

1 RONALD J. TENPAS
Assistant Attorney General
2 Environment & Natural Resources Division
United States Department of Justice

JS - 6

3 ELISE S. FELDMAN
4 Environmental Enforcement Section
Environment & Natural Resources Division
5 United States Department of Justice
301 Howard Street, Suite 1050
6 San Francisco, CA 94105
Telephone: (415) 744-6470
7 Facsimile: (415) 744-6476
E-mail: Elise.Feldman@usdoj.gov

8 THOMAS P. O'BRIEN
9 United States Attorney
Central District of California
10 1200 U.S. Courthouse
312 North Spring Street
11 Los Angeles, California 90012
Telephone: (213) 894-2434
12 Facsimile: (213) 894-0141

13 Attorneys for Plaintiff United States of America
14 Additional Counsel Listed on Next Page

15
16 IN THE UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
18 WESTERN DIVISION

19 _____)
UNITED STATES OF AMERICA)
20 and THE STATE OF CALIFORNIA)
DEPARTMENT OF TOXIC)
21 SUBSTANCES CONTROL)

CASE NO. 08-05618 ABC (FMOx)

22 Plaintiffs,

23 v.

CONSENT DECREE

24 REULAND ELECTRIC COMPANY)

25
26 Defendant.
27 _____)

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 JAMES HUMES
Chief Assistant Attorney General
3 KEN ALEX
Senior Assistant Attorney General
4 DONALD A. ROBINSON
Supervising Deputy Attorney General

5 ANN RUSHTON
6 California Bar # 62597
Deputy Attorney General
7 California Department of Justice
300 South Spring Street
8 Los Angeles, California 90013
Tel: (213) 897-2608
9 Fax: (213) 897-2802
ann.rushton@doj.ca.gov

10 Attorneys for the California
11 Department of Toxic Substances Control

12 SAMUEL I. GUTTER
13 Sidley Austin LLP
1501 K Street, N.W.
14 Washington, DC 20005
Tel: (202)736-8167
15 Fax: (202)736-8711
sgutter@Sidley.com

16 Attorney for Defendant
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. BACKGROUND 2

II. JURISDICTION 3

III. PARTIES BOUND 3

IV. DEFINITIONS 3

V. REIMBURSEMENT OF RESPONSE COSTS 6

VI. FAILURE TO COMPLY WITH REQUIREMENTS 8

VII. COVENANT NOT TO SUE BY PLAINTIFFS 10

VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANT 11

IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION 12

X. SITE ACCESS 13

XI. ACCESS TO INFORMATION 14

XII. RETENTION OF RECORDS 16

XIII. NOTICES AND SUBMISSIONS 17

XIV. RETENTION OF JURISDICTION 18

XV. INTEGRATION/APPENDICES 18

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT 18

XVII. EFFECTIVE DATE 19

XVIII. SIGNATORIES/SERVICE 19

XIX. FINAL JUDGMENT 19

1 **I. BACKGROUND**

2 A. The United States of America ("United States"), on behalf of the
3 Administrator of the United States Environmental Protection Agency ("EPA"), and
4 the State of California Department of Toxic Substances Control ("DTSC"), have
5 filed a complaint in this matter pursuant to Sections 106 and 107 of the
6 Comprehensive Environmental Response, Compensation, and Liability Act
7 ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, and Section 7003 of the Resource
8 Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, seeking
9 performance of response actions and reimbursement of response costs incurred and
10 to be incurred for response actions taken at or in connection with the release or
11 threatened release of hazardous substances at the Puente Valley Operable Unit
12 ("PVOU") of the San Gabriel Valley Superfund Site, Area 4, Los Angeles County,
13 California (the "Site").

14 B. This Consent Decree provides for the reimbursement of a portion of the
15 United States' Past Response Costs and a portion of the State DTSC's Past
16 Response Costs at this Site by Reuland Electric Company ("Settling Defendant").

17 C. The United States has reviewed the Financial Information submitted by
18 Settling Defendant to determine whether Settling Defendant is financially able to
19 pay response costs incurred and to be incurred at the Site. Based upon this
20 Financial Information, the United States has determined that Settling Defendant is
21 able to pay the amounts specified in Section V.

22 D. By entering into this Consent Decree, Settling Defendant does not admit
23 liability to or arising out of the transactions or occurrences alleged in the
24 Complaint or to any other person related to the Site.

