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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF CONTRA COSTA

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14 **PEOPLE OF THE STATE OF**  
15 **CALIFORNIA,**

16 Plaintiff,

17 v.

18 **GOLDEN GATE PETROLEUM CO., a**  
19 **California Corporation; BAY**  
20 **AREA/DIABLO PETROLEUM**  
21 **COMPANY, a California Corporation;**  
22 **DENNIS O'KEEFE, an individual;**  
**WESTGATE PETROLEUM COMPANY,**  
**INC., a California Corporation, and DOES**  
**1 THROUGH 100,**

23 Defendants.  
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Case No. MSC 07 02593

**FINAL JUDGMENT ON CONSENT**

Date: July 29, 2011

Time: 1:30 p.m.

Dept: 17

Judge: Barry Goode

Trial Date: August 22, 2011

Action Filed: November 26, 2007

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1 It appearing that the Court has jurisdiction over the subject matter and the parties; that  
2 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA (People), by and through  
3 KAMALA D. HARRIS, Attorney General of California, MARGARITA PADILLA, Supervising  
4 Deputy Attorney General, KIRK MCINNIS, Deputy Attorney General, and the additional counsel  
5 for the PEOPLE as set forth on the STIPULATION FOR ENTRY OF FINAL JUDGMENT ON  
6 CONSENT; and Defendants, GOLDEN GATE PETROLEUM CO., a California corporation;  
7 BAY AREA/DIABLO PETROLEUM COMPANY, a California corporation; DENNIS  
8 O’KEEFE, an individual; WESTGATE PETROLEUM COMPANY, INC., a California  
9 corporation, by and through its attorneys, POLLOCK & JAMES, LLP, by Mark S. Pollock, Esq.,  
10 have executed a STIPULATION FOR ENTRY OF FINAL JUDGMENT ON CONSENT  
11 (“Stipulation”), filed concurrently with this FINAL JUDGMENT ON CONSENT (“Judgment”);  
12 that the Stipulation recites, among other things, the consent of the parties to the signing of this  
13 Judgment by the Court and to its filing and entry; and, therefore, upon the consent of the parties  
14 hereto, and good cause appearing for the entry of this Judgment,

15 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

16 **A. JURISDICTION**

17 The Superior Court of Contra Costa County has subject matter jurisdiction and personal  
18 jurisdiction over the Parties.

19 **B. DEFINITIONS**

20 Except where otherwise expressly defined herein, all terms in this Judgment shall be  
21 interpreted consistent with Chapters 6.5, 6.7, and 6.95 of Division 20 of the Health and Safety  
22 Code and the regulations promulgated under these chapters.

23 1. “Covered Facilities” means the Defendants’ facilities in the State of  
24 California listed in Attachment A.

25 2. “Certified Unified Program Agency” or “CUPA” is the agency certified by  
26 the California Environmental Protection Agency pursuant to the requirements of Chapter 6.11 of  
27 the Health and Safety Code to implement certain State of California environmental programs  
28 within the local agency’s jurisdiction. As used in this Judgment, CUPA includes any Participating

1 Agency or Unified Program Agency.

2 3. "Hazardous Materials Business Plan" or "HMBP" as used herein, means a  
3 separate plan for each facility, site, or branch of business which meets the requirements of Health  
4 and Safety Code section 25504.

5 4. "Hazardous Material," as used herein, means "hazardous material" as that  
6 term is used in Health and Safety Code section 25501(p).

7 5. "Hazardous Waste," as used herein, shall have the definition as provided  
8 for in Health and Safety Code section 25117.

9 6. "Hazardous Waste Management," and "management" as used herein, shall  
10 have the definition as provided for in Health and Safety Code section 25117.2.

11 7. "Underground Storage Tank System" or "UST system," as used herein,  
12 shall have the definition provided by Health and Safety Code section 25281(z).

13 8. "Pledged Assets," as used herein, means those assets referenced in  
14 Attachment C.

15 **C. PAYMENTS OF CIVIL PENALTIES AND COSTS**

16 Defendants are jointly and severally liable for a total of six million dollars (\$6,000,000),  
17 to be allocated and to be paid as set forth herein. Defendants shall deliver all required payments  
18 by cashier's check to the California Department of Justice, Office of the Attorney General,  
19 attention Kirk McInnis, Deputy Attorney General, 1515 Clay Street, 20th, Floor, Oakland, CA  
20 94612, for distribution pursuant to the terms of Attachment B of this Judgment.

21 **1. REIMBURSEMENT OF COSTS OF INVESTIGATION AND**  
22 **ENFORCEMENT**

23 1.1. Within thirty (30) days of entry of this Final Judgment on Consent,  
24 Defendants shall pay fifty thousand dollars (\$50,000) for reimbursement of attorneys fees, costs  
25 of investigation, and other costs of enforcement. Defendants shall pay an additional three  
26 hundred fifty thousand dollars (\$350,000) for reimbursement of attorneys fees, costs of  
27 investigation, and other costs of enforcement by December 31, 2011. Defendants shall pay an  
28 additional four hundred ninety five thousand three hundred seventy dollars (\$495,370) for

1 reimbursement of attorneys' fees, costs of investigation, and other costs of enforcement by June  
2 1, 2015. These funds will be allocated as set forth in Attachment B, incorporated by reference.

