend or  
13 | develop the Deliverable or other submission required under this  
14 | Consent Decree to correct the deficiency(ies).

15 |         E. If upon resubmission, a Deliverable or other submission  
16 | is disapproved by EPA due to a material defect and the Settling  
17 | Defendants fail to cure the defect, Settling Defendants shall be  
18 | deemed to have failed to submit such Deliverable or other  
19 | submission timely and adequately subject only to the Settling  
20 | Defendants' invocation of the dispute resolution procedures set  
21 | forth in Section XXI. (Dispute Resolution). The provisions of  
22 | Section XXI. (Dispute Resolution) and Section XXII. (Stipulated  
23 | Penalties) shall govern the implementation of the Phase I and  
24 | Phase II Work and accrual and payment of any stipulated penalties  
25 | during Dispute Resolution. If EPA's disapproval or modification  
26 | of a Deliverable or other submission is upheld, stipulated  
27 | penalties shall accrue for such violation from the date of the  
28 | resubmittal, as provided in Paragraph D., above.

1 F. All Deliverables or other submissions required to be  
2 submitted to EPA under this Consent Decree shall, upon approval  
3 by EPA, be enforceable under this Consent Decree. In the event  
4 EPA approves or requires Settling Defendants to modify a portion  
5 of a Deliverable or other submission required under this Consent  
6 Decree, the approved or modified portion shall be enforceable  
7 under this Consent Decree.

1 XIII. PROJECT COORDINATORS

2 A. Within thirty (30) days after lodging of this Consent  
3 Decree, the Settling Defendants will designate two Project  
4 Coordinators. The specific Elements of Work to be managed by  
5 each Project Coordinator are subject to EPA's approval. After  
6 two (2) years from the date of entry of the Consent Decree,  
7 Settling Defendants may propose that two (2) separate Project  
8 Coordinators are no longer necessary. Within five (5) days after  
9 selection of, and at any time Settling Defendants propose to  
10 change, a Project Coordinator, Settling Defendants shall notify  
11 EPA, in writing, of the name, title, qualifications, address and  
12 telephone number of the proposed Project Coordinator(s). Unless  
13 EPA disapproves of a proposed Project Coordinator pursuant to  
14 Paragraph B., below, the Settling Defendants may proceed.

15 B. If EPA disapproves a proposed Project Coordinator, EPA  
16 will notify Settling Defendants in writing within seven (7) days  
17 after receipt of Settling Defendants' written notification to EPA  
18 in Paragraph A., above. Within thirty (30) days after receipt of  
19 EPA's disapproval, Settling Defendants shall notify EPA of the  
20 name and qualifications of the proposed replacement Project  
21 Coordinator.

22 C. If EPA disapproves of the proposed replacement Project  
23 Coordinator and such disapproval prevents the Settling Defendants  
24 from meeting one or more deadlines in a Plan, Deliverable, or  
25 other written submission approved by EPA pursuant to this Consent  
26 Decree, Settling Defendants may seek relief under the provisions  
27 of Section XX. (Force Majeure).

28 D. Within thirty (30) days after lodging of this Consent

1 Decree, EPA will notify Settling Defendants, in writing, of the  
2 name, address, and telephone number of EPA's Project  
3 Coordinator(s), if different from the person identified in  
4 Section XXIX. (Notices and Submissions).

5 E. If EPA changes a Project Coordinator, the identity of  
6 the successor will be given to the Settling Defendants at least  
7 five (5) Working Days before the change occurs, unless  
8 impracticable, but in no event later than the actual day the  
9 change becomes effective. A verbal notification will be followed  
10 in writing.

11 F. EPA may designate other representatives, including, but  
12 not limited to, EPA employees, and federal contractors and  
13 consultants, to observe and monitor the progress of any Work  
14 undertaken pursuant to this Consent Decree. EPA's Project  
15 Coordinators shall have the authority lawfully vested in a  
16 Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC)  
17 by the National Contingency Plan, 40 C.F.R. Part 300. In  
18 addition, EPA's Project Coordinators shall have authority  
19 consistent with the National Contingency Plan to halt any Work  
20 required by this Consent Decree and to take any necessary  
21 response action when s/he determines that conditions at the Site  
22 constitute an emergency situation or may present an immediate  
23 threat to public health or welfare or the environment due to  
24 release or threatened release of Waste Material.

1                                   XIV. CERTIFICATIONS OF COMPLETION

2           A.    EPA shall certify completion of each of the following:

3    (1) the Phase I portion of the Short-Term and Interim  
4    Collection/Treatment/Disposal of Contaminated Liquids Components  
5    of Work, and the Phase I portion of the Routine Site Maintenance,  
6    Routine Groundwater Monitoring, and Community Relations Support  
7    Elements of Work, specified in Section 1.2.13. of the SOW  
8    ("Obligations"); (2) all Phase I Work; (3) all Phase II Work  
9    (i.e., including the O&M Base Period Work).

10           B.   After complete performance of all tasks and activities  
11    required to complete a Phase of Work or Obligation under a Phase  
12    of Work specified in Paragraph A., above, Settling Defendants  
13    shall submit to EPA a Completion of Work Obligation Report or  
14    Completion of Work Phase Report as specified in Sections 3.0. and  
15    5.0. of the SOW. Written acceptance of each such Report by EPA  
16    shall be deemed to be EPA's certification that the Phase of Work  
17    or Obligation has been fully performed in accordance with this  
18    Consent Decree. The effective date of each such certification  
19    shall be the date EPA mails, or otherwise transmits, its written  
20    acceptance to Settling Defendants.

21           C.   If EPA determines that the relevant Phase of Work or  
22    Obligation, or any portion thereof, has not been completed in  
23    accordance with this Consent Decree, EPA will notify Settling  
24    Defendants in writing of the tasks and activities that must be  
25    undertaken to complete the Phase of Work or Obligation. Settling  
26    Defendants shall perform all tasks and activities described in  
27    the notice, subject to their right to invoke the dispute  
28    resolution procedures set forth in Section XXI. (Dispute



1 Resolution). During the period of EPA's determination of whether  
2 the Phase I Work, pursuant to Paragraph A.(1) or A.(2), above,  
3 has been completed in accordance with this Consent Decree,  
4 Settling Defendants shall perform the continuing Work under the  
5 relevant Element or Component of Work as Phase II Work.  
6 Provided, however, if the Phase I Obligation or Work is not  
7 accepted by EPA as complete, Settling Defendants shall reimburse  
8 any amounts drawn from the Escrow Account and expended after the  
9 date of Settling Defendants' submittal of their completion report  
10 to perform the tasks and activities to complete the Phase I  
11 Obligation or Work.

12 D. 1. The Final Cost Estimate, pursuant to Section  
13 XVIII. Paragraph A.3. of the Consent Decree, and the Cost  
14 Estimates and Funding Limits Element of Work at Section 2.15. of  
15 the SOW, and the Waste Database Support and Other Assistance  
16 Element of Work at Section 2.14. of the SOW are Phase I Work, but  
17 their completion shall not be a condition precedent to the  
18 certification of completion of Phase I Work. Provided, however,  
19 that notwithstanding the certification of completion of Phase I  
20 Work pursuant to this Section XIV., the Settling Defendants shall  
21 remain obligated to pay for, perform, and complete the Final Cost  
22 Estimate and the Waste Database Support and Other Assistance  
23 Element of Work in accordance with Sections 2.15. and 2.14. of  
24 the SOW, respectively.

25 2. The pendency of any dispute on the Final Cost  
26 Estimate shall not prevent EPA from certifying completion of  
27 Phase II Work, provided EPA has accepted in writing, pursuant to  
28 Section 5.4. of the SOW, the Final Cost Estimate.

1 E. EPA shall not unreasonably delay taking any action or  
2 making any decision under this Section.  
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1 | Material on, at, or from the Site.

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1 Nothing in this Section shall result in an indemnification of the  
2 United States for actions, omissions or for conditions resulting  
3 from the negligence of the United States or its authorized  
4 representatives.

5 B. Subject to Section VII. Paragraph B. (Work To Be  
6 Performed), the Settling Defendants waive all claims against the  
7 United States for damages or reimbursement or for set-off of any  
8 payments made or to be made to the United States, arising from or  
9 on account of any contract, agreement, or arrangement between any  
10 one or more of the Settling Defendants and any person for  
11 performance of the Work, including, but not limited to, claims on  
12 account of construction delays. In addition, the Settling  
13 Defendants shall indemnify and hold harmless the United States  
14 with respect to any and all claims for damages or reimbursement  
15 arising from or on account of any contract, agreement, or  
16 arrangement between any one or more of Settling Defendants and  
17 any person for performance of the Work, including, but not  
18 limited to, claims on account of construction delays.

19 C. No later than fifteen (15) days before commencing any  
20 on-site Work, Settling Defendants shall secure, and shall  
21 maintain until the first anniversary of EPA's Certification of  
22 Completion of Phase II Work pursuant to Section XIV.  
23 (Certifications of Completion), comprehensive general liability  
24 insurance and automobile insurance with limits of \$1 million  
25 dollars per occurrence, combined single limit, naming as  
26 additional insured the United States. In addition, for the  
27 duration of their obligations under this Consent Decree, Settling  
28 Defendants shall satisfy, or shall require that their contractors

1 or subcontractors satisfy, all applicable laws and regulations  
2 regarding the provision of worker's compensation insurance for  
3 all persons performing the Work on behalf of Settling Defendants  
4 in furtherance of this Consent Decree. Prior to commencement of  
5 the Work under this Consent Decree, Settling Defendants shall  
6 provide to EPA certificates of such insurance and a copy of each  
7 insurance policy. Settling Defendants shall resubmit such  
8 certificates and copies of policies each year on the anniversary  
9 of the effective date of this Consent Decree. Settling  
10 Defendants may demonstrate by evidence satisfactory to EPA that  
11 they, or any contractor or subcontractor, maintain insurance or  
12 other protection equivalent to that described above. Settling  
13 Defendants need provide only that portion of the insurance  
14 described above that is not maintained by the contractor or  
15 subcontractor. The United States must seek recovery under this  
16 Section from Settling Defendants' insurance policies as an  
17 additional insured prior to seeking compensation under the  
18 indemnities set forth in Paragraph A. of this Section.

1                   XVII. ESCROW ACCOUNTS/FINANCING THE WORK

2           A.     Settling Defendants shall establish the "Casmalia  
3 Consent Decree Escrow Account" ("Escrow Account") no later than  
4 ninety (90) days after the date of entry of this Consent Decree.  
5 Settling Defendants shall provide a copy of the Escrow Agreement  
6 establishing the Escrow Account to EPA as soon as possible, and  
7 in no event more than seven (7) days thereafter, for approval  
8 primarily to ensure that the escrowed funds will be handled as  
9 set forth by this Consent Decree. EPA does not, through any  
10 approval of the terms of the Escrow Account, guarantee the  
11 sufficiency of the funds in the Escrow Account established by  
12 this Section for performance of the Work.

13           B.     The Escrow Account shall have six (6) interest-bearing  
14 Accounts: (a) "Cash Account"; (b) "Phase II Account"; (c) "30-  
15 Year O&M Account"; (d) "Past Response Costs Account"; (e) "Post-  
16 30 Year O&M Account"; and (f) "Support Costs Account." The Phase  
17 II Account shall have two Sub-Accounts, the "Phase II Future  
18 Response Costs Sub-Account" and the "Phase II Work Sub-Account."  
19 The 30-Year O&M Account shall have two Sub-Accounts, the "30-Year  
20 O&M Work Sub-Account" and the "30-Year O&M Oversight Sub-  
21 Account." The 30-Year O&M Work Sub-Account shall include a  
22 segregated Sub-Account to hold monies transferred from the RCRA  
23 Trust Fund to the Escrow Account. The Post-30 Year O&M Account  
24 shall have two Sub-Accounts, the "Post-30 Year O&M Work Sub-  
25 Account" and the "Post-30 Year O&M Oversight Sub-Account.." These  
26 Accounts and Sub-Accounts shall be segregated from one another.

27           C.     Unless otherwise provided in this Consent Decree, the  
28 Cash Account shall serve as an interim account to hold all funds



1 received pursuant to this Consent Decree until those funds are  
2 disbursed according to the priorities in this Section and Funding  
3 Limits established in Section XVIII. (Cost Estimates and Fund  
4 Transfers). The Cash Account shall also hold any excess funds  
5 after all other Accounts are fully funded pursuant to Paragraphs  
6 E.1. through E.7., below, and until any excess is disbursed  
7 pursuant to Paragraph F., below.

8 D. Except as provided otherwise in Paragraph I., below,  
9 and Section XVIII. (Cost Estimates and Fund Transfers):

10 1. Money in the Phase II Account shall be used to  
11 fund the performance of the Phase II Work and Future Response  
12 Costs as specified in Section XIX. Paragraph D. (Reimbursement of  
13 Response Costs);

14 2. The RCRA Trust Fund after transfer to the Escrow  
15 Account, all money subject to the transfer limitations in Section  
16 XXIII. Paragraphs C.2. and C.3. (Coordinated Enforcement  
17 Recovery) and the money in the 30-Year O&M Work Sub-Account shall  
18 be used to pay for 30-Year O&M Work.

19 3. Money in the Post-30 Year O&M Work Sub-Account  
20 shall be used to pay for Post 30-Year O&M Work.

21 4. Money in the 30-Year O&M Oversight Sub-Account and  
22 Post-30 Year O&M Oversight Sub-Account shall be used, in  
23 accordance with the provisions of Section XXIV. Paragraph C.  
24 (Lead Agency), to pay for the costs of governmental/regulatory  
25 oversight after Phase II Work is certified complete.

26 5. The monies to be disbursed from the Cash Account  
27 that are attributable to the Past Response Costs Account shall be  
28 immediately disbursed to the Hazardous Substance Superfund in

1 accordance with Section XIX. (Reimbursement of Response Costs) to  
2 reimburse Past Response Costs and Unfunded Future Response Costs  
3 not otherwise recovered.

4           6. Nothing in this Paragraph D. shall preclude other  
5 monies obtained for the Site and not precluded by this Consent  
6 Decree from being used by the United States to finance the Work  
7 or the governmental/regulatory oversight.

8           E. Distribution Priorities and Funding Limits. The Escrow  
9 Agreement shall instruct and authorize the Escrow Manager to  
10 disburse the money in the Cash Account according to the following  
11 distribution priority and subject to the Funding Limits set forth  
12 below, in Section XVIII. Paragraph A. (Cost Estimates and Fund  
13 Transfers).

14           1. When the balance in the Cash Account first reaches  
15 or exceeds \$3 million, the Escrow Manager shall make a deposit of  
16 \$3 million to the Phase II Work Sub-Account. Thereafter the  
17 Escrow Manager shall make quarterly deposits of funds accumulated  
18 in the Cash Account during the previous quarter as follows: (a)  
19 fifty percent (50%) to the Phase II Work Sub-Account and fifty  
20 percent (50%) to the Phase II Future Response Costs Sub-Account  
21 until the Phase II Future Response Costs Sub-Account is filled to  
22 the Funding Limit established by Section XVIII. Paragraph A.1.  
23 (Cost Estimates and Fund Transfers) and then (b) one-hundred  
24 percent (100%) to the Phase II Work Sub-Account until the Phase  
25 II Account is filled to the Initial or Interim Cost Estimate, as  
26 applicable, for Phase II Work.

27           2. After the deposits to the Phase II Account under  
28 Paragraph E.1., above, are complete, the Escrow Manager shall

1 make quarterly deposits of funds accumulated in the Cash Account  
2 during the preceding quarter as follows: the 30-Year O&M Work  
3 Sub-Account shall be filled until the amount remaining to be  
4 filled equals the Past Response Costs Funding Limit as determined  
5 under Section XIX. Paragraph B.2. (Reimbursement of Response  
6 Costs), unless the amount needed to fill the 30-Year O&M Work  
7 Sub-Account is less than the Past Response Costs Funding Limit,  
8 in which event the Past Response Costs Account shall be filled  
9 until the amount remaining to be filled equals the amount  
10 remaining to be filled in the 30-Year O&M Work Sub-Account.  
11 Except as provided below, the RCRA Trust Fund and monies received  
12 from the Casmalia Entities and/or the State pursuant to Section  
13 XXIII. Paragraphs C.2. and C.3. (Coordinated Enforcement  
14 Recovery) (including accrued interest and income) shall not be  
15 counted toward satisfaction of the 30-Year O&M Work Sub-Account  
16 Funding Limit until after the Interim Cost Estimate becomes  
17 effective and any and all transfers, pursuant to Paragraph B.1.  
18 of Section XVIII. (Cost Estimates and Fund Transfers) have been  
19 made. After the Interim Cost Estimate becomes effective, the  
20 RCRA Trust Fund shall not be counted unless it has been  
21 transferred into the 30-Year O&M Work Sub-Account or is  
22 available, without impediment, for the 30-Year O&M Work. Prior  
23 to the effective date of the Interim Cost Estimate, funds  
24 received from the Casmalia Entities and/or the State pursuant to  
25 Section XXIII. Paragraphs C.2. and C.3. (Coordinated Enforcement  
26 Recovery) (including accrued interest and income) shall be  
27 counted toward satisfaction of the 30-Year O&M Work Sub-Account  
28 Funding Limit upon receipt of such funds in the 30-Year O&M Work

1 Sub-Account of the Escrow Account only for determining whether a  
2 transfer of funds can be made pursuant to Section XVIII.

3 Paragraph B.2. (Cost Estimates and Fund Transfers).

4           3. After the deposits under Paragraph E.2., above,  
5 are complete, the Escrow Manager shall make quarterly deposits of  
6 funds accumulated in the Cash Account during the preceding  
7 quarter as follows: fifty percent (50%) to the 30-Year O&M Work  
8 Sub-Account and fifty percent (50%) to the Past Response Costs  
9 Account until the 30-Year O&M Work-Sub Account is funded to the  
10 Initial, Interim, or Final Funding Limit, as applicable, and the  
11 Past Response Costs Account is funded to its Funding Limit as  
12 determined under Section XIX. Paragraph B. (Reimbursement of  
13 Response Costs). Except as provided below, the RCRA Trust Fund  
14 and monies received from the Casmalia Entities and/or the State  
15 pursuant to Section XXIII. Paragraphs C.2. and C.3. (Coordinated  
16 Enforcement Recovery) (including accrued interest and income)  
17 shall not be counted toward satisfaction of the 30-Year O&M Work  
18 Sub-Account Funding Limit until after the Interim Cost Estimate  
19 becomes effective and any and all transfers, pursuant to  
20 Paragraph B.1. of Section XVIII. (Cost Estimates and Fund  
21 Transfers) have been made. After the Interim Cost Estimate  
22 becomes effective, the RCRA Trust Fund shall not be counted  
23 unless it has been transferred into the 30-Year O&M Work Sub-  
24 Account or is available, without impediment, for the 30-Year O&M  
25 Work. Prior to the effective date of the Interim Cost Estimate,  
26 funds received from the Casmalia Entities and/or the State  
27 pursuant to Section XXIII. Paragraphs C.2. and C.3. (Coordinated  
28 Enforcement Recovery) (including accrued interest and income)

1 shall be counted toward satisfaction of the 30-Year O&M Work Sub-  
2 Account Funding Limit upon receipt of such funds in the 30-Year  
3 O&M Work Sub-Account of the Escrow Account only for determining  
4 whether a transfer of funds can be made pursuant to Section  
5 XVIII. Paragraph B.2. (Cost Estimates and Fund Transfers).

6 4. After the deposits to the 30-Year O&M Work Sub-  
7 Account and the Past Response Costs Account under Paragraph E.3.,  
8 above, are complete, the Escrow Manager shall make quarterly  
9 deposits of funds accumulated in the Cash Account during the  
10 preceding quarter to the 30-Year O&M Oversight Sub-Account until  
11 it is filled to the Initial, Interim, or Final Cost Estimate, as  
12 applicable, for the 30-Year O&M Oversight Funding Limit.

13 5. After the deposits to the 30-Year O&M Oversight  
14 Sub-Account under Paragraph E.4., above, are complete, the Escrow  
15 Manager shall make quarterly deposits of funds accumulated in the  
16 Cash Account during the preceding quarter to the Post-30 Year O&M  
17 Work Sub-Account until it is filled to the Initial, Interim, or  
18 Final Cost Estimate, as applicable, for the Post-30 Year O&M  
19 Work.

20 6. After the deposits to the Post-30 Year O&M Work  
21 Sub-Account under Paragraph E.5., above, are complete, the Escrow  
22 Manager shall make quarterly deposits of funds accumulated in the  
23 Cash Account during the preceding quarter to the Post-30 Year O&M  
24 Oversight Sub-Account until it is filled to the Initial, Interim,  
25 or Final Cost Estimate, as applicable, for the Post-30 Year O&M  
26 Oversight Funding Limit.

27 7. After the deposits to the Post-30 Year O&M Account  
28 under Paragraph E.6., above, are complete, the Escrow Manager

1 shall make quarterly deposits of funds accumulated in the Cash  
2 Account during the preceding quarter to the Support Costs Account  
3 until it is filled to the limit as determined under Section 2.15.  
4 of the SOW. Settling Defendants shall be entitled to draw from  
5 this Account only after the 30-Year O&M and Post-30 Year O&M  
6 Accounts are fully funded based upon the Final Cost Estimate and  
7 they have received a covenant not to sue, as provided for in  
8 Section XXV. Paragraphs A.3. and A.4. (Covenants Not To  
9 Sue/Reservations of Rights), for all 30-Year and Post-30 Year O&M  
10 Work and associated governmental/regulatory oversight of the  
11 United States. Any withdrawals by Settling Defendants from the  
12 Support Costs Account shall be made only after demonstration,  
13 based upon an accounting and adequate supporting documentation,  
14 that Support Costs have been incurred pursuant to this Consent  
15 Decree but not reimbursed.

16 8. Unless otherwise agreed to in writing by EPA and  
17 the Settling Defendants and except as provided above in  
18 Paragraphs E.2. and E.3. concerning accounting for the RCRA Trust  
19 Fund and other restricted funds, the cumulative deposits to any  
20 Account shall not exceed the applicable and effective Funding  
21 Limit as set forth in this Consent Decree at Section XVIII.  
22 Paragraph A. (Cost Estimates and Fund Transfers), except as a  
23 result of interest accumulation. Interest accumulation shall be  
24 administered according to the terms of Paragraph I., below.

25 F. Excess Funding

26 After (i) the Final Cost Estimate and associated Final  
27 Funding Limit(s) become effective, (ii) the Cashout Settlements  
28 are completed, and (iii) all deposits pursuant to Paragraph E.,

1 above, or Section XVIII. Paragraph B. (Cost Estimates and Fund  
2 Transfers) so that each of the Accounts and Sub-Accounts referred  
3 to in Paragraph E., above, are fully funded, the Escrow Manager  
4 shall deposit all recoveries of monies from Third Parties under  
5 Section XXIII. (Coordinated Enforcement Recovery) and any excess  
6 funds remaining in the Cash Account to the Post-30 Year O&M  
7 Account to be held in trust, together with any interest accrual  
8 or income, to pay for performance of the Post-30 Year O&M Work.

9 G. Phase II Account Disbursements

10 1. The Escrow Agreement shall instruct and authorize  
11 the Escrow Manager to disburse funds from the Phase II Work Sub-  
12 Account as follows:

13 a. to pay for the Phase II Work to be performed  
14 by the Settling Defendants pursuant to Section VII. Paragraph B.  
15 (Work To Be Performed).

16 b. to pay to EPA requested amounts as Funded  
17 Future Response Costs upon exhaustion of funds in the Phase II  
18 Future Response Costs Sub-Account.

19 c. to fund or to reimburse EPA's performance of  
20 Phase I or Phase II Work in the event that Settling Defendants  
21 fail to perform such Work pursuant to Section VII. Paragraph C.  
22 (Work To Be Performed) or Section XXV. Paragraph C.4. (Covenants  
23 Not To Sue/Reservations of Rights).

24 d. to pay for other matters upon written  
25 agreement of EPA and the Settling Defendants.

26 2. The Escrow Agreement shall instruct the Escrow  
27 Manager to disburse funds from the Phase II Future Response Costs  
28 Sub-Account as follows:

1 a. upon request by EPA, to pay EPA for Funded  
2 Future Response Costs associated with the Phase II Work.

3 b. upon request by EPA, to pay for Phase II Work  
4 upon exhaustion of unrestricted funds in the other Accounts.

5 c. to pay for other matters upon written  
6 agreement of EPA and the Settling Defendants.

7 H. After Certification of Completion of Phase II Work  
8 pursuant to Section XIV. (Certifications of Completion), any  
9 monies remaining in the Phase II Account shall be distributed to  
10 the remaining Accounts in the priority specified in Paragraphs  
11 E.2. through 7., above, or in accordance with Paragraph F.,  
12 above, as applicable.

13 I. Interest. Interest received on each Account in the  
14 Escrow Account shall be paid into the Account on which it is  
15 earned, and may be used first to pay for the Account fees charged  
16 by the Escrow Manager to administer the Escrow Account.  
17 Remaining accumulations of interest then shall be used in the  
18 same manner and for the same purposes as the other funds in the  
19 Escrow Account.

20 J. Reports

21 1. The Escrow Agreement shall require the Escrow  
22 Manager to prepare and submit to the Settling Defendants and EPA  
23 quarterly statements summarizing (a) monies received and  
24 disbursed in the prior quarter from and to the Escrow Account,  
25 each of the Accounts and Sub-Accounts, and to the Hazardous  
26 Substance Superfund; and (b) the balances in each Account and  
27 Sub-Account as of the date of each quarterly statement. The  
28 Escrow Agreement shall also require the Escrow Manager to submit



1 | an annual report to EPA and the Settling Defendants, which shall  
2 | include a summary of monies received and disbursed in the  
3 | preceding twelve (12) month period, for the Escrow Account  
4 | including each Account and Sub-Account. The reporting periods  
5 | for the Escrow Account quarterly statements and the annual  
6 | financial reports, pursuant to this Paragraph J.1., and the  
7 | Overall Project Quarterly Reports and the Annualized Phase II  
8 | Work Budget Estimate reports, required at SOW Section 5.4., shall  
9 | be conformed to use common reporting periods to the maximum  
10 | extent practicable.

11 |           2. The Settling Defendants shall submit to EPA for  
12 | approval and in accordance with the schedule at SOW Section 5.4.  
13 | an annual work budget ("Annualized Phase II Work Budget  
14 | Estimate"), and updates thereto, setting forth the monies  
15 | estimated to be necessary to satisfy the Phase II Work Sub-  
16 | Account expenses described in Section VII. Paragraph B.4. (Work  
17 | To Be Performed), and Section 2.0. of the SOW.

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1 XVIII. COST ESTIMATES AND FUND TRANSFERS

2 A. Cost Estimates and Funding Limits

3 1. Initial Cost Estimate

4 a. Within thirty (30) days of the date of entry  
5 of this Consent Decree, the Settling Defendants shall submit to  
6 EPA a proposed Initial Cost Estimate, separated into sub-  
7 components of cost, for the Work under this Consent Decree, as  
8 set forth in Section 2.15. of the SOW. Portions of the proposed  
9 Initial Cost Estimate shall be provided by EPA pursuant to sub-  
10 Paragraphs 1.b. and 1.c., below. The Initial Cost Estimate shall  
11 be based upon available data, and will be used to establish  
12 Initial Funding Limits for the Accounts and Sub-Accounts of the  
13 Casmalia Consent Decree Escrow Account provided for under Section  
14 XVII. (Escrow Accounts/Financing The Work). The Initial Cost  
15 Estimate shall also be used as the starting point for  
16 development, before inclusion of all applicable premiums and  
17 other cost elements, of the cost estimate for the Cashout  
18 Settlements procedure.

19 b. Until updated pursuant to Section XIX.  
20 Paragraph B.2. (Reimbursement of Response Costs), the Initial  
21 Past Response Costs Estimate established pursuant to Section XIX.  
22 Paragraph B.1. (Reimbursement of Response Costs) shall be used as  
23 the Initial Past Response Costs Funding Limit for the Past  
24 Response Costs Account.

25 c. EPA shall provide an estimate of Future  
26 Response Costs for Future Response Actions associated with Phase  
27 II Work, which estimate shall be used as the Initial Funding  
28 Limit for the Phase II Future Response Costs Sub-Account of the

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1 Phase II Account. EPA shall also provide estimates of  
2 governmental/regulatory oversight costs for 30-Year and Post-30  
3 Year O&M Work, which estimates shall be the Initial Funding  
4 Limits for the 30-Year O&M Oversight Sub-Account and Post-30 Year  
5 O&M Oversight Sub-Account, respectively.

6 d. The cost estimates established under this  
7 Paragraph will be re-evaluated according to the procedures in  
8 Paragraphs A.2. and A.3., below, and the revised cost estimates  
9 may necessitate or permit changes in the Funding Limits for use  
10 in accordance with Section XVII. (Escrow Accounts/Financing The  
11 Work). The Initial Cost Estimate shall be effective until the  
12 Interim Cost Estimate and associated Interim Funding Limits  
13 become effective; or in the case of Past Response Costs, until  
14 such costs are updated pursuant to Section XIX. Paragraphs B. and  
15 E. (Reimbursement of Response Costs); or in the case of the  
16 Funded Future Response Costs estimate for Future Response Actions  
17 associated with the Phase II Work or the costs of  
18 governmental/regulatory oversight for the 30-Year and Post-30  
19 Year O&M Work, until a proposed revised estimate is final  
20 pursuant to Paragraph A.2., below.

21 e. EPA shall: (i) approve in whole or in part, (ii)  
22 approve upon specified conditions, (iii) disapprove, in whole or  
23 in part, or (iv) any combination of the above, the proposed  
24 Initial Cost Estimate pursuant to Section XII. (Submissions  
25 Requiring Agency Approval). If EPA and the Settling Defendants  
26 cannot reach agreement on the Initial Cost Estimate, then the  
27 matter shall be subject to dispute resolution under the dispute  
28 resolution procedures of Section XXI. (Dispute Resolution). The

1 Initial Cost Estimate shall become effective on the later of the  
2 date thirty (30) days after EPA approves in writing the Initial  
3 Cost Estimate submitted by Settling Defendants or the date of  
4 final resolution of any dispute pursuant to this Paragraph A.1.e.  
5 ("effective date"); except that any undisputed portion of the  
6 Initial Cost Estimate shall become effective as of the date  
7 thirty (30) days after EPA's approval.

8           2.   Interim Cost Estimate

9           a.   As part of the Phase I Work, Settling  
10 Defendants shall re-evaluate the Initial Cost Estimate, taking  
11 into account, at least, the information obtained and findings  
12 from the Remedial Investigation/Feasibility Study Component of  
13 Work, and submit to EPA proposed Interim Cost Estimate separated  
14 into sub-components of costs, for Work under this Consent Decree  
15 as specified in Paragraph A.1., above, and Section 2.15. of the  
16 SOW. Portions of the proposed Interim Cost Estimate shall be  
17 provided by EPA pursuant to sub-Paragraph 2.b., below.

18           b.   Past Response Costs shall be updated by the  
19 United States as provided in Section XIX. Paragraphs B. and E.  
20 (Reimbursement of Response Costs). Further, EPA shall re-  
21 evaluate and, if necessary, propose changes to the estimates of  
22 Funded Future Response Costs associated with the Phase II Work  
23 and governmental/regulatory oversight costs for 30-Year and Post-  
24 30 Year O&M Work, which revised estimates shall be the proposed  
25 Interim Funding Limits for the 30-Year O&M Oversight Sub-Account  
26 and Post-30 Year O&M Oversight Sub-Account, respectively.

27           c.   EPA shall: (i) approve in whole or in part,  
28 (ii) approve upon specified conditions, (iii) disapprove, in

1 whole or in part, or (iv) any combination of the above, the  
2 proposed Interim Cost Estimate pursuant to Section XII.

3 (Submissions Requiring Agency Approval). If the proposed Interim  
4 Cost Estimate is different from the Initial Cost Estimate, in  
5 whole or in part, and EPA and the Settling Defendants cannot  
6 reach agreement on the new estimates, then the matter shall be  
7 subject to dispute resolution under the dispute resolution  
8 procedures of Section XXI. (Dispute Resolution). The Interim  
9 Cost Estimate shall become effective on the later of the date  
10 thirty (30) days after EPA approves in writing the Interim Cost  
11 Estimate submitted by Settling Defendants or the date of final  
12 resolution of any dispute pursuant to this Paragraph A.2.c.  
13 ("effective date"); except that any undisputed portion of the  
14 Interim Cost Estimate shall become effective as of the date  
15 thirty (30) days after EPA's approval.

16 d. The Interim Cost Estimate shall be used to  
17 establish Interim Funding Limits that will remain effective until  
18 superseded by the Final Cost Estimate and associated Final  
19 Funding Limits.

20 3. Final Cost Estimate

21 a. As part of Settling Defendants' Phase I Work  
22 obligation, Settling Defendants shall re-evaluate the Interim  
23 Cost Estimate, taking into account, at least, the information  
24 obtained as a result of completion of Initial Phase II Work and  
25 the experience gained and costs incurred during performance of  
26 the O&M Base Period Work, and submit to EPA proposed Final Cost  
27 Estimate, separated into sub-components of costs, for the 30-Year  
28 O&M Work and Post-30 Year O&M Work as specified in Section 2.15.