25 E. The United States, the State DTSC, and Settling Defendant agree, and
26 this Court by entering this Consent Decree finds, that this Consent Decree has been
27 negotiated by the Parties in good faith, that settlement of this matter will avoid
28 prolonged and complicated litigation between the Parties, and that this Consent

1 hereto as Appendix A.

2 c. "CERCLA" shall mean the Comprehensive Environmental
3 Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C.
4 § 9601, et seq.

5 d. "Consent Decree" shall mean this Consent Decree and all
6 appendices attached hereto.

7 e. "Day" shall mean a calendar day. In computing any period of
8 time under this Consent Decree, where the last day falls on a Saturday, Sunday, or
9 federal holiday, the period shall run until the close of business of the next working
10 day.

11 f. "DOJ" shall mean the United States Department of Justice and
12 any successor departments, agencies, or instrumentalities of the United States.

13 g. "DTSC" shall mean the State of California Department of
14 Toxic Substances Control and any successor departments or agencies.

15 h. "Effective Date" shall mean the date of entry of this Consent
16 Decree.

17 i. "EPA" shall mean the United States Environmental Protection
18 Agency and any successor departments, agencies, or instrumentalities of the United
19 States.

20 j. "EPA Hazardous Substance Superfund" shall mean the
21 Hazardous Substance Superfund established by the Internal Revenue Code,
22 26 U.S.C. § 9507.

23 k. "ESD" shall mean the Explanation of Significant Differences
24 issued by EPA on June 14, 2005 for the Record of Decision.

25 l. "Facility" shall mean the Site.

26 m. "Financial Information" shall mean those financial documents
27 identified in Appendix B.

28 n. "Future DTSC Response Costs" shall mean all costs, including

1 but not limited to Oversight Costs, direct and indirect costs, and Basin-wide
2 Response Costs allocated to the Site, including Interest, that the State DTSC pays
3 or incurs at or relating to the Site after the date of entry of this Consent Decree,
4 but prior to the later of (i) the date 8 years from the Operational and Functional
5 Date of the Carrier Consent Decree, or (ii) the date of issuance of a final Record of
6 Decision for the Site.

7 o. "Future Response Costs" shall mean all costs, including but not
8 limited to Oversight Costs, direct and indirect costs, and Basin-wide Response
9 Costs allocated to the Site, including Interest, that the United States or any third
10 party pays or incurs at or relating to the Site after the date of entry of this Consent
11 Decree, but prior to the later of (i) the date 8 years from the Operational and
12 Functional Date of the Carrier Consent Decree, or (ii) the date of issuance of a final
13 Record of Decision for the Site.

14 p. "Interest" shall mean interest at the applicable rate specified for
15 interest on investments of the Hazardous Substance Superfund established by
16 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance
17 with 42 U.S.C. § 9607(a).

18 q. "Oversight Costs" shall mean all direct and indirect costs,
19 including Interest, that the United States or the DTSC incurs in connection with
20 monitoring and supervising performance of the Response Work by other persons.

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

23 s. "Parties" shall mean the United States, the State DTSC, and the
24 Settling Defendant.

25 t. "Past DTSC Response Costs" shall mean all costs, including but
26 not limited to Oversight Costs, direct and indirect costs, and Basin-wide Response
27 Costs allocated to the Site, including Interest, that the State DTSC has paid or
28 incurred at or relating to the Site through and including the date of entry of this

1 Consent Decree.

2 u. "Past Response Costs" shall mean all costs, including but not
3 limited to Oversight Costs, direct and indirect costs, and Basin-wide Response
4 Costs allocated to the Site, including Interest, that the United States or any third
5 party has paid or incurred at or relating to the Site through and including the date
6 of entry of this Consent Decree.

7 v. "Plaintiffs" shall mean the United States and the State of
8 California Department of Toxic Substances Control.

9 w. "Record of Decision" or "ROD" shall mean the September 30,
10 1998 EPA Interim Record of Decision for the Puente Valley Operable Unit (Area
11 4) of the San Gabriel Valley Superfund Sites, Areas 1-4.

12 x. "Response Work" shall mean the design and implementation of
13 any remedial measures, including the operation and maintenance thereof,
14 encompassed within the Record of Decision as modified by the ESD.

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

17 z. "Settling Defendant" shall mean Reuland Electric Company.

18 aa. "Site" shall mean the facility, which consists of an area of
19 groundwater contamination in Los Angeles County, California, located in the
20 geographic area designated on the National Priorities List as the San Gabriel
21 Valley Superfund Site, Area 4 [see 49 Fed. Reg. 19480 (1984)], and identified as
22 the Puente Valley Operable Unit.