3 **2. INITIAL CIVIL PENALTIES**

4 2.1. In addition to the payments made in accordance with Section C.1.1,  
5 Defendants shall pay a total of two million one hundred four thousand six hundred thirty dollars  
6 (\$2,104,630) as Penalty Payments for civil penalties. These funds shall be paid as follows: 1) a  
7 payment of four hundred seventy-five thousand dollars (\$475,000) shall be made on or before  
8 June 1, 2012; 2) a payment of six hundred thousand dollars (\$600,000) shall be made on or before  
9 June 1, 2013; 3) a payment of seven hundred twenty-five thousand dollars (\$725,000) shall be  
10 made on or before June 1, 2014; and 4) a final payment of three hundred four thousand six  
11 hundred thirty dollars (\$304,630) shall be made on or before June 1, 2015. These funds will be  
12 allocated as set forth in Attachment B, incorporated by reference.

13 **3. SUSPENDED PENALTY**

14 3.1. Of Defendants' total liability of six million dollars (\$6,000,000),  
15 three million dollars (\$3,000,000) shall be suspended as set forth below.

16 3.1 (a) If the People determine that Defendants have violated one or  
17 more injunctive provisions, the People shall notify Defendants of the violation and request  
18 payment of a Suspended Penalty. The appropriate Suspended penalty amounts for the violations  
19 identified in Sections F. 2.1 to F. 2.11 is two thousand five hundred dollars (\$2,500) for the first  
20 day of violation and two thousand five hundred dollars (\$2,500) per day after the period to correct  
21 the violation provided in Sections F. 2.1 to F. 2.11, if any, has expired. The appropriate  
22 Suspended Penalty amounts for the violations identified in Sections F. 2.12 to F. 2.33 is one  
23 thousand dollars (\$1,000) for the first day of violation and one thousand dollars (\$1,000) per day  
24 after the period to correct the violation provided in Sections F 2.12 to F. 2.33, if any, has expired.  
25 The appropriate Suspended Penalty amounts for the violations identified in Sections F. 2.34 to F.  
26 2.44. is five hundred dollars (\$500) for the first day of violation and five hundred dollars (\$500)  
27 per day after the period to correct the violation provided in Sections F 2.34 to F. 2.44, if any, has  
28 expired.



1 3.1(b). If Defendants contend that the alleged violation did not  
2 occur or that Defendants are not responsible for the alleged violation due to a Force Majeure as  
3 defined in Section G, the People may file a noticed motion as set forth in Section H, requesting  
4 that the Court impose Suspended Penalties. Defendants retain the right to oppose the motion on  
5 the grounds that the alleged violation did not occur or that Defendants are not responsible for the  
6 alleged violation due to a Force Majeure as defined in Section G. At least ten (10) days before  
7 filing a motion seeking a Suspended Penalty, the People shall seek to meet and confer in good  
8 faith with Defendants to attempt to resolve the matter without judicial intervention.

9 3.1(c). If the Court finds that one or more Defendants have engaged  
10 in a violation on one or more occasions, for each day of each violation, ~~the~~ the Court shall require  
11 Defendants to pay a Suspended Penalty as described in Section 3.1(a). The Parties will not be  
12 permitted to request the Court to reduce, increase, or otherwise modify the amount of the  
13 Suspended Penalty. Suspended Penalties may be imposed until the entire Suspended Penalty of  
14 three million dollars (\$3,000,000.00) is exhausted.

15 3.2. Defendants shall pay a Suspended Penalty within thirty (30) days of  
16 notification of the violation as provided in Section 3.1(a). If Defendants contend that the alleged  
17 violation did not occur or that Defendants are not responsible for the alleged violation due to a  
18 Force Majeure as defined in Section G, and the People seek judicial intervention under Section  
19 3.1(b), Defendants shall pay a Suspended Penalty within thirty (30) days of the entry of an order  
20 finding that Defendants committed a violation.

21 3.3. Five years from entry of this Judgment, any amount of the original  
22 Suspended Penalty that has not been paid out under this Judgment shall be excused.

#### 23 4. LATE PAYMENTS

24 4.1. Defendants shall be and are hereby deemed liable for a stipulated  
25 civil penalty of ten thousand dollars (\$10,000.00) for each day that a payment required pursuant  
26 to this Judgment is late. If a required payment is more than thirty (30) days late, it constitutes an  
27 Event of Default under Section E.

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1 **D. JOINT AND SEVERAL LIABILITY**

2 Defendants, and each of them, are jointly and severally liable for all payments required  
3 pursuant to this Judgment.

4 **E. FINANCIAL ASSURANCE**

5 1. As security for their prompt and complete payment of their obligations  
6 under this Judgment, Defendants, and each of them, does assign, grant, and pledge all of their  
7 currently unencumbered interest in each and every Pledged Asset referenced in Attachment C. It  
8 is understood Defendants have the right to substitute a new primary lender for up to 120 percent  
9 of the current indebtedness. The amount of Defendants' indebtedness may increase further as  
10 penalty is paid down under this Agreement, subject to negotiation between the parties.

11 Defendants pledge all the equity interest in a 1999 Beech King Aircraft Raytheon C90A LJ-1572  
12 N931GG, subject to Security Agreement and Promissory Note No. 0011438, Schedule No.  
13 0011438001, dated December 16, 2005, and will execute all documents necessary to secure that  
14 pledge.

15 1.1. Defendants, and each of them, hereby grant and pledge to the  
16 People a continuing lien and security interest in the Pledged Assets which shall continue in effect  
17 to secure Defendants' performance of their obligations under Section C of this Judgment.

