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15 **UNITED STATES DISTRICT COURT**  
 16 **CENTRAL DISTRICT OF CALIFORNIA**

	)		
UNITED STATES OF AMERICA,	)	Case No. CV 16—8127 DDP	
	)		
Plaintiff,	)		
	)		
v.	)		
	)	<b><u>CONSENT DECREE</u></b>	
JPMORGAN CHASE BANK N.A.,	)		
<i>et al.</i> ,	)		
	)		
Defendants.	)		
	)		

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1 **I. BACKGROUND**

2 A. The United States of America (“United States”), on behalf of the  
3 Administrator of the U.S. Environmental Protection Agency (“EPA”), filed a  
4 complaint in this matter pursuant to Section 107 of the Comprehensive  
5 Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”),  
6 42 U.S.C. § 9607, seeking reimbursement of response costs incurred or to be  
7 incurred for response actions taken or to be taken at or in connection with the  
8 release or threatened release of hazardous substances at the BKK Sanitary Landfill  
9 Site in West Covina, California (“the Site”).

10 B. In response to the release or threatened release of hazardous  
11 substances at or from the Site, EPA undertook response actions at the Site pursuant  
12 to Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake additional  
13 response actions in the future.

14 C. In performing response action at the Site, EPA has incurred response  
15 costs and will incur additional response costs in the future.

16 D. The California Department of Toxic Substances Control (“DTSC”)  
17 and the Settling Defendants, as defined below, have negotiated and executed a  
18 consent decree (“DTSC Consent Decree”), which several other agencies of the  
19 State of California have joined, that settles claims of the State agencies against the  
20 Settling Defendants related to the BKK Sanitary Landfill Site. The DTSC Consent  
21 Decree will be lodged with this Court simultaneously with this Consent Decree.  
22 Pursuant to the DTSC Consent Decree, JPMorgan Chase Bank, N.A. (“JPMC”), on  
23 behalf of itself and all other Settling Defendants, will pay \$85,000,000 to DTSC, to  
24 be used for work at the Site. DTSC is overseeing response actions at the Site.  
25 Pursuant to the DTSC Consent Decree, if EPA and DTSC determine that EPA  
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1 should begin overseeing response actions at the Site, the State will transfer to EPA  
2 certain funds it received from Settling Defendants.

3 E. The United States alleges that the defendants that have entered into  
4 this Consent Decree (“Settling Defendants”) are responsible parties pursuant to  
5 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally  
6 liable for response costs incurred and to be incurred at the Site.

7 F. Settling Defendants do not admit any liability arising out of the  
8 transactions or occurrences alleged in the complaint.

9 G. EPA has reviewed the Financial Information and Insurance  
10 Information submitted by WMI Rainier, LLC to determine whether WMI Rainier,  
11 LLC is financially able to pay response costs incurred and to be incurred at the  
12 Site. Based upon this Financial Information and Insurance Information, EPA has  
13 determined that WMI Rainier, LLC has limited financial ability to pay for response  
14 costs incurred and to be incurred at the Site.

15 H. The United States and Settling Defendants agree, and this Court by  
16 entering this Consent Decree finds, that this Consent Decree has been negotiated  
17 by the Parties in good faith, that settlement of this matter without further litigation  
18 and without the admission or adjudication of any issue of fact or law is appropriate  
19 and will avoid prolonged and complicated litigation between the Parties, and that  
20 this Consent Decree is fair, reasonable, and in the public interest.

21 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and  
22 DECREED:

## 23 II. JURISDICTION

24 1. This Court has jurisdiction over the subject matter of this action  
25 pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and  
26 also has personal jurisdiction over Settling Defendants. Solely for the purposes of  
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1 this Consent Decree and the underlying complaint, Settling Defendants waive all  
2 objections and defenses that they may have to jurisdiction of the Court or to venue  
3 in this District. Settling Defendants shall not challenge entry or the terms of this  
4 Consent Decree or this Court’s jurisdiction to enter and enforce this Consent  
5 Decree.