1 of the SOW. Portions of the proposed Final Cost Estimate shall  
2 be provided by EPA pursuant to sub-Paragraph 3.b., below.

3 b. Past Response Costs shall be updated by the  
4 United States as provided in Section XIX. Paragraphs B. and E.  
5 (Reimbursement of Response Costs). Further, EPA shall re-  
6 evaluate and, if necessary, propose changes to the estimates of  
7 governmental/regulatory oversight costs for 30-Year and Post-30  
8 Year O&M Work, which revised estimates shall be the proposed  
9 Final Funding Limits for the 30-Year O&M Oversight Sub-Account  
10 and Post-30 Year O&M Oversight Sub-Account, respectively.

11 c. EPA shall: (i) approve in whole or in part,  
12 (ii) approve upon specified conditions, (iii) disapprove, in  
13 whole or in part, or (iv) any combination of the above, the  
14 proposed Final Cost Estimate pursuant to Section XII.

15 (Submissions Requiring Agency Approval). If the proposed Final  
16 Cost Estimate is different from the Interim Cost Estimate, in  
17 whole or in part, and EPA and the Settling Defendants cannot  
18 reach agreement on the new estimates, then the matter shall be  
19 subject to dispute resolution under the dispute resolution  
20 procedures of Section XXI. (Dispute Resolution). The Final Cost  
21 Estimate shall become effective on the later of the date thirty  
22 (30) days after EPA approves in writing the Final Cost Estimate  
23 submitted by Settling Defendants or the date of final resolution  
24 of any dispute pursuant to this Paragraph A.3.c. ("effective  
25 date").

26 d. The Final Cost Estimate shall be used to  
27 establish Final Funding Limits for each of the remaining Accounts  
28 and Sub-Accounts of the Escrow Account.

1 B. Fund Transfers

2 The Escrow Agreement shall instruct the Escrow Manager  
3 to transfer funds among Accounts as follows:

4 1. Transfers Based Upon Cost Estimates

5 a. As soon as practicable after the Interim and  
6 Final Cost Estimate and associated Interim and Final Funding  
7 Limits become effective, pursuant to this Section XVIII.

8 Paragraph A. (Cost Estimates and Fund Transfers), all Accounts  
9 will be reviewed and, to the extent any Account which had  
10 previously been considered fully funded based upon the Initial or  
11 Interim Cost Estimate, as applicable, is now under-funded, monies  
12 from the Cash Account, if available, shall be deposited to the  
13 under-funded Accounts in the priority order set forth in Section  
14 XVII. Paragraphs E.1. through E.7. (Escrow Accounts/Financing The  
15 Work) until each Account, in turn, is funded to the Interim or  
16 Final Funding Limit or, as to the Past Response Costs Account, to  
17 the Funding Limit established under Section XIX. Paragraph B.  
18 (Reimbursement of Response Costs) as adjusted by Section XIX.  
19 Paragraph E. (Reimbursement of Response Costs).

20 To the extent monies are not available in the Cash  
21 Account to fund each Account, in priority order, to the revised  
22 Funding Limits, then, except for restricted funds under Paragraph  
23 B.3., below, transfers shall be made from the lowest priority  
24 Account with available funds to the highest priority Account  
25 requiring additional funds until all Accounts are funded, to the  
26 extent possible, to the revised Funding Limit.

27 b. If based upon the Interim or Final Cost  
28 Estimate revisions, an Account is over-funded, except for

1 restricted funds under Paragraph B.3., below, monies from the  
2 over-funded Accounts shall be transferred to higher priority  
3 under-funded Accounts until all Accounts are funded, to the  
4 extent possible, to the revised Funding Limits, and after higher  
5 priority transfers are satisfied, then to equal or lower priority  
6 under-funded Accounts until those Accounts are funded, to the  
7 extent possible, to the revised Funding Limits.

8 c. Transfer of monies pursuant to Paragraph  
9 B.1.a. or B.1.b., above, based upon newly effective Funding  
10 Limits is not subject to dispute resolution.

11 2. Transfers Prior to Certification of Completion of  
12 Phase II Work

13 a. At any time prior to Certification of  
14 Completion of Phase II Work, EPA may, but is not required to,  
15 request transfers of monies, if available, in priority order,  
16 from the Support Costs Account; the Sub-Accounts of the Post-30  
17 Year O&M Account; the Sub-Accounts of the 30-Year O&M Account,  
18 subject to the restrictions of Paragraph B.3. of this Section; or  
19 the Future Response Costs Sub-Account of the Phase II Account to  
20 the Phase II Work Sub-Account if there are insufficient funds in  
21 the Phase II Work Sub-Account to finance the Phase II Work. Any  
22 decision by EPA whether or not to transfer monies pursuant to  
23 this Paragraph B.2. is not subject to dispute resolution.

24 b. To the extent a deposit to the 30-Year O&M  
25 Work Sub-Account of the restricted funds, pursuant to Paragraph  
26 B.3. of this Section, overfunds the Account, unrestricted monies  
27 from the Account shall be transferred to higher priority under-  
28 funded Accounts until all such Accounts are funded, to the extent



1 possible, to the applicable Funding Limits, and after higher  
2 priority transfers are satisfied, then to equal or lower priority  
3 under-funded Accounts until those Accounts are funded, to the  
4 extent possible, to the applicable Funding Limits; provided,  
5 however, no transfers pursuant to this sub-Paragraph 2.b. shall  
6 be made to equal or lower priority under-funded Accounts until  
7 the Interim Cost Estimate is effective and any and all transfers,  
8 pursuant to Paragraph B.1., based upon the newly effective  
9 Interim Cost Estimate are made.

10 3. Restrictions on Transfers

11 Unless Settling Defendants agree otherwise, all  
12 funds in the RCRA Trust Fund after transfer to the Escrow Account  
13 and all monies in the 30-Year O&M Account subject to the transfer  
14 limitations in Section XXIII. (Coordinated Enforcement Recovery)  
15 shall be reserved exclusively for 30-Year O&M Work as provided in  
16 Section XVII. Paragraph D.2. (Escrow Accounts/Financing The Work)  
17 and, notwithstanding any other provision of this Consent Decree,  
18 may not be transferred. Unrestricted funds, as authorized by  
19 Paragraph C.2. of Section XXIII. (Coordinated Enforcement  
20 Recovery), may be transferred from the 30-Year O&M Account in  
21 accordance with this Paragraph B.

22 4. Other Transfers

23 Other transfers of monies not specified above may  
24 be made prior to Certification of Completion of Phase II Work  
25 provided that EPA and the Settling Defendants agree in writing.

26 5. The availability of monies in, or transfer of  
27 monies between or among, Accounts and Sub-Accounts of the Escrow  
28 Account shall not be construed to preclude or otherwise affect

1 enforcement or cost recovery actions or claims by the United  
2 States or the Settling Defendants against Third Parties under  
3 CERCLA, RCRA, or other appropriate laws.

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1                   XIX. REIMBURSEMENT OF RESPONSE COSTS

2           A.     The United States has incurred, and will continue to  
3 incur, costs in connection with response actions at the Site.  
4 The United States and the Settling Defendants intend, through  
5 this Consent Decree, to: (a) create a mechanism for the potential  
6 recovery by the United States of Past Response Costs; and (b)  
7 create mechanisms to pay certain Future Response Costs that will  
8 be incurred by the United States after the entry of this Consent  
9 Decree. Subject to the Settling Defendants' reservation of  
10 rights (Section XXV. Paragraph D.), and for purposes of this  
11 Consent Decree only, the Settling Defendants agree that the  
12 United States may recover its Past Response Costs as provided for  
13 in this Consent Decree.

14           B.     Past Response Costs

15           1.     From March 1, 1992, the United States has incurred  
16 Past Response Costs for CERCLA response actions in connection  
17 with the Casmalia Site. Within six (6) months after entry of  
18 this Consent Decree, the United States shall provide to the  
19 Settling Defendants a summary in the form of the Superfund Cost  
20 Recovery Enhancement System ("SCORES") Report, or any superseding  
21 summary report, of these Past Response Costs ("Initial Past  
22 Response Costs Estimate"). The United States shall update and  
23 finalize the Initial Past Response Costs Estimate no later than  
24 twelve (12) months after the date of entry of this Consent Decree  
25 ("Final Past Response Costs Summary").

26           2.     The Final Past Response Costs Summary, together  
27 with any accrued interest under Paragraph B.3., below, shall be  
28 the Past Response Costs Funding Limit pursuant to Section XVIII.

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1 Paragraph A. (Cost Estimates and Fund Transfers) for the Past  
2 Response Costs Account. In accordance with the provisions of  
3 Paragraph E. of this Section XIX., additional amounts of Future  
4 Response Costs not otherwise reimbursed may periodically be added  
5 as an adjustment to the Past Response Costs Funding Limit.

6 3. Subject to the Settling Defendants' reservation of  
7 rights at Section XXV. (Covenants Not To Sue/Reservations of  
8 Rights), the United States may recover prejudgment interest on  
9 the amount of unreimbursed Past Response Costs identified in  
10 Paragraph B.2., above, until the date the entire amount is  
11 reimbursed to the Superfund pursuant to Section XVII. (Escrow  
12 Accounts/Financing The Work). Such prejudgment interest shall  
13 accrue from the first day of the month following lodging of this  
14 Consent Decree, and such interest on unreimbursed amounts shall  
15 accrue at the rate established pursuant to 42 U.S.C. § 9607(a) or  
16 any subsequently enacted superseding provision of law. Interest  
17 accrued shall be added annually to the Past Response Costs  
18 Funding Limit until all principle and interest amounts are  
19 recovered pursuant to Section XVII. (Escrow Accounts/Financing  
20 The Work).

21 4. Payment Instructions. Whenever the Escrow Manager  
22 receives monies that are attributable to the Past Response Costs  
23 Account under the terms of Section XVII. Paragraph E. (Escrow  
24 Accounts/Financing The Work), such funds up to the amount of the  
25 then applicable Past Response Costs Funding Limit, shall be paid  
26 immediately to the Superfund in the form of an electronic funds  
27 transfer according to instructions to be provided by EPA or by a  
28 certified check or checks made payable to the "EPA Hazardous

1 Substance Superfund" and referencing the EPA Region and Site name  
2 and number, "Casmalia/093H" and DOJ Case Number 90-7-1-611A. The  
3 Escrow Manager shall ensure that any payments by certified checks  
4 are forwarded to

5 U.S. Environmental Protection Agency  
6 Region IX, Superfund Accounting  
7 Box No. 360863M  
8 Pittsburgh, PA 15251

9 The Escrow Manager shall also ensure that copies of each check,  
10 together with the transmittal letter, are sent to EPA as  
11 specified in Section XXIX. (Notices and Submissions).

12 C. Funded Future Response Costs -- Phase I

13 1. Subject to the limitations below in this Paragraph  
14 C., Settling Defendants shall pay the United States the following  
15 sums for Future Response Costs incurred primarily during the  
16 first six (6) years after entry of the Consent Decree. Subject  
17 to the payment provisions in Paragraph C.2., below, the Settling  
18 Defendants shall pay annually at least the Annual Base Amount,  
19 but in no event more than the Annual Limitation.

20 <u>Year</u>	<u>Annual Base</u>	+	<u>Annual Discretionary</u> <u>Increment</u>	=	<u>Annual</u> <u>Limitation</u> <u>(Total)</u>
21					
22 1	\$800,000		\$400,000		\$1,200,000
23 2	\$800,000		\$400,000		\$1,200,000
24 3	\$600,000		\$300,000		\$ 900,000
25 4	\$400,000		\$200,000		\$ 600,000
26 5	\$200,000		\$100,000		\$ 300,000
27 6	\$200,000		\$100,000		\$ 300,000

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1 Both the Annual Base Amount and the Annual Limitation shall be  
2 adjusted annually on the anniversary date of Consent Decree entry  
3 for inflation by a factor equal to the current year's Consumer  
4 Price Index. Payment of these Funded Future Response Costs is  
5 not subject to dispute resolution except as specified in  
6 Paragraph C.3., below.

7           2. Payment of the Funded Future Response Costs  
8 pursuant to Paragraph C.1., above, shall be made by semi-annual  
9 payments as follows: Within thirty (30) days after entry of this  
10 Consent Decree, Settling Defendants shall pay to the EPA half of  
11 the Annual Base Amount for Year 1. On the first day of the month  
12 every six months thereafter, until the payment obligations under  
13 this Paragraph terminate, Settling Defendants shall pay the next  
14 semi-annual installment equal to one-half the applicable Annual  
15 Base Amount, and shall continue such semi-annual installment  
16 payments through the last semi-annual installment payment  
17 required of the Settling Defendants. This payment schedule may  
18 be modified by the written agreement of EPA and the Settling  
19 Defendants.

20           3. For any year in which the Settling Defendants are  
21 obligated to pay the Annual Base Amount in Paragraph C.1., above,  
22 at any time after the second semi-annual installment payment for  
23 that year, EPA may request additional payments up to the Annual  
24 Limitation ("Annual Discretionary Increment") for that year.  
25 EPA's written request for payment of some or all of the Annual  
26 Discretionary Increment will include a written budget statement  
27 describing the activities for which the Annual Discretionary  
28 Increment is intended to be used. Payment of sums demanded from

1 the Annual Discretionary Increment under this Paragraph C.3. are  
2 due, as set forth in Paragraph C.4., below, at the time of the  
3 next semi-annual payment or within twenty-one (21) days after the  
4 date of receipt by the Settling Defendants of EPA's written,  
5 certified mail request and budget explanation, whichever is  
6 earlier. Settling Defendants' obligation to pay the requested  
7 amount of the Annual Discretionary Increment is not subject to  
8 dispute resolution except for disputes as to whether the monies  
9 are intended to be used for Future Response Actions associated  
10 with the Phase I Work. In the event of such a dispute, the  
11 disputed payment must be made by the Settling Defendants  
12 notwithstanding the dispute. Formal dispute resolution, if  
13 necessary, of any such dispute shall be governed by Section XXI.  
14 (Dispute Resolution), Paragraph D. In the event that Settling  
15 Defendants prevail in the dispute, EPA shall not be required to  
16 repay the disputed amount; instead, the amount shall be applied  
17 as a credit to the next semi-annual installment due or to  
18 Settling Defendants' liability for Unfunded Future Response  
19 Costs.

20 If, in any year, EPA elects not to request some or all of  
21 the Annual Discretionary Increment, the unrequested and unpaid  
22 amount shall accrue as a cumulative credit toward the Annual  
23 Discretionary Increment available to EPA in later years. At any  
24 time up through but not including the sixth anniversary date of  
25 entry of the Consent Decree, payment of the credited amount may  
26 be demanded by EPA from the Settling Defendants in writing,  
27 together with a budget statement describing the activities for  
28 which the funds are intended to be used. Settling Defendants

1 shall pay the demanded amount, provided, however, that any  
2 cumulative credit associated with the Annual Discretionary  
3 Increment shall not be payable after the thirtieth (30th) day  
4 from the sixth anniversary date of entry of the Consent Decree,  
5 excluding funds necessary for activities that have been  
6 identified, budgeted and are substantially in progress during the  
7 six (6) year period.

8 4. Payment Instructions

9 a. Settling Defendants shall pay the United  
10 States for all monies owed under this Paragraph C., in the form  
11 of an electronic funds transfer according to instructions to be  
12 provided by EPA or by a certified check or checks, accompanied by  
13 a transmittal letter, made payable to the "EPA Hazardous  
14 Substance Superfund" and referencing the EPA Region and Site Name  
15 and Number, "Casmalia/093H" and the DOJ Case Number 90-7-1-611A.  
16 The Settling Defendants shall forward the certified check(s) to

17 U.S. Environmental Protection Agency  
18 Region IX  
19 Superfund Accounting  
20 Box No. 360863M  
21 Pittsburgh, PA 15251

22 Copies of each check together with the transmittal letter shall  
23 be sent to EPA as specified in Section XXIX. (Notices and  
24 Submissions). The monies received by EPA shall be placed in an  
25 EPA site-specific Casmalia account.

26 b. Notwithstanding any other provision of this  
27 Consent Decree, in the event any monies received under this  
28 Paragraph C. remain unexpended thirty (30) days after the sixth  
anniversary date of entry of the Consent Decree, EPA shall not be  
precluded from using such monies for Future Response Actions,

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1 Work, or Future Response Costs, provided, however, EPA may not,  
2 pursuant to sub-Paragraph A.6.b. of Section XXV. (Covenants Not  
3 To Sue/Reservations of Rights), recover such costs from Settling  
4 Defendants.

5 5. Funded Future Response Costs paid to EPA pursuant  
6 to this Paragraph C. are for the exclusive use of the United  
7 States (including federal contractors and consultants) for  
8 performance of Future Response Actions and may not be used by any  
9 entity not a Party to this Consent Decree, unless EPA and the  
10 Settling Defendants agree otherwise in writing.

11 D. Funded Future Response Costs -- Phase II

12 1. In addition to the amounts received pursuant to  
13 Paragraph C., above, EPA may request, and is entitled to receive,  
14 disbursements of monies from the Future Response Costs Sub-  
15 Account of the Phase II Account until Certification of Completion  
16 of the Phase II Work. EPA's written request for a specified sum  
17 shall authorize the Escrow Manager to disburse to EPA the  
18 requested amount subject only to the availability of funds in the  
19 Future Response Costs Sub-Account as determined pursuant to  
20 Section XVIII. Paragraph A. (Cost Estimates and Fund Transfers).  
21 To the extent funds in the Future Response Costs Sub-Account are  
22 insufficient to satisfy EPA's payment request under this  
23 Paragraph, the Escrow Manager shall pay the requested amount from  
24 monies in the Phase II Work Sub-Account, pursuant to Section  
25 XVII. Paragraph G. (Escrow Accounts/Financing The Work). Payment  
26 to EPA under this Paragraph D.1. shall be made pursuant to the  
27 provisions of Paragraph C.4.a., above. Any monies that remain in  
28 the Future Response Costs Sub-Account after Certification of

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1 Completion of Phase II Work shall be distributed to the remaining  
2 Accounts in the priority established under Section XVII.

3 Paragraph E. (Escrow Accounts/Financing The Work).

4           2.    Funded Future Response Costs provided to EPA  
5 pursuant to this Paragraph D. are for the exclusive use of the  
6 United States (including federal contractors and consultants) for  
7 the performance of Future Response Actions and may not be used by  
8 any entity not a Party to this Consent Decree, unless EPA and the  
9 Settling Defendants agree otherwise in writing.

10           E.    Unfunded Future Response Costs

11           Future Response Costs incurred by the United States  
12 beginning on the thirtieth (30th) day after entry of this Consent  
13 Decree not funded pursuant to Paragraph C. or D., above, or not  
14 reimbursed pursuant to Section XXIII. (Coordinated Enforcement  
15 Recovery), shall be considered Unfunded Future Response Costs and  
16 shall be added periodically to the Past Response Costs Funding  
17 Limit to be reimbursed to EPA pursuant to the priorities  
18 established in Section XVII. Paragraph E. (Escrow  
19 Accounts/Financing The Work). The United States shall establish  
20 the amount of any adjustment to the Past Response Costs Funding  
21 Limit by providing to the Settling Defendants a written summary,  
22 in the form of the Superfund Cost Recovery Enhancement System  
23 ("SCORES") Report, or any superseding summary report, of Unfunded  
24 Future Response Costs. The total amount of the summary, or the  
25 undisputed amount in the event of a dispute, shall be added to  
26 the Past Response Costs Funding Limit thirty (30) days after the  
27 United States' written transmittal of the summary to the Settling  
28 Defendants or resolution of the dispute, as applicable. Any

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1 dispute with respect to the amount of the Unfunded Future  
2 Response Costs shall be resolved pursuant to Section XXI.  
3 (Dispute Resolution), Paragraph E. Subject to the Settling  
4 Defendants reservation of rights at Section XXV. (Covenants Not  
5 To Sue/Reservations of Rights), the United States may recover  
6 prejudgment interest in accord with the provisions of Section  
7 XIX. Paragraph B.3. (Reimbursement of Response Costs) on any  
8 adjustment to the Past Response Costs Funding Limit made under  
9 this Paragraph from the date that the costs were incurred.

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1 implementation of any measures to be taken to prevent or mitigate  
2 the delay or the effect of the delay; the Settling Defendants'  
3 rationale for attributing such delay to a force majeure event if  
4 they intend to assert such a claim; and a statement as to  
5 whether, in the opinion of the Settling Defendants, such event  
6 may cause or contribute to an endangerment to public health,  
7 welfare or the environment. The Settling Defendants shall  
8 include with any notice all available documentation supporting  
9 their claim that the delay was attributable to a force majeure.  
10 Failure to comply with the above requirements shall preclude  
11 Settling Defendants from asserting any claim of force majeure for  
12 that event for the period of time of such failure to comply, and  
13 for additional delay caused by such failure. Settling Defendants  
14 shall be deemed to have notice of any circumstance of which their  
15 contractors or subcontractors had or should have had notice.

16 C. If EPA agrees that the delay or anticipated delay is  
17 attributable to a force majeure event, the time for performance  
18 of the obligations under this Consent Decree that are affected by  
19 the force majeure event will be extended for such time as is  
20 necessary to complete those obligations. EPA will notify the  
21 Settling Defendants in writing of the length of the extension, if  
22 any, for performance of the obligations affected by the force  
23 majeure event. An extension of the time for performance of the  
24 obligations affected by the force majeure event shall not, of  
25 itself, extend the time for performance of any other obligation.

26 D. If EPA does not agree that the delay or anticipated  
27 delay has been or will be caused by a force majeure event, EPA  
28 will notify the Settling Defendants in writing of its decision.

1 If EPA determines that the event did not constitute force  
2 majeure, then any deadline missed as a result of the event  
3 claimed to be force majeure by the Settling Defendants shall  
4 constitute a violation of the Consent Decree and Settling  
5 Defendants shall be subject to stipulated penalties as provided  
6 in Section XXII. (Stipulated Penalties).

7 E. If the Settling Defendants elect to invoke the dispute  
8 resolution procedures set forth in Section XXI. (Dispute  
9 Resolution), they shall do so no later than fifteen (15) days  
10 after receipt of EPA's notice under Paragraph C. or D., above.  
11 Any dispute concerning the application of force majeure that  
12 proceeds to formal dispute resolution shall be resolved pursuant  
13 to Paragraph E. of Section XXI. (Dispute Resolution). In any  
14 such proceeding, Settling Defendants shall have the burden of  
15 demonstrating by a preponderance of the evidence that the delay  
16 or anticipated delay has been or will be caused by a force  
17 majeure event, that the duration of the delay or the extension  
18 sought was or will be warranted under the circumstances, that  
19 best efforts were exercised to avoid and mitigate the effects of  
20 the delay, and that Settling Defendants complied with the  
21 requirements of this Section.

1 XXI. DISPUTE RESOLUTION

2 A. General Provisions

3 Unless otherwise expressly provided for in this Consent  
4 Decree, the dispute resolution procedures of this Section shall  
5 be the exclusive mechanism to resolve disputes arising under or  
6 with respect to this Consent Decree. However, the procedures set  
7 forth in this Section shall not apply to actions by the United  
8 States to enforce obligations of the Settling Defendants that  
9 have not been disputed in accordance with this Section.

10 B. Informal Dispute Resolution

11 1. Any dispute which arises under or with respect to  
12 this Consent Decree shall in the first instance be the subject of  
13 informal negotiations between the parties to the dispute. The  
14 period for informal negotiations shall not exceed twenty (20)  
15 days from the time the dispute arises, unless it is modified by  
16 written agreement of the parties to the dispute. The dispute  
17 shall be considered to have arisen when one party notifies the  
18 other party in writing that there is a dispute.

19 2. In the event that the parties cannot resolve a  
20 dispute by informal negotiations under the preceding Paragraph,  
21 then the position advanced by EPA shall be considered binding  
22 unless, within thirty (30) days after the conclusion of the  
23 informal negotiation period, Settling Defendants invoke the  
24 formal dispute resolution procedures of this Section by serving  
25 on the United States a written Statement of Position on the  
26 matter in dispute, including, but not limited to, any factual  
27 data, analysis or opinion supporting that position and any  
28 supporting documentation relied upon by the Settling Defendants.

1 The Statement of Position shall specify the Settling Defendants'  
2 position as to whether formal dispute resolution should proceed  
3 under Paragraph D., E., or F., below. Settling Defendants'  
4 decision to invoke dispute resolution shall not in and of itself  
5 constitute a force majeure event under Section XX. (Force  
6 Majeure).

7 C. Formal Dispute Resolution Procedures

8 1. Formal dispute resolution for disputes under this  
9 Consent Decree shall proceed pursuant to the provisions set forth  
10 in this Paragraph C.

11 2. Within thirty (30) days after receipt of Settling  
12 Defendants' Statement of Position, EPA will serve on Settling  
13 Defendants its Statement of Position, including, but not limited  
14 to, any factual data, analysis, or opinion supporting that  
15 position and all supporting documentation relied upon by EPA.  
16 EPA's Statement of Position shall include a statement as to  
17 whether formal dispute resolution should proceed under Paragraph  
18 D., E., or F., below.

19 3. If there is disagreement between EPA and the  
20 Settling Defendants as to whether dispute resolution should  
21 proceed under Paragraph D., E., or F., below, the parties to the  
22 dispute shall follow the procedures set forth in the paragraph  
23 determined by EPA to be applicable. However, if the Settling  
24 Defendants ultimately appeal to the court to resolve the dispute,  
25 the Court shall determine which paragraph is applicable in  
26 accordance with the standards of applicability set forth in  
27 Paragraph D., E., or F., below.

28 D. Formal dispute resolution for disputes pertaining to



1 the selection or adequacy of any response action shall be  
2 conducted pursuant to the procedures set forth in this Paragraph  
3 D. For purposes of this Paragraph, the adequacy of any response  
4 action includes, without limitation: (1) the adequacy or  
5 appropriateness of plans and procedures to implement plans; and  
6 (2) the adequacy of the performance of response actions taken  
7 pursuant to this Consent Decree.

8 1. An administrative record of the dispute shall be  
9 maintained by EPA and shall contain all statements of position,  
10 including supporting documentation, submitted pursuant to this  
11 Paragraph D. and Paragraph B., above (i.e., informal dispute  
12 resolution). The Settling Defendants and EPA may supplement the  
13 record as authorized by applicable law.

14 2. The Director of the Hazardous Waste Management  
15 Division, EPA Region IX, or any designee or successor, will issue  
16 a final administrative decision resolving the dispute based on  
17 the administrative record described in Paragraph D.1. This  
18 decision shall be binding upon the Settling Defendants, subject  
19 only to the right to seek judicial review pursuant to Paragraphs  
20 D.3. and D.4.

21 3. Any administrative decision made by EPA pursuant  
22 to Paragraph D.2. shall be reviewable by this Court, provided  
23 that a notice of judicial appeal is filed by the Settling  
24 Defendants with the Court and served on all Parties to the  
25 dispute within thirty (30) days of receipt of EPA's decision.  
26 The notice of judicial appeal shall include a description of the  
27 matter in dispute, the efforts made by the parties to resolve it,  
28 the relief requested, and the schedule, if any, within which the

1 dispute must be resolved to ensure orderly implementation of this  
2 Consent Decree. The United States may file a response to  
3 Settling Defendants' notice of judicial appeal.

4 4. In proceedings on any dispute governed by this  
5 Paragraph, Settling Defendants shall have the burden of  
6 demonstrating that the decision of the Hazardous Waste Management  
7 Division Director, or any designee or successor, is arbitrary and  
8 capricious or otherwise not in accordance with law. Judicial  
9 review of EPA's decision shall be on the administrative record  
10 compiled pursuant to Paragraphs D.1.

11 E. Formal dispute resolution for disputes pertaining to  
12 the establishment of Cost Estimates pursuant to Section XVIII.  
13 Paragraph A. (Cost Estimates and Fund Transfers) shall be  
14 governed by this Paragraph. A dispute of a cost estimate shall  
15 not challenge the underlying selection or adequacy of a response  
16 action. Remedy selection/adequacy disputes shall be resolved  
17 pursuant to Paragraph D., above, before any related cost estimate  
18 dispute is addressed.

19 Notwithstanding the provisions of this Paragraph E.,  
20 any dispute as to EPA's estimate for the Phase II Future Response  
21 Costs Sub-Account of the Phase II Account, pursuant to Section  
22 XIX., Paragraph D. (Reimbursement of Response Costs) shall be  
23 governed by the procedures of Paragraph D. of this Section. For  
24 purposes of this Consent Decree only, the Parties agree that EPA  
25 is entitled to collect such Future Response Costs, and any  
26 dispute as to them shall be limited to the appropriate amount of  
27 the Phase II Future Response Costs Sub-Account Funding Limit  
28 rather than EPA's entitlement to such monies.

1 Any and all disputes as to a Cost Estimate shall be  
2 brought within thirty (30) days of EPA's written approval,  
3 pursuant to Section 5.11. of the SOW, of such Cost Estimate. If  
4 EPA includes governmental/regulatory oversight costs in the Cost  
5 Estimate, the Settling Defendants may dispute EPA's right to  
6 include such costs; provided, however, that such dispute may be  
7 raised only with respect to the Final Cost Estimate.  
8 Notwithstanding the provisions of Paragraph D.4. of Section XVII.  
9 (Escrow Accounts/Financing The Work), if Settling Defendants  
10 prevail in the dispute, any amounts in the 30-Year and Post-30  
11 Year O&M Oversight Sub-Accounts shall be transferred to other  
12 Accounts in priority order pursuant to Paragraph E. of Section  
13 XVII. (Escrow Accounts/Financing The Work), and payment of  
14 governmental/regulatory oversight costs shall not be required for  
15 Settling Defendants to obtain the covenants not to sue at  
16 Paragraphs A.3. and A.4. of Section XXV. (Covenants Not To  
17 Sue/Reservations of Rights).

18 1. Following receipt of the Statements of Position  
19 submitted pursuant to Paragraph C., the Director of the Hazardous  
20 Waste Management Division, EPA Region IX, or any designee or  
21 successor, will issue a final decision resolving the dispute.  
22 The Hazardous Waste Management Division Director's decision shall  
23 be binding on the Settling Defendants unless, within thirty (30)  
24 days of receipt of the decision, the Settling Defendants file  
25 with the Court and serve on the parties to the dispute a notice  
26 of judicial appeal setting forth the matter in dispute, the  
27 efforts made by the parties to resolve it, the relief requested,  
28 and the schedule, if any, within which the dispute must be

1 resolved to ensure orderly implementation of the Consent Decree.  
2 The United States may file a response to Settling Defendants'  
3 notice of judicial appeal.

4 2. In proceedings under this Paragraph, Settling  
5 Defendants shall have the burden of demonstrating that their  
6 position is supported by a preponderance of the evidence.

7 F. Formal dispute resolution for disputes not governed by  
8 Paragraphs D. or E., above, shall be governed by this Paragraph.

9 1. Following receipt of Settling Defendants'  
10 Statement of Position submitted pursuant to Paragraph C., the  
11 Director of the Hazardous Waste Management Division, EPA Region  
12 IX, or any designee or successor, will issue a final decision  
13 resolving the dispute. The Hazardous Waste Management Division  
14 Director's decision shall be binding on the Settling Defendants  
15 unless, within thirty (30) days of receipt of the decision, the  
16 Settling Defendants file with the Court and serve on the parties  
17 a notice of judicial appeal setting forth the matter in dispute,  
18 the efforts made by the parties to resolve it, the relief  
19 requested, and the schedule, if any, within which the dispute  
20 must be resolved to ensure orderly implementation of the Consent  
21 Decree. The United States may file a response to Settling  
22 Defendants' notice of judicial appeal.

23 2. Judicial review of any dispute governed by this  
24 Paragraph shall be governed by applicable provisions of law.

25 G. Work Obligations During Dispute Resolution

26 The invocation of formal dispute resolution procedures  
27 under this Section shall not extend, postpone or affect in any  
28 way (a) the implementation of any ROD or other EPA decision

1 document or final Deliverable not directly in dispute, and (b)  
2 any obligation of the Settling Defendants under this Consent  
3 Decree not directly in dispute, unless EPA or the Court agrees  
4 otherwise.

5 H. Obligations After Resolution of Dispute

6 1. Stipulated penalties with respect to the disputed  
7 matter shall continue to accrue as allowed in Section XXII.  
8 (Stipulated Penalties), but payment shall be stayed pending  
9 resolution of the dispute as provided in Section XXII. Paragraph  
10 J. (Stipulated Penalties). Notwithstanding the stay of payment,  
11 stipulated penalties shall accrue from the first day of  
12 noncompliance with any applicable provision of this Consent  
13 Decree as provided in Section XXII. Paragraph F. (Stipulated  
14 Penalties).

15 2. If Settling Defendants do not prevail in the  
16 disputed matter, they shall, if applicable, then implement the  
17 disputed matter as resolved and perform the Work which was the  
18 subject of the dispute, if required. Any Deliverable or other  
19 submission required under this Consent Decree should be amended,  
20 if applicable, to reflect the resolution of the dispute.