18 1.2. This Section shall remain in full force and effect until all payments  
19 required under Section C have been made and shall not be limited, impaired, or otherwise  
20 affected in any way by any delay by the People in making any demand on any Defendant for, or  
21 otherwise delay in enforcing, performance or payment of any of Defendants' obligations under  
22 this Judgment

23 2. "Event of Default" is defined to include any of the following conditions:

24 2.1. Failure to make any payment under Section C of this Judgment  
25 when due;

26 2.2. Misrepresentation of the financial status of any Defendant in the  
27 course of the settlement negotiation leading to the resolution of this matter;

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1                   2.3. Institution of any legal proceeding by any Defendant seeking to  
2 adjudicate him or it bankrupt or insolvent, or seeking dissolution, liquidation, winding up,  
3 reorganization, adjustment, protection, or relief of his or its debts under any law relating to  
4 bankruptcy, insolvency, reorganization, or relief of debts or seeking the entry of an order for  
5 relief or the appointment of a receiver, trustee, custodian, or similar person for a Defendant;

6                   2.4. Any action or attempt to lessen, reduce, or subordinate the People's  
7 interest in any Pledged Asset;

8                   2.5. Institution by any third party of any legal proceeding seeking to  
9 adjudicate any Defendant bankrupt or insolvent, or seeking dissolution, liquidation, winding up,  
10 reorganization, adjustment, protection, or relief of any Defendant's debts under any law relating  
11 to bankruptcy, insolvency, reorganization, or relief of debts or seeking the entry of an order for  
12 relief or the appointment of a receiver, trustee, custodian, or similar person for a Defendant;

13                   2.6. Dissolution of any Defendant;

14                   3. Upon occurrence of an Event of Default, the People, in their sole and  
15 absolute discretion and option, may avail themselves of any and all remedies available under law,  
16 including but not limited to the rights of a secured party under the Uniform Commercial Code.

17 **F. PERMANENT INJUNCTIVE RELIEF**

18                   **1. GENERAL INJUNCTIVE PROVISIONS**

19                   Defendants, and each of them, shall be, and are hereby, permanently enjoined as  
20 follows:

21                   1.1. Pursuant to the provisions of the Health and Safety Code sections  
22 25181, 25184, 25299.01, 25516, 25516.2 and Business and Professions Code section 17203,  
23 Defendants are permanently enjoined to comply with Chapters 6.5, 6.7, and 6.95 of Division 20  
24 of the Health and Safety Code and the regulations promulgated under these chapters at the  
25 Covered Facilities. Knowing failure to comply with this injunction, and the specific injunctive  
26 provisions that follow, may subject Defendants to sanctions, including, but not limited to,  
27 contempt.

28 ///

1                                   **2.       SPECIFIC INJUNCTIVE PROVISIONS**

2                                   2.1.     Defendants shall not perform work on UST systems without all  
3 necessary permits or authorization from the appropriate permitting agencies. This provision shall  
4 not apply to the existing dispute between Defendants and Contra Costa County with respect to the  
5 Brentwood facility. The issue of whether or not the Brentwood facility has a permit and for what  
6 period of time, if any, will not be subject to the injunctive enforcement provisions of this Final  
7 Judgment on Consent in this case and is not a “Covered Matter” defined and addressed by this  
8 Final Judgment on Consent

9                                   2.2.     Defendants shall not raise, alter the position of, tamper with,  
10 disable, or otherwise render nonfunctional or ineffective, sensors in spill containment structures,  
11 under dispenser containment, and sumps.

12                                  2.3.     Defendants shall at all times assure the sensors in spill containment  
13 structures, under dispenser containment, and sumps are placed in a position so that the sensor is  
14 capable of detecting a leak at the earliest possible opportunity. Defendants shall undertake  
15 measures to regularly inspect, at least monthly, the UST system to assure all leak detection  
16 systems are properly placed. Defendants shall maintain a log to memorialize such inspections  
17 and the results thereof. Defendants shall instruct its employees if during the course of such sensor  
18 inspections or at any other time employees may otherwise observe a sensor which is improperly  
19 placed, to immediately notify supervisory personnel that a sensor is not properly placed. If a  
20 sensor is not properly placed or is not functioning as required, Defendants shall shut the UST  
21 system down immediately. Defendants shall not place the UST system back into operation until  
22 the sensor has been properly positioned, replaced or repaired.

23                                  2.4.     If any UST system fails a secondary containment test, and where  
24 Defendants reasonably determine that a release to the environment is not possible as a result of  
25 the failure, Defendants may continue to operate the UST system for a reasonable time until  
26 repairs are made, unless otherwise directed by the appropriate CUPA. A reasonable time within  
27 which to repair a secondary containment system is 30-120 days, depending on the type and extent  
28 of the failure, the repairs needed and the time needed by the CUPA to review any necessary repair

1 applications.

2 2.5. If any UST system fails a secondary containment test, and where  
3 the failure would indicate to a reasonable operator that there is a potential for release to the  
4 environment, Defendants shall immediately take all appropriate action to prevent a release,  
5 including but not limited to, shutting down the effected portion of the UST system.

6 2.6. Defendants shall at all times ensure that all secondary containment  
7 systems are constructed so that any releases to the secondary containment system will flow to a  
8 collection sump as required by California Code of Regulations, title 23, section 2636(c)(1). If the  
9 appropriate CUPA finds a violation of California Code of Regulations, title 23, section  
10 2636(c)(1), Defendants shall correct the violation within seven (7) days or, if a permit is required  
11 from the CUPA, shall submit the necessary documentation to obtain the permit within seven (7)  
12 days.