6 **III. PARTIES BOUND**

7 2. This Consent Decree is binding upon the United States, and upon  
8 Settling Defendants and their successors and assigns. Any change in ownership or  
9 corporate or other legal status, including, but not limited to, any transfer of assets  
10 or real or personal property, shall in no way alter the status or responsibilities of  
11 Settling Defendants under this Consent Decree.

12 **IV. DEFINITIONS**

13 3. Unless otherwise expressly provided in this Consent Decree, terms  
14 used in this Consent Decree that are defined in CERCLA or in regulations  
15 promulgated under CERCLA shall have the meaning assigned to them in CERCLA  
16 or in such regulations. Whenever terms listed below are used in this Consent  
17 Decree or in any appendix attached hereto, the following definitions shall apply  
18 solely for purposes of this Consent Decree:

19 “BKK Sanitary Landfill Site Special Account” shall mean the special  
20 account, within the EPA Hazardous Substance Superfund, established for the Site  
21 by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

22 “CERCLA” shall mean the Comprehensive Environmental Response,  
23 Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

24 “Consent Decree” shall mean this Consent Decree and all appendices  
25 attached hereto. In the event of conflict between this Consent Decree and any  
26 appendix, this Consent Decree shall control.

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

5 “DOJ” shall mean the U.S. Department of Justice and its successor  
6 departments, agencies, or instrumentalities.

7 “DTSC” shall mean the California Department of Toxic Substances  
8 Control.

9 “DTSC Consent Decree” shall mean the consent decree entered into by  
10 the State agencies and Settling Defendants in 2016 to resolve Settling  
11 Defendants’ liability at the Site.

12 “Effective Date” shall mean the date upon which the approval of this  
13 Consent Decree is recorded on the Court’s docket.

14 “EPA” shall mean the U.S. Environmental Protection Agency and its  
15 successor departments, agencies, or instrumentalities.

16 “EPA Hazardous Substance Superfund” shall mean the Hazardous  
17 Substance Superfund established by the Internal Revenue Code, 26 U.S.C. §  
18 9507.

19 “Financial Information” shall mean those financial documents pertaining  
20 to WMI Rainier, LLC identified in Appendix B.

21 “Insurance Information” shall mean those insurance documents  
22 pertaining to WMI Rainier, LLC identified in Appendix C.

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

3 “JPMC” shall mean JPMorgan Chase Bank, N.A.

4 “Paragraph” shall mean a portion of this Consent Decree identified by an  
5 Arabic numeral or an upper or lower case letter.

6 “Parties” shall mean the United States and Settling Defendants.

7 “RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-  
8 6992 (also known as the Resource Conservation and Recovery Act).

9 “Section” shall mean a portion of this Consent Decree identified by a  
10 Roman numeral.

11 “Settling Defendants” shall mean:

12 a) JPMC, in its individual capacity, and in its capacity as  
13 having purchased assets and assumed liabilities of: (i) Washington  
14 Mutual Bank, Henderson, Nevada (“WMB”), whose predecessors in  
15 interest include Home Savings & Loan Association, a California  
16 corporation (also known as Home Savings of America, Home Savings of  
17 America, a Federal Savings and Loan Association, and Home Savings of  
18 America, F.A.); and (ii) Washington Mutual Bank, FSB, Park City, Utah,  
19 to the extent provided for in the September 25, 2008 purchase and  
20 assumption agreement among Federal Deposit Insurance Corporation  
21 (“FDIC”), as receiver for Washington Mutual Bank, FDIC in its corporate  
22 capacity, and JPMC;