21 3. In any dispute in which the Settling Defendants  
22 prevail: (a) any affected deadlines or schedules shall be  
23 extended to account fully for any delays attributable to the  
24 dispute resolution procedures; and (b) any penalties which would  
25 otherwise have accrued for Consent Decree violations shall be  
26 void.

1                                   XXII. STIPULATED PENALTIES

2           A.     Settling Defendants shall be liable to the United  
3 States for stipulated penalties in the amounts set forth in  
4 Paragraphs B. and C., below, for failure to comply with the  
5 requirements of this Consent Decree specified in Paragraphs B.  
6 and C., below, unless excused under Section XX. (Force Majeure),  
7 or pursuant to Section XXI. (Dispute Resolution). "Compliance"  
8 by Settling Defendants shall include submission of Deliverables  
9 and other submissions required by this Consent Decree and  
10 completion of the tasks and activities under this Consent Decree  
11 in the manner, and within the time, established by, and/or  
12 approved under, this Consent Decree.

13           B.     The following stipulated penalties shall be payable per  
14 violation per day to the United States for failure to submit  
15 timely or adequate Deliverables or for any noncompliance under  
16 Paragraph D., below:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1000	Day 1 through 5
\$ 2500	Day 6 through 30
\$ 5000	Day 31 and each day thereafter

22           C.     The following stipulated penalties shall be payable per  
23 violation per day to the United States for any other  
24 noncompliance with the Consent Decree or SOW that is not covered  
25 by Paragraph B., above. For purposes of this Section XXII.,  
26 "Deliverable" shall mean all submissions or milestone events  
27 required of the Settling Defendants under Section 4.0. of the SOW  
28 including any additions and modifications made in accordance with

1 the terms of this Consent Decree.

2	<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
3	\$ 500	Day 1 through 5
4	\$ 1000	Day 6 through 30
5	\$ 2500	Day 31 and each day
6		thereafter

7 D. In the event that Settling Defendants suspend  
8 performance of the Phase I or Phase II Work without authorization  
9 as determined by EPA or in the event that EPA or a designee,  
10 assumes performance of a portion or all of the Phase I or Phase  
11 II Work as a result of Settling Defendants unauthorized failure  
12 to perform, as determined pursuant to Paragraph C. (Failure to  
13 Perform) of Section VII. (Work To Be Performed) or Paragraph C.4.  
14 of Section XXV. (Covenants Not To Sue/Reservations of Rights),  
15 Settling Defendants shall be liable for stipulated penalties in  
16 the amounts set forth in Paragraph B., above, until such time as  
17 the suspended Work has been completed by EPA.

18 E. The Settling Defendants are jointly and severally  
19 liable for any stipulated penalties pursuant to the provisions of  
20 this Section. The dollar amounts specified for penalties are not  
21 subject to Section XXI. (Dispute Resolution).

22 F. All penalties shall begin to accrue on the first day of  
23 noncompliance with any applicable provision of this Consent  
24 Decree and shall continue to accrue through the final day of the  
25 correction of the noncompliance or completion of the activity.  
26 However, stipulated penalties shall not accrue: (1) during the  
27 14-day grace period provided in Section XII. Paragraph C.  
28 (Submissions Requiring Agency Approval); (2) with respect to a

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1 deficient submission under Section XII. (Submissions Requiring  
2 Agency Approval), during the period, if any, beginning on the  
3 31st day after EPA's receipt of such submission until the date  
4 that EPA notifies Settling Defendants of any deficiency; (3) with  
5 respect to a decision by the Director of the Waste Management  
6 Division, EPA Region IX, or any designee or successor, under  
7 Paragraph D.2., E.1., or F.1. of Section XXI. (Dispute  
8 Resolution), during the period, if any, beginning on the 21st day  
9 after the date that Settling Defendants' reply to EPA's Statement  
10 of Position is received until the date that the Director issues a  
11 final decision regarding such dispute; or (4) with respect to  
12 judicial review by this Court of any dispute under Section XXI.  
13 (Dispute Resolution), during the period, if any, beginning on the  
14 31st day after the Court's receipt of the final submission  
15 regarding the dispute until the date that the Court issues a  
16 final decision regarding such dispute. Nothing herein shall  
17 prevent the simultaneous accrual of separate penalties for  
18 separate violations of this Consent Decree.

19 G. Following EPA's determination that Settling Defendants  
20 have failed to comply with a requirement of this Consent Decree,  
21 EPA may give Settling Defendants written notification and  
22 describe the noncompliance. EPA may send the Settling Defendants  
23 a written demand for the payment of the penalties. However,  
24 Settling Defendants are subject to stipulated penalties as  
25 provided in the preceding Paragraph regardless of whether EPA has  
26 notified the Settling Defendants of a violation.

27 H. All penalties owed to the United States under this  
28 section shall be due and payable within thirty (30) days of the



1 Settling Defendants' receipt from EPA of a demand for payment of  
2 the penalties, unless Settling Defendants invoke the dispute  
3 resolution procedures under Section XXI. (Dispute Resolution).  
4 All payments under this Section shall be paid to the United  
5 States according to instructions to be provided by EPA before  
6 payment. Copies of check(s) paid or certifications of electronic  
7 funds transfers pursuant to this Section, and any accompanying  
8 transmittal letter(s), shall be sent to the United States as  
9 provided in Section XXIX. (Notices and Submissions) within ten  
10 (10) days of such payment.

11 I. The payment of penalties shall not alter in any way  
12 Settling Defendants' obligation to complete the performance of  
13 the Work required under this Consent Decree.

14 J. Penalties shall continue to accrue as provided in  
15 Paragraph F., above, during any dispute resolution period, but  
16 need not be paid until the following:

17 1. If the dispute is resolved by agreement or by a  
18 decision of EPA that is not appealed to this Court, accrued  
19 penalties determined to be owing shall be paid according to the  
20 terms of Paragraph H., above, within fifteen (15) days of the  
21 agreement or the receipt of EPA's decision or order;

22 2. If the dispute is appealed to this Court and the  
23 United States prevails in whole or in part, Settling Defendants  
24 shall pay, according to the terms of Paragraph H., above, all  
25 accrued penalties, determined by the Court to be owed, within  
26 thirty (30) days of receipt of the Court's decision or order,  
27 except as provided in sub-Paragraph 3., below;

28 3. If the District Court's decision is appealed by

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1 any party to the dispute, Settling Defendants shall pay all  
2 accrued penalties determined by the District Court to be owing to  
3 the United States into an interest-bearing escrow account within  
4 sixty (60) days of receipt of the Court's decision or order.  
5 Penalties shall be paid into this account as they continue to  
6 accrue, at least every sixty (60) days. Within fifteen (15) days  
7 of receipt of the final appellate court decision, the escrow  
8 agent shall pay the balance of the account to the United States  
9 according to instructions to be provided by EPA before payment,  
10 or to Settling Defendants, to the extent that they prevail.

11 K. 1. If Settling Defendants fail to pay stipulated  
12 penalties when due, the United States may institute proceedings  
13 to collect the penalties, as well as interest. Settling  
14 Defendants shall pay interest on the unpaid balance, which shall  
15 begin to accrue on the date of demand made pursuant to Paragraph  
16 H., above, at the rate established pursuant to Section 107(a) of  
17 CERCLA, 42 U.S.C. § 9607.

18 2. Nothing in this Consent Decree shall be construed  
19 as prohibiting, altering, or in any way limiting the ability of  
20 the United States to seek any other remedies or sanctions  
21 available by virtue of Settling Defendants' violation of this  
22 Decree or of the statutes and regulations upon which it is based,  
23 including, but not limited to, penalties pursuant to Section  
24 122(1) of CERCLA.

25 L. Notwithstanding any other provision of this Section,  
26 the United States may, in its sole discretion, waive any portion  
27 of the stipulated penalties that have accrued pursuant to this  
28 Consent Decree.

1                   XXIII. COORDINATED ENFORCEMENT RECOVERY

2           A.    This Section is intended to provide the framework for  
3 (a) the approach to and enforcement against Third Parties who  
4 have not resolved their liabilities for the Site pursuant to the  
5 Cashout Settlement(s), and (b) for the distribution in accordance  
6 with this Consent Decree of monetary proceeds obtained through  
7 actions, claims, settlements, judgments and other efforts from  
8 Third Parties in accordance with this Consent Decree.

9           B.    To the extent consistent with prosecutorial and  
10 litigation discretion, the United States and the Settling  
11 Defendants agree to act in good faith to coordinate their  
12 approach in any enforcement, cost recovery, or other claim  
13 against Third Parties.

14           C.    Except as provided below, any monetary recovery  
15 obtained by the United States or the Settling Defendants from any  
16 Third Party in any action or claim relating to the financing or  
17 performance of Site activities or recovery of Site response costs  
18 shall be deposited into the Cash Account of the Casmalia Consent  
19 Decree Escrow Account to be distributed to other Accounts of the  
20 Escrow Account according to the funding priorities established  
21 under this Consent Decree at Section XVII. Paragraph E. (Escrow  
22 Accounts/Financing The Work).

23                   1. Reimbursement of Expenditures

24                   a.    Except as provided in Paragraph C.2. and  
25 C.3., below, if the United States or the Settling Defendants  
26 obtain monetary recovery from a Third Party that does not resolve  
27 its liability pursuant to the Cashout Settlement(s), then the  
28 funds recovered may be first used to reimburse the United States

1 and the Settling Defendants for all expenditures each such party  
2 has made in pursuing such recovery. After the Parties have been  
3 fully reimbursed for such costs, then the remaining amount of the  
4 monetary recovery shall be deposited in the Cash Account of the  
5 Escrow Account for distribution according to the priorities set  
6 forth in Section XVII. Paragraph E. (Escrow Accounts/Financing  
7 The Work) of this Consent Decree. Except as provided below,  
8 expenditures subject to reimbursement shall begin to accrue as to  
9 each Third Party after the deadline has passed for resolution of  
10 that Third Party's Site liability through the Cashout  
11 Settlements.

12           b. In the event that both the United States and  
13 the Settling Defendants have made expenditures for pursuit of a  
14 claim against a Third Party, the monetary proceeds received shall  
15 be distributed equally between the United States and the Settling  
16 Defendants until one party's expenditures are fully satisfied  
17 after which the other party's expenditures shall be fully  
18 reimbursed, if possible.

19           c. In order to obtain reimbursement of  
20 expenditures pursuant to this Paragraph C., within thirty (30)  
21 days of judgment or settlement or other receipt of funds, the  
22 United States and the Settling Defendants shall submit to the  
23 other a claim for reimbursement of the expenditures which have  
24 occurred with respect to the Third Party claim, including  
25 sufficient documentation supporting and justifying payment of the  
26 claim. The United States may dispute a claim of the Settling  
27 Defendants' based upon allegations (a) of an accounting error,  
28 (b) that the costs are unreasonable or excessive in relation to

1 the recovery, or (c) that the claimed cost is not recoverable  
2 under this Section's terms or not related to the Third Party  
3 recovery. The Settling Defendants may dispute a claim of the  
4 United States under this Paragraph C. based upon allegations (a)  
5 of an accounting error, (b) that the cost item is inconsistent  
6 with the NCP, or (c) that the claimed cost was not related to the  
7 Third Party recovery. Any dispute with respect to a claim shall  
8 be resolved pursuant to Section XXI., Paragraph E. (Dispute  
9 Resolution). In the event of such a dispute, the disputed funds  
10 shall be deposited with the Escrow Manager in a separate interest  
11 bearing account pending resolution of the dispute.

12 2. Recovery Against The State

13 All monetary recoveries obtained from resolution  
14 in whole or in part of the State of California's potential  
15 liabilities associated with the Casmalia Site shall be deposited  
16 in the Cash Account and then transferred in full to the 30-Year  
17 O&M Work Sub-Account subject only to the following exceptions:

18 a. 3-Way Settlement On Or Before Fifteen Months

19 If the monetary recovery is (i) authorized or  
20 obtained by settlement agreement signed by the United States, the  
21 State, and the Settling Defendants or (ii) is otherwise received  
22 in the Escrow Account without objection of any Party on or before  
23 the date fifteen (15) months following lodging of the Consent  
24 Decree, EPA may, in its discretion authorize and direct the  
25 Escrow Manager to transfer up to seventy-five percent (75%) of  
26 the monetary recovery, including any associated interest accrual  
27 and income, to the Phase II Account.

1                   b.    2-Way Settlement On Or Before Fifteen Months

2                   If the monetary recovery is authorized or obtained  
3 by settlement agreement signed by only the United States and the  
4 State on or before the date fifteen (15) months following lodging  
5 of the Consent Decree, EPA may, in its discretion, authorize and  
6 direct the Escrow Manager to transfer up to one hundred percent  
7 (100%) of the monetary recovery, including any associated  
8 interest accrual and income, to the Phase II Account.

9                   c.    Settlement or Judgment After Fifteen Months

10                  If the monetary recovery is authorized (i) by  
11 settlement agreement signed by the United States and/or the  
12 Settling Defendants or (ii) by an entered judgment after the date  
13 fifteen (15) months following lodging of the Consent Decree, EPA  
14 may, in its discretion, authorize and direct the Escrow Manager  
15 to transfer up to seventy-five percent (75%) of the monetary  
16 recovery, including any associated interest accrual and income,  
17 to the Phase II Account.

18                  d.    Allocation of Expenditures.   (i) If the

19 monetary recovery obtained from the State is authorized pursuant  
20 to a settlement agreement signed by the United States and/or  
21 Settling Defendants or an entered judgment after the date fifteen  
22 (15) months following lodging of the Consent Decree, Settling  
23 Defendants and the United States may be reimbursed from any such  
24 recovery for all expenditures attributable to preparation for  
25 litigation against the State incurred by the Settling Defendants  
26 and/or the United States after the date fifteen (15) months  
27 following lodging of the Consent Decree. The reimbursement shall  
28 be subject to the terms of Paragraph C.1.b. and C.1.c., above.

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1 (ii) If the monetary recovery obtained from the State is  
2 authorized pursuant to a settlement agreement signed by the  
3 United States and/or the Settling Defendants or an entered  
4 judgment on or before the date fifteen (15) months following  
5 lodging of the Consent Decree, the Settling Defendants and the  
6 United States shall not be reimbursed from the recovery, subject  
7 to Paragraph E. below, for any expenditures, and the proceeds of  
8 the recovery shall not be subject to the terms of Paragraph C.1.,  
9 above.

10 3. Recovery Against The Casmalia Entities

11 All monetary recoveries obtained from the Casmalia  
12 Entities shall be deposited in the Cash Account and then  
13 transferred in full to the 30-Year O&M Work Sub-Account subject  
14 only to the following exceptions: (i) the Settling Defendants  
15 and the United States shall be entitled to reimbursement from the  
16 recovery proceeds in accordance with the terms of Paragraph  
17 C.1.b. and C.1.c., above, for all expenditures attributable to  
18 settlement with or litigation against the Casmalia Entities  
19 incurred after lodging of this Consent Decree; and (ii) EPA may,  
20 in its discretion, authorize and direct the Escrow Manager to  
21 transfer up to twenty-five percent (25%) of the net monetary  
22 recovery (i.e. after the allocation under (i) above), including  
23 any associated interest accrual or income, to the Phase II  
24 Account.

25 D. Except for actions against Third Parties already  
26 initiated or ongoing, the provisions of this Section XXIII.  
27 (Coordinated Enforcement Recovery) shall terminate three (3)  
28 years from the effective date, provided in Paragraph A.3. of

1 Section XVIII. (Cost Estimates and Fund Transfers), of the Final  
2 Cost Estimate.

3 E. Nothing in this Section is intended to authorize  
4 recoveries from Third Parties that are not otherwise recoverable  
5 pursuant to Sections 106 and 107 of CERCLA or other applicable  
6 law. Further, the United States reserves its rights against the  
7 Settling Defendants, as provided in Section XXV. Paragraph C.  
8 (Covenants Not To Sue/Reservations of Rights), and/or against  
9 Third Parties to recover any Response Costs incurred in  
10 connection with actions against Third Parties that are not  
11 reimbursed or otherwise recovered pursuant to this Section.



1 XXIV. LEAD AGENCY

2 A. As used in this Section, CERCLA shall mean the  
3 Comprehensive Environmental Response, Compensation, and Liability  
4 Act of 1980, 42 U.S.C. §§ 9601 et seq., as amended by the  
5 Superfund Amendments and Reauthorization Act of 1986, Pub. L. No.  
6 99-499, 100 Stat. 1613 (1986), and "NCP" shall mean the National  
7 Oil and Hazardous Substances Pollution Contingency Plan, dated  
8 March 8, 1990 (55 Fed. Reg. 8813), promulgated pursuant to  
9 Section 105 of CERCLA, 42 U.S.C. §§ 9605.

10 B. This Consent Decree is intended to govern all Site  
11 regulatory and enforcement activities. EPA is the lead agency  
12 for the governmental/regulatory oversight of the Phase I and  
13 Phase II Work. As the lead agency, pursuant to its authority  
14 under CERCLA, EPA shall make all decisions, including but not  
15 limited to, remedy selection, ARARs determinations, technical  
16 determinations and acceptance or approval of the Work, Consent  
17 Decree compliance, and enforcement matters related to this  
18 Consent Decree. Pursuant to CERCLA and the NCP, EPA intends to  
19 provide an opportunity for State involvement in CERCLA response  
20 activities. Unless notified otherwise by the State, EPA intends  
21 to rely upon the California Department of Toxic Substances  
22 Control ("DTSC"), as the Support Agency responsible for  
23 coordinating and interacting with EPA on matters related to this  
24 Consent Decree and the Site.

25 C. The designation of the lead regulatory agency for the  
26 governmental/regulatory oversight of the 30-Year O&M and Post-30  
27 Year O&M Work is not resolved by the terms of this Consent  
28 Decree. Nothing in or under this Consent Decree, including EPA's

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1 role as the lead regulatory agency for the governmental/  
2 regulatory oversight until Certification of Completion of Phase  
3 II Work or the pendency of any dispute concerning the Final Cost  
4 Estimate after Certification of Completion of Phase II Work shall  
5 create any presumption that EPA is, or require that EPA be, the  
6 lead regulatory agency for the 30-Year O&M and Post-30 Year O&M  
7 Work. No later than the fourth anniversary date of the  
8 initiation of the O&M Base Period Work, EPA shall make a good  
9 faith attempt to resolve with the State and other governmental  
10 entities, as appropriate, the designation of the lead regulatory  
11 agency for the governmental/regulatory oversight of the 30-Year  
12 O&M and Post-30 Year O&M Work.

13           If EPA is designated the lead regulatory agency for the  
14 governmental/regulatory oversight of the 30-Year O&M and/or Post-  
15 30 Year O&M Work, monies in the 30-Year and/or Post-30 Year O&M  
16 Oversight Sub-Accounts shall be transferred to EPA upon notice to  
17 the Escrow Manager of EPA's designation. Upon approval of the  
18 Parties, monies in the 30-Year and/or Post-30 Year O&M Oversight  
19 Sub-Accounts may be transferred to the State if the State is  
20 designated the lead regulatory agency for governmental/regulatory  
21 oversight of the 30-Year O&M and/or Post-30 Year O&M Work. If  
22 EPA is not designated the lead regulatory agency, absent approval  
23 of the Parties to transfer such monies to the new lead agency,  
24 monies in the 30-Year and Post-30 Year O&M Oversight Sub-Accounts  
25 shall be distributed to other Accounts of the Escrow Account in  
26 priority order pursuant to Section XVII. Paragraph E. (Escrow  
27 Accounts/Financing The Work).

28           D. Settling Defendants' rights and obligations under this

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1 Consent Decree shall not be affected by the designation of a new  
2 lead agency pursuant to this Section XXIV.

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1           XXV.   COVENANTS NOT TO SUE/RESERVATIONS OF RIGHTS

2           A.    United States' Covenants Not To Sue

3           1.    Phase I Work.   In consideration of the actions  
4 that will be performed and the payments that will be made by the  
5 Settling Defendants under the terms of the Consent Decree, in  
6 accordance with Paragraph A.7. below and except as specifically  
7 provided in Paragraph C. of this Section, the United States  
8 covenants not to sue or to take administrative action against  
9 Settling Defendants pursuant to CERCLA, RCRA, and common law  
10 relating to the performance of the Phase I Work.

11          2.    Phase II Work.   In consideration of the actions  
12 that will be performed and the payments that will be made by the  
13 Settling Defendants under the terms of the Consent Decree, in  
14 accordance with Paragraph A.7. below and except as specifically  
15 provided in Paragraph C. of this Section, the United States  
16 covenants not to sue or to take administrative action against  
17 Settling Defendants pursuant to CERCLA, RCRA, and common law  
18 relating to the performance of the Phase II Work.   In the event  
19 EPA performs or funds any or all of the Phase II Work pursuant to  
20 Section XXV. Paragraph C.4. (Covenants Not To Sue/Reservations of  
21 Rights), response costs incurred by EPA for such Phase II Work  
22 shall not be recoverable from Settling Defendants.   Subject to  
23 the preceding sentence, EPA reserves its rights as specified in  
24 Paragraph C.3.d. of this Section against the Settling Defendants.

25          3.    30-Year O&M

26                   When referred to under this Paragraph A.3., 30-  
27 Year O&M includes both the 30-Year O&M Work and associated  
28 governmental/regulatory oversight by the United States for the

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1 30-Year O&M Work. Subject only to the final resolution of any  
2 related cost estimate disputes pursuant to Section XXI. Paragraph  
3 E. (Dispute Resolution), receipt of the covenant not to sue under  
4 this Paragraph A.3. shall require full funding of both the 30-  
5 Year O&M Work Sub-Account and the 30-Year O&M Oversight Sub-  
6 Account.

7 In consideration of the actions that will be performed  
8 and the payments that will be made by the Settling Defendants  
9 under the terms of the Consent Decree, in accordance with  
10 Paragraph A.7. below and except as specifically provided in  
11 Paragraph C. of this Section, the United States shall covenant  
12 not to sue or to take administrative action against the Settling  
13 Defendants pursuant to CERCLA, RCRA and common law relating to  
14 30-Year O&M as follows:

15 a. At any time within three years after the  
16 Final Cost Estimate becomes effective and after any and all  
17 transfers under Section XVIII. (Cost Estimates and Fund  
18 Transfers) are made, the Settling Defendants shall receive a  
19 covenant not to sue for 30-Year O&M if the amount in the 30-Year  
20 O&M Account is equal to or greater than the Final Cost Estimate.  
21 The covenant will become effective when the 30-Year O&M Account  
22 is fully funded based upon a fully effective Final Cost Estimate  
23 as provided in Section XVIII. Paragraph A.3.c. (Cost Estimates  
24 and Fund Transfers). After the covenant not to sue becomes  
25 effective, excess funds in the 30-Year O&M Account, if any, will  
26 be transferred to the next Account with equal or higher priority  
27 as set forth in Section XVII. Paragraph E. (Escrow  
28 Accounts/Financing The Work).

1           b.    If, at any time within three years after the  
2 Final Cost Estimate becomes effective and after any and all  
3 transfers under Section XVIII. (Cost Estimates and Fund  
4 Transfers) are made, there is a shortfall of funds in the 30-Year  
5 O&M Account, the Settling Defendants may receive a covenant not  
6 to sue for 30-Year O&M if they elect to fund the shortfall. For  
7 the election to be effective, the Settling Defendants must pay  
8 the unfunded amount into the 30-Year O&M Account no later than  
9 sixty (60) days after the third anniversary of the effective date  
10 of the Final Cost Estimate for 30-Year O&M. The covenant not to  
11 sue shall be effective upon receipt of the money in the 30-Year  
12 O&M Account of the Escrow Account.

13           c.    If the Settling Defendants do not receive a  
14 covenant not to sue pursuant to Paragraph 3.a or 3.b. above, they  
15 shall be entitled to a covenant not to sue for 30-Year O&M Work  
16 until an amount equal to the annualized cost of two years of O&M  
17 Work, as determined by the Final Cost Estimate, remains in the  
18 30-Year O&M Work Sub-Account, at which time, the Settling  
19 Defendant's covenant not to sue for 30-Year O&M Work shall  
20 expire.

21           d.    The money in the RCRA Trust Fund shall be  
22 included in the calculations made pursuant to this Paragraph 3.,  
23 only if it has been transferred into the 30-Year O&M Work Sub-  
24 Account or is otherwise available, without impediment, for the  
25 30-Year O&M Work.

26           e.    Settling Defendants shall only be entitled to  
27 exercise the Full Funding Option pursuant to this Paragraph  
28 A.3.a. or A.3.b. based upon a fully effective Final Cost Estimate

1 for 30-Year O&M.

2 4. Post 30-Year O&M

3 When referred to under this Paragraph A.4., Post-  
4 30 Year O&M includes both the Post-30 Year O&M Work and  
5 associated governmental/regulatory oversight by the United States  
6 for the Post-30 Year O&M Work. Subject only to the final  
7 resolution of any related cost estimate disputes pursuant to  
8 Section XXI. Paragraph E. (Dispute Resolution), receipt of the  
9 covenant not to sue under this Paragraph A.4. shall require full  
10 funding of both the Post-30 Year O&M Work Sub-Account and the  
11 Post-30 Year O&M Oversight Sub-Account.

12 In consideration of the actions that will be performed  
13 and the payments that will be made by the Settling Defendants  
14 under the terms of the Consent Decree, in accordance with  
15 Paragraph A.7. below and except as specifically provided in  
16 Paragraph C. of this Section, the United States shall covenant  
17 not to sue or to take administrative action against the Settling  
18 Defendants pursuant to CERCLA, RCRA and common law relating to  
19 Post-30 Year O&M as follows:

20 a. At any time within three years after the  
21 Final Cost Estimate becomes effective and after any and all  
22 transfers under Section XVIII. (Cost Estimates and Fund  
23 Transfers) are made, the Settling Defendants shall receive a  
24 covenant not to sue for Post-30 Year O&M if the amount in the  
25 Post-30 Year O&M Account is equal to or greater than the Final  
26 Cost Estimate. The covenant will become effective when the Post-  
27 30 Year O&M Account is fully funded based upon a fully effective  
28 Final Cost Estimate as provided in Section XVIII. Paragraph

1 A.3.c. (Cost Estimates and Fund Transfers). After the covenant  
2 not to sue becomes effective, excess funds in the Post-30 Year  
3 O&M Account, if any, will be transferred to the Account with the  
4 next highest priority as set forth in Section XVII. Paragraphs E.  
5 and F. (Escrow Accounts/Financing The Work).

6 b. If, at any time within three years after the  
7 Final Cost Estimate becomes effective and after any and all  
8 transfers under Section XVIII. (Cost Estimates and Fund  
9 Transfers) are made, there is a shortfall of funds in the Post  
10 30-Year O&M Account, the Settling Defendants may receive a  
11 covenant not to sue for Post-30 Year O&M if they elect to fund  
12 the shortfall. For the election to be effective, the Settling  
13 Defendants must pay the unfunded amount into the Post-30 Year O&M  
14 Account no later than sixty (60) days after the third anniversary  
15 of the effective date of the Final Cost Estimate for Post-30 Year  
16 O&M. The covenant not to sue shall be effective upon receipt of  
17 the money in the Post-30 Year O&M Account of the Escrow Account.

18 c. Settling Defendants shall only be entitled to  
19 exercise the Full Funding Option pursuant to this Paragraph  
20 A.4.a. or A.4.b. based upon a fully effective Final Cost Estimate  
21 for Post-30 Year O&M.

22 5. Past Response Costs

23 In consideration of the actions that will be  
24 performed and the payments that will be made by the Settling  
25 Defendants under the terms of this Consent Decree, in accordance  
26 with Paragraph A.7. below and except as provided in Paragraph C.  
27 of this Section, the United States covenants not to sue or to  
28 take administrative action against the Settling Defendants under



1 CERCLA, RCRA, or common law (a) until three (3) years from the  
2 date of entry of this Consent Decree for recovery of Past  
3 Response Costs, and (b) for Past Response Costs that are  
4 reimbursed pursuant to this Consent Decree.

5 6. Future Response Costs

6 In consideration of the actions that will be  
7 performed and the payments that will be made by the Settling  
8 Defendants under the terms of this Consent Decree, in accordance  
9 with Paragraph A.7. below and except as specifically provided in  
10 Paragraph C. of this Section,

11 a. the United States covenants not to sue or to  
12 take administrative action against Settling Defendants pursuant  
13 to CERCLA, RCRA, or common law for recovery of Unfunded Future  
14 Response Costs incurred up through but not including the date  
15 three (3) years from the date of entry of this Consent Decree;  
16 and

17 b. the United States covenants not to sue or to  
18 take administrative action against Settling Defendants pursuant  
19 to CERCLA, RCRA, or common law for recovery of Funded Future  
20 Response Costs paid by the Settling Defendants and received by  
21 EPA pursuant to Paragraph C. of Section XIX. (Reimbursement of  
22 Response Costs); and

23 c. the United States covenants not to sue or to  
24 take administrative action against Settling Defendants pursuant  
25 to CERCLA, RCRA, or common law for the recovery of Funded Future  
26 Response Costs drawn out of the Future Response Costs Sub-Account  
27 or the Phase II Work Sub-Account and received by EPA pursuant to  
28 Section XIX. Paragraph D. (Reimbursement of Response Costs).

1           7.     Except with respect to future liability, the  
2 covenants not to sue set forth in Paragraphs 1., 2., 5. and 6.,  
3 above, shall take effect upon the date of entry of this Consent  
4 Decree. With respect to future liability, these covenants not to  
5 sue shall take effect upon completion of the Initial Phase II  
6 Work. The covenants not to sue in Paragraphs 3. and 4. above  
7 shall take effect as described therein. Each of these covenants  
8 not to sue is conditioned upon the complete and satisfactory  
9 performance by Settling Defendants of any applicable obligations  
10 under this Consent Decree with respect to each covenant not to  
11 sue. These covenants not to sue extend only to the Settling  
12 Defendants and do not extend to any other person(s).

13           B.     Settling Defendants' Covenants Not To Sue. Subject to  
14 the Settling Defendants' Reservations of Rights at Paragraph D.  
15 below, Settling Defendants hereby covenant not to sue and agree  
16 not to assert any claims or causes of action, either direct or  
17 collateral, against the United States with respect to the Site,  
18 any liabilities associated with the Site, or this Consent Decree,  
19 including but not limited to, (i) any claim for reimbursement  
20 from the Hazardous Substance Superfund (established pursuant to  
21 the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA  
22 Sections 106(b)(2), 111, 112, 113 or any other provision of law;  
23 or (ii) any claim against the United States, including any  
24 department, agency, subdivision, or instrumentality of the United  
25 States, under CERCLA or RCRA related to the Site. Nothing in  
26 this Consent Decree shall be deemed to constitute  
27 preauthorization of a claim within the meaning of Section 111 of  
28 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

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1 C. United States' Reservations of Rights

2 1. Reopeners

3 a. United States' Pre-Certification Reservations

4 Notwithstanding any other provision of this Consent Decree,  
5 the United States reserves, and this Consent Decree is without  
6 prejudice to, the right to institute proceedings in this action  
7 or in a new action, or to issue an administrative order seeking  
8 to compel Settling Defendants (1) to perform further response  
9 actions relating to the Site or (2) to reimburse the United  
10 States for additional costs of response if, after the final ROD  
11 and prior to completion of the Initial Phase II Work:

12 (i) conditions at the Site, previously unknown to EPA,  
13 are discovered, or

14 (ii) information, previously unknown to EPA, is  
15 received, in whole or in part,

16 and these previously unknown conditions or this information  
17 together with any other relevant information indicates that  
18 response actions implemented under this Consent Decree are not  
19 protective of human health or the environment. Provided,  
20 however, subject to the priorities and transfer restrictions in  
21 Sections XVII. (Escrow Accounts/Financing The Work) and XVIII.  
22 (Cost Estimates and Fund Transfers), if EPA determines, in its  
23 sole discretion, that adequate unrestricted funds are available  
24 to finance and perform the remaining Phase II Work and any  
25 additional work necessitated under the reopeners in this  
26 Paragraph C.1.a. ("reopener work"), upon notice from EPA, the  
27 Settling Defendants shall perform the reopener work using such  
28 funds, and upon acceptance of its completion by EPA, the United

1 States shall covenant not to sue Settling Defendants for the  
2 reopener work performed.

3           b. United States' Post-Certification  
4 reservations. Notwithstanding any other provision of this  
5 Consent Decree, the United States reserves, and this Consent  
6 Decree is without prejudice to, the right to institute  
7 proceedings in this action or in a new action, or to issue an  
8 administrative order seeking to compel Settling Defendants (1) to  
9 perform further response actions relating to the Site or (2) to  
10 reimburse the United States for additional costs of response if,  
11 subsequent to completion of the Initial Phase II Work:

12           (i) conditions at the Site, previously unknown to EPA,  
13           are discovered, or

14           (ii) information, previously unknown to EPA, is  
15           received, in whole or in part,

16 and these previously unknown conditions or this information  
17 together with other relevant information indicate that response  
18 actions implemented under this Consent Decree are not protective  
19 of human health or the environment.