13 2.7. Defendants shall at all times have a means of monitoring for water  
14 intrusion by precipitation or infiltration into secondary containment as required by Health and  
15 Safety Code section 25291(e). If the appropriate CUPA finds a violation of Health and Safety  
16 Code section 25291(e), Defendants shall correct the violation within seven (7) days or, if a permit  
17 is required from the CUPA, shall submit the necessary documentation to obtain the permit within  
18 seven (7) days.

19 2.8. Defendants shall at all times timely notify the appropriate CUPA of  
20 any unauthorized releases from a diesel vent line and provide a report describing the release and  
21 the corrective actions as required by Health and Safety Code section 25295 and California Code  
22 of Regulations, title 23, sections 2650 and 2652.

23 2.9. Defendants shall equip all UST systems with a spill containment  
24 structure and overfill prevention system as required by California Code of Regulations, title 23,  
25 section 2635(b). The overfill prevention system shall not allow for manual override, as required  
26 by California Code of Regulations, title 23, section 2635(b)(2).

27 2.10. Defendants shall implement corrections specified in any CUPA  
28 inspection report within 30 days after receiving an inspection report, as required by California

1 Code of Regulations, title 23, section 2712(f).

2 2.11. Defendants shall at all times have an operational audible/visual  
3 alarm system connected for continuous monitoring as required by California Code of Regulations,  
4 title 23, sections 2632 (c)(2)(B) and 2636(f)(1).

5 2.12. Defendants shall notify the appropriate authority prior to changing  
6 monitoring procedures, such as replacing leak detection equipment and/or monitoring.

7 2.13. Defendants shall at all times submit Monitoring Response Plans  
8 pursuant to California Code of Regulations, title 23, section 2632. If the appropriate CUPA finds  
9 a violation of California Code of Regulations, title 23, section 2632, Defendants shall correct the  
10 violation within thirty (30) days.

11 2.14. Defendants shall test secondary containment systems installed prior  
12 to January 1, 2001 every thirty-six months, in accordance with California Code of Regulations,  
13 title 23, section 2637(a). If the appropriate CUPA finds a violation of California Code of  
14 Regulations, title 23, section 2637(a), Defendants shall correct the violation within fifteen (15)  
15 days.

16 2.15. Defendants shall at all times have documentation on-site regarding  
17 monitoring system alarms and action taken in response to alarms, if any, available for review as  
18 required by California Code of Regulations, title 23, section 2712. If the appropriate CUPA finds  
19 a violation of California Code of Regulations, title 23, section 2712, Defendants shall correct the  
20 violation within thirty (30) days.

21 2.16. Defendants shall annually perform online leak detection tests as  
22 required by California Code of Regulation, title 23, section 2636(f)(2). If the appropriate CUPA  
23 finds a violation of California Code of Regulations, title 23, section 2636(f)(2), Defendants shall  
24 correct the violation within fifteen (15) days.

25 2.17. Defendants shall annually perform pipeline integrity tests as  
26 required by California Code of Regulation, title 23, section 2636(f)(4). If the appropriate CUPA  
27 finds a violation of California Code of Regulations, title 23, section 2636(f)(4), Defendants shall  
28 correct the violation within fifteen (15) days.

1                   2.18. Defendants shall implement and maintain a monitoring program for  
2 their pressurized product piping, other than pressurized piping contained in under-dispenser  
3 containment, that is fail safe and shuts down the pump when a leak is detected, as required by  
4 California Code of Regulations, title 23, section 2636(f)(5)(B). If the appropriate CUPA finds a  
5 violation of California Code of Regulations, title 23, section 2636(f)(5)(B), Defendants shall  
6 correct the violation within fifteen (15) days.

7                   2.19. Defendants shall annually test and certify UST monitoring systems  
8 in accordance with California Code of Regulations, title 23, section 2638. If the appropriate  
9 CUPA finds a violation of California Code of Regulations, title 23, section 2638, Defendants  
10 shall correct the violation within fifteen (15) days.

11                   2.20. Defendants shall at all times notify the appropriate CUPA in  
12 advance of upgrades of UST systems, including replacement of spill containers

13                   2.21. Defendants shall not allow liquid and debris to accumulate in  
14 containment sumps.

15                   2.22. Defendants shall at all times maintain monitoring and maintenance  
16 records pursuant to California Code of Regulations, title 23, section 2712(b). If the appropriate  
17 CUPA finds a violation of California Code of Regulations, title 23, section 2712(b), Defendants  
18 shall correct the violation within thirty (30) days.

19                   2.23. Defendants shall at all times provide adequate training to all  
20 employees to respond to a hazardous material spill or release from a UST system, including  
21 familiarizing employees with the UST monitoring plan and release report procedures in the  
22 HMBP, pursuant to Health and Safety Code section 25504. If the appropriate CUPA finds a  
23 violation of Health and Safety Code section 25504, Defendants shall correct the violation within  
24 thirty (30) days.

25                   2.24. Defendants shall at all times notify the appropriate CUPA of  
26 changes in the usage of USTs, including a change in the storage of new hazardous substances, as  
27 required by Health and Safety Code section 25286. If the appropriate CUPA finds a violation of  
28 Health and Safety Code section 25286, Defendants shall correct the violation within thirty (30)

1 days.