23 b) WMI Liquidating Trust, on behalf of itself and WMI  
24 Holdings Corp., in accordance with each of (i) Section 2.2 of the  
25 agreement entered on or about December 5, 2010, in the Washington  
26 Mutual Inc. Bankruptcy Chapter 11 case, by Washington Mutual, Inc. and  
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1 WMI Investment Corp., JPMC, DTSC and the BKK Joint Defense Group  
2 and concerning the Site, (ii) the Seventh Amended Joint Plan of Affiliated  
3 Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code  
4 dated December 12, 2011, and as modified thereafter (including Section  
5 27.6 thereof), and (iii) Paragraph 12 of the Findings of Fact, Conclusions  
6 of Law, and Order Confirming the Seventh Amended Joint Plan of  
7 Affiliated Debtors Pursuant to Chapter 11 of the United States  
8 Bankruptcy Code filed February 24, 2013 (WMI Holdings Corp.,  
9 together with WMI Liquidating Trust, is identified as a Debtor and  
10 Reorganized Debtor in the Seventh Amended Joint Plan); and

11 c) WMI Rainier, LLC, on behalf of itself and alleged  
12 predecessors in interest Ahmanson Developments, Inc. and Oxford  
13 Investment Corporation.

14 “Site” shall mean the BKK Sanitary Landfill Site, encompassing  
15 approximately 583 acres, located at 2210 South Azusa Avenue, in West Covina,  
16 Los Angeles County, California, and generally shown on the map included in  
17 Appendix A.

18 “State” shall mean the State of California.

19 “United States” shall mean the United States of America and each  
20 department, agency, and instrumentality of the United States, including EPA.

## 21 **V. STATEMENT OF PURPOSE**

22 4. By entering into this Consent Decree, the mutual objective of the  
23 Parties is for JPMC, on behalf of Settling Defendants, to make a cash payment that,  
24 taken in light of the DTSC Consent Decree, resolves Settling Defendants’ alleged  
25 civil liability for the Site under Sections 106 and 107 of CERCLA, 42 U.S.C.  
26 §§ 9606 and 9607, and under Section 7003 of RCRA, 42 U.S.C. § 6973, as  
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1 provided in the Covenants by The United States in Section VIII, and subject to the  
2 Reservations of Rights by United States in Section IX.

3 **VI. PAYMENT OF RESPONSE COSTS**

4 5. Payment of Response Costs. JPMC, on behalf of Settling Defendants,  
5 shall pay to EPA the principal amount of \$1,000,000. The payment shall be made  
6 within 30 days after the Effective Date and, if timely paid, shall include no Interest.

7 6. JPMC, on behalf of Settling Defendants, shall make payment at  
8 <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with  
9 instructions provided to Settling Defendants by the Financial Litigation Unit  
10 (“FLU”) of the U.S. Attorney’s Office for the Central District of California after  
11 the Effective Date. The payment instructions provided by the FLU shall include a  
12 Consolidated Debt Collection System (“CDCS”) number, which shall be used to  
13 identify all payments required to be made in accordance with this Consent Decree.  
14 The FLU shall provide the payment instructions to:

15 Arthur Korzec  
16 JPMorgan Chase Bank, N.A.  
17 Executive Director and Assistant General Counsel  
18 JPMorgan Chase Bank, N.A.  
19 4 New York Plaza, 19th Floor  
20 New York, NY 10004-2413

21 and

22 Albert M. Cohen  
23 Loeb & Loeb LLP  
24 10100 Santa Monica Blvd., Suite 2200  
25 Los Angeles, CA 90067

26 on behalf of Settling Defendants. JPMC, on behalf of Settling Defendants, may  
27 change the individual to receive payment instructions on their behalf by providing  
written notice to DOJ and EPA of such change in accordance with Section XIII  
(Notices and Submissions).

1           7.     Deposit of Payment.

2           a.     Deposit of Settling Defendants' Payment. The total amount to  
3 be paid pursuant to Paragraph 5 (Payment of Response Costs), along with any  
4 other payments required under this Consent Decree, shall be deposited by EPA in  
5 the BKK Sanitary Landfill Site Special Account to be retained and used to conduct  
6 or finance response actions at or in connection with the Site, or to be transferred by  
7 EPA to the EPA Hazardous Substance Superfund.