23 bb. "State" shall mean the State of California.

24 cc. "United States" shall mean the United States of America,
25 including its departments, agencies and instrumentalities.

26 **V. REIMBURSEMENT OF RESPONSE COSTS**

27 4. Payments to the EPA Hazardous Substance Superfund and to the State
28 DTSC. Settling Defendant shall pay to the EPA Hazardous Substance Superfund

1 the amount of two hundred forty-six thousand dollars (\$246,000) in reimbursement
2 of Past Response Costs and pay to the State DTSC four thousand dollars (\$4,000)
3 in reimbursement of Past DTSC Response Costs. Payment shall be made as
4 follows:

5 a. Settling Defendant shall, within thirty (30) Days after entry of this
6 Consent Decree, remit the principal of two hundred forty-six thousand dollars
7 (\$246,000) to the United States. Payment to the United States shall be made by
8 FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in
9 accordance with current EFT procedures, referencing the USAO File Number,
10 EPA Region IX, the Site/Spill ID Number 09-8V, and DOJ Case Number 90-11-2-
11 354/26. Payment shall be made in accordance with instructions provided to the
12 Settling Defendant by the Financial Litigation Unit of the United States Attorney's
13 Office for the Central District of California following lodging of the Consent
14 Decree. Any payments received by the Department of Justice after 4:00 p.m.
15 Eastern Time shall be credited on the next business Day. Settling Defendant shall
16 send notice to the EPA and the DOJ that payment has been made in accordance
17 with Section XIII (Notices and Submissions) and to David Wood, PMD-6, Section
18 Chief, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California
19 94105.

20 b. The two hundred forty-six thousand dollars (\$246,000) paid by
21 Settling Defendant to the United States shall be deposited in the "San Gabriel
22 Valley Superfund Sites, Area 4, Special Account" within the EPA Hazardous
23 Substance Superfund. This Special Account shall be retained and used to conduct
24 or finance response actions at or in connection with the Site or the San Gabriel
25 Valley Superfund Sites (Areas 1- 4), or may be transferred by the EPA from this
26 Special Account to the EPA Hazardous Substance Superfund.

27 c. Settling Defendant shall, within thirty (30) Days after entry of this
28 Consent Decree, remit the principal of four thousand dollars (\$4,000) to the State

1 DTSC. Payment to the State DTSC shall be made by certified check or cashier's
2 check, made payable to "Cashier of the Department of Toxic Substances Control,"
3 Department of Toxic Substances Control, State of California, Accounting Office,
4 1001 I Street, Sacramento, California 95812. Settling Defendant shall send a
5 transmittal letter with the check, referencing the San Gabriel Superfund Sites, Area
6 4 (Puente Valley Operable Unit), Project Code No. 300346. Settling Defendant
7 also shall send notice, including a copy of the check and transmittal letter, to the
8 State DTSC as provided in Section XIII (Notices and Submissions).

9 **VI. FAILURE TO COMPLY WITH REQUIREMENTS**

10 5. Interest on Late Payments. In the event that any payment required
11 under Section V (Reimbursement of Response Costs) or Section VI, Paragraph 6
12 (Stipulated Penalties) is not received when due, Interest shall continue to accrue on
13 the unpaid balance through the date of payment. Settling Defendant shall be liable
14 for any such Interest pertaining to the payments required under Section V,
15 paragraphs 4. a. and c. (Reimbursement of Response Costs).

16 6. Stipulated Penalties.

17 a. Settling Defendant shall be liable for stipulated penalties for
18 late payments under Section V, paragraphs 4. a. and c. (Reimbursement of
19 Response Costs) and for the Interest on late payments for Section V, paragraphs 4.
20 a. and c. as required under Section VI, Paragraph 5. The stipulated penalties shall
21 be in the following amounts per violation per Day that any such payment is late:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th Day
\$1500	15th through 30th Day
\$2500	31st Day and beyond

22
23
24
25
26 Each of the payments required under Section V (Reimbursement of Response
27 Costs) shall be considered a separate violation for purposes of calculating
28 stipulated penalties under this provision.

1 b. Settling Defendant shall be liable for stipulated penalties in the
2 amount of \$1500 per Day per violation of the provisions contained in Sections XI
3 (Access To Information), and XII (Retention of Records).