2                   2.25. Defendants shall at all times submit accurate as-built drawings for  
3 variations to the approved plans including remote monitoring sumps, remote fill lines for waste  
4 oil tanks, remote alarm panels, and monitoring sensors as required by California Code of  
5 Regulations, title 23, section 2711(a)(8). If the appropriate CUPA finds a violation of California  
6 Code of Regulations, title 23, section 2711(a)(8), Defendants shall correct the violation within  
7 thirty (30) days.

8                   2.26. Defendants shall at all times submit documentation to show  
9 compliance with state and federal financial responsibility requirements applicable to underground  
10 storage tanks containing petroleum as required by California Code of Regulations, title 23,  
11 section 2711(a)(11). If the appropriate CUPA finds a violation of California Code of  
12 Regulations, title 23, section 2711(a)(11), Defendants shall correct the violation within thirty (30)  
13 days.

14                   2.27. Defendants shall at all times inform the appropriate CUPA of  
15 changes to the designated underground storage tank operator as required by California Code of  
16 Regulations, title 23, section 2715(a). If the appropriate CUPA finds a violation of California  
17 Code of Regulations, title 23, section 2715(a), Defendants shall correct the violation within thirty  
18 (30) days.

19                   2.28. Defendants shall at all times cause the designated underground  
20 storage tank operator to provide facility employee training as required by California Code of  
21 Regulations, title 23, section 2715(f). If the appropriate CUPA finds a violation of California  
22 Code of Regulations, title 23, section 2715(f), Defendants shall correct the violation within fifteen  
23 (15) days.

24                   2.29. Defendants shall at all times maintain a list of facility employees  
25 who have been trained by the designated underground storage tank operator and provide a list of  
26 facility employees who have been trained to the local agency upon request as required by  
27 California Code of Regulations, title 23, section 2715(f)(3). If the appropriate CUPA finds a  
28 violation of California Code of Regulations, title 23, section 2715(f)(3), Defendants shall correct



1 the violation within thirty (30) days.

2                   2.30. Defendants shall provide to the appropriate CUPA the bi-annual  
3 line integrity test results for all remote fill lines as required by California Code of Regulations,  
4 title 23, section 2643(e). If the appropriate CUPA finds a violation of California Code of  
5 Regulations, title 23, section 2643(e), Defendants shall correct the violation within fifteen (15)  
6 days.

7                   2.31. Defendants shall submit UST permit application-Form A and UST  
8 permit application-Form B to the local agency as required by California Code of Regulations, title  
9 23, section 2711(c). If the appropriate CUPA finds a violation of California Code of Regulations,  
10 title 23, section 2711(c), Defendants shall correct the violation within thirty (30) days.

11                   2.32. Defendants shall at all times monitor the UST system as specified  
12 on the permit as required by Health and Safety Code section 25293.

13                   2.33. Defendants shall at all times provide training to employees pursuant  
14 to California Code of Regulations, title 22, section 66265.16. If the appropriate CUPA finds a  
15 violation of California Code of Regulations, title 22, section 66265.16, Defendants shall correct  
16 the violation within thirty (30) days.

17                   2.34. Defendants shall at all times maintain documentation of training of  
18 employees pursuant to California Code of Regulations, title 22, section 66265.16. If the  
19 appropriate CUPA finds a violation of California Code of Regulations, title 22, section 66265.16,  
20 Defendants shall correct the violation within thirty (30) days.

21                   2.35. Defendants shall at all times properly label containers of hazardous  
22 waste as required by California Code of Regulations, title 22, section 66262.34.

23                   2.36. Defendants shall at all times keep containers of hazardous waste  
24 closed except when removing or adding hazardous waste as required by California Code of  
25 Regulations, title 22, section 66265.173.

26                   2.37. Defendants shall at all times maintain adequate aisle space in  
27 hazardous waste accumulation areas as required by California Code of Regulations, title 22,  
28 section 66265.35.

1                   2.38. Defendants shall establish/implement a HMBP as required by  
2 Health and Safety Code section 25503.5. If the appropriate CUPA finds a violation of Health and  
3 Safety Code section 25503.5, Defendants shall correct the violation within fifteen (15) days.

4                   2.39. Defendants shall submit/update HMBPs as required by Health and  
5 Safety Code section 25505. If the appropriate CUPA finds a violation of Health and Safety Code  
6 section 25505, Defendants shall correct the violation within fifteen (15) days.

7                   2.40. Defendants shall at all times have an emergency coordinator as  
8 required by California Code of Regulations, title 22, section 66265.55.

9                   2.41. Defendants shall not manage hazardous waste without an  
10 Environmental Protection Agency Identification number as required by California Code of  
11 Regulations, title 22, section 66262.12(a). If the appropriate CUPA finds a violation of California  
12 Code of Regulations, title 22, section 66262.12(a), Defendants shall correct the violation within  
13 thirty (30) days.

14                   2.42. Defendants shall keep required copies of Uniform Hazardous Waste  
15 Manifests for three (3) years as required by California Health and Safety Code section  
16 25160.2(b)(3).

17                   2.43. Defendants shall not store hazardous waste on-site at any of the  
18 Covered Facilities longer than ninety (90) days without a permit as required by Health and Safety  
19 Code section 25201(a).