8           b.     Deposit of Funds Transferred from State to EPA. If EPA and  
9 DTSC determine that EPA should begin overseeing response actions at the Site,  
10 and the State transfers to EPA any portion of the funds it received from Settling  
11 Defendants pursuant to the DTSC Consent Decree, those funds shall be deposited  
12 by EPA in the BKK Sanitary Landfill Site Special Account, to be retained or used  
13 to conduct or finance response actions at or in connection with the Site, or if those  
14 funds are not needed at the Site, to be transferred by EPA to the EPA Hazardous  
15 Substance Superfund. Any funds transferred from the State to EPA pursuant to the  
16 DTSC Consent Decree will not be used to reimburse EPA for response costs it has  
17 incurred at or in connection with the Site prior to the date of the agreement  
18 between EPA and DTSC that EPA should assume primary responsibility for  
19 overseeing response actions at the Site. EPA may make available funds in the  
20 BKK Sanitary Landfill Site Special Account for disbursement to potentially  
21 responsible parties who agree to conduct response actions at the Site pursuant to an  
22 agreement with EPA, as partial reimbursement for performance of those response  
23 actions.

24           8.     Notice of Payment. At the time of payment, JPMC, on behalf of  
25 Settling Defendants, shall send notice that payment has been made (a) to EPA in  
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1 accordance with Section XIII (Notices and Submissions), (b) to DOJ in accordance  
2 with Section XIII; and (c) to the EPA Cincinnati Finance Office (CFO) at:

3 EPA CFO by email: cinwd\_acctsreceivable@epa.gov

4 EPA CFO by regular mail: EPA Cincinnati Finance Office  
5 26 W. Martin Luther King Drive  
6 Cincinnati, Ohio 45268

7 Such notice shall reference the CDCS Number, Site/Spill ID Number 0961, and  
8 DJ # 90-11-3-10782.

9 **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

10 9. Interest on Payments. If JPMC, on behalf of Settling Defendants, fails  
11 to make the payment required by Paragraph 5 (Payment of Response Costs) by the  
12 required due date, Interest shall accrue on the unpaid balance from the Effective  
13 Date through the date of payment.

14 10. Stipulated Penalty.

15 a. If any amounts due to EPA under Paragraph 5 (Payment of  
16 Response Costs) are not paid by the required date, Settling Defendants shall be in  
17 violation of this Consent Decree and shall pay, as a stipulated penalty, in addition  
18 to the Interest required by Paragraph 9 (Interest on Payments), \$1,000 per day that  
19 such payment is late.

20 b. Stipulated penalties are due and payable within 30 days after  
21 the date of the demand for payment of the penalties by EPA. All payments to EPA  
22 under this Paragraph shall be identified as “stipulated penalties” and shall be made  
23 by Fedwire Electronic Funds Transfer to:

1 Federal Reserve Bank of New York  
2 ABA = 021030004  
3 Account = 68010727  
4 SWIFT address = FRNYUS33  
5 33 Liberty Street  
6 New York, NY 10045  
7 Field Tag 4200 of the Fedwire message should read “D  
8 68010727 Environmental Protection Agency”

9 Each payment shall reference the CDCS Number, Site/ Spill ID Number 0961, and  
10 DJ # 90-11-3-10782.

11 c. At the time of payment, Settling Defendants shall send notice  
12 that payment has been made to EPA and DOJ in accordance with Paragraph 8  
13 (Notice of Payment).

14 d. Penalties shall accrue as provided in this Paragraph regardless  
15 of whether EPA has notified Settling Defendants of the violation or made a  
16 demand for payment, but need only be paid upon demand. All penalties shall  
17 begin to accrue on the day after payment is due and shall continue to accrue  
18 through the date of payment. Nothing in this Consent Decree shall prevent the  
19 simultaneous accrual of separate penalties for separate violations of this Consent  
20 Decree.

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

24 12. Payments made under this Section shall be in addition to any other  
25 remedies or sanctions available to the United States by virtue of Settling  
26 Defendants’ failure to comply with the requirements of this Consent Decree.