4 7. All Interest and penalties set forth under this Section shall begin to
5 accrue on the Day a violation occurs, and shall continue to accrue through the final
6 Day of the correction of the noncompliance. Nothing herein shall prevent the
7 simultaneous accrual of separate penalties for separate violations of this Consent
8 Decree.

9 8. Interest and stipulated penalties shall accrue as provided in Paragraphs
10 5 and 6, regardless of whether EPA or DTSC has notified Settling Defendant of the
11 violation or made a demand for payment, but need be paid only upon demand.

12 9. Interest and stipulated penalties set forth under this Section shall be
13 due and payable within 30 Days of the date of demand for payment. All payments
14 to the United States under this Paragraph shall be made by certified or cashier's
15 check made payable to the "EPA Hazardous Substances Superfund," shall be
16 forwarded to the U.S. EPA, Region IX, Superfund Accounting, P.O. Box
17 360863M, Pittsburgh, PA 15251, shall indicate that payment is for Interest and/or
18 stipulated penalties, and shall reference EPA Region IX, the Site/Spill
19 Identification Numbers 09-8V, the USAO File Number, the DOJ Case Number 90-
20 11-2-354/26, and the name and address of the party making payment. Copies of
21 check(s) paid pursuant to this Paragraph, and any accompanying transmittal
22 letter(s), shall be forwarded to the DOJ and the EPA as provided in Section XIII
23 (Notices and Submissions), and to David Wood, PMD-6, Section Chief, U.S. EPA
24 Region IX, 75 Hawthorne Street, San Francisco, California 94105. Payment to the
25 State DTSC under this Paragraph shall be made by certified check or cashier's
26 check, made payable to "Cashier of the Department of Toxic Substances Control,"
27 and shall be forwarded to the Department of Toxic Substances Control, State of
28 California, Accounting Office, 1001 I Street, Sacramento, California 95812.

1 Settling Defendant shall send a transmittal letter with the check, referencing the
2 San Gabriel Superfund Sites, Area 4 (Puente Valley Operable Unit), Project Code
3 No. 300346. Settling Defendant also shall send notice, including a copy of the
4 check and transmittal letter, to the State DTSC as provided in Section XIII (Notices
5 and Submissions).

6 10. Notwithstanding any other provision of this Section, the United States
7 and/or the State DTSC may, in its unreviewable discretion, waive any portion of
8 Interest or stipulated penalties that have accrued pursuant to this Consent Decree.

9 11. Payments made under Paragraphs 5 through 9 shall be in addition to
10 any other remedies or sanctions available to Plaintiffs by virtue of Settling
11 Defendant's failure to comply with the requirements of this Consent Decree.

12 12. If the United States and/or the State DTSC brings an action against
13 any Settling Defendant to enforce this Consent Decree, Settling Defendant shall
14 reimburse the United States and/or the State DTSC for all costs of such action,
15 including but not limited to costs of attorney time.

16 **VII. COVENANT NOT TO SUE BY PLAINTIFFS**

17 13. Covenant Not to Sue. Except as specifically provided in Paragraph 14
18 (Reservation of Rights), Plaintiffs covenant not to sue or to take administrative
19 action against Settling Defendant for performance of Response Work, Past
20 Response Costs, Future Response Costs, Past DTSC Response Costs, and Future
21 DTSC Response Costs, pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or
22 Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a). This
23 covenant shall take effect upon receipt by Plaintiffs of the payments set forth in
24 Paragraph 4. This covenant is conditioned upon Settling Defendant's satisfactory
25 performance of its obligations under this Consent Decree. This covenant not to sue
26 is also conditioned upon the veracity and completeness of the Financial
27 Information provided to EPA by Settling Defendant. If the Financial Information
28 is subsequently determined by EPA to be false or, in any material respect,

1 inaccurate, Settling Defendant shall forfeit all payments made pursuant to this
2 Consent Decree and this covenant not to sue and the contribution protection in
3 Paragraph 19 shall be null and void. Such forfeiture shall not constitute liquidated
4 damages and shall not in any way foreclose the Plaintiffs' right to pursue any other
5 causes of action arising from Settling Defendant's false or materially inaccurate
6 information. This covenant extends only to Settling Defendant and does not
7 extend to any other person.