20                   **3. ENVIRONMENTAL COORDINATOR**

21                   3.1. Defendants shall employ and maintain a corporate officer or  
22 employee knowledgeable in the California environmental laws that are the subject of this  
23 Judgment, as an “Environmental Coordinator.” The Environmental Coordinator’s responsibility  
24 shall be to manage Defendants’ compliance with the injunctive terms in this Judgment. The  
25 duties of the Environmental Coordinator shall include, collecting and maintaining copies of all  
26 written advisements of violation, including Notices of Violation (“NOVs”) and inspection reports,  
27 issued or performed by the CUPAs, relating to the Covered Facilities for a period of five (5) years  
28 and to undertake good faith efforts to assess Defendants’ compliance with applicable laws and

1 regulations, and to advise Defendants' personnel on compliance with all applicable laws and  
2 regulations, and to correct any noted deficiencies or violations.

3 3.2. Beginning one year after the entry of this Judgment, and continuing  
4 for five (5) years from the entry thereof, Defendants' Environmental Coordinator shall submit to  
5 the People, annual status report describing Defendants' program for compliance with the terms of  
6 the injunction and implementation of such compliance program, any material change made to the  
7 program in the preceding year, any NOV issued to Defendants for any of the Covered Facilities,  
8 any actions taken in response to such NOVs, and any penalties paid by Defendants with respect  
9 to such NOVs. Each such annual report shall be signed by Defendants' Environmental  
10 Coordinator under penalty of perjury.

11 **G. FORCE MAJEURE**

12 1. Defendants may assert Force Majeure as an affirmative defense in the  
13 event it is unable to perform its obligations under this Judgment. Any event beyond the control of  
14 Defendants that prevents the performance of such an obligation despite Defendants' timely and  
15 diligent efforts to fulfill the obligation is a Force Majeure event. A Force Majeure event does not  
16 include financial inability to fund or complete the work, any failure by Defendants' suppliers,  
17 contractors, subcontractors or other persons contracted to perform the work for or on behalf of  
18 Defendants (unless failure to do so is itself due to a Force Majeure event), nor does it include  
19 circumstances which could have been avoided if Defendants had complied with preventative  
20 requirements imposed by law, regulation, or ordinance.

21 **H. ENFORCEMENT**

22 1. The People may move this Court to enforce any provision of this Judgment  
23 and to award other appropriate relief, including penalties for contempt and penalties as provided  
24 for in Section C.3, by serving and filing a regularly noticed motion in accordance with Code of  
25 Civil Procedure section 1005 ("Enforcement Motion"). Defendants may file an opposition and  
26 the People may file a reply. At least ten (10) calendar days before filing an Enforcement Motion,  
27 the People must seek to meet and confer with Defendants to attempt to resolve the matter without  
28 judicial intervention. To ensure that the meet and confer is as productive as possible, the People

1 will identify, as specifically as the available information allows, the specific instances and dates  
2 of non-compliance, and the actions that the People believe Defendants must take to remedy that  
3 non-compliance and the amount of penalties, if any, sought by the People.

4           2.       Imposition of penalties pursuant to this provision of this Judgment is in  
5 addition to any enforcement action that may be taken by the People, or any state, county, or local  
6 agency, department, board or entity, or any CUPA for violations of applicable environmental  
7 laws.

8 **I.       EFFECT OF CONSENT JUDGMENT**

9           1.       Except as expressly provided in Section J, nothing in this Judgment shall  
10 be construed to preclude the People, or any state, county, or local agency, department, board or  
11 entity, or any CUPA, from exercising its authority under any law, statute, or regulation.

12 **J.       MATTERS COVERED AND RESERVED CLAIMS**

13           1.       This Judgment is a final and binding resolution and settlement of all known  
14 claims, violations, and causes of action alleged by the People in the Complaint with respect to their  
15 violations of Chapter 6.5, 6.7, and 6.95, and of all claims, violations, or causes of action related to  
16 the violations of Chapter 6.5, 6.7, and 6.95 alleged by the People which could have been asserted  
17 by the People based on the facts that are the subject of the Complaint against Defendants. The  
18 matters described in the previous sentence are “Covered Matters.” The People may pursue any  
19 claim that is not a covered matter (“Reserved Claims”).

20           2.       Any claims, violations, or causes of action that are not based on facts  
21 alleged in the Complaint, including but not limited to any violations that occurred after November  
22 26, 2007 or which are not related to the Covered Facilities, are not resolved, settled, or covered by  
23 this Judgment. In addition, claims, violations, or causes of action against independent contractors  
24 or subcontractors of Defendants, if any, are not resolved by this Judgment.

25           3.       Notwithstanding any other provision of this Judgment, any claims, or  
26 causes of action for performance of cleanup, corrective action, or response action concerning or  
27 arising out of actual past or future releases, spills, leaks, discharges or disposal of hazardous  
28 materials, hazardous wastes, and/or hazardous substances caused or contributed to by Defendants,

1 or claims or causes of action relating to the disposal of hazardous materials, hazardous wastes, or  
2 hazardous substances by Defendants, where such disposal was unknown to the People as of  
3 November 26, 2007 are not Covered Matters and are Reserved Claims.

4 4. In any subsequent action that may be brought in the name of the People  
5 based on any Reserved Claims, Defendants will not assert that the failure to pursue the Reserved  
6 Claims as part of this action constitutes claim-splitting or laches or is otherwise inequitable  
7 because of this asserted failure. This Section does not bar Defendants from asserting any statute  
8 of limitations that may be applicable to any Reserved Claims or any other defense.

9 5. Defendants shall not to pursue any civil or administrative claims against  
10 the People or against any agencies of the State of California, any counties in the State of  
11 California, or any CUPA, or against their officers, employees, representatives, agents, or  
12 attorneys, arising out of or related to the Complaint and the Covered Matters.