27 13. Notwithstanding any other provision of this Section, the United States  
may, in its unreviewable discretion, waive payment of any portion of the stipulated

1 penalties that have accrued pursuant to this Consent Decree. Payment of stipulated  
2 penalties shall not excuse Settling Defendants from payment as required by Section  
3 VI or from performance of any other requirements of this Consent Decree.

#### 4 **VIII. COVENANTS BY THE UNITED STATES**

5 14. Except as specifically provided in Section IX (Reservation of Rights  
6 by United States), the United States covenants not to sue or to take administrative  
7 action against Settling Defendants pursuant to Sections 106 and 107(a) of  
8 CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C.  
9 § 6973, regarding the Site. With respect to present and future liability, these  
10 covenants shall take effect upon the latter of (a) receipt by EPA of all amounts  
11 required by Paragraph 5 (Payment of Response Costs) and any Interest or  
12 stipulated penalties due thereon under Section VII (Failure to Comply with  
13 Consent Decree); or (b) written confirmation from DTSC that JPMC has made full  
14 payment of the \$85 million due under the DTSC Consent Decree. These covenants  
15 are conditioned upon the satisfactory performance by Settling Defendants of their  
16 obligations under this Consent Decree.

17 15. As to WMI Rainier, LLC, the covenants set forth in Paragraph 14 are  
18 further conditioned upon the veracity and completeness of the Financial  
19 Information and the Insurance Information provided to EPA by WMI Rainier, LLC  
20 and the financial, insurance, and indemnity certification made by WMI Rainier,  
21 LLC in Paragraphs 33-34. If the Financial Information or the Insurance  
22 Information provided by WMI Rainier, LLC, or the financial, insurance, or  
23 indemnity certification made by WMI Rainier, LLC in Paragraphs 33-34, is  
24 subsequently determined by EPA to be false or, in any material respect, inaccurate,  
25 WMI Rainier, LLC shall forfeit all payments made pursuant to this Consent Decree  
26 and these covenants and the contribution protection in Paragraph 24 shall be null  
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1 and void as to WMI Rainier, LLC. Such forfeiture shall not constitute liquidated  
2 damages and shall not in any way foreclose the United States' right to pursue any  
3 other causes of action arising from WMI Rainier, LLC's provision of false or  
4 materially inaccurate information.

5 16. The covenants set forth in Paragraph 14 extend only to Settling  
6 Defendants and do not extend to any other person.

7 **IX. RESERVATION OF RIGHTS BY UNITED STATES**

8 17. The United States reserves, and this Consent Decree is without  
9 prejudice to, all rights against Settling Defendants with respect to all matters not  
10 expressly included within the Covenants by The United States in Paragraph 14.  
11 Notwithstanding any other provision of this Consent Decree, the United States  
12 reserves all rights against Settling Defendants with respect to:

13 a. liability for failure of Settling Defendants to meet a requirement  
14 of this Consent Decree;

15 b. criminal liability;

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

18 d. liability based on the ownership or operation of the Site by  
19 Settling Defendants when such ownership or operation commences after signature  
20 of this Consent Decree by Settling Defendants;

21 e. liability based on Settling Defendants' transportation,  
22 treatment, storage, or disposal, or arrangement for transportation, treatment,  
23 storage, or disposal of a hazardous substance or a solid waste at or in connection  
24 with the Site, after signature of this Consent Decree by Settling Defendants; and  
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1 f. liability arising from the past, present, or future disposal,  
2 release or threat of release of a hazardous substance, pollutant, or contaminant  
3 outside of the Site.

4 18. Notwithstanding any other provision of this Consent Decree, the  
5 United States reserves, and this Consent Decree is without prejudice to, the right to  
6 reinstitute or reopen this action as to WMI Rainier, LLC, or to commence a new  
7 action seeking relief other than as provided in this Consent Decree as to WMI  
8 Rainier, LLC, if the Financial Information or the Insurance Information provided  
9 by WMI Rainier, LLC, or the financial, insurance, or indemnity certification made  
10 by WMI Rainier, LLC in Paragraphs 33-34, is false or, in any material respect,  
11 inaccurate.