8 14. Reservation of Rights. The covenant not to sue set forth in Paragraph
9 13 does not pertain to any matters other than those expressly specified therein. The
10 Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against
11 Settling Defendant with respect to other matters, including but not limited to:

12 a. liability for failure by Settling Defendant to meet a requirement
13 of this Consent Decree;

14 b. liability for damages for injury to, destruction of, or loss of
15 natural resources, and for the costs of any natural resource damage assessments;

16 c. criminal liability; and

17 d. liability for response actions and response costs incurred or to
18 be incurred by the United States and/or DTSC not covered as "matters addressed"
19 as set forth in Paragraph 19 of this Consent Decree, including but not limited to
20 liability for any response actions and response costs at the Site that occur after the
21 later of (i) the date 8 years from the Operational and Functional Date of the Carrier
22 Consent Decree, or (ii) the date of issuance of a final Record of Decision for the
23 Site.

24 15. Notwithstanding any other provision of this Consent Decree,
25 Plaintiffs reserve, and this Consent Decree is without prejudice to, the right to
26 reinstitute or reopen this action, or to commence a new action seeking relief other
27 than as provided in this Consent Decree, if the Financial Information provided by
28 Settling Defendant, or the financial certification made by Settling Defendant in

1 Paragraph 29, is false or, in an material respect, inaccurate.

2 **VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

3 16. Settling Defendant covenants not to sue and agrees not to assert any
4 claims or causes of action against Plaintiffs or their contractors or employees with
5 respect to Response Work, Past Response Costs, Future Response Costs, Past
6 DTSC Response Costs, and Future DTSC Response Costs, as set forth in this
7 Consent Decree, including but not limited to:

8 a. any direct or indirect claims for reimbursement from the
9 Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or
10 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any
11 other provision of law;

12 b. any claims arising out of costs or response actions at or in
13 connection with the Site, including any claim under the United States Constitution,
14 the California Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to
15 Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

16 c. any claims against the United States pursuant to Sections 107
17 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, related to the Site.

18 17. Nothing in this Consent Decree shall be deemed to constitute approval
19 or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42
20 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

21 **IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

22 18. Nothing in this Consent Decree shall be construed to create any rights
23 in, or grant any cause of action to, any person not a Party to this Consent Decree.
24 Each of the Parties expressly reserves any and all rights (including, but not limited
25 to, any right to contribution), defenses, claims, demands, and causes of action
26 which each Party may have with respect to any matter, transaction, or occurrence
27 relating in any way to the Site against any person not a Party hereto.

28 19. The Parties agree that in consideration of the payment made by

1 Settling Defendant and the execution of this Consent Decree, Settling Defendant
2 has resolved its liability to Plaintiffs and is entitled to protection from contribution
3 actions or claims as provided by Section 113(f)(2) of CERCLA,
4 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree,
5 conditioned only upon entry of this Consent Decree. The "matters addressed" in
6 this Consent Decree are: Response Work; Past Response Costs; Future Response
7 Costs; Past DTSC Response Costs; and Future DTSC Response Costs. The
8 "matters addressed" exclude those response actions and response costs to which
9 Plaintiffs have reserved their rights under this Consent Decree.

10 20. Settling Defendant agrees that, with respect to any suit or claim for
11 contribution brought by it for matters related to this Consent Decree, it will notify
12 the DOJ, the EPA, and the State DTSC in writing not later than sixty (60) Days
13 prior to the initiation of such suit or claim. Settling Defendant also agrees that,
14 with respect to any suit or claim for contribution brought against it for matters
15 related to this Consent Decree, it will notify the DOJ, EPA, and the State DTSC in
16 writing within ten (10) Days of service of the complaint or claims upon it. In
17 addition, Settling Defendant shall notify the DOJ, EPA, and the State DTSC within
18 ten (10) Days of service or receipt of any motion for summary judgment or any
19 order from a court setting a case for trial, for matters related to this Consent
20 Decree.

21 21. In any subsequent administrative or judicial proceeding initiated by
22 the United States or the State of California for injunctive relief, recovery of
23 response costs, or other relief relating to the Site, Settling Defendant shall not
24 assert, and may not maintain, any defense or claims based upon the principles of
25 waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other
26 defenses based upon any contention that the claims raised by the United States or
27 the State of California in the subsequent proceeding were or should have been
28 brought in the instant case; provided, however, that nothing in this Paragraph

1 affects the enforceability of the Covenant Not to Sue by Plaintiffs set forth in
2 Section VII.