13 **K. NOTICE**

14 1. All submissions and notices required by this Judgment shall be sent to:

15 a. For Plaintiff:

16  
17 Kirk McInnis  
18 Deputy Attorney General  
19 Office of the Attorney General  
20 1515 Clay Street, 20th Floor  
21 P.O. Box 70550  
22 Oakland, California 94612-0550  
23 Kirk.McInnis@doj.ca.gov

24 David Boyers  
25 Senior Staff Counsel  
26 State Water Resources Control Board, Office of Enforcement  
27 1001 I Street, 16<sup>th</sup> Floor  
28 Sacramento, CA 95814  
[dboyers@waterboards.ca.gov](mailto:dboyers@waterboards.ca.gov)

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b. For Defendants:

Dennis O’Keefe  
Bay Area/ Diablo Petroleum Company  
1340 Arnold Drive, Suite 231  
Martinez, CA  
94553

Pollock & James, LLP  
952 Jefferson St.  
Napa, CA  
94559

Any party may change its notice and name and address by informing the other Parties in writing by certified mail. The change shall be effective upon receipt of the certified mail.

2. All notices and communications required or permitted under this Judgment that are properly addressed as provided in this section are effective upon delivery if delivered personally or by overnight delivery, or are effective five (5) days following deposit in the United States mail, postage prepaid if delivered by mail, or are effective the next court day that electronic mail is sent before 5 p.m. (PST) to the electronic mail addresses of the designated recipients for notice concurrent with sending the notice by United States mail.

**L. NECESSITY FOR WRITTEN APPROVALS**

1. All notices, approvals, and decisions of the People under the terms of this Judgment shall be communicated to Defendants in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the People regarding submissions or notices shall be construed to relieve Defendants of their obligations to obtain any final written approval required by this Judgment.

**M. NO WAIVER OF RIGHT TO ENFORCE**

1. The failure of the People to enforce any provision of this Judgment shall neither be deemed a waiver of such provision nor in any way affect the validity of this Judgment. The failure of the People to enforce any such provision shall not preclude it from later enforcing the same or other provisions of this Judgment. Nor oral advice guidance, suggestions, or comments by employees or officials of the People or Defendants, or people acting on behalf of

1 Defendants, regarding matters covered in this Judgment shall be construed to relieve any of the  
2 Defendants of their obligations under this Judgment.

3 **N. REGULATORY CHANGES**

4 1. Nothing in this Judgment shall excuse any of the Defendants from meeting  
5 any more stringent requirements that may be imposed by changes in applicable law.

6 **O. APPLICATION OF JUDGMENT**

7 1. This Judgment shall apply to and be binding upon the People and upon  
8 each of the Defendants, their successors, assigns, directors, officers, and representatives.

9 **P. CONTINUING JURISDICTION**

10 1. This Court shall retain continuing jurisdiction to interpret and enforce the  
11 terms of this Judgment and to address any other matters arising out of or regarding this Judgment.

12 **Q. ABILITY TO INSPECT AND COPY RECORDS AND DOCUMENTS**

13 1. On reasonable notice and subject to all of the defenses each of the  
14 Defendants would have to request for documents made by subpoenas, discovery, or other formal  
15 legal process, Defendants shall permit any duly authorized representative of the People to inspect  
16 and copy Defendants' respective records and documents to determine whether Defendants is in  
17 compliance with the terms of this Judgment. Nothing in this Paragraph is intended to require  
18 access to or production of any privileged documents.

19 **R. PAYMENT OF LITIGATION EXPENSES AND FEES**

20 1. Each of the Defendants shall pay their respective attorneys fees, expert  
21 witness fees and costs, and all other costs of litigation and investigation incurred by it and/or him  
22 in connection with this matter.

23 **S. MODIFICATION**

24 1. This Judgment may be modified only by the Court, upon noticed motion,  
25 or upon written consent by the Parties and approval of the Court.

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IT IS SO ORDERED.

DATED: August 8, 2011



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DN: cn=Barry Goode,  
c=US, o=Superior Court,  
ou=Judge  
Date: 2011.08.08  
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THE HONORABLE BARRY GOODE  
JUDGE OF THE SUPERIOR COURT



## ATTACHMENT A

### The Covered Facilities

LOCATION	ADDRESS
Arcata Texaco	421 J. Street, Arcata 95521
Atascadero Shell	2000 El Camino Real, Atascadero 93422
Brentwood Plant/Store	8285 Brentwood Blvd., Brentwood 94513
Cloverdale Cash Oil	324 N. Cloverdale Blvd., Cloverdale 95425
Cloverdale Shell	1194 S. Cloverdale, Cloverdale 95425
El Sobrante Shell	5329A San Pablo Dam Rd., El Sobrante 94803
Eureka Cash Oil	1679 Myrtle Ave, Eureka 95501
Eureka Texaco	3505 Broadway, Eureka 95503
Hayward Plant/Shell	1565 Industrial Parkway, Hayward 94554
Lakeport Shell	2725 S. Main St., Lakeport 95453
Lemoore Shell	1790 W. Bush St., Lemoore 93245
Los Osos Chevron	995 Los Osos Valley Rd., Los Osos 93402
Martinez Plant	3575 Pacheco Blvd., Martinez 94553
Martinez Store	3520 Pacheco Blvd., Martinez 94553
Oakland	421 23 <sup>rd</sup> Ave., Oakland 94606
Oakland Port	1107 5 <sup>th</sup> Street, Oakland 94607
Paso Robles Plant	820 26 <sup>th</sup> St., Paso Robles 93446
Paso Robles Store	2331 Spring St., Paso Robles 93446
Richmond Store	700 Earlandson Rd., Richmond 94806
S. San Francisco Shell	114-128 Harbor Way 94080
Salinas Plant	1020 Terven Ave., Salinas 93906
San Jose Plant	905 Stockton Ave., San Jose 95110
Santa Rosa Cardlock	1534 Copperhill, Santa Rosa 95402
Ukiah Shell	1105 Airport Park Blvd., Ukiah 95482
Watsonville Cash Oil	13 San Juan Rd., Watsonville 95076
Willits Circle K Shell	1579 S. Main Street, Willits 95490
Benicia	116 W. Channel Road, Benicia
Fortuna	409 S. Fortuna Blvd., Fortuna
Healdsburg	1496 Healdsburg Ave., Healdsburg
San Luis Obispo	950 Orcutt Road, San Luis Obispo
Chico Cash Oil	111 W 11 <sup>th</sup> Ave., Chico 95926
Salinas Plant	1020 Terven Ave., Salinas 93906
Cobb Texaco	16340 Hwy. 175, Cobb 95426
Two Jacks	5200 Main Street, Two Jacks 95451