20           2. For purposes of Paragraph C.1.a., above, the  
21 information and the conditions known to EPA shall include only  
22 that information and those conditions set forth in the final  
23 Record of Decision for the Site, together with other EPA response  
24 action decision document(s) selecting the final remedy, and the  
25 administrative record(s) supporting these response action  
26 decision document(s). For purposes of Paragraph C.1.b., above,  
27 the information and the conditions known to EPA shall include  
28 only that information and those conditions set forth in the final

1 Record of Decision for the Site, together with other EPA response  
2 action decision document(s) selecting the final remedy, and the  
3 administrative record(s) supporting these response action  
4 decision document(s), and any information received by EPA  
5 pursuant to the requirements of this Consent Decree prior to  
6 completion of the Initial Phase II Work.

7           3. United States' General Reservations of Rights. The  
8 United States' covenants not to sue set forth above do not  
9 pertain to any matters other than those expressly specified in  
10 Paragraph A., above. The United States reserves, and this  
11 Consent Decree is without prejudice to, all claims, rights, and  
12 defenses against Settling Defendants with respect to all other  
13 matters, including but not limited to, the following:

14           a. claims based on a failure by Settling  
15 Defendants 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  
18 Materials outside of the Site;

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

21           d. except as provided in Paragraph A.2. of this  
22 Section, after the expiration of the moratorium set forth in  
23 Paragraph A.5., above, liability for Past Response Costs  
24 (including any Unfunded Future Response Costs) relating to  
25 the Site, not otherwise recovered, that have been incurred  
26 by the United States by or through any of its departments,  
27 agencies, instrumentalities, or subdivisions;

28           e. criminal liability;

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1 f. liability for violations of federal or state  
2 law which occur during or after implementation of the Work;

3 g. liability for the 30-Year O&M Work for which  
4 the Settling Defendants have not received a covenant not to  
5 sue pursuant to this Consent Decree; and

6 h. liability for Post-30 Year O&M Work for which  
7 Settling Defendants have not received a covenant not to sue  
8 pursuant to this Consent Decree.

9 4. In the event EPA determines that Settling  
10 Defendants have failed to implement any provisions of the Phase I  
11 or Phase II Work in an adequate or timely manner, EPA may perform  
12 any and all portions of such Work as EPA determines necessary.  
13 Settling Defendants may invoke the procedures set forth in  
14 Section XXI. (Dispute Resolution) to dispute EPA's determination  
15 that the Settling Defendants failed to implement a provision of  
16 the Phase I or Phase II Work in an adequate or timely manner as  
17 arbitrary and capricious or otherwise not in accordance with law  
18 pursuant to Section XXI. Paragraph D. (Dispute Resolution). Such  
19 dispute shall be resolved on the administrative record.

20 5. Notwithstanding any other provision of this  
21 Consent Decree, the United States retains all authority and  
22 reserves all rights to take any and all response actions  
23 authorized by law; provided however, that the United States shall  
24 not take any such actions that would constitute Phase I Work,  
25 except in accordance with Section VII. Paragraph C. (Work To Be  
26 Performed) or Section XV. (Emergency Response).

27 6. In any dispute resolution proceeding pursuant to  
28 Section XXI. (Dispute Resolution), the United States reserves all

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1 rights to assert any and all defenses available under applicable  
2 law.

3 D. Settling Defendants' Reservations of Rights

4 1. The Settling Defendants' covenants not to sue  
5 set forth in Paragraph B. above, do not pertain to any matters  
6 other than those expressly specified in such covenants. The  
7 Settling Defendants reserve, and this Consent Decree is without  
8 prejudice to, all rights against EPA with respect to all other  
9 matters.

10 2. Except as otherwise provided in this Consent  
11 Decree, the Settling Defendants reserve all of their claims,  
12 rights and defenses with respect to the following:

13 a. the United States' right to recover  
14 against the Settling Defendants any response, oversight, or  
15 related cost, including interest and indirect costs, not  
16 otherwise funded or reimbursed pursuant to this Consent  
17 Decree;

18 b. liability of the Settling Defendants  
19 arising from the past, present, or future disposal, release,  
20 or threat of release of Waste Materials outside of the Site;

21 c. claims against any department, agency,  
22 subdivision or instrumentality of the United States ("United  
23 States") that has not resolved its liability for conditions  
24 at the Site in the Cashout Settlements;

25 d. any claim against any Third Party that  
26 does not resolve its liability pursuant to the Cashout  
27 Settlements, the State of California, and the Casmalia  
28 Entities;

1 e. any claim brought by the United States  
2 against the Settling Defendants that is otherwise not  
3 precluded by this Consent Decree; provided, however, that  
4 Settling Defendants may not assert any claim against any  
5 department, agency, instrumentality, or subdivision of the  
6 United States as to which contribution protection has been  
7 received pursuant to Section 113(f) of CERCLA, 42 U.S.C.  
8 § 9613(f).

9 f. Settling Defendants' obligation to  
10 perform the 30-Year and Post 30-Year O&M Work;

11 g. any matter relating to compliance with  
12 the terms of this Consent Decree;

13 h. any matter relating to any request by  
14 EPA to perform additional work pursuant to Section VIII.  
15 (Additional Response Actions) and Paragraphs C.1.a. and  
16 C.1.b. of Section XXV. (Covenants Not To Sue/Reservations of  
17 Rights);

18 i. any matter relating to the RCRA Trust  
19 Fund;

20 j. any negligence action against the United  
21 States pursuant to Section XVI. (Indemnification and  
22 Insurance); and

23 k. Settling Defendants' right to challenge  
24 any settlement between the United States and any Third  
25 Party, including the State and the Casmalia Entities, with  
26 respect to the Site.  
27  
28



1           XXVI.   EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

2           A.   Nothing in this Consent Decree shall be construed to  
3 create any rights in, or grant any causes of action to, any  
4 person not a Party to this Consent Decree. Except as provided in  
5 Section XXIII. (Coordinated Enforcement Recovery), each of the  
6 Parties expressly reserves any and all rights (including, but not  
7 limited to, any right to contribution), defenses, claims,  
8 demands, and causes of action which each Party may have with  
9 respect to any matter, transaction, or occurrence relating in any  
10 way to the Site against any person not a Party hereto.

11           B.   The Parties agree, and by entering this Consent Decree,  
12 this Court finds, that the Settling Defendants are entitled, as  
13 of the effective date of this Consent Decree, to protection from  
14 contribution actions or claims as provided by CERCLA Section  
15 113(f)(2), 42 U.S.C. § 9613(f)(2), and any other applicable law,  
16 for matters addressed in this Consent Decree. For purposes of  
17 this Paragraph, "matters addressed" shall include liability  
18 pursuant to CERCLA, RCRA, and common law for Phase I Work, Phase  
19 II Work, 30-Year O&M (including 30-Year O&M Work and costs of  
20 governmental/regulatory oversight), Post-30 Year O&M (including  
21 Post-30 Year O&M Work and costs of governmental/regulatory  
22 oversight), Past Response Costs and Future Response Costs.  
23 Provided, however, the Settling Defendants' contribution  
24 protection for unreimbursed Past Response Costs (including  
25 Unfunded Future Response Costs) and 30-Year and Post-30 Year O&M  
26 (including 30-Year and Post-30 Year O&M Work and costs of  
27 governmental/regulatory oversight) shall expire on the expiration  
28 of the Full Funding Option elections, as provided pursuant to

1 Section XXV. Paragraphs A.3. and A.4. (Covenants Not To  
2 Sue/Reservations of Rights), for matters for which the Settling  
3 Defendants have not received a covenant not to sue under this  
4 Consent Decree.

5 C. With respect to any suit or claim for contribution  
6 brought against them for matters related to this Consent Decree  
7 or the Casmalia Site, the Settling Defendants will notify the  
8 United States in writing within seven (7) days of service of the  
9 complaint on them. In addition, Settling Defendants shall notify  
10 the United States within seven (7) days of service or receipt of  
11 any dispositive motion and within seven (7) days of receipt of  
12 any order from a court setting a case for trial.

13 D. In any subsequent administrative or judicial proceeding  
14 initiated by the United States for injunctive relief, recovery of  
15 response costs, or other appropriate relief relating to the Site,  
16 as governed by Section XXV. (Covenants Not To Sue/Reservations of  
17 Rights), Settling Defendants shall not assert, and may not  
18 maintain, any defense or claim based upon the principles of a bar  
19 due to a statute of limitations, waiver, res judicata, collateral  
20 estoppel, issue preclusion, claim-splitting, or other defenses  
21 based upon any contention that the claims raised by the United  
22 States in the subsequent proceeding were or should have been  
23 brought in the instant case; provided, however, that nothing in  
24 this Paragraph affects the enforceability of the covenants not to  
25 sue set forth in Section XXV. (Covenants Not To Sue/Reservations  
26 of Rights).

1                                        XXVII. ACCESS TO INFORMATION

2            A.    Settling Defendants shall provide to EPA, upon request,  
3 copies of all documents and information, unless privileged,  
4 within their possession or control or that of their contractors  
5 or agents generated pursuant to the obligations of this Consent  
6 Decree, relating to activities at the Site, or relating to the  
7 implementation of this Consent Decree, including, but not limited  
8 to, sampling, analysis, chain of custody records, manifests,  
9 trucking logs, receipts, reports, sample traffic routing,  
10 correspondence, or other documents or information related to the  
11 Work; provided, however, that except with respect to documents or  
12 information generated pursuant to the obligations of this Consent  
13 Decree, Settling Defendants reserve any rights and defenses they  
14 may have to challenge such requests pursuant to Section 104(e) of  
15 CERCLA, 42 U.S.C. §9604(e). Settling Defendants shall also make  
16 available to EPA for purposes of investigation, information  
17 gathering, or testimony, their employees, agents, or  
18 representatives with knowledge of relevant facts concerning the  
19 performance of the Work. Any requests for additional documents  
20 and information shall be governed by applicable law.

21            B.    Settling Defendants may assert business confidentiality  
22 claims covering part or all of the documents or information  
23 submitted to EPA under this Consent Decree to the extent  
24 permitted by, and in accordance with, Section 104(e)(7) of  
25 CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).  
26 Documents or information determined to be confidential by EPA  
27 will be afforded the protection specified in 40 C.F.R. Part 2,  
28 Subpart B. If no claim of confidentiality accompanies documents

1 or information when they are submitted to EPA, or if EPA has  
2 notified Settling Defendants that the documents or information  
3 are not confidential under the standards of Section 104(e)(7) of  
4 CERCLA, the public may be given access to such documents or  
5 information without further notice to Settling Defendants.

6 C. With respect to information disclosure to EPA under  
7 this Section, the Settling Defendants may assert that certain  
8 documents, records and other information are privileged under the  
9 attorney-client privilege or any other privilege recognized by  
10 federal law. If the Settling Parties assert such a privilege in  
11 lieu of providing documents, they shall provide EPA with the  
12 following: (1) the title of the document, record, or  
13 information; (2) the date of the document, record, or  
14 information; (3) the name and title of the author of the  
15 document, record, or information; (4) the name and title of each  
16 addressee and recipient; (5) a description of the contents of the  
17 document, record, or information: and (6) the privilege asserted  
18 by the Settling Defendants. However, no documents, reports or  
19 other information created or generated pursuant to the  
20 requirements of the Consent Decree shall be withheld on the  
21 grounds that they are privileged.

22 D. No claim of confidentiality shall be made with respect  
23 to any data, including, but not limited to, all sampling,  
24 analytical, monitoring, hydrogeologic, scientific, chemical, or  
25 engineering data.

1 XXVIII. RETENTION OF RECORDS

2 A. Until seven (7) years after the Certification of  
3 Completion of Phase II Work pursuant to Section XIV.  
4 (Certifications of Completion), each Settling Defendant shall  
5 preserve and retain all records and documents (not including  
6 duplicates) now in its possession or control, or which come into  
7 its possession or control, that relate in any manner to the  
8 performance of the Work or any ROD or other EPA response action  
9 decision document pursuant to this Consent Decree, or that relate  
10 to the liability of any person for response actions conducted and  
11 to be conducted at the Site, regardless of any corporate records  
12 retention policy to the contrary. For the same period, Settling  
13 Defendants shall also instruct their contractors and agents to  
14 preserve all documents, records, and information of whatever  
15 kind, nature or description (not including duplicates) relating  
16 to the performance of the Work.

17 B. At the conclusion of this document retention period,  
18 Settling Defendants shall notify the United States at least  
19 ninety (90) days prior to the destruction of any such records or  
20 documents, and, upon request by the United States, Settling  
21 Defendants shall make available any such records or documents to  
22 EPA. The Settling Defendants may assert that certain documents,  
23 records and other information are privileged under the attorney-  
24 client privilege or any other privilege recognized by federal  
25 law. Any documents as to which a privilege claim is or may be  
26 asserted shall be retained for five (5) additional years unless  
27 Settling Defendants have received a covenant not to sue pursuant  
28 to Section XXV. Paragraphs A.3. and A.4. (Covenants Not to

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1 Sue/Reservations of Rights) and are no longer potentially liable  
2 for Past Response Costs. Upon request, for any documents as to  
3 which the Settling Defendants have asserted a privilege claim,  
4 they shall provide the United States with a privilege index that  
5 includes the following information sufficient to determine  
6 whether specific documents are relevant to any further claim(s)  
7 related to the Site and the basis for the privilege asserted: the  
8 title, date, name and title of authors, name and title of  
9 addressees and recipients, description of the subject, and the  
10 asserted privilege. No documents, reports or other information  
11 created or generated pursuant to the requirements of the Consent  
12 Decree shall be withheld from the United States on the grounds  
13 that they are privileged.

14 C. To the best of its recollection and knowledge, each  
15 Settling Defendant hereby certifies, individually, that it has  
16 not knowingly or wilfully altered, mutilated, discarded,  
17 destroyed or otherwise disposed of any records, documents or  
18 other information relating to its potential liability regarding  
19 the Site since notification of potential liability by the United  
20 States.

21 D. EPA has obtained copies of certain original records  
22 from the Casmalia facility, which records in the form of  
23 microfiche, are in the possession of EPA. Settling Defendants  
24 have in their possession a duplicate copy of the microfiche  
25 records. Each set of microfiche comprises 2148 microfiche pages.  
26 Each Settling Defendant hereby stipulates that to the best of its  
27 knowledge the microfiche is an accurate reproduction of the  
28 original Casmalia records. Each Settling Defendant further

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1 stipulates that those copies of manifests, dump receipts, weigh  
2 tickets, and other waste disposal records obtained from the  
3 Casmalia facility, and recorded in microfiche form, that are  
4 attributable to that Settling Defendant and all related entities  
5 to that Settling Defendant listed in Appendix D are true and  
6 accurate copies of the original records, authentic and admissible  
7 as records of regularly conducted business activity within the  
8 meaning of Rules 1003, 1004, 901, and 802(6) of the Federal Rules  
9 of Evidence.

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1                           XXIX. NOTICES AND SUBMISSIONS

2           A.    Whenever, under the terms of this Consent Decree,  
3 written notice is required to be given or a Deliverable or other  
4 submission or document is required to be sent by one Party to  
5 another, it shall be directed to the individuals at the addresses  
6 specified below, unless those individuals or their successors  
7 give notice of a change to the other Parties in writing. All  
8 notices and submissions shall be considered effective upon  
9 receipt, unless otherwise provided. Written notice as specified  
10 herein shall constitute complete satisfaction of any written  
11 notice requirement of the Consent Decree with respect to the  
12 United States, EPA, and the Settling Defendants, respectively.

13 As to the United States:

14 Chief, Environmental Enforcement Section  
15 Environment and Natural Resources Division  
16 U.S. Department of Justice  
17 P.O. Box 7611  
18 Ben Franklin Station  
19 Washington, D.C. 20044-7611  
20 Re: United States v. Casmalia Resources, et al.  
21 DJ # 90-7-1-611A

22 As to EPA:

23 Karen Ueno (or Successor)  
24 EPA Project Coordinator (Casmalia Site)  
25 United States Environmental Protection Agency  
26 Region IX  
27 Mail Code H-3  
28 75 Hawthorne Street  
29 San Francisco, California 94105

30 Joanne S. Marchetta (or Successor)  
31 Assistant Regional Counsel - Casmalia Site  
32 Office of Regional Counsel, RC-3  
33 75 Hawthorne Street  
34 San Francisco, California 94105



1 As to the Settling Defendants:

2 Cory Bertelsen  
3 Casmalia Site Project Manager  
4 CB Consulting, Inc.  
5 729 Los Palos Drive  
6 Lafayette, California 94549

7 Dan Hemker  
8 Co-chair, Casmalia Site Steering Committee  
9 Chevron Research and Technology Company  
10 1003 West Cutting Blvd.  
11 Richmond, California 94804

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XXX. EFFECTIVE DATE

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



1 XXXII. APPENDICES

2 The following appendices are attached to and incorporated  
3 into this Consent Decree:

4 "Appendix A" is the Statement of Work.

5 "Appendix B" is a Casmalia Site map and schematic diagram.

6 "Appendix C" is a list of Settling Defendants.

7 "Appendix D" is a list of Settling Defendants' Affiliates.  
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1 XXXIV. MODIFICATION

2 A. Modifications to the SOW or its schedules shall be made  
3 as provided therein. All such modifications shall be made in  
4 writing.

5 B. Nothing in this Decree shall be deemed to alter the  
6 Court's power to enforce, supervise or approve modifications to  
7 this Consent Decree.

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1           XXXV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

2           A.     This Consent Decree shall be lodged with the Court for  
3 a period of not less than thirty (30) days for public notice and  
4 comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.  
5 § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves  
6 the right to withdraw or withhold its consent if the comments  
7 regarding the Consent Decree disclose facts or considerations  
8 which indicate that the Consent Decree is inappropriate,  
9 improper, or inadequate. Settling Defendants consent to the  
10 entry of this Consent Decree without further notice.

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

1                   XXXVI.   SIGNATORIES AND SERVICE

2           A.     Each undersigned representative of a Settling Defendant  
3 to this Consent Decree and the Assistant Attorney General for  
4 Environment and Natural Resources of the Department of Justice  
5 certifies that he or she is fully authorized to enter into the  
6 terms and conditions of this Consent Decree and to execute and  
7 legally bind such Party to this Consent Decree.

8           B.     All Parties agree not to oppose entry of this Consent  
9 Decree unless, pursuant to Section XXXV. (Lodging and Opportunity  
10 For Public Comment), the United States has notified the Settling  
11 Defendants and the State in writing that it no longer supports  
12 entry of the Consent Decree.

13           C.     Each Settling Defendant shall identify, on the attached  
14 signature page, the name, address, and telephone number of an  
15 agent who is authorized to accept service of process by mail on  
16 behalf of that Party with respect to all matters arising under,  
17 or relating to, this Consent Decree. Settling Defendants hereby  
18 agree to accept service in that manner and to waive the formal  
19 service requirements set forth in Rule 4 of the Federal Rules of  
20 Civil Procedure and any applicable local rules of this Court,  
21 including, but not limited to, service of a summons.



1 XXXVII. SECTION HEADINGS

2 The Section headings set forth in this Consent Decree and  
3 its Table of Contents are included for convenience of reference  
4 only and shall be disregarded in the construction and  
5 interpretation of any of the provisions of this Consent Decree.  
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XXXVIII. COUNTERPARTS

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

19 97 SO ORDERED THIS 23<sup>rd</sup> DAY OF June

KIM McLANE WARD LAW  
United States District Judge

SIGNATURE PAGES NOT INCLUDED  
(PAGES 146 - 211 INCLUSIVE)

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in  
2 United States v. ABB Vetco Gray relating to the Casmalia  
3 Resources Hazardous Waste Management Facility Site:

4 FOR THE UNITED STATES OF AMERICA

5  
6 Dated: 9/8/96 *L. J. Schiffer*  
7 LOIS J. SCHIFFER  
8 Assistant Attorney General  
9 Environment and Natural Resources  
10 Division  
11 U.S. Department of Justice  
12 Washington, D.C.

13  
14 Dated: 8/23/96 *Leslie Allen*  
15 LESLIE ALLEN  
16 Senior Attorney  
17 Environmental Enforcement Section  
18 Environment and Natural Resources  
19 Division  
20 U.S. Department of Justice  
21 P.O. Box 7611  
22 Washington, D.C. 20044-7611

23  
24 Dated: 9/9/96 NORA M. MANELLA  
25 United States Attorney  
26 Central District of California

27  
28 by: *Kurt Zimmerman by J. Marchetti*  
KURT ZIMMERMAN  
Assistant United States Attorney  
300 North Los Angeles Street  
Los Angeles, California 90012  
(213) 894-2434

Casmalia Consent Decree

1 Dated:

9/9/96

STEVEN A. HERMAN

STEVEN A. HERMAN  
Assistant Administrator for  
Enforcement and Compliance  
Assurance  
U.S. Environmental Protection  
Agency  
401 M Street, S.W.  
Washington, D.C. 20460

2  
3  
4  
5  
6  
7 Dated:

7/31/96

Michael Northridge

MICHAEL NORTHRIDGE  
Office of Enforcement and  
Compliance Assurance  
U.S. Environmental Protection  
Agency  
401 M Street  
Washington, D.C. 20460

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9  
10  
11  
12  
13 Dated:

7/25/96

Felicia Marcus

FELICIA MARCUS  
Regional Administrator, Region 9  
U.S. Environmental Protection  
Agency  
75 Hawthorne Street  
San Francisco, California 94105

14  
15  
16  
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18  
19 Dated:

7/29/96

Joanne S. Marchetta

JOANNE S. MARCHETTA  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency, Region 9  
75 Hawthorne Street  
San Francisco, California 94105  
(415) 744-1315

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28 Casmalia Consent Decree

ABB VETCO GRAY INC.

Dated: 7/11/96

By: J. Breese

Name: JANICE BREESE

Title: DIRECTOR OF LEGAL SERVICES

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AEROCHEM, INC.

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Dated: July 11, 1996

By: Robert B. Hahn

Name: ROBERT B. HAHN

Title: PRESIDENT

AEROJET-GENERAL CORPORATION

Dated: 6/24/94

By: Suzanne L. Phinney

Name: Suzanne L. Phinney

Title: Vice President, Environmental

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ATLANTIC RICHFIELD COMPANY (ARCO)

Dated: July 10, 1996

By: *CR Knowles* *pac*  
*CR*

Name: C. R. Knowles

Title: Manager, Environmental Remediation



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CASPIAN INC.

Dated: July 22, 1996

By: 

Name: Cyrus A. Jaffari

Title: President

CHEVRON CORPORATION, A DELAWARE CORPORATION

Dated: July 10, 1996

By: 

Name: D. G. Dale

Title: Manager - Superfund & Waste Mgmt.

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CHEVRON CHEMICAL COMPANY, A  
DELAWARE CORPORATION

Dated: July 10, 1996

By: 

Name: D. G. Dale

Title: Manager - Superfund & Waste Mgmt

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CHEVRON LAND AND DEVELOPMENT  
COMPANY, A DELAWARE CORPORATION

Dated: July 10, 1996

By: *D. G. Dale*

Name: D. G. Dale

Title: Manager - Superfund & Waste Mgmt

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CHEVRON PIPE LINE COMPANY,  
A DELAWARE CORPORATION

Dated: July 10, 1996

By: 

Name: D. G. Dale

Title: Manager - Superfund & Waste Mgmt

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CHEVRON U.S.A. INC.,  
A PENNSYLVANIA CORPORATION ON  
BEHALF OF ITSELF AND ITS DIVISIONS  
CHEVRON U.S.A. PRODUCTION COMPANY,  
CHEVRON PRODUCTS COMPANY, CHEVRON  
RESEARCH AND TECHNOLOGY COMPANY,  
CHEVRON PETROLEUM TECHNOLOGY  
COMPANY, AND CHEVRON RESOURCES  
COMPANY AND AS SUCCESSOR TO GULF  
OIL CORPORATION

Dated: July 10, 1996

By: *D.G. Dale*

Name: D. G. Dale

Title: Manager - Superfund & Waste Mgmt

CITY OF OXNARD

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Dated: 7-16-96

By: D. Manuel Lopez

Name: Dr. Manuel M. Lopez

Title: Mayor

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CLAIROL, INC.

Dated: 2/11/96

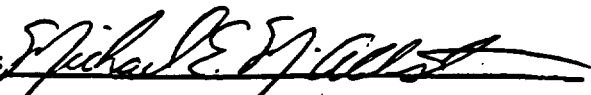
By: *[Signature]*  
Name: J.T. Sullivan  
Title: V.P.



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COASTAL OIL & GAS CORPORATION

Dated: July 16, 1996

By: 

Name: Michael E. McAllister

Title: Director - Environmental & Safety Affairs

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CONOCO INC.

Dated: JUNE 19, 1996

By: George C. Rule

Name: George C. Rule

Title: Business Development Manager  
Exploration Production, North  
America

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COMAP, INC.

Dated: 6/25/96

By:  \_\_\_\_\_

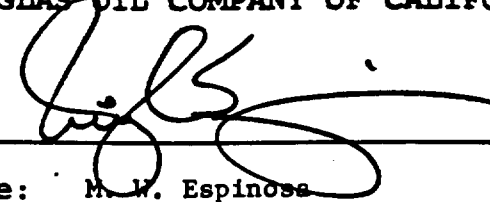
Name: M. W. Espinosa

Title: Vice President & Treasurer

DOUGLAS OIL COMPANY OF CALIFORNIA

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Dated: 6/25/96

By:  \_\_\_\_\_


Name: M. W. Espinosa

Title: Vice President & Treasurer

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DOUGLAS STATIONS, INC.

Dated: 6/25/96

By: 

Name: M. W. Espinosa

Title: Vice President & Treasurer

E.I. DU PONT DE NEMOURS  
AND COMPANY

Dated: 6/21/96

By: 

Name: R. A. Harrington

Vice President and

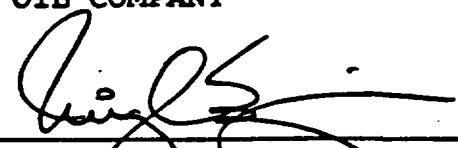
Title: Assistant General Counsel

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KAYO OIL COMPANY

Dated: 6/25/96

By:  \_\_\_\_\_

Name: M. W. Espinosa

Title: Vice President & Treasurer

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DEUTSCH COMPANY

Dated: 9 July 1996

By: *Carl Deutsch*

Name: Carl Deutsch

Title: President



THE DOW CHEMICAL COMPANY

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Dated: July 11, 1996

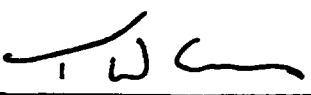
By: 

Name: Brent W. Schindler

Title: Senior Attorney

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Dated: 7-2-96

By: 

Name: Timothy W. Jennings

Title: UP-CRO

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EXXON CORPORATION

Dated: 6/28/96

By: G. T. Theriot Rm.

Name: G. T. Theriot

Title: Environmental & Safety Dept. Manager

SEARIVER MARITIME, INCORPORATED,  
FORMERLY KNOWN AS EXXON SHIPPING  
COMPANY

Dated: July 3, 1996

By: Albert R. Galik


Name: Albert R. Galik

Title: Corporate Secretary

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GEMINI INDUSTRIES, INC.

Dated: July 8, 1996

By: 

Name: MAHKOUD ELGHINDY

Title: President

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GENERAL DYNAMICS CORPORATION

Dated: June 28, 1996

By: *Edward C. Bruntrager*

Name: Edward C. Bruntrager

Title: Vice President &  
General Counsel

GENERAL ELECTRIC COMPANY

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Dated: 7/2/66

By: 

Name: LEONARD H. SHAW

Title: COUNSEL - WESTERN U.S. & PACIFIC AIR REGIONS

GENERAL MOTORS CORPORATION

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Dated: JUNE 24, 1996

By: Don A. Schiemann

Name: DON A. SCHIEMANN

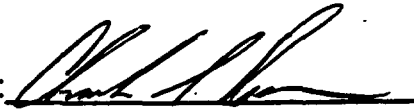
Title: ATTORNEY



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HUGHES AIRCRAFT COMPANY  
AND ITS SUBSIDIARIES

Dated: July 9, 1996

By: 

Name: Chuck S. Ream

Title: Vice President &

Chief Financial Officer

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HUGHES RESEARCH LABORATORIES, INC.

Dated: July 8, 1996

By: Mary Y. Yasui

Name: Mary Y. Yasui

Title: Chief Financial Officer

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HUGHES TELECOMMUNICATIONS &  
SPACE COMPANY AND ITS SUBSIDIARIES

Dated: July 3, 1996

By: *Donald G. Gonzales*

Name: Donald G. Gonzales

for Grant J. Beatson

Title: Treasurer

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LEVER BROTHERS COMPANY

Dated: June 27, 1996

By: Melinda Sweet

Name: Melinda Sweet

Title: General Counsel and Senior  
Vice President

LOCKHEED MARTIN CORPORATION

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Dated: July 8, 1996

By: *William T. Vinson*

Name: William T. Vinson

Title: Vice President

Lockheed Martin Corporation for its former subsidiaries, Lockheed Corporation and Martin Marietta Corporation, and their respective subsidiaries, divisions and affiliates that disposed of waste at the Casmalia Resources Hazardous Waste Management Facility.

MCDONNELL DOUGLAS TECHNOLOGIES,  
INC.

Dated: 8 July 1996

By: 

Name: Dan Summers

Title: Assistant General Counsel

For Service of Process by Mail:

Dan Summers  
McDonnell Douglas Corporation  
P. O. Box 516 (M/C 100-1240)  
St. Louis, MO 63166

(314) 233-2089 - Phone  
(314) 777-1007 - Fax

MCDONNELL DOUGLAS CORPORATION

Dated: 8 July 1986

By: 

Name: Dan Summers

Title: Assistant General Counsel

For Service of Process by Mail:

Dan Summers  
McDonnell Douglas Corporation  
P.O. Box 516 (M/C 100-1240)  
St. Louis, MO 63166

(314) 233-2089 - Phone  
(314) 777-1007 - Fax

MCDONNELL DOUGLAS HELICOPTER  
COMPANY

8 July 1986

Dated: ~~\_\_\_\_\_~~

By: 

Name: Dan Summers

Title: Assistant General Counsel

For Service of Process by Mail:

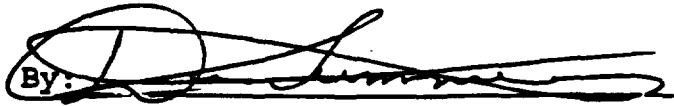
Dan Summers  
McDonnell Douglas Corporation  
P.O. Box 516 (M/C 100-1240)  
St. Louis, MO 63166

(314) 233-2089 - Phone  
(314) 777-1007 - Fax



MCDONNELL DOUGLAS REALTY COMPANY

Dated: 9 July 1996

By: 

Name: Dan Summers

Title: Assistant General Counsel

For Service of Process by Mail:

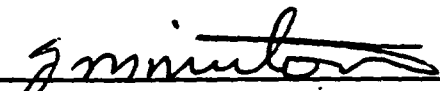
Dan Summers  
McDonnell Douglas Corporation  
P.O. Box 516 (M/C 100-1240)  
St. Louis, MO 63166

(314) 233-2089 - Phone  
(314) 777-1007 - Fax

MOBIL OIL CORPORATION

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Dated: July 17, 1996

By: 

Name: Tom M. Milton

Title: Superfund Response Group Manager

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NEW VICI, INC.  
(FOR GONZALES/MONTEREY VINEYARD)

Dated: July 10, 1996

By: *Paul G. Sessler*

Name: Paul G. Sessler

Title: President

NORTHROP GRUMMAN CORPORATION

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Dated: July 2, 1996

By: Norman L. Sealander

Name: 

Title: Manager, Corporate  
Environmental Management

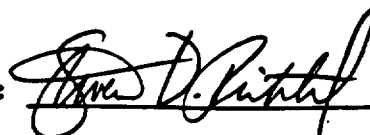
OIL AND SOLVENT PROCESS COMPANY,  
A Subsidiary of CHEMICAL WASTE  
MANAGEMENT, INC.

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Dated:

July 19, 1996

By:



*SDR*  
Name: Steven D. Richtel

Title: Group Remedial Projects Manager

Casmalia Consent Decree

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PACIFIC GAS & ELECTRIC COMPANY

Dated: June 27, 1996

By: Bruce R. Worthington

Name: Bruce R. Worthington

Title: Senior Vice President and  
General Counsel

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**PACIFIC OFFSHORE PIPELINE COMPANY**

Dated: July 8, 1996

By: *mjwalker*

Name: Michael J. Walker *sub*

Title: Vice President

THE PROCTER & GAMBLE MANUFACTURING  
COMPANY

Dated: 7/2/96

By: E. G. Nelson

Name: E.G. Nelson

Title: Vice President - Finance

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REYNOLDS METALS COMPANY

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Dated: July 3, 1996

By: 

Name: James E. McKinnon

Title: Chief Environmental Counsel

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RGGL CORPORATION

Dated: JUNE 19, 1996

By: Gary J. DiSano

Name: GARY J. DISANO

Title: VICE PRESIDENT  
R.G.G.L. CORPORATION

RHONE-POULENC INC. (including the former  
Rhone-Poulenc Basic Chemicals Company and  
Stauffer Chemical Company)

Dated: July 29, 1996

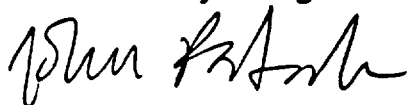
By: 

Name: John M. Iatesta

Title: Assistant Secretary

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Dated this 21<sup>st</sup> day of August 1996



John R. Stocker  
Vice President-Law  
Rockwell International Corporation

CASMALIA CONSENT DECREE

ROHR, INC., FORMERLY ROHR  
INDUSTRIES, INC.