3 X. SITE ACCESS

4 22. Commencing upon the date of lodging of this Consent Decree,
5 Settling Defendant agrees to provide the United States and the State of California
6 and their representatives, including the EPA, the DTSC, and the Los Angeles
7 Regional Water Quality Control Board, and their contractors, access at all
8 reasonable times to the property within the Site owned or controlled by Settling
9 Defendant to which access is determined by the EPA or the State of California to
10 be required for the implementation of this Consent Decree, or for the purpose of
11 conducting any response activity related to the Site, including but not limited to:

- 12 a. Monitoring of investigation, removal, remedial or other
13 activities at the Site;
- 14 b. Verifying any data or information submitted to the United
15 States or to the State of California;
- 16 c. Conducting investigations relating to contamination at or near
17 the Site;
- 18 d. Obtaining samples;
- 19 e. Assessing the need for, planning, or implementing response
20 actions at or near the Site; and
- 21 f. Inspecting and copying records, operating logs, contracts, or
22 other documents maintained or generated by Settling Defendant or its agents,
23 consistent with Section XI (Access to Information).

24 23. Notwithstanding any provision of this Consent Decree, the United
25 States and the State of California retain all of their access authorities and rights,
26 including enforcement authorities related thereto, under CERCLA, the Resource
27 Conservation and Recovery Act, 42 U.S.C. § 6927, and any other applicable
28 statutes or regulations.

1 **XI. ACCESS TO INFORMATION**

2 24. Settling Defendant shall provide to Plaintiffs, upon request, copies of
3 all documents and information within its possession or control or that of its
4 contractors or agents relating in any manner to response actions taken at the Site or
5 the liability of any person for response actions conducted and to be conducted at
6 the Site, including, but not limited to, sampling, analysis, chain of custody records,
7 manifests, trucking logs, receipts, reports, sample traffic routing, correspondence,
8 or other documents or information related to the Site.

9 25. Confidential Business Information and Privileged Documents.

10 a. Settling Defendant may assert business confidentiality claims
11 covering part or all of the documents or information submitted to Plaintiffs under
12 this Consent Decree to the extent permitted by and in accordance with Section
13 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
14 Documents or information determined to be confidential by Plaintiffs will be
15 accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
16 confidentiality accompanies documents or information when they are submitted to
17 the Plaintiffs, or if Plaintiffs have notified Settling Defendant that the documents or
18 information are not confidential under the standards of Section 104(e)(7) of
19 CERCLA, the public may be given access to such documents or information
20 without further notice to Settling Defendant.

21 b. Settling Defendant may assert that certain documents, records
22 or other information are privileged under the attorney-client privilege or any other
23 privilege recognized by federal law. If Settling Defendant asserts such a privilege
24 in lieu of providing documents, it shall provide Plaintiffs with the following:
25 1) the title of the document, record, or information; 2) the date of the document,
26 record, or information; 3) the name and title of the author of the document, record,
27 or information; 4) the name and title of each addressee and recipient; 5) a
28 description of the subject of the document, record or information; and 6) the

1 privilege asserted. However, no documents, reports, or other information created
2 or generated pursuant to the requirements of this or any other consent decree with
3 Plaintiffs shall be withheld on the grounds that they are privileged. If a claim of
4 privilege applies only to a portion of a document, the document shall be provided
5 to Plaintiffs in redacted form to mask the privileged information only. Settling
6 Defendant shall retain all records and documents that it claims to be privileged
7 until Plaintiffs have had a reasonable opportunity to dispute the privilege claim and
8 any such dispute has been resolved in the Settling Defendant's favor.

9 26. No claim of confidentiality shall be made with respect to any data,
10 including but not limited to, all sampling, analytical, monitoring, hydrogeologic,
11 scientific, chemical, or engineering data, or any other documents or information
12 evidencing conditions at or around the Site.

13 XII. RETENTION OF RECORDS

14 27. Until ten (10) years after the entry of this Consent Decree, Settling
15 Defendant shall preserve and retain all records and documents now in its
16 possession or control, or which come into its possession or control thereafter, that
17 relate in any manner to response actions taken at the Site or the liability of any
18 person for response actions conducted and to be conducted at the Site, regardless of
19 any corporate retention policy to the contrary. After five (5) years, Settling
20 Defendant may contact the EPA in writing to request instructions as to whether
21 such records and documents shall be maintained for the remaining five (5) year
22 retention period, or whether such records and documents may be discarded. No
23 retained records or documents shall be disposed of prior to the ten (10) year
24 retention period, unless Settling Defendant receives instructions from the EPA
25 specifically permitting Settling Defendant to dispose of such records and
26 documents.