**ATTACHMENT B**

<b>Agency</b>	<b>Bus. &amp; Prof. Code § 17200</b>	<b>Health and Safety Code § 25299</b>	<b>Costs and Expenses</b>	<b>Total</b>
Craig Thompson Trust*			268,000	268,000
Water Board		500,000		500,000
Attorney General			447,000	447,000
Alameda	20,000			20,000
Butte			10,000	10,000
Contra Costa	310,000	100,000		410,000
Humboldt**	20,000	15,000	60,000	95,000
Kings	20,000	15,000		35,000
Lake	20,000	15,000		35,000
Mendocino	20,000	15,000		35,000
Monterey	205,000	98,630	106,370	410,000
San Luis Obispo	20,000			20,000
San Mateo		1,000	4,000	5,000
Santa Clara	220,000			220,000
Solano	400,000			400,000
Sonoma	15,000	5,000		20,000
Sutter	20,000	15,000		35,000
Yuba	20,000	15,000		35,000
Totals	1,310,000	794,630	895,370	3,000,000

\* The Criag Thompson Environmental Protection Prosecution Trust

\*\* \$60,000 in Costs and Expenses to be paid to the California District Attorneys Association Circuit Prosecutor Project

**Agency****Date Due**

Craig Thompson Trust	9/15/2011 (\$50,000) 1/31/2012 (\$218,000)
Water Board	6/30/2012 (\$100,000) 6/30/2013 (\$150,000) 6/30/2014 (\$250,000)
Attorney General	1/31/2012 (\$62,000) 6/30/2015 (\$385,000)
Alameda	6/30/2015
Butte	1/31/2012
Contra Costa	6/30/2012 (\$100,000) 6/30/2013 (\$150,000) 6/30/2014 (\$160,000)
Humboldt	1/31/2012 (\$60,000) 6/30/2014 (\$35,000)
Kings	6/30/2014
Lake	6/30/2014
Mendocino	6/30/2014
Monterey	6/30/2012 (\$100,000) 6/30/2015 (\$310,000)
San Luis Obispo	6/30/2015
San Mateo	6/30/2015
Santa Clara	6/30/2012 (\$75,000) 6/30/2014 (\$105,000) 6/30/2015 (\$40,000)
Solano	6/30/2012 (\$100,000) 6/30/2013 (\$300,000)
Sonoma ???	6/30/2015
Sutter	6/30/2014
Yuba	6/30/2014

**ATTACHMENT C**

421 J Street, Arcata CA 95521, APN 201-182-003-000

2000 El Camino Real, Atascadero CA 94513, APN 049-141-053

324 N. Cloverdale Blvd., Cloverdale CA 95425, APN 116-310-064-000

1194 S. Cloverdale Blvd., Cloverdale CA 95425, APN 116-310-063-000

1790 W. Bush St., Lemoore CA 93245, APN 023-450-017-000

114-128 Harbor Way, South San Francisco CA 94080, APN 015-032-070

13 San Juan Rd., Watsonville CA 95076, APN 117-361-027-000

1579 S. Main Street, Willits CA 95490, APN 007-120-06

1020 Terven Ave., Salinas CA 93906, APN 003-561-032-000

S Cloverdale/Santana Dr., Cloverdale CA 95425, APN 001-162-016-000

409 S Fortuna Rd., Fortuna CA 95540, APN 201-123-013-000

44 N 19 1/2 Ave., Lemoore CA 93245, APN 023-450-019-000

124 Leslie St., Ukiah CA 95482, APN 003-050-57

8285 Brentwood Blvd., Brentwood CA 94513, APN 013-240-012-800

820 26th St., Paso Robles CA 93446, APN 008-120-034

905 Stockton Ave., San Jose CA 95110, APN 230-41-003-00

116 E. Channel Rd., Benicia CA 94510, APN 0080-040-770-01, 0080-040-780-01,  
0080-040-790-01

3740 Highland Springs Road, Lakeport CA 95453, APN 008-022-310-000

5300 Main St., Kelseyville, CA 95451, APN 024-071-670

597 W. Winnemucca Blvd., Winnemucca NV 89445, APN 015-426-01

1445 East 6th St., Reno NV 89512, APN 008-33-402, 008-33-416

5190 Sun Valley Blvd., SunValley NV 89433, APN 085-85-115