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3 Dated: July 10, 1996

By: *William Billingslea, Jr.*

4 Name: William Billingslea, Jr.

5 Corporate Counsel and

6 Title: Assistant Secretary

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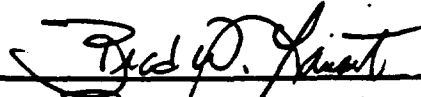
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ROMIC ENVIRONMENTAL TECHNOLOGIES CORPORATION

Dated: July 9, 1996

By:   
Name: Brad W. Lambert  
Title: Vice President Admin

Casualty Consent Decree

TOTAL P.02

Dated: 7/15/96

By: Frank R. Fossati

Name: Frank R. Fossati

Title: Manager Remediation,  
HSE - Remediation West  
Shell Oil Company

\* See list of 39 specific Shell affiliates,  
subsidiaries and related entities ~~on the~~  
listed on Appendix D  
~~attached letter dated 7/8/96,~~ that Shell  
is entering this agreement, on behalf of.

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SOUTHERN CALIFORNIA GAS COMPANY

Dated: July 8, 1996

By: Wallace Leifer

Name: Wallace Leifer

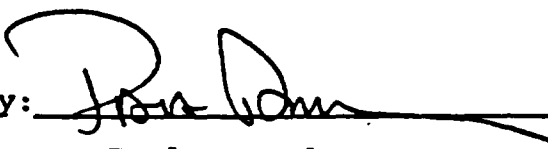
Title: Director of Buildings and Real Estate



SOUTHERN PACIFIC TRANSPORTATION

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Dated: July 1, 1996

By: 

Name: Paula Amanda

Title: Assistant General Attorney

SQUARE D COMPANY

Dated: 7/2/96

By: Walter W. Kurczewski

Name: Walter W. Kurczewski

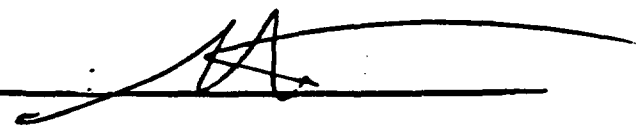
Title: Vice President

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TELEFLEX INCORPORATED

Dated: \_\_\_\_\_

By:  \_\_\_\_\_

Name: Steven K. Chance


Title: Vice President & General Counsel

Casmalia Consent Decree

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TEXACO INC.

Dated: July 30, 1996

By: 

Name: David G. Yetter

Title: President, EHS Division

TODD PACIFIC SHIPYARDS CORP.

Dated: July 9, 1996

By: Michael G. Marsh

Name: Michael G. MARSH

Title: Secretary & General Counsel

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UNION OIL COMPANY OF CALIFORNIA,  
INC. DBA UNOCAL

Dated: July 1, 1996

By: Robert King Jr.

ms Name: Robert J. King Jr.

Title: Manager, Superfund Programs

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PUREGRO COMPANY

Dated: July 9, 1996

By: 

MB Name: Richard K. Jemison  
General Manager- Real Estate Dev. &  
Title: President-Unocal Land & Dev. Company

UNION PACIFIC RESOURCES COMPANY

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Dated: 7-02-96

By: Joseph A. Hasala Jr.

Name: Joseph A. Hasala Jr.

Title: Vice President and  
General Counsel *JAH*



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~~UNION PACIFIC RAILROAD~~

Dated: July 8, 1996

By: *Paul A. Conley, Jr.*

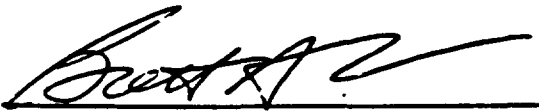
Name: Paul A. Conley, Jr.

Title: Assistant Vice President - Law

USPCI FOR SOLVENT SERVICE

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Dated: 7-3-96

By: 

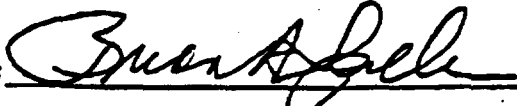
Name: BRETT A. HICKMAN

Title: CORPORATE COUNSEL

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ZENECA INC.

Dated: July 10, 1996

By: 

Name: Brian A. Spiller

Title: General Manager, Corporate  
Environmental Services

ZYCON CORPORATION

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Dated: 7-10-96

By: Joseph U. Brechel  
Name: Joseph U. Brechel  
Title: Senior V.P.

**APPENDIX A:**  
**STATEMENT OF WORK**

CASMALIA CONSENT DECREE  
APPENDIX A:  
STATEMENT OF WORK

# STATEMENT OF WORK

## 1.0 INTRODUCTION, DEFINITIONS, AND GENERAL PROVISIONS

### 1.1 Introduction

1.1.1 This Statement of Work ("SOW") details the tasks and activities to be undertaken by the Settling Defendants in compliance with the Consent Decree.

1.1.2 The Elements of Work and their respective Components are the following:

#### 1.1.2.1 Early Actions Element of Work

- A. Short-term Collection/Treatment/Disposal of Contaminated Liquids Component
- B. Interim Collection/Treatment/Disposal of Contaminated Liquids Component
- C. Pesticides/Solvents Landfill Cap Design Component
- D. Pesticides/Solvents Landfill Cap Construction Component
- E. Other Landfill Caps Design Component
- F. Other Landfill Caps Construction Component

#### 1.1.2.2 Engineering Evaluation/Cost Analysis ("EE/CA") Response Action Element of Work

- A. EE/CA Component
- B. EE/CA Response Action Design Component
- C. EE/CA Response Action Construction Component
- D. EE/CA Response Action Operation and Maintenance Component

#### 1.1.2.3 Remedial Investigation/Feasibility Study ("RI/FS") Response Action Element of Work

- A. RI/FS Component
- B. Final Response Action Design Component
- C. Final Response Action Construction Component
- D. Operation and Maintenance Base Period Component

#### 1.1.2.4 Routine Site Maintenance Element of Work

#### 1.1.2.5 Routine Groundwater Monitoring Element of Work

- A. Water Level Monitoring Component

**B. Chemical Quality Monitoring Component**

**1.1.2.6 Community Relations Support Element of Work**

**1.1.2.7 Waste Database Support and Other Assistance Element of Work**

**1.1.2.8 Cost Estimates and Funding Limits Element of Work**

**1.2 Definitions**

**1.2.1 Unless otherwise expressly provided herein, terms used in this SOW which are defined in the Consent Decree shall have the meaning assigned to them in the Consent Decree. For convenience, definitions of certain terms defined in the Consent Decree, as well as certain other terms that are used in this SOW, are provided, below.**

**1.2.2 "CNS" shall mean the Casmalia Neutralization System, including all tanks, vessels, and interconnecting lines.**

**1.2.3 "Day" shall mean a calendar day, unless expressly stated to be a Working Day. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this SOW, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next Working Day.**

**1.2.4 "Element(s) of Work" shall mean the specific work elements as set forth in this SOW. Each Element of Work may have multiple Components as specified in this SOW.**

**1.2.5 "Final Cost Estimate" shall mean the final revision of the cost estimates established pursuant to Section XVIII, Paragraph A.3 (Cost Estimates and Fund Transfers) of the Consent Decree and Section 2.15 of this SOW of the total present worth costs to be incurred to complete 30-Year O&M Work and Post-30 Year O&M Work and associated governmental/regulatory oversight determined in accordance with the terms of the Consent Decree and this SOW. The Final Cost Estimate shall be separated into sub-components of cost as set forth in Section 2.15 of this SOW.**

**1.2.6 "Initial Cost Estimate" shall mean the preliminary estimates established pursuant to Section XVIII, Paragraph A.1 (Cost Estimates and Fund Transfers) of the Consent Decree and Section 2.15 of this SOW of the total present worth costs to be incurred to complete all Site Work and Future Response Actions determined in accordance with the terms of the Consent Decree and this SOW.**

The Initial Cost Estimate shall be separated into sub-components of cost as set forth in Section 2.15 of this SOW.

- 1.2.7 "Initial Phase II Work" shall mean all Phase II Work, except for the O&M Base Period Work. Initial Phase II Work shall be complete as of the date set forth in EPA's written acceptance of the Initiation of Operation Report, Operation and Maintenance Base Period Component, pursuant to Section 5.7.4 of this SOW.
- 1.2.8 "Interim Cost Estimate" shall mean the revised cost estimates established pursuant to Section XVIII, Paragraph A.2 (Cost Estimates and Fund Transfers) of the Consent Decree and Section 2.15 of this SOW of the total present worth costs to be incurred to complete all Site Work and Future Response Actions determined in accordance with the terms of the Consent Decree and this SOW. The Interim Cost Estimate shall be separated into sub-components of cost as set forth in Section 2.15 of this SOW.
- 1.2.9 "Operation and Maintenance" or "O & M" shall mean all tasks and activities required to maintain the effectiveness of the response actions implemented under the Phase I and Initial Phase II Work. For purposes of the Consent Decree, O&M will be divided into three time periods: (a) O&M activities performed by Settling Defendants during the first five (5) years of O&M ("O&M Base Period Work"); (b) O&M activities performed for the next thirty (30) years (i.e. years 6 through 35 of O&M ("30-Year O&M Work"); and (c) O&M activities to be performed after the 30-Year O&M Work ("Post-30 Year O&M Work"). Except as set forth in Section XVII (Escrow Accounts/Financing the Work), Section XVIII (Cost Estimates and Fund Transfers), Paragraphs A.3 and A.4 of Section XXV (Covenants Not to Sue/Reservation of Rights), and Section XXVI (Effect of Settlement/Contribution Protection) of the Consent Decree, Operation and Maintenance (O&M) shall not include the costs or performance of governmental/regulatory oversight, including enforcement, of the O&M Work.
- 1.2.10 "O&M Base Period" shall mean the five (5) year period beginning on the date set forth in EPA's written acceptance of the Initiation of Operation Report, Operation and Maintenance Base Period Component, pursuant to Section 5.7.4 of this SOW.
- 1.2.11 "O&M Base Period Work" shall mean the implementation of all tasks and activities of the Operation and Maintenance Base Period Component of Work, pursuant to Section 2.10.5 of this SOW, necessary to complete the O&M performed during the O&M Base Period.



- 1.2.12 "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations to be achieved by the Settling Defendants in implementing the Elements and Components of Work. The Performance Standards for Phase I and Phase II Work are specified in Section 2.0 of this SOW. To the extent not defined in this SOW, Performance Standards shall be set forth, as appropriate, in a future EPA ROD or other response action decision document(s), later amendment(s) to this SOW, or in EPA approvals and decisions made under this SOW.
- 1.2.13 "Phase I Work" shall mean the performance of all tasks and activities necessary to implement the Elements and Components of Work, listed below, and any modifications thereto, in accordance with the requirements of the Consent Decree. The completion of all tasks and activities in Phase I Work is not a prerequisite to initiating tasks and activities in Phase II Work.

1.2.13.1 Early Actions Element of Work

- A. Short-Term Collection/Treatment/Disposal of Contaminated Liquids Component and Interim Collection/Treatment/Disposal of Contaminated Liquids Component, collectively, for the shorter of six (6) years from the date of lodging of the Consent Decree or until the date set forth in EPA's written acceptance of the Initiation of Operation Report, EE/CA Response Action Operation and Maintenance Component, Section 5.6.4 of this SOW. In no event, however, shall Settling Defendants collect, treat, and dispose of contaminated liquids for less than five (5) years from the date of lodging of the Consent Decree. The Short-Term and Interim Collection/Treatment/Disposal of Contaminated Liquids Components of Work shall cease to be Phase I Work as of the effective date of EPA's written acceptance of the "Phase I Completion of Obligation Report for Short-Term and Interim Collection/Treatment/Disposal of Contaminated Liquids Components of Work," as set forth in Section 5.4 of this SOW.

Treatment and disposal of the CNS sludges and cleaning of the CNS for potential re-use at the Site.

- B. Pesticides/Solvents Landfill Cap Design Component.
- C. Pesticides/Solvents Landfill Cap Construction Component.
- D. Other Landfill Caps Design Component.

- 1.2.13.2      **Engineering Evaluation/Cost Analysis ("EE/CA") Response Action Element of Work.**
- A.      **EE/CA Component.**
  - B.      **EE/CA Response Action Design Component.**
- 1.2.13.3      **Remedial Investigation/Feasibility Study ("RI/FS") Response Action Element of Work**
- A.      **RI/FS Component.**
  - B.      **Final Response Action Design Component.**
- 1.2.13.4      **Routine Site Maintenance Element of Work**
- A.      **For three (3) years, starting on the first day of the fourteenth (14th) week after the date of lodging of the Consent Decree. The Routine Site Maintenance Element of Work shall cease to be Phase I Work as of the effective date of EPA's written acceptance of the "Phase I Completion of Obligation Report for Routine Site Maintenance Element of Work," as set for in Section 5.4 of this SOW.**
- 1.2.13.5      **Routine Groundwater Monitoring Element of Work**
- A.      **For three (3) years, starting on the first day of the twenty seventh (27th) week after the date of lodging of the Consent Decree. The Routine Groundwater Monitoring Element of Work shall cease to be Phase I Work as of the effective date of EPA's written acceptance of the "Phase I Completion of Obligation Report for Routine Groundwater Monitoring Element of Work," as set for in Section 5.4 of this SOW.**
- 1.2.13.6      **Community Relations Support Element of Work**
- A.      **For three (3) years, starting on the date of lodging of the Consent Decree. The Community Relations Support Element of Work shall cease to be Phase I Work as of the effective date of EPA's written acceptance of the "Phase I Completion of Obligation Report for Community Relations Support Element of Work," as set for in Section 5.4 of this SOW.**

1.2.13.7 Waste Database Support and Other Assistance Element of Work

1.2.13.8 Cost Estimates and Funding Limits Element of Work

1.2.14 "Phase II Work" shall mean any Work to be implemented at the Site that is not within Phase I Work or 30-Year and Post-30 Year O&M Work. Phase II Work shall mean the performance of all tasks and activities necessary to implement the Elements and Components of Work listed below; any modifications thereto, in accordance with the requirements of the Consent Decree; and any response actions selected by EPA under a future ROD or other response action decision document(s), as appropriate and necessary. Except as set forth in Section XVII (Escrow Accounts/Financing The Work) and Section XVIII (Cost Estimates and Fund Transfers) of the Consent Decree, Phase II Work shall not include the costs or performance of governmental/regulatory oversight, including enforcement.

1.2.14.1 Early Actions Element of Work

A. Interim Collection/Treatment/Disposal of Contaminated Liquids Component starting on the day following the end of the period defined in "Phase I Work" at Section 1.2.13.1.A of this SOW, and ending as of the date set forth in EPA's written acceptance of the Initiation of Operation Report, EE/CA Response Action Operation and Maintenance Component, Section 5.6.4 of this SOW.

B. Other Landfill Caps Construction Component.

1.2.14.2 Engineering Evaluation/Cost Analysis ("EE/CA") Response Action Element of Work

A. EE/CA Response Action Construction Component.

B. EE/CA Response Action Operation and Maintenance Component.

1.2.14.3 Remedial Investigation/Feasibility Study ("RI/FS") Response Action Element of Work

A. Final Response Action Construction Component.

B. Operation and Maintenance Base Period Component.

**1.2.14.4 Routine Site Maintenance Element of Work**

- A. Starting on the day following the end of the period defined in "Phase I Work" at Section 1.2.13.4.A of this SOW, and ending as of the date set forth in EPA's written acceptance of the Initiation of Operation Report, Operation and Maintenance Base Period Component, Section 5.7.4 of this SOW.

**1.2.14.5 Routine Groundwater Monitoring Element of Work**

- A. Starting on the day following the end of the period defined in "Phase I Work" at Section 1.2.13.5. A of this SOW, and ending as of the date set forth in EPA's written acceptance of the Initiation of Operation Report, Operation and Maintenance Base Period Component, Section 5.7.4 of this SOW.

**1.2.14.6 Community Relations Support Element of Work**

- A. Beginning on the day following the end of the period defined in "Phase I Work" at Section 1.2.13.6.A of this SOW, and ending as of the date set forth in EPA's written acceptance of the Initiation of Operation Report, Operation and Maintenance Base Period Component, Section 5.7.4 of this SOW.

1.2.15 "Residual" shall mean any solid waste, sludge, residue, contaminated media, or other by-product of the treatment, storage, or disposal of any water or liquids generated in the performance of the Work. This term also includes contaminated materials produced by any excavation, drilling, or soil dislocation resulting from performance of the Work. A residual is not necessarily a hazardous waste.

1.2.16 "Settling Defendants" shall mean all Parties listed in Appendix C of the Consent Decree and any related entities specifically identified therein and in Appendix D of the Consent Decree, as provided in Section IV (Parties Bound) of the Consent Decree.

1.2.17 "Site" or "Casmalia Site" shall mean generally the Casmalia Resources Hazardous Waste Management Facility, encompassing approximately 252 acres, located approximately 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 to this SOW. Site shall include the areal extent of contamination that is presently located in the vicinity of the Casmalia facility and all suitable areas in very close proximity to the contamination necessary for

the implementation of the response action and any areas to which such contamination migrates.

- 1.2.18 "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any hazardous waste under Section 1004(5) of RCRA or hazardous constituent as defined at 40 C.F.R. § 260.10 pursuant to RCRA; (4) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (5) any hazardous substance under California Health and Safety Code §§ 25316 and 25317.
- 1.2.19 "Work" shall mean any or all tasks and activities included or to be included in Phase I Work, Initial Phase II Work and O&M under the Consent Decree, except those required by Section XXVIII (Retention of Records) of the Consent Decree. Except as provided otherwise in the Consent Decree, Work shall not include the costs or performance of governmental/regulatory oversight, including enforcement.
- 1.2.20 "Zone 1" shall mean the area within the Casmalia Resources Hazardous Waste Management Facility boundary, depicted generally on the map attached to this SOW. This definition is for the convenience of identifying geographic areas of the Site for purposes of this SOW, and should not be construed as determining the Site boundary or the applicability of the permit exemption at Section 121(e) of CERCLA and § 300.5 of the National Contingency Plan ("NCP").
- 1.2.21 "Zone 2" shall mean the area that encompasses the extent of Site-related contamination or potential contamination outside of the Casmalia Resources Hazardous Waste Management Facility boundary, depicted generally on the map attached to this SOW. This definition is for the convenience of identifying geographic areas of the Site for purposes of this SOW, and should not be construed as determining the Site boundary or the applicability of the permit exemption at Section 121(e) of CERCLA and § 300.5 of the NCP.

### 1.3 General Provisions

- 1.3.1 Except as specified below in this Section 1.3.1, the Work under this SOW and any final plans, designs, reports, schedules, or proposals developed under this SOW shall be implemented only after EPA's written approval.
- 1.3.1.1 Settling Defendants may propose modifications to the Work being performed under this SOW or to final plans, designs, reports, or schedules developed under this SOW through a Technical Memorandum ("TM"), and shall obtain EPA's written

approval of the TM prior to implementing such modifications.

- 1.3.1.2 Settling Defendants shall use a TM: 1) to propose methods to effectively use and improve the Gallery Well, Sump 9B, PSCT, and PCT extractions systems pursuant to the Interim Collection/Treatment/Disposal of Contaminated Liquids Component under Section 2.8.4 of this SOW, and 2) pursuant to Section VII (Work To Be Performed) of the Consent Decree, and Section 1.3.10 of this SOW, to propose, if there is insufficient money in the Phase II Work Account, the Phase II tasks and activities that can be undertaken with the available funding. Settling Defendants may use a TM to propose that meeting an applicable or relevant and appropriate requirement ("ARAR") under CERCLA is not practicable.
- 1.3.1.3 Settling Defendants shall not use a TM in lieu of submitting the plans, designs, reports, and schedules required by this SOW.
- 1.3.1.4 A TM is not required for non-material field changes approved by EPA or for schedule changes that expedite the submission of deliverables and/or milestone events.
- 1.3.2 Settling Defendants shall perform, at their expense and without limitation as to its cost or duration, the Phase I Work. The Phase I Work shall be performed in accordance with the Consent Decree, including, but not limited to, this SOW; all standards, plans, specifications, and schedules set forth in or developed pursuant to the Consent Decree and this SOW; and any modifications or amendments thereto made pursuant to the terms of the Consent Decree.
- 1.3.3 Settling Defendants shall begin performance of the Work, as set forth in this SOW, including its schedules, no later than seven (7) days from lodging of the Consent Decree. Settling Defendants shall not, however, be required to commence construction of any permanent facilities until the Consent Decree has been entered by the Court or unless such construction is agreed to by EPA and the Settling Defendants. In the event that the Consent Decree is not entered by the District Court within twelve (12) months from the date of its lodging, the Settling Defendants' obligation to perform or to finance any Work prior to entry of this Consent Decree shall terminate, at the Settling Defendants' option, until the date of entry of this Consent Decree by the District Court. Any delay in the commencement of construction of permanent facilities or in the implementation of other tasks, activities, and obligations caused by a delay in the entry of the Consent Decree shall extend, pro tanto, the dates in the

schedules in Section 5.0 of this SOW.

- 1.3.4 Except as provided in Section XIV, Paragraphs C. and D. (Certifications of Completion) of the Consent Decree, Settling Defendants' obligation to perform and pay for Phase I Work shall cease as of the effective date of EPA's written acceptance of the Completion of Phase I Work Report (Section 5.4 of this SOW). Pursuant to Section XIV, the following Elements or Components of Work shall cease to be Phase I Work obligations and become Phase II Work as follows: 1) the Short-Term and Interim Collection/Treatment/Disposal of Contaminated Liquids Components of Work shall cease to be Phase I Work as of the effective date of EPA's written acceptance of the "Phase I Completion of Obligation Report for Short-Term and Interim Collection/Treatment/Disposal of Contaminated Liquids Components of Work," as set forth in Section 5.4 of this SOW; 2) the Routine Site Maintenance Element of Work shall cease to be Phase I Work as of the effective date of EPA's written acceptance of the "Phase I Completion of Obligation Report for Routine Site Maintenance Element of Work," as set forth in Section 5.4 of this SOW; 3) the Routine Groundwater Monitoring Element of Work shall cease to be Phase I Work as of the effective date of EPA's written acceptance of the "Phase I Completion of Obligation Report for Routine Groundwater Monitoring Element of Work," as set forth in Section 5.4 of this SOW; and 4) the Community Relations Support Element of Work shall cease to be Phase I Work as of the effective date of EPA's written acceptance of the "Phase I Completion of Obligation Report for Community Relations Support Element of Work," as set forth in Section 5.4 of this SOW.
- 1.3.5 The Final Cost Estimate, pursuant to Section XVIII, Paragraph A.3 (Cost Estimates and Fund Transfers) of the Consent Decree, and the Cost Estimates and Funding Limits Element of Work at Section 2.15 of this SOW, and the Waste Database Support and Other Assistance Element of Work at Section 2.14 of this SOW are Phase I Work, but their completion shall not be a condition precedent to the certification of completion of Phase I Work. Provided, however, that notwithstanding the certification of completion of Phase I Work, pursuant to Section XIV (Certifications of Completion) of the Consent Decree, the Settling Defendants shall remain obligated to pay for, perform, and complete the Final Cost Estimate and the Waste Database and Other Assistance Element of Work in accordance with Sections 2.15 and 2.14, respectively.
- 1.3.6 The Settling Defendants shall perform Phase II Work, not otherwise performed by Third Parties, using monies received from the Cashout Settlement(s); from actions, claims, settlements or other efforts pursuant to Section XXIII (Coordinated Enforcement Recovery) of the Consent Decree; and/or from other sources not precluded by the Consent Decree. Settling Defendants shall not be

obligated under the terms of the Consent Decree to pay for any Phase II Work, except that Settling Defendants shall pay their Administrative Costs associated with and relating to the Phase II Work and shall not be entitled to withdraw or use funds from the Casmalia Consent Decree Escrow Account to pay these Costs. Nothing in this Section 1.3.6 shall be construed to preclude the assessment of stipulated penalties against, or payment of stipulated penalties by, the Settling Defendants for violations related to Phase II Work as provided under Section XXII (Stipulated Penalties) of the Consent Decree.

- 1.3.7 The detailed scope of the Elements and Components of Phase II Work shall be determined in accordance with the Consent Decree and this SOW. The full scope of response actions associated with Phase II Work shall be set forth by EPA in an EE/CA Action Memorandum or other EPA response action decision document, after completion of the EE/CA Component of Work at Section 2.9.2 of this SOW, and a ROD, after completion of the RI/FS Component of Work at Section 2.10.2 of this SOW, which taken together, and with other response action decision documents, as appropriate and necessary, will determine the final remedy for the Site.

Settling Defendants shall perform Phase II Work in accordance with the Consent Decree, including, but not limited to, this SOW; all applicable standards, plans, specifications, and schedules set forth in or developed pursuant to the Consent Decree and this SOW; any applicable modifications or amendments thereto made pursuant to the terms of the Consent Decree, and any future EPA ROD or other response action decision document(s), as appropriate and necessary.

- 1.3.8 Settling Defendants are not obligated to begin Phase II Work until \$3 million is available for performance of the Phase II Work.
- 1.3.9 Settling Defendants are not obligated to perform Phase II Work absent the receipt of sufficient funds. However, in the event of insufficient funds, Settling Defendants shall perform that Work that can be performed with available funds pursuant to the determination in Section 1.3.10, below. The Settling Defendants shall be authorized to withdraw advance payments from the Phase II Work Account as set forth below to fund the Phase II Work.

- 1.3.9.1 The Escrow Agreement shall instruct the Escrow Manager to disburse money from the Phase II Work Account to the Settling Defendants quarterly as authorized by the Annualized Phase II Work Budget Estimate, including updates thereto, required to be submitted by the Settling Defendants pursuant to Section XVII, Paragraph J.2. (Escrow Accounts/Financing the Work) of the



Consent Decree, and Sections 3.18, 4.1.1, and 5.4 of this SOW. Although any quarterly payment to the Settling Defendants may exceed the budgeted amount for that quarter after notice to EPA, the Escrow Agreement shall instruct the Escrow Manager not to disburse money over four consecutive quarters that is in excess of the Annualized Phase II Work Budget Estimate in the absence of written approval by EPA.

If the Settling Defendants request money from the Phase II Work Account in excess of the Annualized Phase II Work Budget Estimate, the Settling Defendants shall submit to EPA for approval, justification of the need for funds in excess of such budget and steps to be taken to bring the project back within budget, if possible, and to minimize future cost overruns. Settling Defendants shall maintain records accounting for all Work expenditures paid for by money from the Escrow Account and detailing Site operations related to Escrow Account expenditures. EPA shall be entitled, upon reasonable notice to the Settling Defendants, to audit Settling Defendants' accounting and operations records related to the Escrow Account expenditures.

1.3.9.2 If insufficient money is available in the Phase II Work Account to fund the Work pursuant to Section 1.3.9.1, above, Settling Defendants shall notify EPA, as specified in Section 5.4 of this SOW, of the unavailability of funds. In the event that the insufficient funding results in suspension of performance of the unfunded Phase II Work, Settling Defendants shall re-start the Work as soon as practicable after such additional funds become available. Settling Defendants shall not unnecessarily delay re-starting the Work.

1.3.10 If, pursuant to Section VII, Paragraph B.4 (Work To Be Performed) of the Consent Decree, there is insufficient money in the Phase II Work Account to fund the Work, Settling Defendants shall propose to EPA through a Technical Memorandum, pursuant to Section 1.3.1, above, the Phase II Work tasks and activities that can be undertaken with the available funding, and the tasks and activities that need to or can be deferred for practical technical considerations. The TM shall include a proposed budget and schedule for the tasks and activities to be performed with the available funding.

1.3.11 Settling Defendants' obligations under the Consent Decree to perform Phase II Work will cease on the effective date, as provided in Section XIV

**(Certifications of Completion) of the Consent Decree for the Phase II Work.**

- 1.3.12 The specific tasks and activities to be performed during the 30-Year O&M Work and the Post-30 Year O&M Work are not specified under this SOW or the Consent Decree.**
- 1.3.13 Notwithstanding any approvals that may be granted by the United States or other governmental entities, the Settling Defendants shall not be relieved of any liability arising from or relating to their acts or omissions or the acts or omissions of any of their contractors, subcontractors, or any other person acting on their behalf in the performance of the Work or their failure to perform or complete the Work.**
- 1.3.14 Neither the SOW, the plans, any standards, specifications, and schedules, nor any approvals, permits or other permissions that may be granted by EPA related to the Consent Decree constitute a warranty or representation of any kind by the United States that this SOW, plans, standards, specifications, schedules, or ROD or other EPA response action decision documents, when implemented, will achieve the Performance Standards established or to be established, and shall not foreclose the United States from seeking performance of all terms and conditions of the Consent Decree or any EPA ROD or other EPA response action decision, the enforcement of which is not otherwise precluded by the Consent Decree. The Work performed by the Settling Defendants pursuant to the Consent Decree shall include the obligation to achieve the Performance Standards.**
- 1.3.15 Except as otherwise permitted by law and as approved by EPA, any facilities constructed or put in place under the terms of the Consent Decree shall not be used to treat Waste Materials other than those associated with the Site.**
- 1.3.16 Settling Defendants shall be jointly and severally responsible for the performance of the Settling Defendants' obligations under the Consent Decree. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the Work, tasks, and activities provided for under the Consent Decree, the remaining Settling Defendants shall complete all such requirements.**
- 1.3.17 All Work, tasks, and activities undertaken by Settling Defendants pursuant to this SOW and the Consent Decree, shall be performed in accordance with all applicable federal and state laws and regulations. Except as allowed by CERCLA and the NCP, Settling Defendants shall also comply with applicable or relevant and appropriate requirements ("ARAR") under federal environmental or state environmental or facility siting laws as determined by**

EPA pursuant to this SOW and the Consent Decree and as authorized by law. Only those state standards that are promulgated, are identified by the state in a timely manner, and are more stringent than federal requirements may be applicable or relevant and appropriate.

- 1.3.18 In accordance with § 300.415(i) of the NCP, removal actions taken pursuant to CERCLA section 106 under this SOW and the Consent Decree shall, to the extent practicable considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Waivers described in § 300.430(f)(1)(ii)(C) of the NCP may be used for removal actions. Consistent with these provisions, the Settling Defendants may propose to EPA, through a Technical Memorandum, pursuant to Section 1.3.1 of this SOW, that meeting a particular ARAR is not practicable.
- 1.3.19 The Consent Decree, including this SOW, is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.
- 1.3.20 As provided in Section 121(e) of CERCLA and § 300.5 of the NCP, no Federal, State, or local permits shall be required for any portion of the Work conducted entirely on-site. For purposes of this SOW and the Consent Decree, the term "on-site" means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action. Where any portion of the Work requires a Federal or State permit or authorization, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or authorizations. Settling Defendants or their designee shall be required to obtain and hold any permits needed for implementation of the Phase I and Phase II Work.
- 1.3.21 The Settling Defendants may seek relief under the provisions of Section XX (Force Majeure) of the Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.
- 1.3.22 Wherever commencement of Work or the Period of Performance in this SOW is linked to the Settling Defendants' submission of an Initiation of Operation Report, the date that such Work commences or ends is subject to EPA's written acceptance of that Report. If EPA agrees that necessary conditions have been satisfied, the date Work commenced or Performance ended will be retroactive to the date of the Settling Defendant's submission of the Initiation of Operation Report. If EPA does not agree, then the date shall extend until EPA determines that the necessary conditions have been satisfied.

- 1.3.23 Each Completion of Obligation Report and Completion of Work Phase Report shall contain a statement that the Work Component, Element, Phase, or other obligation, as applicable, has been completed in full satisfaction of the requirements of the Consent Decree, as follows:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate, and complete, and that the requirements of the Consent Decree have been fully satisfied. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Settling Defendants' statement shall be signed by Settling Defendants' Project Coordinator, or a responsible corporate official of a Settling Defendant on behalf of all of the Settling Defendants.

- 1.3.24 All as-built drawings shall be signed and stamped by a registered Professional Engineer.
- 1.3.25 Settling Defendants shall integrate and coordinate, as appropriate, each Element of Work with all other Elements of Work, and with all other Site operations and activities.
- 1.3.26 During performance of the Work, Settling Defendants shall implement, install, and/or use appropriate controls to restrict unauthorized access to hazardous waste source areas, to control transport of contaminants in Zones 1 and 2, and to help prevent release of and exposure to contaminants of concern in Zones 1 and 2. Access controls shall include fencing and warning signs. Controls to prevent the transport and release of contaminants during performance of the Work shall include managing runoff and minimizing sediment transport.
- 1.3.27 During construction activities, Settling Defendants shall implement dust control measures to control the transport of contaminants in Zones 1 and 2. Dust control activities shall include standard engineering and construction practices, or the use of water, polymeric, chemical or physical surface sealers.
- 1.3.28 In the event that the performance of Work under this SOW results in the alteration, destruction or abandonment of any needed facility at the Site, Settling Defendants shall either repair or replace, as necessary, such facility with one that provides the same level of control or function. The need and schedule for repair or replacement shall be determined by EPA. Any repair or replacement is subject to the written approval of EPA.