27 28. After the conclusion of the ten (10) year document retention period in
28 the preceding Paragraph, Settling Defendant shall notify the EPA and the DOJ at

1 least ninety (90) Days prior to the destruction of any such records or documents,
2 and, upon request by the EPA or the DOJ, Settling Defendant shall deliver any
3 such records or documents to EPA subject to the same privilege provisions set
4 forth in Section XI (Access To Information).

5 29. Settling Defendant hereby certifies that, to the best of its knowledge
6 and belief, after thorough inquiry, it has:

7 a. not altered, mutilated, discarded, destroyed or otherwise
8 disposed of any records, reports, or other information relating to its potential
9 liability regarding the Site since notification of potential liability by the United
10 States or DTSC or the filing of suit against it regarding the Site, and that it has
11 fully complied with any and all EPA and DTSC requests for information regarding
12 the Site and Settling Defendant's financial circumstances pursuant to Sections
13 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section
14 3007 of RCRA, 42 U.S.C. § 6927; and

15 b. submitted to EPA Financial Information that fairly,
16 accurately, and materially sets forth its financial circumstances, and that those
17 circumstances have not materially changed between the time the Financial
18 Information was submitted to EPA and the time Settling Defendant executes this
19 Consent Decree.

20 **XIII. NOTICES AND SUBMISSIONS**

21 30. Whenever, under the terms of this Consent Decree, notice is required
22 to be given or a document is required to be forwarded by one party to another, it
23 shall be directed to the individuals at the addresses specified below, unless those
24 individuals or their successors give notice of a change to the other Parties in
25 writing. Written notice as specified herein shall constitute complete satisfaction of
26 any written notice requirement of the Consent Decree with respect to the United
27 States (the DOJ and the EPA), the State of California DTSC, and Settling
28 Defendant, respectively.

1 As to the United States:

2 As to DOJ:

3 Bruce S. Gelber
4 Chief, Environmental Enforcement Section
5 Environment and Natural Resources Division
6 U.S. Department of Justice (DJ # 90-11-2-354/26)
7 P.O. Box 7611
8 Washington, D.C. 20044-7611

9 Elise S. Feldman
10 Trial Attorney
11 Environmental Enforcement Section
12 Environment and Natural Resources Division
13 U.S. Department of Justice
14 301 Howard Street, Suite 1050
15 San Francisco, CA 94105

16 As to EPA:

17 Dustin Minor (ORC-3)
18 Senior Counsel
19 U.S. Environmental Protection Agency, Region IX
20 75 Hawthorne Street
21 San Francisco, California 94105

22 As to the State of California Department of Toxic Substances Control:

23 Ann Rushton
24 Deputy Attorney General, Environment Section
25 California Department of Justice
26 300 South Spring Street
27 Los Angeles, California 90013

28 Jacalyn Spizman
Project Manager, Site Mitigation Branch
Department of Toxic Substances Control, Region 3
5796 Corporate Avenue
Cypress, California 90630

As to Settling Defendant:

Samuel I. Gutter
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005

Settling Defendant may change the identity or contact information for its agent at any time by written notice to the Court and to the Plaintiffs.

XIV. RETENTION OF JURISDICTION

1 31. This Court shall retain jurisdiction over this matter for the purpose of
2 interpreting and enforcing the terms of this Consent Decree.

3 **XV. INTEGRATION/APPENDICES**

4 32. This Consent Decree and its appendices constitute the final, complete
5 and exclusive agreement and understanding among the Parties with respect to the
6 settlement embodied in this Consent Decree. The Parties acknowledge that there
7 are no representations, agreements or understandings relating to the settlement
8 other than those expressly contained in this Consent Decree. The following
9 appendices are attached to and incorporated into this Consent Decree: “Appendix
10 A” is the relevant portion of the Carrier Consent Decree; and “Appendix B” is a
11 list of the financial documents submitted to EPA by Settling Defendant.

12 **XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

13 33. This Consent Decree shall be lodged with the Court for a period of not
14 less than thirty (30) Days for public notice and comment. The United States
15 reserves the right to withdraw or withhold its consent if the comments regarding
16 the Consent Decree disclose facts or considerations which indicate that this
17 Consent Decree is inappropriate, improper, or inadequate. Settling Defendant
18 consents to the entry of this Consent Decree without further notice.

19 34. If for any reason this Court should decline to approve this Consent
20 Decree in the form presented, this agreement is voidable at the sole discretion of
21 any party and the terms of the agreement may not be used as evidence in any
22 litigation between the Parties.