1.3.29 Settling Defendants shall, prior to any shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to EPA of such shipment of Waste Material. However, this notification requirement shall not apply to any shipments when the total volume of all such shipments to an out-of-state waste management facility will not exceed 10 cubic yards.

1.3.29.1 The written notification shall include the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state or to a facility in another state.

1.3.29.2 The identity of the receiving facility and the state will be determined by the Settling Defendants. The Settling Defendants shall provide the information required, above, as soon as practicable before the Waste Material is actually shipped.

1.3.30 Whenever this SOW uses the terms "include" or "includes," they shall mean "include, but not limited to," and "includes, but not limited to," respectively.

1.3.31 Unless otherwise specified in writing by EPA, Settling Defendants shall submit to EPA, three (3) copies of all Deliverables, and two (2) copies of other submissions required by this SOW.

**2.0 DESCRIPTION OF WORK TO BE PERFORMED, OBJECTIVES,  
PERFORMANCE STANDARDS, AND PERIOD OF PERFORMANCE**

- 2.1 This section sets forth the Elements and Components of Work to be performed pursuant to the Consent Decree, and the objectives, performance standards, and period of performance for the Work.
- 2.2 Settling Defendants shall demonstrate achievement of the Performance Standards set forth in this Section 2.0.
- 2.3 Unless otherwise specified, achievement of the Performance Standards shall be demonstrated at representative locations proposed by the Settling Defendants and approved by EPA.
- 2.4 All Work performed and proposals made by the Settling Defendants are subject to EPA's written approval.
- 2.5 All Work performed by the Settling Defendants shall be performed in accordance with the deliverables and schedules set forth under Sections 4.0 and 5.0, respectively.
- 2.6 [Intentionally left blank]
- 2.7 Unless otherwise specified, Settling Defendants shall treat and dispose of, or arrange and provide for the treatment and disposal of, Residuals and Waste Materials generated from implementing the Work.
- 2.8 Early Actions Element of Work
- 2.8.1 The Early Actions Element of Work includes the following Components of Work: 1) Short-Term Collection/Treatment/Disposal of Contaminated Liquids Component, 2) Interim Collection/Treatment/Disposal of Contaminated Liquids Component, 3) Pesticides/Solvents Landfill Cap Design Component, 4) Pesticides/Solvents Landfill Cap Construction Component, 5) Other Landfill Caps Design Component, and 6) Other Landfill Caps Construction Component.
- 2.8.2 The objective of this Element of Work and each of its Components is to implement protective measures at the Site as early as practicable. Unless otherwise specified, the response actions taken pursuant to this Element of Work shall be implemented pursuant to CERCLA removal authorities.
- 2.8.3 Short-Term Collection/Treatment/Disposal of Contaminated Liquids Component
- 2.8.3.1 The objective of this Component of Work is to control and

stabilize conditions at the Site so as to prevent and/or mitigate imminent and substantial endangerments and/or potential emergency situations until the commencement of the Interim Collection/Treatment/Disposal of Contaminated Liquids Component.

2.8.3.2 The Performance Standards for this Component of Work are as follow:

- A. Extract, collect, and temporarily store on-site, contaminated liquids from the Gallery Well and Sump 9B.
- B. Maintain the water surface level in the Gallery Well casing at least thirty (30) feet below the top of the well casing.
- C. Maintain the water surface level in the Sump 9B well casing at least six (6) feet below the top of the well casing.
- D. Treat and dispose of, or arrange and provide for the transport, treatment, and disposal of, the contaminated liquids collected from the Gallery Well and Sump 9B. The facility selected for treatment and disposal shall be permitted, or otherwise legally authorized, to accept and treat and dispose of such contaminated liquids.
- E. Extract, collect, and temporarily store on-site, contaminated liquids from PSCT-1.
- F. Treat the collected PSCT-1 contaminated liquids to the standards for F039 waste at 40 C.F.R. § 268.43, using an on-site carbon treatment unit. After treatment, discharge the effluent to Pond 18, or other on-site pond proposed by the Settling Defendants.
- G. Analyze PSCT-1 influent and effluent; propose a schedule for performing such analyses.
- H. Maintain the water surface level in the PSCT-1 well casing at least twenty-two (22) feet below the top of the well casing.
- I. Control volatile organic compound emissions from the Sump 9B/Gallery Well and PSCT-1 storage tanks.
- J. Arrange and provide for the regeneration or proper disposal of

spent carbon generated from implementing this Component.

- K. Extract water from the PCT. To the extent practicable, use the water collected for Zone 1 dust control. Pump any excess PCT water to the existing on-site rainwater runoff collection ponds.
- L. Maintain the structural integrity and effectiveness, including any necessary repair and replacement, of all facilities used to perform this Component of Work.

2.8.3.3 The Period of Performance for this Component ends as of the date set forth in EPA's written acceptance of the Initiation of Operation Report, Interim Collection/Treatment/Disposal of Contaminated Liquids Component, Section 5.5.2 of this SOW.

#### 2.8.4 Interim Collection/Treatment/Disposal of Contaminated Liquids Component

2.8.4.1 The objective of this Component of Work is to expeditiously and effectively control Site-related groundwater contamination using existing Site facilities and other potential facilities.

2.8.4.2. The Performance Standards for this Component of Work include:

- A. Propose methods and include supporting information: 1) to effectively use and improve the Gallery Well, Sump 9B, PSCT, and PCT extraction systems to control Site-related groundwater contamination; include recommendations for use of potential or existing facility locations and operations to achieve and maintain such control, 2) to manage, treat, and dispose/discharge a greater volume of water than that collected in the Short-Term Collection/Treatment/Disposal of Contaminated Liquids Component, 3) to expeditiously install other facilities to improve the control of Site-related groundwater contamination using existing systems, and 4) to treat and dispose of the sludges remaining in the CNS and clean the CNS for potential re-use at the Site.
- B. Operate and continue to extract, collect, treat, dispose, and otherwise manage the contaminated liquids and other water in accordance with the methods approved by EPA pursuant to Section 2.8.4.2.A, above.
- C. Achieve and maintain control of Site-related groundwater



contamination at each of the facility locations, in accordance with the methods approved by EPA pursuant to Section 2.8.4.2.A, above.

- D. Treat and dispose of, or arrange and provide for the treatment and disposal of the sludges remaining in the CNS and clean the CNS for potential re-use at the Site, in accordance with the methods approved by EPA pursuant to Section 2.8.4.2.A, above.
- E. Maintain the structural integrity and effectiveness, including any necessary repair and replacement, of all facilities used to perform this Component of Work.

2.8.4.3 The Period of Performance for this Component ends as of the date set forth in EPA's written acceptance of the Initiation of Operation Report, EE/CA Response Action Operation and Maintenance Component, Section 5.6.4 of this SOW.

#### 2.8.5 Pesticides/Solvents Landfill Cap Design Component

2.8.5.1 The objective of this Component of Work is to provide expeditious design of a cap and buttress that stabilize and contain the Pesticides/Solvents landfill at the Site.

2.8.5.2 The Performance Standards for this Component of Work include:

A. Design a landfill cap that meets the substantive requirements of 40 C.F.R. § 264.310 and is consistent with Technical Guidance Document: Final Covers on Hazardous Waste and Surface Impoundments, EPA/530-SW-89-047. At a minimum, the landfill unit shall be capped with a cover designed to:

- i. Provide long-term minimization of migration of liquids through the closed landfill.
- ii. Function with minimum maintenance.
- iii. Promote drainage and minimize erosion or abrasion of the cover.
- iv. Accommodate settling and subsidence so that the cover's integrity is maintained.

v. Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

B. Design a buttress at the downgradient end of the landfill. The design shall include an engineering analysis of, and proposal for addressing, relevant location factors, including seismic safety, slope stability, and structural integrity.

#### 2.8.6 Pesticides/Solvents Landfill Cap Construction Component

2.8.6.1 The objective of this Component of Work is to provide expeditious construction of a cap and buttress to stabilize and contain the Pesticides/Solvents landfill at the Site, and to maintain the structural integrity and effectiveness of the cap and buttress after construction is complete.

2.8.6.2 The Performance Standards for this Component of Work include:

A. Construct the landfill cap and associated buttress in accordance with the final design and other related final documents pursuant to Section 5.5.4 of this SOW.

B. Maintain the structural integrity and effectiveness of the landfill cap and buttress, as part of the Routine Site Maintenance Element of Work.

2.8.6.3 The Period of Performance for this Component ends as of the date set forth in EPA's written acceptance of the Initiation of Operation Report, Operation and Maintenance Base Period Component, Section 5.7.4 of this SOW.

#### 2.8.7 Other Landfill Caps Design Component

2.8.7.1 The objective of this Component of Work is to provide expeditious design of caps and necessary associated buttresses to stabilize and contain the Acids, Caustics/Cyanides, PCB, and Metals landfills at the Site.

In accordance with the NCP, the full scope of response actions associated with Zone 1 shall be set forth by EPA in an EE/CA Action Memorandum or other EPA response action decision document, after completion of the EE/CA Component of Work at Section 2.9.2 of this SOW.

**2.8.7.2 The Performance Standards for this Component of Work include:**

- A. Design a landfill cap for each of these landfills that meets the substantive requirements of 40 C.F.R. § 264.310 and is consistent with Technical Guidance Document: Final Covers on Hazardous Waste and Surface Impoundments, EPA/530-SW-89-047. At a minimum, the landfill unit shall be capped with a cover designed to:**
- i. Provide long-term minimization of migration of liquids through the closed landfill.**
  - ii. Function with minimum maintenance.**
  - iii. Promote drainage and minimize erosion or abrasion of the cover.**
  - iv. Accommodate settling and subsidence so that the cover's integrity is maintained.**
  - v. Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.**
- B. Evaluate the necessity of installing buttresses for stabilizing and containing the Acids, Caustics/Cyanides, PCB, and Metals landfills. The evaluation shall include recommendations and supporting information as to which landfills need or do not need buttresses.**
- C. Design buttresses for placement at the downgradient end of the landfills determined, pursuant to Section 2.8.7.2.B, above, to need buttressing. The design shall include an engineering analysis of, and proposal for addressing, relevant location factors including seismic safety, slope stability, and structural integrity.**

**2.8.8 Other Landfill Caps Construction Component**

- 2.8.8.1 The objective of this Component of Work is to provide expeditious construction of caps and necessary associated buttresses to stabilize and contain the Acids, Caustics/Cyanides, PCB, and Metals landfills at the Site, and to maintain the structural integrity and effectiveness of the caps and buttresses after construction is complete.**

**2.8.8.2 The Performance Standards for this Component of Work include:**

- A. Construct landfill caps and associated buttresses in accordance with the final design and other related final documents pursuant to Section 5.5.6 of this SOW.**
- B. Maintain the structural integrity and effectiveness of the landfill caps and buttresses, as part of the Routine Site Maintenance Element of Work.**

**2.8.8.3 The Period of Performance for this Component ends as of the date set forth in EPA's written acceptance of the Initiation of Operation Report, Operation and Maintenance Base Period Component, Section 5.7.4 of this SOW.**

**2.9 Engineering Evaluation/Cost Analysis ("EE/CA") Response Action Element of Work**

**2.9.1 The objectives of this Element of Work are to: 1) promptly reduce the risks posed by the Zone 1 area, including controlling the migration of contaminated groundwater and containing the contaminated land masses, using CERCLA non-time critical removal authorities to integrate removal and remedial site management, investigation, evaluation, and decision-making, 2) promote CERCLA program efficiencies, 3) provide Site characterization and analysis sufficient for EPA to select CERCLA response actions in an EE/CA Action Memorandum and/or other decision documents, and 4) design, construct, and operate and maintain the EE/CA response actions selected by EPA.**

**2.9.2 EE/CA Component**

**2.9.2.1 The objective of this Component of Work is to provide EPA with sufficient information on Site characterization and response action alternatives to make a decision on the appropriate response actions to take in the Zone 1 area to promptly reduce the risks posed by the Zone 1 area.**

**2.9.2.2 The Performance Standards for this Component of Work include:**

- A. Perform an EE/CA and prepare an EE/CA Report for the Zone 1 area, in accordance with this SOW, the Consent Decree, and § 300.415 of the NCP, and consistent with the Guidance on Conducting Non-Time-Critical Removal Actions Under CERCLA, EPA/540-R-93-057.**

- B. Use existing Site-related data, including data developed prior to and pursuant to the Consent Decree and this SOW, to the maximum extent practicable and collect additional data necessary to characterize Zone 1 risks, develop and evaluate response action alternatives, and support design of the response actions.
- C. Integrate and incorporate into the evaluation and analysis of the EE/CA, all prior EPA response action decisions and associated response actions, including the Early Actions under Section 2.8.
- D. Perform a baseline risk assessment of the current and potential threats to human health and the environment posed by the Zone 1 area in accordance with § 300.430(d)(4) of the NCP. Alternatively, propose the performance of a consolidated baseline risk assessment for both the Zone 1 and Zone 2 areas to satisfy the baseline risk assessment Performance Standard for this Section 2.9.2.2 and for the RI/FS Component under Section 2.10.2.1 of this SOW.
- E. Streamline the EE/CA to focus primarily on evaluation of containment alternatives for the contaminated land masses. Evaluate opportunities and/or alternatives for treatment and permanence.
- F. Develop and evaluate response action alternatives for controlling contaminated groundwater that, among other things, focus on 1) capturing hazardous substances, pollutants, and contaminants as close to the Site's former waste management units as practicable, and 2) minimizing both the generation of contaminated groundwater and the extraction of uncontaminated groundwater.
- G. Develop and evaluate options for controlling surface water that consider institutional controls supplemented by engineering controls.
- H. Inspect and evaluate the structural integrity and contents of the CNS, and develop and evaluate options for its disposal or re-use.
- I. Investigate, assess, and characterize the noncapped areas of Zone 1, including previous pond and pad areas, Pond 18 area, areas between landfills, access roads, runoff containment areas, groundwater treatment areas, and former burial trenches and injection well areas. Develop and evaluate options for response

actions in these areas, including cleanup, closure, and/or revegetation.

- J. Investigate, assess, and characterize the "RCRA Landfill" area to determine whether the landfill area can be closed without a RCRA cap. Develop and evaluate options for response actions, including capping and the need for a buttress, cleanup, and/or revegetation.
- K. Perform an analysis, substantiated by data and other evaluative information, consistent with § 300.430(f)(ii)(C) of the NCP and the Guidance for Evaluating the Technical Impracticability of Groundwater Restoration, EPA Directive 9234.2-25, of the technical practicability of restoring the groundwater in the Zone 1 area.
- L. Develop, organize, and maintain an administrative record file for the EE/CA, in accordance with § 300.820 of the NCP, and consistent with the Guidance on Conducting Non-Time-Critical Removal Actions Under CERCLA, EPA/540-R-93-057.

#### 2.9.3 EE/CA Response Action Design Component

- 2.9.3.1 The objective of this Component of Work is to design the EE/CA response actions selected by EPA pursuant to the EE/CA performed under Section 2.9.2.
- 2.9.3.2 The Performance Standards for this Component of Work include:
  - A. Design the response actions selected by EPA in EPA's EE/CA Action Memorandum or other EE/CA response action decision document.

#### 2.9.4 EE/CA Response Action Construction Component

- 2.9.4.1 The objective of this Component of Work is to construct the EE/CA response actions selected by EPA pursuant to the EE/CA performed under Section 2.9.2.
- 2.9.4.2 The Performance Standards for this Component of Work include:
  - A. Construct the EE/CA response actions in accordance with the final design and other related final documents pursuant to

**Section 5.0 of this SOW.**

**2.9.5 EE/CA Response Action Operation and Maintenance Component**

**2.9.5.1 The objective of this Component of Work is to operate and maintain the EE/CA response actions.**

**2.9.5.2 The Performance Standards for this Component of Work include:**

- A. Develop an Operation and Maintenance Plan and other related documents pursuant to Section 5.0 of this SOW for the EE/CA response actions selected by EPA.**
- B. Operate and maintain the EE/CA response actions in accordance with the final Operation and Maintenance Plan and other related final documents pursuant to Section 5.0 of this SOW.**

**2.9.5.3 The Period of Performance for this Component ends as of the date set forth in EPA's written acceptance of the Initiation of Operation Report, Operation and Maintenance Base Period Component, Section 5.7.4 of this SOW.**

**2.10 Remedial Investigation/Feasibility Study ("RI/FS") Response Action Element of Work**

**2.10.1 The objectives of this Element of Work are to: 1) collect data necessary to adequately characterize the Site, 2) develop a range of appropriate final remedial alternatives and present relevant information concerning the remedial action options, 3) provide sufficient information to enable EPA to select an appropriate final remedy for the Site, and 4) design, construct, and operate and maintain for five (5) years, the final response action selected by EPA.**

**2.10.2 RI/FS Component**

**2.10.2.1 The Performance Standards for this Component of Work include:**

- A. Perform a CERCLA RI/FS and prepare an RI/FS Report for the Site in accordance with this SOW and the Consent Decree, and § 300.430 of the NCP, and consistent with the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, EPA/540/G-89/004.**
- B. Use existing Site-related data, including data developed prior to and pursuant to the Consent Decree and this SOW, to the**

maximum extent practicable and collect additional data necessary to fully characterize risks, develop and evaluate response action alternatives, and support design of the final response action.

- C. Develop a consolidated RI/FS Report that addresses the entire Site. Integrate and incorporate into the evaluation and analysis of the RI/FS, existing Site-related data developed prior to and pursuant to the Consent Decree and this SOW, all prior EPA response decisions and associated response actions, including the Early Actions, and the EE/CA response actions selected by EPA pursuant to Sections 2.8 and 2.9 of this SOW, respectively.
- D. Perform a baseline risk assessment of the current and potential threats to human health and the environment posed by the Zone 2 area in accordance with § 300.430(d)(4) of the NCP. Alternatively, propose the performance of a consolidated baseline risk assessment for both the Zone 1 and Zone 2 areas to satisfy the baseline risk assessment Performance Standard for this Section 2.10.2.1 and for the EE/CA Component under Section 2.9.2.2 of this SOW.
- E. For the Zone 2 area, develop and evaluate a range of response action alternatives in accordance with § 300.430(e) of the NCP, that include remediating, as appropriate, any Site-related releases of hazardous substances, pollutants, and contaminants.
- F. For the Zone 1 area, collect additional Site characterization information and/or data, and develop and evaluate additional response action alternatives that supplement the EE/CA performed under Section 2.9.2 if: 1) EPA determines that such information and data are needed before a final response action can be selected for the Site, 2) new information is gained from the Remedial Investigation that indicates that the EE/CA response actions no longer are protective of public health and the environment, and/or 3) additive actions are needed in the Zone 1 area to address the Zone 2 risks.
- G. Develop, organize, and maintain an administrative record file for the RI/FS, in accordance with § 300.820 of the NCP, and consistent with the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, EPA/540/G-89/004.



### **2.10.3 Final Response Action Design Component**

**2.10.3.1 The Performance Standards for this Component of Work include:**

- A. Design the final response action selected by EPA in EPA's Record of Decision ("ROD") or other final response action decision document.**

### **2.10.4 Final Response Action Construction Component**

**2.10.4.1 The Performance Standards for this Component of Work include:**

- A. Construct the final response action selected by EPA, in accordance with the final design and other related final documents pursuant to Section 5.0 of this SOW.**

### **2.10.5 Operation and Maintenance Base Period Component**

**2.10.5.1 The Performance Standards for this Component of Work include:**

- A. Develop an Operation and Maintenance Base Period Plan and other related documents pursuant to Section 5.0 of this SOW, for the final response action selected by EPA. Include and incorporate into the Plan all relevant tasks and activities from the Routine Site Maintenance, Routine Groundwater Monitoring, and Community Relations Support Elements of Work to be implemented during the Period.**
- B. Operate and maintain the final response action for five (5) years, in accordance with the final Operation and Maintenance Base Period Plan and other related final documents pursuant to Section 5.0 of this SOW.**
- C. Develop a 30-Year Operation and Maintenance Plan for the Site.**

**2.10.5.2 The Period of Performance for this Component ends as of the effective date of EPA's written acceptance of the Completion of Phase II Work Report.**

## **2.11 Routine Site Maintenance Element of Work**

**2.11.1 The objective of this Element of Work is to assure that facilities at the Site continue to be effective.**

**2.11.2 The Performance Standards for this Element of Work include:**

- 2.11.2.1 Provide routine site maintenance on a scheduled basis.**
- 2.11.2.2 Provide routine site maintenance on an unscheduled basis within 24 hours or sooner of either oral notice from EPA of the need for such maintenance, or knowledge by Settling Defendants of an action or occurrence requiring such maintenance.**
- 2.11.2.3 Perform periodic air monitoring related to worker protection.**
- 2.11.2.4 Perform a Site inventory of existing conditions, including an assessment of the condition of facilities in existence at the time of lodging of the Consent Decree. Prepare a Site inventory report.**
- 2.11.2.5 Using information gained from the Site inventory, propose the following: 1) a routine site maintenance program and schedule, and 2) a method to manage, including the potential for periodic discharge of, storm water collected in Zone 1 storm water collection ponds and Zone 1 storm water runoff.**
- 2.11.2.6 Propose a schedule for updating, and in accordance with the approved schedule, periodically update Plans associated with this Element of Work to address changing Site conditions.**

**2.11.3 Routine site maintenance activities shall include performing the following:**

- 2.11.3.1 Control soil erosion; control vegetation and maintain soil surface, including weed control and erosion repair.**
- 2.11.3.2 Clean and maintain extraction wells and appurtenances.**
- 2.11.3.3 Maintain and repair lighting and electrical power necessary to perform the Work.**
- 2.11.3.4 Remove trash.**
- 2.11.3.5 Dispose/remove or otherwise manage Residuals and Waste Materials generated during site maintenance activities.**
- 2.11.3.6 Provide site security.**

- 2.11.3.7 Maintain and repair, as necessary, access roads in the Zone 1 area.
  - 2.11.3.8 Conduct routine inspections of the condition and effectiveness of all monitoring wells and storage/runoff ponds, and repair, replace, or take other action as necessary.
  - 2.11.3.9 Manage Zone 1 storm water collected in Zone 1 storm water collection ponds and Zone 1 storm water runoff.
  - 2.11.3.10 Maintain, clean, and replace, as necessary, all drainage structures.
  - 2.11.3.11 Survey monitoring wells required for periodic sampling.
  - 2.11.3.12 Provide for electricity and other utilities for implementing the Work.
  - 2.11.3.13 Maintain the structural integrity and effectiveness of the Site landfill caps and associated buttresses.
- 2.11.4 The Period of Performance for this Element of Work ends as of the date set forth in EPA's written acceptance of the Initiation of Operation Report, Operation and Maintenance Base Period Component, Section 5.7.4 of this SOW.

**2.12 Routine Groundwater Monitoring Element of Work**

2.12.1 The Routine Groundwater Monitoring Element of Work includes the following Components: 1) Water Level Monitoring Component and, 2) and Chemical Quality Monitoring Components.

2.12.2 The Period of Performance for this Element of Work ends as of the date set forth in EPA's written acceptance of the Initiation of Operation Report, Operation and Maintenance Base Period Component, Section 5.7.4 of this SOW.

**2.12.3 Water Level Monitoring Component**

2.12.3.1 The objectives of this Component of Work are to monitor: 1) groundwater flow system conditions at the Site, 2) changes in groundwater storage, 3) hydraulic effectiveness of response systems, and 4) vertical distribution of hydraulic head.

**2.12.3.2 The Performance Standards for this Component of Work include:**

- A. Propose a routine water level monitoring program related to the Site, including methods and schedules.**
- B. Propose a schedule for updating, and in accordance with the approved schedule, periodically update Plans associated with this Component to address changing Site conditions.**
- C. Conduct water level monitoring related to the Site and submit reports in accordance with final Plans. At a minimum, reports shall describe: 1) groundwater flow system conditions at the Site, 2) changes in groundwater storage, 3) hydraulic effectiveness of response action systems, and 4) vertical distribution of hydraulic head observed at the Site.**
- D. Properly dispose of or otherwise manage any water, Residuals, and Waste Materials generated during the water level monitoring activities.**
- E. Use existing wells to the maximum extent practicable to meet the objectives of this Component of Work.**
- F. Coordinate monitoring associated with other Elements of Work to maximize the efficiency of the Work under this Component.**
- G. Provide for the computer transfer of data collected and developed under this Section 2.12.3, in a form compatible to systems and software used by EPA, as specified by EPA.**

**2.12.4 Chemical Quality Monitoring Component**

**2.12.4.1 The objectives of this Component of Work are to monitor: 1) locations with Site-related hazardous substances, pollutants, or contaminants, 2) quality of extracted water, 3) efficacy of response actions and 4) areas potentially affected by Site-related releases.**

**2.12.4.2 The Performance Standards for this Component of Work include:**

- A. Propose a routine chemical quality monitoring program related to the Site, including methods and schedules.**

- B. Propose a schedule for updating, and in accordance with the approved schedule, periodically update Plans associated with this Component to address changing Site conditions.
- C. Conduct chemical quality monitoring related to the Site and submit reports in accordance with final Plans. At a minimum, reports shall describe chemical conditions observed at the Site.
- D. Properly dispose of or otherwise manage any water, Residuals, and Waste Materials generated during the chemical quality monitoring activities.
- E. Use existing wells to the maximum extent practicable to meet the objectives of this Component of Work.
- F. Coordinate monitoring associated with other Elements of Work to maximize the efficiency of the Work under this Component.
- G. Provide for the computer transfer of data collected and developed under this Section 2.12.4, in a form compatible with systems and software used by EPA, as specified by EPA.

**2.13 Community Relations Support Element of Work**

2.13.1 The objective of this Element of Work is to keep the public informed in a timely manner regarding Work performed under the Consent Decree and this SOW.

2.13.2 The Performance Standards for this Element of Work include:

- 2.13.2.1 Develop a Work Plan for community relations support, and include specific tasks, activities, work products, and schedules. Propose a schedule for updating, and in accordance with the approved schedule, periodically update the Work Plan to address changing community relations support needs.
- 2.13.2.2 Assist EPA in the development and distribution of, or, as determined by EPA, develop and distribute newsletters and fact sheets concerning the Work.
- 2.13.2.3 Assist EPA in the preparation of, or, as determined by EPA, prepare and participate in technical presentations concerning the Work.

- 2.13.2.4 Assist EPA in providing or, as determined by EPA, provide individual notice to residents in proximity to or who may be interested in the Work to be performed.
- 2.13.2.5 Develop a Community Relations Plan ("CRP") in accordance with § 300.430(c) of the NCP. Propose a schedule for updating, and in accordance with the approved schedule, periodically update the CRP.
- 2.13.2.6 Provide copies for the public and/or information repositories of final deliverables and, at EPA request, other final documents developed under the Consent Decree and this SOW.
- 2.13.2.7 Provide \$50,000 to fund qualified citizen groups to hire independent technical advisors to help interpret and comment on Site-related documents developed under this SOW. Any such group must be: 1) a representative group of individuals potentially affected by the Casmalia Site, 2) incorporated as a nonprofit organization for the purposes of the Casmalia Site, and 3) able to demonstrate its capability to adequately and responsibly manage any funds awarded.

Any such group is ineligible if it is: 1) potentially responsible for contamination problems at the Site, 2) an academic institution, 3) a political subdivision, or 4) a group established or sustained by government entities, a Potentially Responsible Party, or any ineligible entity.

Funds may be awarded to one or more than one qualified group.

- 2.13.2.8 As part of the CRP, propose a method, including an application process and eligibility criteria, for awarding and administering the funds in Section 2.13.2.7, above. Any unobligated funds shall revert to the Settling Defendants upon EPA's written acceptance of the Completion of Phase II Work Report.

- 2.13.3 The Period of Performance for this Element of Work ends as of the date set forth in EPA's written acceptance of the Initiation of Operation Report, Operation and Maintenance Base Period Component, Section 5.7.4 of this SOW.

## 2.14 Waste Database Support and Other Assistance Element of Work

### 2.14.1 Performance Standards for this Element of Work include:

2.14.1.1 Settling Defendants shall provide support and assistance to EPA in EPA's identification and analysis of former customers of the Casmalia Resources Hazardous Waste Management Facility, and in EPA's implementation of the Cashout Settlements. As requested and directed by EPA, the tasks and activities Settling Defendants shall perform include: 1) updating and maintaining the waste database used by Casmalia Resources, Inc. during its years of operation of the Casmalia facility, 2) transferring a complete and updated copy of the waste database to EPA, 3) producing waste database reports, 4) organizing and producing waste related documents such as manifests, weigh tickets, and hauler records, 5) investigating the identity, location, and financial status of Third Parties, as appropriate, and 5) providing Third Party notification, meeting support, and logistics for EPA-sponsored information meetings and Third Party notifications. As requested by EPA, Settling Defendants shall also set up and maintain an information repository and clearinghouse for use by Third Parties in EPA's implementation of the Cashout Settlements. Settling Defendants may, but are not required to, provide without reasonable compensation, computer reports or other waste database information to Third Parties who use the repository and clearinghouse.

2.14.2 The Period of Performance for this Element of Work ends as of the earlier of Certification of Completion of Phase II Work, pursuant to Section XIV. (Certifications of Completion) of the Consent Decree, or notice by EPA that no further Work under this Element is necessary.

## 2.15 Cost Estimates and Funding Limits Element of Work

2.15.1 The objective of this Element of Work is to develop cost estimates to be used as Funding Limits for the Accounts and Sub-Accounts of the Casmalia Consent Decree Escrow Account provided for under Section XVII (Escrow Accounts/Financing the Work) of the Consent Decree.

### 2.15.2 The Performance Standards for this Element of Work include:

2.15.2.1 In accordance with this SOW and Section XVIII (Cost Estimates and Fund Transfers) of the Consent Decree, propose Initial Cost

Estimates for the total present worth costs to be incurred to complete all Site Work and Future Response Actions. At a minimum, the estimate shall be separated into sub-components of cost for Phase I Work; Phase II Work; and 30-Year and Post-30 Year O&M Work. EPA shall provide figures for inclusion in the Initial Cost Estimates, and to be used as the basis for setting the Initial Funding Limits for EPA Past and Future Response Costs, and for governmental/regulatory oversight of Phase II, 30-Year and Post-30 Year O&M Work.

2.15.2.2 In accordance with this SOW and Section XVIII (Cost Estimates and Fund Transfers) of the Consent Decree, re-evaluate the Initial Cost Estimates, and propose Interim Cost Estimates for the total present worth costs to be incurred to complete all Site Work and Future Response Actions. At a minimum, the estimate shall be separated into sub-components of cost for Phase I Work; Phase II Work; and 30-Year and Post-30 Year O&M Work. EPA shall provide figures for inclusion in the Interim Cost Estimates, and to be used as the basis for setting the Interim Funding Limits for EPA Past and Future Response Costs, and for governmental/regulatory oversight of Phase II, 30-Year and Post-30 Year O&M Work.

2.15.2.3 In accordance with this SOW and Section XVIII (Cost Estimates and Fund Transfers) of the Consent Decree, re-evaluate the Interim Cost Estimates, and propose Final Cost Estimates for the total present worth costs to be incurred to complete all Site Work and Future Response Actions. At a minimum, the estimate shall be separated into sub-components of cost for 30-Year and Post-30 Year O&M Work. EPA shall provide figures for inclusion in the Final Cost Estimates, and to be used as the basis for setting the Final Funding Limits for EPA Past and Future Response Costs, and for governmental/regulatory oversight of 30-Year and Post-30 Year O&M Work.



### 3.0 DESCRIPTION OF PLANS AND REPORTS

3.1 This Section sets forth a description of the types of information that should be included in the plans and reports listed, below. It is intended to provide a framework for developing such plans and reports, but should not be construed as a prescriptive limitation on the content. EPA may require other information in its review of the deliverables and other documents prepared by the Settling Defendants under this SOW. Unless otherwise specified, the description is not meant to distinguish between draft and final versions of the documents.

#### 3.2 General Work Plan

The General Work Plan is the overall plan to implement, control, and guide the tasks and activities of the Components and Elements of Work performed by the Settling Defendants under this SOW. The Work Plan should include the following information:

- o General introduction.
- o Site location, general vicinity, and nearby population.
- o Site background, including regulatory history, chronology, and early Site operations.
- o Site setting, including topography, drainages, hydrogeology, and geology.
- o Former and existing Site facilities (e.g., waste management units, treatment systems, groundwater capture systems).
- o Overview of Site-related contamination problems and concerns.
- o Summary description of the Work to be performed under the SOW.
- o Overall technical approach, objective, schedule, and process for undertaking, monitoring, and completing the Components and Elements of Work.
- o Summary description of the deliverables, milestones events, and reporting requirements, and cross-references to other documents, as appropriate.
- o Overall description of staff and contractors, including organizational structure positions, responsibilities, and communication protocol.
- o Overall description for coordinating and communicating with EPA.
- o Site map and other relevant figures, tables, and graphs.

### 3.3 Addendum to General Work Plan

An addendum to the General Work Plan is the specific plan to implement, control, and guide a particular Component or Element of Work performed by the Settling Defendants under this SOW. It sets forth the tasks, activities, schedules, deliverables, milestone events, and reporting requirements of that Component or Element. Work Plan addenda should include the following information:

- o Description of the Work to be performed, including objectives.
- o Specific Site information, not included in the General Work Plan, relevant to the Work to be performed.
- o Specific tasks, activities, schedules, deliverables, milestone events, and performance standards.
- o Description of facilities to be used or installed, and operating schedules.
- o Plans for obtaining any necessary off-site access, permits, or authorizations; plans for identifying and complying with ARARs.
- o Plans for integrating and coordinating Work under Addenda with other Work being or to be performed.
- o Plans for communicating with EPA, if different from the General Work Plan.
- o Plans for community outreach and communication, if different from the General Work Plan.
- o Description of staff and contractors who will implement or oversee the Work, if different from the General Work Plan.
- o Reporting requirements.
- o Cross-references to relevant and/or specific information contained in other documents (e.g., the General Work Plan).

### 3.4 General Health and Safety Plan

The General Health and Safety Plan establishes the overall health, safety, personnel protection, emergency response, communication, and notification tasks, activities, and procedures associated with the Work to be performed by the Settling Defendants. The Plan should be developed in conformance with applicable or appropriate Occupational Health and

**Safety Administration ("OSHA") regulations, requirements, and guidance, and include the following information:**

- o Introduction, including purpose and summary description of the Work to be performed by the Settling Defendants.**
- o Site setting, in terms of health and safety considerations.**
- o Former and existing Site facilities, in terms of health and safety considerations.**
- o Site-related contamination problems and concerns, in terms of health and safety considerations.**
- o Emergency and post-emergency tasks, activities, and procedures.**
- o Emergency response communication and notification tasks, activities, and procedures within the Settling Defendants' organization, and with EPA and other government entities and officials, and with local emergency response entities.**
- o Emergency response communication and notification tasks, activities, and procedures for affected and nearby communities.**
- o Non-emergency spill/release contingency procedures and plans.**
- o Incident reporting and communication procedures.**
- o Standard jobsite health and safety considerations and procedures, including hazards evaluation and chemicals of concern.**
- o Personal Protective Equipment and instructions/procedures to ensure personnel protection and safety.**
- o Monitoring and assessment plans related to health and safety, and personnel protection.**
- o Medical surveillance programs and training.**
- o Health and safety training.**
- o Recordkeeping and reporting.**
- o Emergency response staff and contractors, including designation of the Settling Defendants' emergency response coordinator.**

- o Cross-references to relevant and/or specific information contained in other documents (e.g., the General Work Plan).

### 3.5 General Quality Assurance Project Plan

The General Quality Assurance Project Plan establishes the overall quality assurance and quality control tasks, activities, and procedures associated with the Work to be performed by the Settling Defendants. The Plan should conform to EPA guidance, including "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); Data Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised August 1991, (EPA 330/9-78-001-R), and any updates thereto. It should include the following information:

- o Introduction, purpose and summary description of the Work to be performed by the Settling Defendants.
- o Data quality objectives.
- o Sampling and sample custody procedures.
- o Analytical methods and procedures.
- o Data reduction and validation.
- o Control procedures, including internal quality control checks.
- o Audits.
- o Routine procedures to assess data quality.
- o Corrective action procedures.
- o Construction related QA/QC.
- o Recordkeeping and reporting.
- o Cross-references to relevant and/or specific information contained in other documents (e.g., the General Work Plan).

### 3.6 General Sampling Plan

The General Sampling Plan establishes the overall sampling tasks, activities, and procedures and protocols associated with the Work to be performed by the Settling

**Defendants. The Plan should conform to EPA guidance, and include the following information:**

- o Introduction, including purpose and summary description of the Work to be performed by the Settling Defendants.**
- o Sampling rationale and objectives.**
- o Sampling locations and frequency.**
- o Routine monitoring, tasks, activities, and procedures and protocols.**
- o Sample designation plans and procedures.**
- o Sampling equipment and sampling, preservation, preparation and cleaning procedures.**
- o Chain-of-custody procedures, and conformance with EPA-NEIC procedures.**
- o Recordkeeping and reporting.**
- o Cross-references to relevant and/or specific information contained in other documents (e.g., the General Work Plan).**

**3.7 Addenda to General Health and Safety, Quality Assurance Project, and Sampling Plans**

Addenda to these Plans should include the specific health and safety, quality assurance, and/or sampling tasks, activities, schedules, deliverables, milestone events, procedures, protocols, and reporting requirements associated with a particular Component or Element of Work. Addenda should also include relevant Site information and conditions not covered by the General Plans, a description of the specific Work to be performed, sufficient detail to enable the proper and complete implementation of such Work, and cross-references to relevant and/or specific information contained in other documents (e.g., the General Health and Safety Plan).

**3.8 Technical Memorandum**

In accordance with Section 1.3.1 of this SOW, a Technical Memorandum ("TM") is the mechanism for requesting modifications to final plans, designs, reports, and schedules developed under this SOW or to the Work being performed under this SOW. A TM should include the following information:

- o General description of and purpose for the modification.**

- o Justification, including any calculations, for the modification.
- o Tasks and activities to be performed to implement the modification, including any actions associated with related subsidiary documents, milestone events, tasks, or activities affected by the modification.
- o Effect that the modification may have on schedules, milestones, deliverables and other documents, tasks, activities, or other Work performed under this SOW.
- o Recommendations.
- o Analyses, data, and other information used to support the modification and any proposed recommendations.

### 3.9 Initiation of Operation Report

The Initiation of Operation Report serves as the Settling Defendants' notification of and documentation supporting the commencement of a particular Component or Element of Work, or Period of Performance, as applicable, under Section 2.0 of this SOW. The Report should include all relevant analyses, data, and other information used to support the contention that Settling Defendants have satisfied all necessary tasks, activities, and conditions for commencing the Work.

### 3.10 Draft Design Report

The Draft Design Report represents a design equivalent to a 90% design. It should include the following information:

- o Design drawings.
- o Design specifications.
- o Design calculations.
- o General design concept and criteria of facilities to be constructed; description of existing facilities and identification of any that will be altered, destroyed, or abandoned during construction; description of off-site facilities required or affected; analysis/discussion of Performance Standards, and how they have been incorporated into the design; design parameters addressing Performance Standards or ARARs.
- o Other plans for implementing the response actions, as appropriate.

### 3.11 Final Design Report

The Final Design Report represents the 100% design. It should include the following information:

- o Design drawings.
- o Design specifications.
- o Design calculations.
- o General design concept and criteria of facilities to be constructed; description of existing facilities and identification of any that will be altered, destroyed, or abandoned during construction; description of off-site facilities required or affected; analysis/discussion of Performance Standards, and how they have been incorporated into the design; design parameters addressing Performance Standards or ARARs.
- o Other plans for implementing the response actions, as appropriate.
- o Response to EPA's comments on the Draft Design Report.

### 3.12 Construction Completion Report

The Construction Completion Report certifies the completion of construction. The Report should include the following information:

- o Description of the facilities constructed, and their associated Component or Element of Work.
- o Certification of construction completion, including completed punch list from walk-through of the constructed facility, and certification by a registered Professional Engineer that construction activities have been completed according to the final design.
- o Plans for shakedown procedures and for demonstrating the facility is operating in accordance with the design.

### 3.13 Construction As-Built Report

The Construction As-Built Report should include the following information:

- o As-built drawings and specifications, signed and stamped by a registered Professional Engineer.

- o QA/QC records.
- o Summary of any modifications.
- o Cross-references to relevant and/or specific information contained in the Construction Completion Report, or other documents, as appropriate.

#### 3.1.4 Operation and Maintenance Plan

The Operation and Maintenance Plan serves as the manual for operating, maintaining, repairing, and replacing the facilities upon the completion of construction, including shakedown, of such facilities. The Plan should include the following information:

- o Description of the operation of, and maintenance, repair, replacement, and monitoring required for, the facilities associated with a Component(s) or Element(s) of Work.
- o Description of shakedown procedures conducted.
- o Operational procedures, including emergency response procedures.
- o Maintenance, repair, and replacement procedures and schedules.
- o Monitoring procedures and schedules.
- o Equipment inventory.
- o Compliance plan that describes the tasks, activities, and procedures proposed to guide the compliance testing activities and acceptance procedures for demonstrating compliance with the Performance Standards and ARARs associated with the Component(s) or Element(s) of Work.

#### 3.15 30-Year Operation and Maintenance Plan

The 30-Year Operation and Maintenance Plan serves as a guide to operating and maintaining all facilities upon the completion of Phase II Work, based on what was learned during the Operation and Maintenance Base Period Component. The Plan should include the following information:

- o Description of the operation of, and maintenance, repair, replacement, and monitoring required for, the facilities associated with the Work that was performed under this SOW.
- o Operational procedures, including emergency response procedures.



- o **Maintenance, repair, and replacement procedures and schedules.**
- o **Monitoring procedures and schedules.**
- o **Equipment inventory.**
- o **Compliance plan that describes the tasks, activities, and procedures proposed to guide the compliance testing activities and acceptance procedures for demonstrating compliance with the Performance Standards and ARARs associated with the Work performed under this SOW.**

### **3.16 Achievement of Performance Standard Report**

The Achievement of Performance Standard Report serves as the Settling Defendants' notification of and documentation supporting achievement of the Performance Standards for a particular Component or Element of Work, under Section 2.0 of this SOW. The Report should describe the Work performed and its associated Component or Element of Work, identify the Performance Standards, and include all relevant analyses, data, and other information used to support that Settling Defendants' have satisfactorily achieved and maintained compliance with the Performance Standards.

### **3.17 Completion of Obligation and Completion of Work Phase or Element of Work Report**

The Completion of Obligation and the Completion of Work Phase or Element of Work Reports are the last reports associated with either a Phase I obligation or a Work Phase or Element of Work performed by the Settling Defendants under this SOW, and are submitted for EPA approval when Settling Defendants have determined that necessary conditions have been satisfied. The Report should include the following information:

- o **Description of the Work or Obligation performed and its associated Component and Element of Work, including objectives, Period of Performance, Performance Standards, and ARARs.**
- o **Demonstration and supporting documentation that the Work or Obligation and requirements have been satisfactorily completed or achieved by the Settling Defendants in accordance with the Consent Decree and this SOW.**

### **3.18 Annualized Phase II Work Budget Estimate and Updates Thereto**

The Annualized Phase II Work Budget Estimate is the estimate, broken down by calendar year, of the projected costs of performing the Phase II Work. At a minimum, the Estimate shall be separated into sub-components of cost needed to administer Section XVII (Escrow Accounts/Financing the Work), Section XVIII (Cost Estimates and Fund Transfers),

and Section VII, Paragraph B.4 (Work To Be Performed) of the Consent Decree. It shall also contain sufficient detail to enable Settling Defendants to make informed budgeting proposals and EPA to make informed budgeting decisions concerning implementation of portions of the Work in the event of insufficient funding in the Phase II Work Account. The Estimate shall be updated annually to reflect actual conditions (e.g., a response or remedy decision made by EPA), and to set forth the Phase II Work costs the Settling Defendants project will be needed in each quarter of the forthcoming calendar year.

### 3.19 Overall Project Quarterly Report

The Overall Project Quarterly Report is a consolidated status report on all Work conducted during the reporting period quarter and to be undertaken in the following quarter(s) by the Settling Defendants. The Report should be separated into sections reflective of the individual Components and Elements of Work. It should include the following information:

- o Description of the Work, and master schedule.
- o Activities/tasks undertaken during the reporting period, and expected to be undertaken during the next reporting period.
- o Deliverables/milestones completed during the reporting period, and expected to be completed during the next reporting period.
- o Identification of issues and actions that have been or are being taken to resolve the issues.
- o TMs submitted.
- o Schedules and schedule changes.
- o Evaluation of the effectiveness of the Work being performed in terms of meeting the objectives, Performance Standards, and ARARs. Include data and analytical and statistical methods used to support the evaluation.
- o Recommendations for corrective measures needed, if any, to meet the objectives, Performance Standards, and ARARs.

## SECTION 4.0 DELIVERABLES

4.1 This Section lists the Deliverables in the form of submissions and milestone events, associated with the Work. The Consent Decree and this SOW may require the submission of additional documents and additional milestone events, not listed herein.

### 4.1.1 General

- 4.1.1.1 Revised Schedule Showing Actual Dates
- 4.1.1.2 Final Transition Work Plan, Sampling Plan, Quality Assurance Project Plan, Health and Safety Plan
- 4.1.1.3 Final General Work Plan, Sampling Plan, Quality Assurance Project Plan, Health and Safety Plan
- 4.1.1.4 Final Annualized Phase II Work Budget Estimate
- 4.1.1.5 Final Updates to Annualized Phase II Work Budget Estimate
- 4.1.1.6 Completion of Obligation Report for Short-Term and Interim Collection/Treatment/Disposal of Contaminated Liquids Components of Work
- 4.1.1.7 Completion of Obligation Report for Routine Site Maintenance Element of Work
- 4.1.1.8 Completion of Obligation Report for Routine Groundwater Monitoring Element of Work
- 4.1.1.9 Completion of Obligation Report for Community Relations Support Element of Work
- 4.1.1.10 Completion of Phase I Work Report
- 4.1.1.11 Completion of Phase II Work Report
- 4.1.1.12 Overall Project Quarterly Reports
- 4.1.1.13 Technical Memoranda

### 4.1.2 Early Actions Element of Work

- 4.1.2.1 Short-term Collection/Treatment/Disposal of Contaminated Liquids Component
  - A. Initiation of Operation Report/Commencement of Short-term Collection/Treatment/Disposal of Contaminated Liquids Component/Award of Contract
  - B. Final Addendum to Transition Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan

- 4.1.2.2 Interim Collection/Treatment/Disposal of Contaminated Liquids Component
  - A. Final Technical Memorandum regarding implementation of Interim Collection/Treatment/Disposal of Contaminated Liquids Component
  - B. Final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan
  - C. Initiation of Operation Report/Commencement of Interim Collection/Treatment/Disposal of Contaminated Liquids Component
  - D. Achievement of Performance Standards Report
- 4.1.2.3 Pesticides/Solvents Landfill Cap Design Component
  - A. Final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan
  - B. Final Design Report
- 4.1.2.4 Pesticides/Solvents Landfill Cap Construction Component
  - A. Award of Contract
  - B. Final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan
  - C. Commencement of Construction
  - D. Completion of Construction/Construction Completion Report
  - E. Construction As-Built Report
- 4.1.2.5 Other Landfill Caps Design Component
  - A. Final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan
  - B. Final Design Report
- 4.1.2.6 Other Landfill Caps Construction Component
  - A. Award of Contract
  - B. Final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan
  - C. Commencement of Construction
  - D. Completion of Construction/Construction Completion Report
  - E. Construction As-Built Report

**4.1.3 Engineering Evaluation/Cost Analysis Response Action Element of Work**

**4.1.3.1 Engineering Evaluation/Cost Analysis Component**

- A. Final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan**
- B. Final EE/CA Report**

**4.1.3.2 EE/CA Response Action Design Component**

- A. Final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan**
- B. Final Design Report**

**4.1.3.3 EE/CA Response Action Construction Component**

- A. Award of Contract**
- B. Final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan**
- C. Commencement of Construction**
- D. Completion of Construction/Construction Completion Report**
- E. Construction As-Built Report**

**4.1.3.4 EE/CA Response Action Operation and Maintenance Component**

- A. Award of Contract**
- B. Final Operation and Maintenance Plan**
- C. Initiation of Operation Report/Commencement of EE/CA Response Action Operation and Maintenance Component**
- D. Final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan**
- E. Achievement of Performance Standards Report**

**4.1.4 Remedial Investigation/Feasibility Study Response Action Element of Work**

**4.1.4.1 RI/FS Component**

- A. Final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan**
- B. Final RI/FS Report**

- 4.1.4.2 Final Response Action Design Component
  - A. Final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan
  - B. Final Design Report

- 4.1.4.3 Final Response Action Construction Component
  - A. Award of Contract
  - B. Final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan
  - C. Commencement of Construction
  - D. Completion of Construction/Construction Completion Report
  - E. Construction As-Built Report

- 4.1.4.4 Operation and Maintenance Base Period Component
  - A. Award of Contract
  - B. Final Operation and Maintenance Base Period Plan
  - C. Initiation of Operation Report/Commencement of Operation and Maintenance Base Period Component
  - D. Final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan
  - E. Achievement of Performance Standards Report
  - F. Final 30-Year Operation and Maintenance Plan

4.1.5 Routine Site Maintenance Element of Work

- 4.1.5.1 Award of Contract
- 4.1.5.2 Inventory of Site Conditions and Submission of Report
- 4.1.5.3 Final Addendum to Transition Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan
- 4.1.5.4 Initiation of Operation Report/Commencement of Routine Site Maintenance Element of Work
- 4.1.5.5 Final Updates to Plans

4.1.6 Routine Groundwater Monitoring Element of Work

- 4.1.6.1 Water Level Monitoring Component
  - A. Final Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan
  - B. Award of Contract

- C. Initiation of Operation Report/Commencement of Water Level Monitoring Component
- D. Final Updates to Plans
- E. Monitoring Reports

4.1.6.2 Chemical Quality Monitoring Component

- A. Final Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan
- B. Award of Contract
- C. Initiation of Operation Report/Commencement of Chemical Quality Monitoring Component
- D. Final Updates to Plans
- E. Monitoring Reports

4.1.7 Community Relations Support Element of Work

- 4.1.7.1 Final Work Plan
- 4.1.7.2 Initiation of Operation Report/Commencement of Community Relations Support Element of Work
- 4.1.7.3 Final Community Relations Plan
- 4.1.7.4 Final Updates to Work Plan
- 4.1.7.5 Method for Awarding and Administering Funds in Section 2.13.2.7

4.1.8 Cost Estimates and Funding Limits Element of Work

- 4.1.8.1 Final Work Plan
- 4.1.8.2 Initial Cost Estimate--Final
- 4.1.8.3 Interim Cost Estimate--Final
- 4.1.8.4 Final Cost Estimate--Final

## 5.0 SCHEDULES

- 5.1 This section provides schedules required of Settling Defendants for Deliverables set forth in Section 4.0, as well as for other submissions and milestone events, and goals for EPA's review.
- 5.2 The Parties agree to strive to meet and discuss issues and concerns prior to the submission of documents and comments.
- 5.3 EPA shall make good faith efforts to meet the goals for its review set forth, below.

Activity	Weeks After Lodging
<b>5.4 General</b>	
Submit revised schedule showing actual dates	7 days
Submit draft Transition Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	2
Complete EPA review of draft Transition Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	6
Submit final Transition Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	8
Submit draft General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	22
Complete EPA review of draft General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	28
Submit final General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	30
Notify EPA of award of each contract	When award is made
Submit draft Annualized Phase II Work Budget Estimate	8 weeks prior to commencing Phase II Work
Complete EPA review of draft Annualized Phase II Work Budget Estimate	Within 4 weeks of receipt



Activity	Weeks After Lodging
Submit final Annualized Phase II Work Budget Estimate	Prior to commencing Phase II Work
Submit draft Update to Annualized Phase II Work Budget Estimate	On November 1 of each year for forthcoming calendar year, during Phase II Work
Complete EPA review of draft Update to Annualized Phase II Work Budget Estimate	Within 4 weeks of receipt
Submit final Update to Annualized Phase II Work Budget Estimate	Within 2 weeks of completion of EPA review of draft
Submit request justifying need for funds in excess of final Annualized Phase II Work Budget Estimate	Prior to such need
Complete EPA response to request justifying need for funds in excess of final Annualized Phase II Work Budget Estimate	Within 2 weeks of receipt
Submit TM regarding insufficient money in Phase II Work Account	As soon as such insufficiency is identified
Complete EPA response to TM regarding insufficient money in Phase II Work Account	Within 4 weeks of receipt
Submit Phase I Completion of Obligation Report for Short-Term and Interim Collection/Treatment/Disposal of Contaminated Liquids Components of Work at Sections 2.8.3 and 2.8.4	When Settling Defendants determine necessary conditions have been satisfied
Complete EPA response to Phase I Completion of Obligation Report for Short-Term and Interim Collection/Treatment/Disposal of Contaminated Liquids Components of Work at Sections 2.8.3 and 2.8.4	Within 45 days of receipt
Submit Phase I Completion of Obligation Report for Routine Site Maintenance Element of Work at Section 2.11	When Settling Defendants determine necessary conditions have been satisfied

Activity	Weeks After Lodging
Complete EPA response to Phase I Completion of Obligation Report for Routine Site Maintenance Element of Work at Section 2.11	Within 45 days of receipt
Submit Phase I Completion of Obligation Report for Routine Groundwater Monitoring Element of Work at Section 2.12	When Settling Defendants determine necessary conditions have been satisfied
Complete EPA response to Phase I Completion of Obligation Report for Routine Groundwater Monitoring Element of Work at Section 2.12	Within 45 days of receipt
Submit Phase I Completion of Obligation Report for Community Relations Support Element of Work at Section 2.13	When Settling Defendants determine necessary conditions have been satisfied
Complete EPA response to Phase I Completion of Obligation Report for Community Relations Support Element of Work at Section 2.13	Within 45 days of receipt
Submit Completion of Phase I Work Report	When Settling Defendants determine necessary conditions have been satisfied
Complete EPA response to Completion of Phase I Work Report	Within 90 days of receipt
Submit draft and final work products pursuant to Section 2.14	As requested by EPA
Submit Completion of Phase II Work Report	When Settling Defendants determine necessary conditions have been satisfied
Complete EPA response to Completion of Phase II Work Report	Within 90 days of receipt
Submit Overall Project Quarterly Reports	Within 14 days after end of each calendar year quarter for previous quarter

Activity	Weeks After Lodging
<b>5.5 Early Actions Element of Work</b>	
<b>5.5.1 Short-Term Collection/Treatment/Disposal of Contaminated Liquids Component</b>	
Submit Initiation of Operation Report/Commence Short-Term Collection/Treatment/Disposal of Contaminated Liquids Component/Award contract	7 days
Complete EPA response to Initiation of Operation Report	6 (As part of EPA review of draft Transition Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan)
Submit draft Addendum to Transition Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	20
Complete EPA Review of draft Addendum to Transition Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	26
Submit final Addendum to Transition Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	28
<b>5.5.2 Interim Collection/Treatment/Disposal of Contaminated Liquids Component</b>	
Submit draft Technical Memorandum proposing methods pursuant to Section 2.8.4.2.A	34
Complete EPA review of Technical Memorandum proposing methods pursuant to Section 2.8.4.2.A	40
Submit final Technical Memorandum proposing methods pursuant to Section 2.8.4.2.A	42
Submit draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	44
Complete EPA review of draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	48

Activity	Weeks After Lodging
Submit final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	50
Submit Initiation of Operation Report/Commence implementation of Interim Collection/Treatment/Disposal of Contaminated Liquids Component	52
Complete EPA response to Initiation of Operation Report	54
Submit Achievement of Performance Standards Report	When Settling Defendants determine necessary conditions have been satisfied
Complete EPA response to Achievement of Performance Standards Report	Within 60 days of receipt
<b>5.5.3 Pesticides/Solvents Landfill Cap Design Component</b>	
Submit draft Addendum to General Work Plan	24
Complete EPA review of draft Addendum to General Work Plan	32
Submit final Addendum to General Work Plan	43
Submit draft Addendum to Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	35
Complete EPA review of draft Addendum to Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	41
Submit final Addendum to Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	43
Submit draft Design Report	70
Complete EPA review of draft Design Report	78
Submit final Design Report	82
<b>5.5.4 Pesticides/Solvents Landfill Cap Construction Component</b>	
Award contract	82

Activity	Weeks After Lodging
Submit draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	88
Complete EPA review of draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	94
Submit final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	96
Commence construction	96
Complete construction/Submit Construction Completion Report	116
Submit Construction As-Built Report	124
Complete EPA review of Construction Completion Report, including Construction As-Built Report	Within 60 days of receipt of Construction As-Built Report
<b>5.5.5 Other Landfill Caps Design Component</b>	
Submit draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	52
Complete EPA review of draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	58
Submit final Addendum to General Work Plan, Quality Assurance Project Plan, and Health and Safety Plan	60
Submit draft Design Report	104
Complete EPA review of draft Design Report	112
Submit final Design Report	115
<b>5.5.6 Other Landfill Caps Construction Component</b>	
Award contract	115

Activity	Weeks After Lodging
Submit draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	121
Complete EPA review of draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	127
Submit final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	129
Commence construction	132
Complete construction/Submit Construction Completion Report	168
Submit Construction As-Built Report	176
Complete EPA review of Construction Completion Report, including Construction As-Built Report	Within 60 days of receipt of Construction As-Built Report
<b>5.6 Engineering Evaluation/Cost Analysis Response Action Element of Work</b>	
<b>5.6.1 Engineering Evaluation/Cost Analysis Component</b>	
Submit draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	49
Complete EPA review of draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	55
Submit final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	57
Submit draft EE/CA Report	83
Complete EPA review of draft EE/CA Report	91
Submit final EE/CA Report	93

Activity	Weeks After Lodging
<b>5.6.2 EE/CA Response Action Design Component</b>	
Submit draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 6 weeks following EPA issuance of EE/CA Action Memorandum
Complete EPA review of draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 6 weeks of receipt
Submit final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 2 weeks of completion of EPA review of draft
Submit draft Design Report	As specified in final Addendum to General Work Plan for EE/CA Response Action Design Component
Complete EPA review of draft Design Report	Within 8 weeks of receipt
Submit final Design Report	Within 3 weeks of completion of EPA review of draft
<b>5.6.3 EE/CA Response Action Construction Component</b>	
Award contract	At submission of final Design Report for EE/CA Response Action Design Component
Submit draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 6 weeks of submission of final Design Report for EE/CA Response Action Design Component
Complete EPA review of draft Addendum to General Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 6 weeks of receipt

Activity	Weeks After Lodging
Submit final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 2 weeks of completion of EPA review of draft
Commence construction	As specified in final Addendum to General Work Plan for EE/CA Response Action Construction Component
Complete construction/Submit Construction Completion Report	As specified in final Addendum to General Work Plan for EE/CA Response Action Construction Component
Submit Construction As-Built Report	Within 8 weeks of completing construction
Complete EPA review of Construction Completion Report, including Construction As-Built Report	Within 60 days of receipt of Construction As-Built Report
<b>5.6.4 EE/CA Response Action Operation and Maintenance Component</b>	
Award contract	At completion of construction of EE/CA Response Action Construction Component
Submit draft Operation and Maintenance Plan	within 4 weeks of completion of construction of EE/CA Response Action Construction Component
Complete EPA review of draft Operation and Maintenance Plan	Within 6 weeks of receipt
Submit final Operation and Maintenance Plan	Within 2 weeks of completion of EPA review of draft



Activity	Weeks After Lodging
Submit Initiation of Operation Report/Commence EE/CA Response Action Operation and Maintenance Component	At submission of final Operation and Maintenance Plan
Complete EPA response to Initiation of Operation Report	Within 2 weeks of receipt
Submit draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 6 weeks of submission of final Operation and Maintenance Plan
Complete EPA review of draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 6 weeks of receipt
Submit final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 2 weeks of completion of EPA review of draft
Submit Achievement of Performance Standards Report	When Settling Defendants determine necessary conditions have been satisfied
Complete EPA review of Achievement of Performance Standards Report	Within 60 days of receipt
5.7 Remedial Investigation/Feasibility Study Response Action Element of Work	
5.7.1 RI/FS Component	
Submit draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	78
Complete EPA review of draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	84
Submit final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	86
Submit draft RI/FS Report	134
Complete EPA review of draft RI/FS Report	146

Activity	Weeks After Lodging
Submit final RI/FS Report	150
<b>5.7.2 Final Response Action Design Component</b>	
Submit draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 6 weeks after EPA issuance of ROD
Complete EPA review of draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 6 Weeks of receipt
Submit final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 2 Weeks of completion of EPA review of draft
Submit draft Design Report	As specified in final Addendum to General Work Plan for Final Response Action Design Component
Complete EPA Review of draft Design Report	Within 6 weeks of receipt
Submit final Design Report	Within 4 weeks of completion of EPA review of draft
<b>5.7.3 Final Response Action Construction Component</b>	
Award contract	At time of submission of final Design Report for Final Response Action Design Component
Submit draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 4 weeks of final Design Report for final Response Action Design Component
Complete EPA review of draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 6 weeks of receipt

Activity	Weeks After Lodging
Submit final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 2 weeks of completion of EPA review of draft
Commence construction	As specified in final Addendum to General Work Plan for Final Response Action Construction Component
Complete construction/Submit Construction Completion Report	As specified in final Addendum to General Work Plan for Final Response Action Construction Component
Submit Construction As-Built Report	Within 8 weeks of completing construction
Complete EPA Review of Construction Completion Report, including Construction As-Built Report	Within 60 days of receipt of Construction As-Built Report
<b>5.7.4 Operation and Maintenance Base Period Component</b>	
Award contract	At completion of construction of Final Response Action Construction Component
Submit draft Operation and Maintenance Base Period Plan	Within 4 weeks of completion of construction of Final Response Action Construction Component
Complete EPA review of draft Operation and Maintenance Base Period Plan	Within 6 weeks of receipt
Submit final Operation and Maintenance Base Period Plan	Within 2 weeks of completion of EPA review of draft

Activity	Weeks After Lodging
Submit Initiation of Operation Report/Commence Operation and Maintenance Base Period Component	At time of submission of final Operation and Maintenance Base Period Plan
EPA response to Initiation of Operation Report	Within 2 weeks of receipt
Submit draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 4 weeks of final Operation and Maintenance Base Period Plan
Complete EPA review of draft Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 6 weeks of receipt
Submit final Addendum to General Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	Within 2 weeks of completion of EPA review
Submit Achievement of Performance Standards Report	When Settling Defendants determine necessary conditions have been satisfied
EPA response to Achievement of Performance Standards Report	Within 60 days of receipt
Submit draft 30-Year Operation and Maintenance Plan	Prior to completion of Phase II Work
Complete EPA review of draft 30-Year Operation and Maintenance Plan	Within 8 weeks of receipt
Submit final 30-Year Operation and Maintenance Plan	Prior to completion of Phase II Work
<b>5.8 Routine Site Maintenance Element of Work</b>	
Award contract	7 days
Complete inventory of Site conditions and submit report	2
Submit draft Addendum to Transition Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	6

Activity	Weeks After Lodging
Complete EPA review of draft Addendum to Transition Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	11
Submit final Addendum to Transition Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	13
Submit Initiation of Operation Report/Commence Routine Site Maintenance Element of Work	13
EPA response to Initiation of Operation Report	15
Submit draft updates to Plans to address changing Site conditions	Pursuant to schedule proposed by Settling Defendants and approved by EPA
Complete EPA review of draft updates to Plans to address changing Site conditions	Within 6 weeks of receipt
Submit final updates to Plans to address changing Site conditions	Within 2 weeks of completion of EPA review
<b>5.9 Routine Groundwater Monitoring Element of Work</b>	
<b>5.9.1 Water Level Monitoring Component</b>	
Submit draft Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	18
Complete EPA review of draft Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	24
Submit final Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	26
Award contract	26
Submit Initiation of Operation Report/Commence Water Level Monitoring Component	26
EPA response to Initiation of Operation Report	28