23 **XVII. EFFECTIVE DATE**

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

26 **XVIII. SIGNATORIES/SERVICE**

27 36. Each undersigned representative of Settling Defendant, the Assistant
28 Attorney General for the Environment and Natural Resources Division of the

1 United States Department of Justice, and together for the State of California, the
2 Deputy Attorney General and the Chief of Operations, Southern California
3 Cleanup Operations Branch Cypress Office, certifies that he or she is authorized to
4 enter into the terms and conditions of this Consent Decree and to execute and bind
5 legally such Party to this document.

6 37. Settling Defendant hereby agrees not to oppose entry of this Consent
7 Decree by this Court or to challenge any provision of this Consent Decree, unless
8 the United States has notified Settling Defendant in writing that it no longer
9 supports entry of the Consent Decree.

10 38. Settling Defendant shall identify, on the attached signature page, the
11 name and address of an agent who is authorized to accept service of process by
12 mail on behalf of that Party with respect to all matters arising under or relating to
13 this Consent Decree. If no agent is specified, the attorney for Settling Defendant
14 listed at the beginning of this document shall be deemed to be the agent authorized
15 to accept service at the address listed. Settling Defendant hereby agrees to accept
16 service in that manner and to waive the formal service requirements set forth in
17 Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of
18 this Court, including, but not limited to, service of a summons.

19
20
21
22
23
24
25
26 **XIX. FINAL JUDGMENT**


27 39. Upon approval and entry of this Consent Decree by this Court, this
28 Consent Decree shall constitute a final judgment between and among the United

1 States, the State of California DTSC, and Settling Defendant. The Court finds that
2 there is no just reason for delay and therefore enters this judgment as the final
3 judgment under Fed. R. Civ. P. 54 and 58.

4

5 SO ORDERED THIS 24 DAY OF October, 2008.

6


7 AUDREY B. COLLINS
8 United States District Judge

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree, relating to
2 the San Gabriel Valley Superfund Site, Area 4, and further identified as the Puente
3 Valley Operable Unit.

4 FOR THE UNITED STATES OF AMERICA

5
6
7 Dated: _____

8 _____
9 RONALD J. TENPAS
10 Assistant Attorney General
11 Environment & Natural Resources Division
12 United States Department of Justice

13
14 Dated: _____

15 _____
16 ELISE S. FELDMAN
17 Trial Attorney
18 Environmental Enforcement Section
19 Environment & Natural Resources Division
20 United States Department of Justice
21 301 Howard Street, Suite 1050
22 San Francisco, CA 94105
23 Telephone: (415) 744-6470
24 Telecopier: (415) 744-6476

25
26
27 Dated: _____

28 _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

KEITH TAKATA
Director
Superfund Division
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

Dated: _____

DUSTIN MINOR
Senior Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

1 THE UNDERSIGNED PARTY enters into this Consent Decree, relating to
2 the San Gabriel Valley Superfund Site, Area 4, and further identified as the Puente
3 Valley Operable Unit.

4
5 FOR THE STATE OF CALIFORNIA
6 DEPARTMENT OF TOXIC
7 SUBSTANCES CONTROL

8 Dated: _____

9 _____
10 THOMAS COTA
11 Chief, Southern California
12 Cleanup Operations Branch
13 Cypress Office
14 5796 Corporate Avenue
15 Cypress, CA 90630

16 Dated: _____

17 _____
18 ANN RUSHTON
19 Deputy Attorney General
20 Environment Section
21 California Department of Justice
22 300 South Spring Street
23 Los Angeles, California 90013

1 THE UNDERSIGNED PARTY enters into this Consent Decree, relating to
2 the San Gabriel Valley Superfund Site, Area 4, and further identified as the Puente
3 Valley Operable Unit.

4 FOR REULAND ELECTRIC COMPANY

5
6 Dated: _____

7 _____
8 SAMUEL I. GUTTER
9 Sidley Austin LLP
10 1501 K Street, N.W.
11 Washington, DC 20005
12 Tel: (202)736-8167
13 Fax: (202)736-8711
14 sgutter@Sidley.com

15 Agent authorized to receive service of process pursuant to Paragraph 37:

16 _____
17 _____
18 _____
19 _____
20 _____
21 _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPENDIX A
RELEVANT PORTIONS OF THE CARRIER CONSENT DECREE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPENDIX B
FINANCIAL INFORMATION