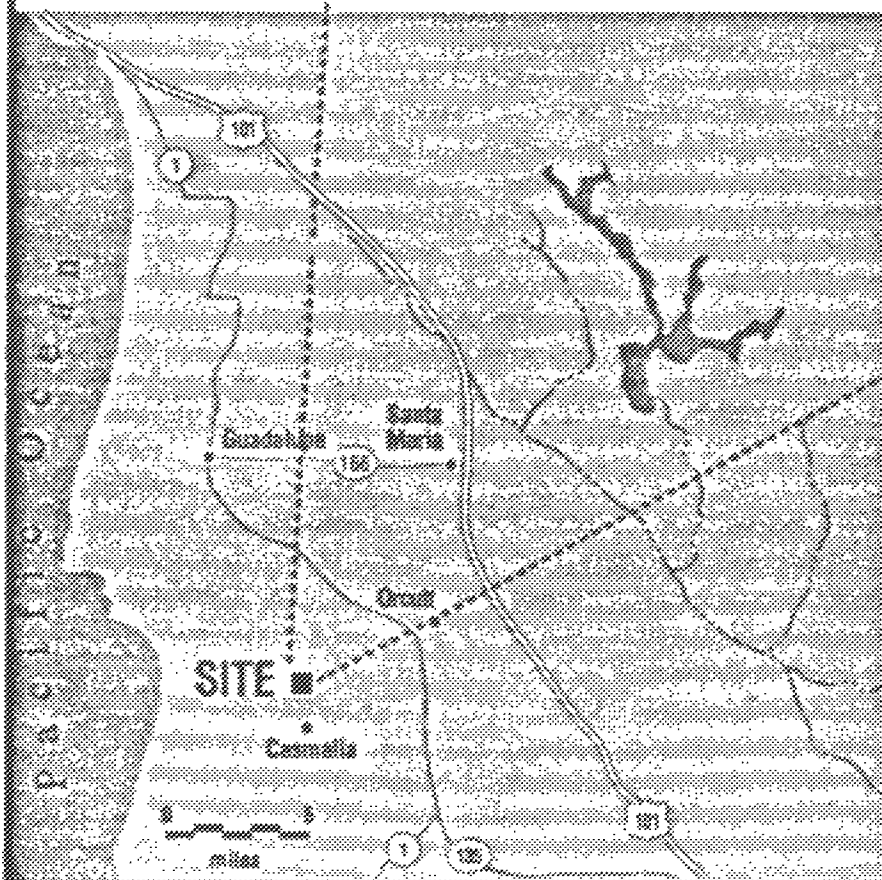
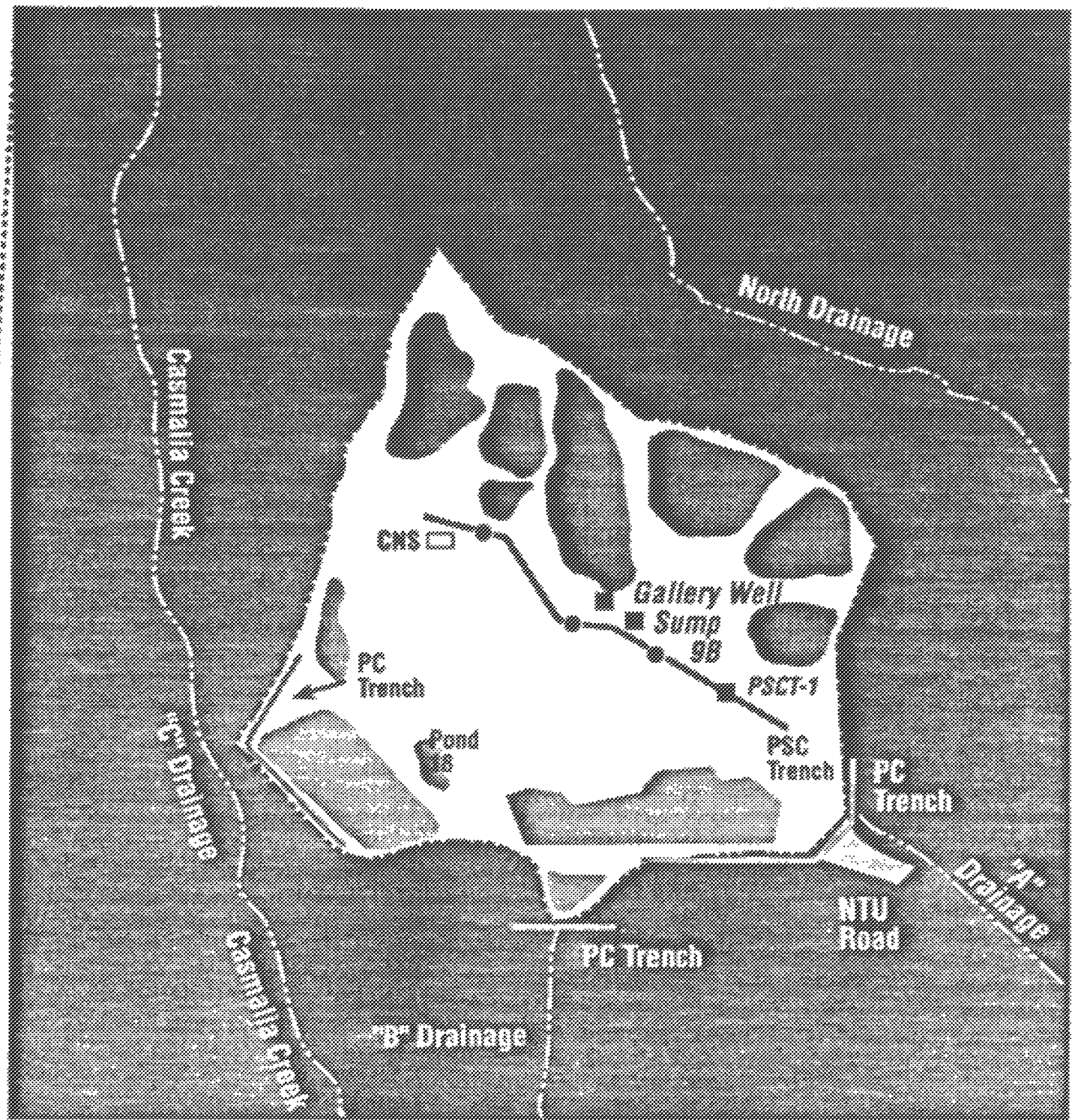
Activity	Weeks After Lodging
Submit draft updates to Plans to address changing Site conditions	Pursuant to schedule proposed by Settling Defendants and approved by EPA
Complete EPA review of draft updates to Plans to address changing Site conditions	Within 6 weeks of receipt
Submit final updates to Plans to address changing Site conditions	Within 2 weeks of completion of EPA review
Submit monitoring reports	As specified in final Work Plan for Water Level Monitoring Component
<b>5.9.2 Chemical Quality Monitoring Component</b>	
Submit draft Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	18
Complete EPA review of draft Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	24
Submit final Work Plan, Sampling Plan, Quality Assurance Project Plan, and Health and Safety Plan	26
Award contract	26
Submit Initiation of Operation Report/Commence Chemical Quality Monitoring Component	26
EPA response to Initiation of Operation Report	28
Submit draft updates to Plans to address changing Site conditions	Pursuant to schedule proposed by Settling Defendants and approved by EPA
Complete EPA review of draft updates to Plans to address changing Site conditions	Within 6 weeks of receipt
Submit final updates to Plans to address changing Site conditions	Within 2 weeks of completion of EPA review

Activity	Weeks After Lodging
Submit monitoring reports	As specified in final Work Plan for Chemical Quality Monitoring Component
<b>5.10 Community Relations Support Element of Work</b>	
Submit draft Work Plan	4
Complete EPA Review of draft Work Plan	8
Submit final Work Plan	10
Submit Initiation of Operation Report/Commence Community Relations Support Element of Work	10
EPA response to Initiation of Operation Report	12
Submit draft Community Relations Plan	26
Complete EPA review of draft Community Relations Plan	30
Submit final Community Relations Plan	34
Submit proposed method for awarding and administering funds in Section 2.13.2.7	As set forth in final Community Relations Plan
EPA response to proposed method	Within 4 weeks of receipt
Submit draft updates to Work Plan to address changing phases of Work	Pursuant to schedule proposed by Settling Defendants and approved by EPA
Complete EPA review of draft updates to Work Plan to address changing phases of Work	Within 6 weeks of receipt
Submit final updates to Work Plan to address changing phases of Work	Within 2 weeks of completion of EPA review
Submit draft work products	As specified in final Work Plan for Community Relations Support Element of Work

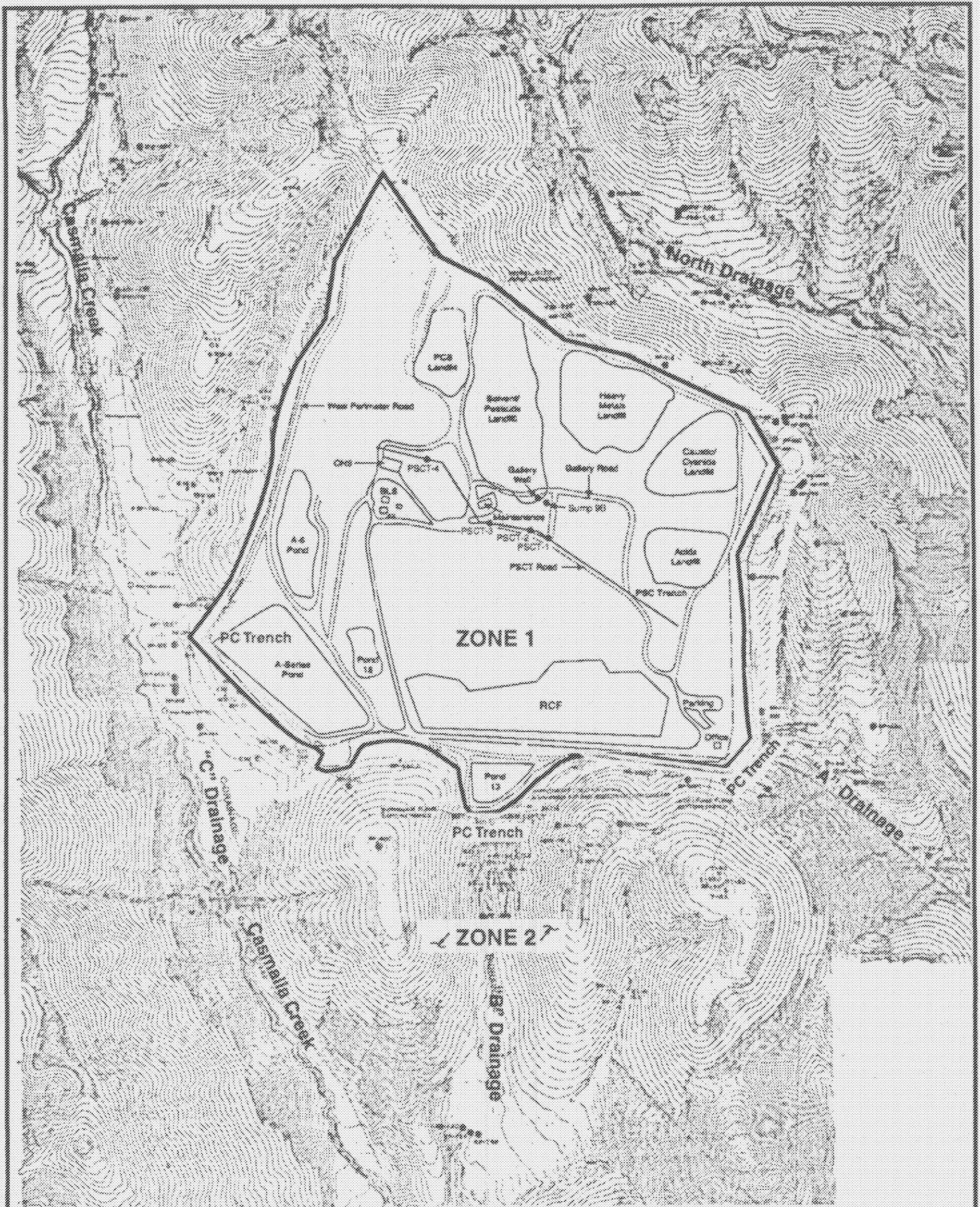
Activity	Weeks After Lodging
Complete EPA review of draft work products	Good faith effort for expeditious review
Submit final work products	As specified in final Work Plan for Community Relations Support Element of Work
<b>5.11 Cost Estimates and Funding Limits Element of Work</b>	
Submit draft Work Plan	12
Complete EPA review of draft Work Plan	18
Submit final Work Plan	22
Submit Initial Cost Estimates--Draft	Within 30 days of entry of the Consent Decree
Complete EPA review of Initial Cost Estimates--Draft	Within 8 weeks of receipt
Submit Initial Cost Estimates--Final	Within 3 weeks of completion of EPA review
Submit Interim Cost Estimates--Draft	At time draft RI/FS Report is submitted
Complete EPA review of Interim Cost Estimates--Draft	Within 12 weeks of receipt
Submit Interim Cost Estimates--Final	Within 4 weeks of completion of EPA review
Submit Final Cost Estimates--Draft	At time Completion of Phase II Work Report is submitted
Complete EPA review of Final Cost Estimates--Draft	Within 8 weeks of receipt
Submit Final Cost Estimates--Final	Within 3 weeks of completion of EPA review



**ATTACHMENT TO APPENDIX A – STATEMENT OF WORK**



Casmalia Site  
General Vicinity and Schematic

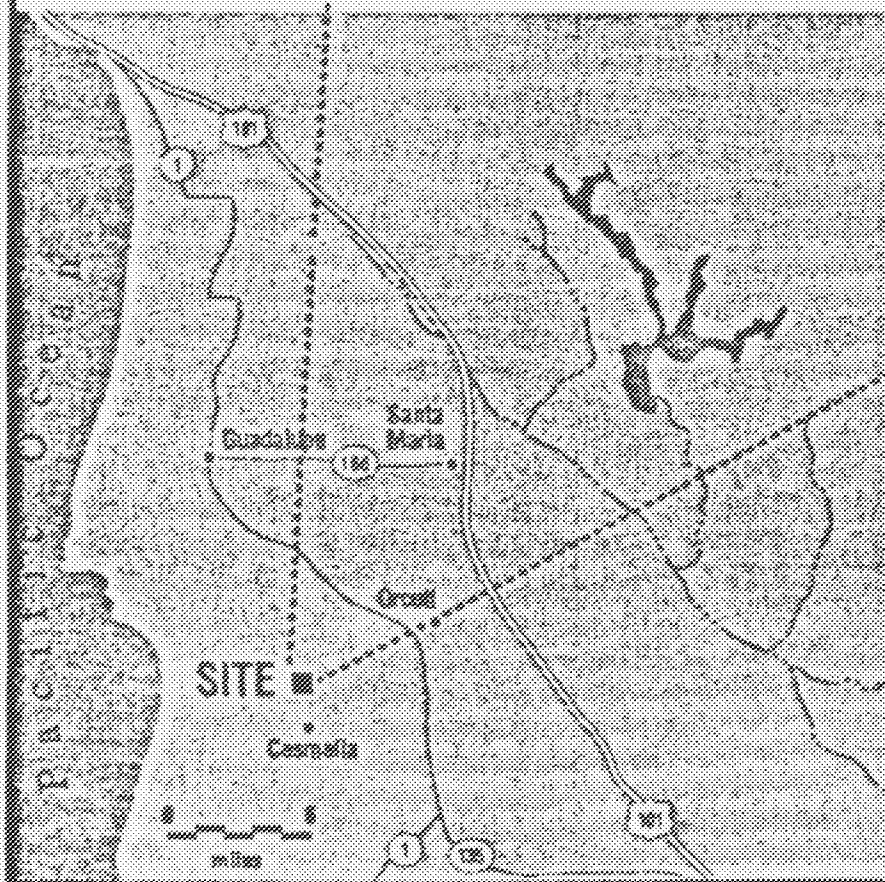
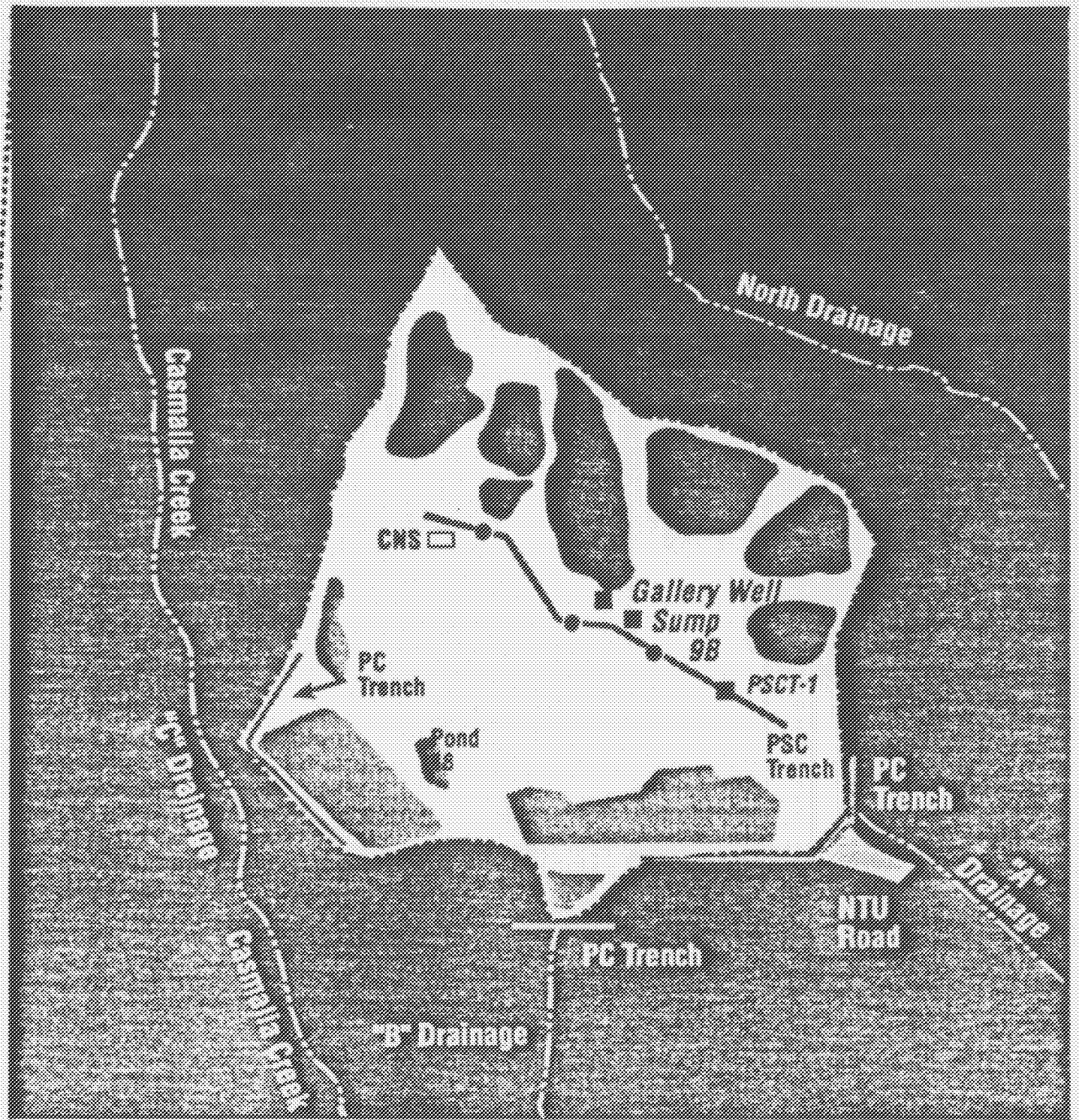


Casmalia Site  
 Facility Layout (Zones 1 and 2)

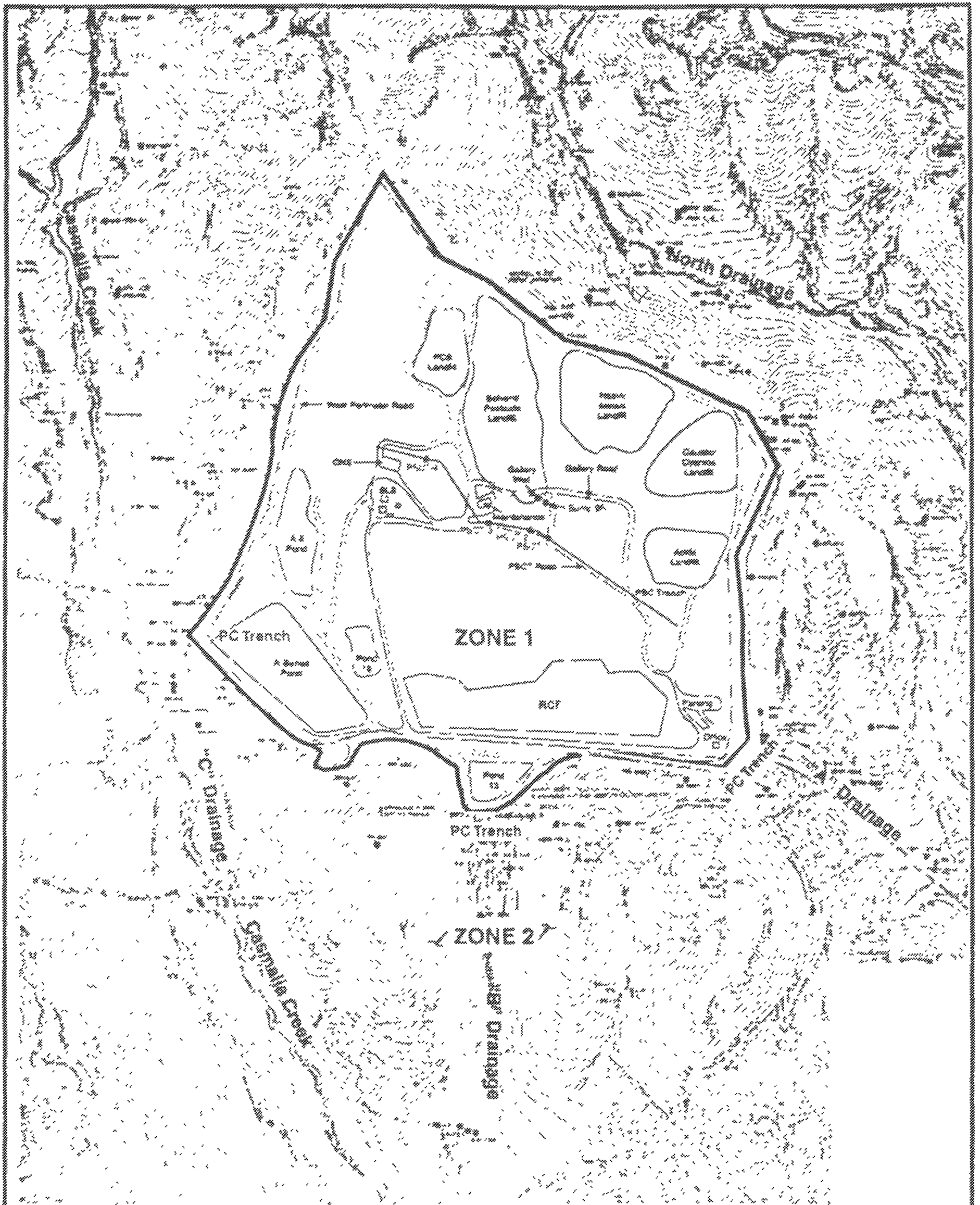
Note: Zone 1 boundary is approximate.  
 Zone 2 outer boundary is undetermined at this time.

**APPENDIX B:**  
**SITE MAPS**

CASMALIA CONSENT DECREE  
APPENDIX B:  
SITE MAPS



Casmalia Site  
General Vicinity and Schematic



Casmalia Site  
 Facility Layout (Zones 1 and 2)

Note: Zone 1 boundary is approximate.  
 Zone 2 outer boundary is undetermined at this time.

**APPENDIX C:**  
**LIST OF SETTLING DEFENDANTS**

CASMALIA CONSENT DECREE  
APPENDIX C:  
LIST OF SETTLING DEFENDANTS

**APPENDIX C:  
LIST OF SETTLING DEFENDANTS**

ABB Vetco Gray Inc.

Aerochem, Inc.

Aerojet General Corporation

Atlantic Richfield Company (ARCO)

Caspian Inc.

Chevron Corporation

City of Oxnard

Clairol, Inc.

Coastal Oil & Gas Corporation

Conoco Inc.

Deutsch Company

The Dow Chemical Company

Everest & Jennings International

Exxon Corporation

Gemini Industries, Inc.

General Dynamics Corporation

General Electric Company

General Motors Corporation

Hughes Aircraft Company, and its subsidiaries

Lever Brothers Company



**Lockheed Martin Corporation (merged entity for Lockheed Corporation and Martin Marietta Corporation)**

**McDonnell Douglas Corporation**

**Mobil Oil Corporation**

**New VICI, Inc. (for Gonzales/Monterey Vineyard)**

**Northrop Grumman Corporation**

**Oil & Solvent Process Company, a subsidiary of Chemical Waste Management, Inc.**

**Pacific Gas and Electric Company**

**Pacific Offshore Pipeline Company**

**The Proctor & Gamble Manufacturing Company**

**Reynolds Metals Company**

**R.G.G.L. Corporation**

**Rhone-Poulenc Inc.**

**Rockwell International Corporation**

**Rohr, Inc. (formerly Rohr Industries, Inc.)**

**Romic Environmental Technologies Corporation**

**Shell Oil Company**

**Shipley Company, Inc.**

**Southern California Gas Company**

**Southern Pacific Transportation Company**

**Square D Company**

**Teleflex Incorporated**

**Texaco Inc.**

**Todd Pacific Shipyards Corp.**

**Union Oil Company of California, Inc. dba Unocal**

**Union Pacific Resources Company**

**Union Pacific Railroad Company**

**USPCI for Solvent Service**

**Zeneca Inc.**

**Zycon Corporation**

**APPENDIX D:  
LIST OF SETTLING DEFENDANTS'  
AFFILIATES**

**CASMALIA CONSENT DECREE  
APPENDIX D:  
LIST OF SETTLING DEFENDANTS'  
AFFILIATES**

**APPENDIX D:  
LIST OF SETTLING DEFENDANTS' AFFILIATES**

**Aerojet General Corporation**

- Aerojet Electro Systems Company
- Aerojet-General Corporation
- Aerojet Heavy Metals Company
- Aerojet Liquid Rocket Corporation
- Aerojet Manufacturing Company
- Aerojet Nevada
- Aerojet Ordnance Company
- Aerojet Solid Propulsion Company
- Aerojet Strategic Propulsion Company
- Aerojet Tactical Systems Company
- Cordova Chemical Company

**Atlantic Richfield Company (ARCO)**

- ARCO Chemical Company
- ARCO Oil and Gas Company
- ARCO Metals Company (American Brass)
- ARCO Products Company (formerly ARCO Petroleum Products Company)
- ARCO Solar Inc.
- ARCO Transportation Company
- Four Corners Pipeline Company
- Tenneco Oil Company (oil and gas production facilities located in Oregon and California)

**Chevron Corporation, a Delaware Corporation**

- Chevron Chemical Company, a Delaware corporation
- Chevron Land and Development Company, a Delaware corporation
- Chevron Pipe Line Company, a Delaware corporation
- Chevron U.S.A. Inc., a Pennsylvania corporation on behalf of itself and its divisions  
Chevron U.S.A. Production Company, Chevron Products Company, Chevron  
Research and Technology Company, Chevron Petroleum Technology Company,  
and Chevron Resources Company and as successor to Gulf Oil Corporation

**Conoco Inc.**

Comap, Inc.  
Douglas Oil Company of California  
Douglas Stations, Inc.  
E.I. du Pont de Nemours and Company  
Kayo Oil Company  
Triangle Facilities, Inc.

**Exxon Corporation**

Exxon Company, USA, a division of Exxon Corporation  
Exxon Chemical Company, a division of Exxon Corporation  
Exxon Enterprises, a Division of Exxon Corporation, and affiliated companies  
SeaRiver Maritime, Incorporated, formerly known as Exxon Shipping Company

**General Motors Corporation**

General Motors - C-P-C Assembly (Southgate and Van Nuys)  
General Motors - Delphi-Energy & Engine Management (formerly Delco-Remy)  
General Motors - Electro-Motive Division  
Delco Systems Operations (formerly Delco Electronics)  
General Motors - Service Parts Operations (formerly Parts Division)  
General Motors - Parts Distribution Facility  
General Motors - Service Parts Truck facility  
General Motors - GMC Truck Center  
General Motors - CPC Fremont Assembly

**Hughes Aircraft Company, and its subsidiaries**

Hughes Research Laboratories, Inc.  
Hughes Telecommunication & Space Company and its subsidiaries

**Lockheed Martin Corporation**

Lockheed Corporation

Lockheed-California Company (Calac), a division of Lockheed Corporation

Lockheed Aircraft Services Company (LAS), a division of Lockheed Corporation

Lockheed Missiles & Space Company (LMSC), a subsidiary of Lockheed Corporation

Lockheed Air Terminal Inc. (LAT), a subsidiary of Lockheed Corporation

Lockheed Space Operation Company (LSOC), a subsidiary of Lockheed Corporation

Lockheed Oceans Systems, a division of Lockheed Missiles & Space Company

Lockheed Advanced Marine Systems, a division of Lockheed Missiles & Space Company, and, subsequently, a division of Lockheed Engineering and Sciences Company, a subsidiary of Lockheed Corporation

Martin Marietta Corporation

Commonwealth Aluminum Corporation, formerly known as Martin Marietta Aluminum, Inc.

Martin Marietta Technologies, Inc.

International Light Metals Corporation

Martin Marietta Carbon, Inc.

M-C Carbon

Martin Marietta Carbon

Martin Marietta International Light Metals Corporation

**McDonnell Douglas Corporation**

McDonnell Douglas Realty Company

McDonnell Douglas Helicopter Company

Douglas Aircraft Company

McDonnell Douglas Aircraft Company

McDonnell Douglas Astronautics Company

McDonnell Douglas Space Systems Company (MDSSC)

MDC Realty Company

McDonnell Douglas Computer Systems

Microdata Corporation

Hughes Helicopters, Inc.

Alcoa Defense Systems, Inc. (now McDonnell Douglas Technologies, Inc.)

Global Analytics Inc.

McDonnell Douglas - HB

**Mobil Oil Corporation**

Mobil Corporation  
Mobil Administrative Services Company, Inc.  
Mobil Exploration and Producing Services, Inc.  
Mobil Exploration and Producing North America, Inc.  
Mobil Pipeline Company  
Mobil Marine Transportation Limited (for s/s Mobil Arctic and Syosett)  
Mobil Chemical Company  
The Superior Oil Company  
Canadian Superior Oil (U.S.) Limited  
Canadian Superior Mining (U.S.) Limited  
Santa Clara Waste Water Company  
Vista Oil Company

**Northrop Grumman Corporation**

Northrop Corporation -- all divisions and subsidiaries including:

Northrop Corporation - Aircraft Division  
Northrop Aircraft Company  
Northrop Corporation, K-8 Facility  
Northrop Corporation - Ventura Division  
Northrop Corporation - Electro-Mechanical Division  
Northrop Corporation - Anaheim  
Northrop Corporation - Electronics Division  
Northrop Corporation - B-2 Division  
Northrop Corporation - Advanced Systems Division  
Northrop Corporation - Advanced Design Systems  
Northrop Corporation - Precision Products Division  
Northrop Research & Technology Center

Grumman Corporation -- all divisions and subsidiaries, including:

Grumman Flexible

Westinghouse Electric Corporation - Electronics Systems Group (all facilities acquired by Northrop Grumman Corporation on March 1, 1996), including:

Westinghouse Electric Corporation - Marine Systems Division

**Oil & Solvent Process Company, a subsidiary of Chemical Waste Management, Inc.**  
Chemical Waste Management, Inc., as successor and/or parent to the following entities:

Gimelli Brothers

Oil & Solvent Process Company (also known as OSCO)

W-T Universal Engineering, Inc.

Waste Management of Alameda County, Inc., as successor to Oakland Scavenger Company

Waste Management Collection & Recycling, Inc., as successor and/or parent to the following entities:

Waste Management of San Gabriel/Pomona Valley, formerly doing business as Webster's Refuse Disposal Service

Waste Management of Sacramento, formerly SAWDCO

Waste Management of Gardena, Inc.

**The Proctor & Gamble Manufacturing Company**

The Proctor & Gamble Paper Products Company

Richardson-Vicks Inc. (formerly Vidal Sasoon, Inc.)

Mallinckrodt Baker, Inc. (formerly J.T. Baker Inc.)

**Reynolds Metals Company**

Reynolds Metals Development Company

**Rhone-Poulenc Inc.**

Rhone-Poulenc Basic Chemicals Co.

Stauffer Chemical Company

**Romic Environmental Technologies Corporation**

California Solvent Recycling

Romic Chemical Corporation

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Appendix D: List of Settling Defendants' Affiliates  
Casmalia Consent Decree



**Shell Oil Company**

Catalyst Technology Inc. L.P.  
Composite Engineering  
Heat Transfer Research  
Triton Biosciences (originally incorporated as Applied Biosciences)  
Kernridge Oil Co.  
Criterion Catalyst Co., L.P.  
Fairview Shell  
Gabriel Shell  
Mitchell Shell  
Palisades Shell  
Philip Asted Shell  
Shell  
Shell Beta Storage SWEPI  
Shell California  
Shell California Production Inc.  
Shell California Production Inc. - Midway Sunset  
Shell Chemical Company  
Shell Development Company  
Shell Oil  
Shell Oil Company/Berkeley  
Shell Oil Company/Disbursements  
Shell Oil Company Kern County Refinery  
Shell Oil Company/Paso Robles  
Shell Oil Company - Wilmington Manufacturing Complex  
Shell Oil Corp.  
Shell Oil Production Services  
Shell Plant Store  
Shell Production Inc.  
Shell Service Station  
Shell Western  
Shell Western E&P Inc.  
Shell Western Exploration  
Shell Western Exploration & Production Inc.  
SWEPI  
Turnpike Shell  
Western Farm Services  
Western Farm Supply  
Wilburn Shell Station  
Yates Shell

**Shipley Company, Inc.**

Shipley Company, L.L.C., successor entity to Shipley Company, Inc.  
Rohm & Haas of California Inc.

**Southern Pacific Transportation Company**

Pacific Motor Trucking Company

**Texaco Inc.**

Texaco Exploration and Production Inc.  
Texaco Refining and Marketing Inc.  
Texaco Trading and Transportation Inc.  
Getty Oil Company and related subsidiaries

**Teleflex Incorporated**

Sermatech Intl.  
The Talley Corp.  
Talley Corporation

**Union Oil Company of California, Inc. dba Unocal**

Pure Gas Company  
The Pure Oil Corporation  
West Coast Shipping  
PureGro Company

**Union Pacific Resources Company**

Champlin Petroleum Company

**Union Pacific Railroad Company**

Western Pacific Railroad Company

**Zeneca Inc.**

Applied Solar Energy Corporation  
Converters Ink Co.  
ICI Americas, Inc.  
ICI Stewart [sic] Pharmaceuticals  
Stuart Pharmaceuticals  
Thoro Packaging