12 **X. COVENANTS BY SETTLING DEFENDANTS**

13 19. Settling Defendants covenant not to sue and agree not to assert any  
14 claims or causes of action against the United States, or its contractors or  
15 employees, with respect to the Site and this Consent Decree, including but not  
16 limited to:

17 a. any direct or indirect claim for reimbursement from the  
18 Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or  
19 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any  
20 other provision of law;

21 b. any claim arising out of response actions at or in connection  
22 with the Site, including any claim under the United States Constitution, the  
23 California Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to  
24 Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or  
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1 c. any claim pursuant to Sections 107 or 113 of CERCLA, 42  
2 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or State  
3 law, relating to the Site.

4 20. Except as provided in Paragraph 22 (claims against other PRPs) and  
5 Paragraph 26 (Res Judicata and other Defenses), these covenants shall not apply in  
6 the event the United States brings a cause of action or issues an order pursuant to  
7 any of the reservations set forth in Section IX (Reservations of Rights by United  
8 States), other than in Paragraph 17.a (liability for failure to meet a requirement of  
9 the Consent Decree) or 17.b (criminal liability), but only to the extent that Settling  
10 Defendants' claims arise from the same response action or response costs that the  
11 United States is seeking pursuant to the applicable reservation.

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

15 22. Settling Defendants agree not to assert any claims and to waive all  
16 claims or causes of action (including but not limited to claims or causes of action  
17 under Sections 107(a) and 113 of CERCLA) that they may have for response costs  
18 relating to the Site against any other person who is a potentially responsible party  
19 under CERCLA at the Site. This waiver shall not apply with respect to any  
20 defense, claim, or cause of action that Settling Defendants may have against any  
21 person if such person asserts a claim or cause of action relating to the Site against  
22 such Settling Defendants.

## 23 **XI. EFFECT OF SETTLEMENT/CONTRIBUTION**

24 23. Except as provided in Paragraph 22 (claims against other PRPs),  
25 nothing in this Consent Decree shall be construed to create any rights in, or grant  
26 any cause of action to, any person not a Party to this Consent Decree. Except as  
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1 provided in Section X (Covenants by Settling Defendants), each of the Parties  
2 expressly reserves any and all rights (including, but not limited to, under Section  
3 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of  
4 action which it may have with respect to any matter, transaction, or occurrence  
5 relating in any way to the Site against any person not a Party hereto. Nothing in  
6 this Consent Decree diminishes the right of the United States, pursuant to Section  
7 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such  
8 persons to obtain additional response costs or response action and to enter into  
9 settlements that give rise to contribution protection pursuant to Section 113(f)(2).

10       24. The Parties agree, and by entering this Consent Decree this Court  
11 finds, that this settlement constitutes a judicially approved settlement for purposes  
12 of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling  
13 Defendants are entitled, as of the Effective Date, to protection from contribution  
14 actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be  
15 otherwise provided by law, for “matters addressed” in this Consent Decree. The  
16 “matters addressed” in this Consent Decree are all response actions taken or to be  
17 taken and all response costs incurred or to be incurred, at or in connection with the  
18 Site, by the United States or any other person, except for the State; provided,  
19 however, that if the United States exercises rights under the reservations in Section  
20 IX (Reservations of Rights by United States), other than in Paragraph 17.a  
21 (liability for failure to meet a requirement of the Consent Decree) or 17.b (criminal  
22 liability), the “matters addressed” in this Consent Decree will no longer include  
23 those response costs or response actions that are within the scope of the exercised  
24 reservation.

25       25. Settling Defendants shall, with respect to any suit or claim brought by  
26 any Settling Defendant for matters related to this Consent Decree, notify EPA and  
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1 DOJ in writing no later than 60 days prior to the initiation of such suit or claim.  
2 Settling Defendants also shall, with respect to any suit or claim brought against any  
3 Settling Defendant for matters related to this Consent Decree, notify EPA and DOJ  
4 in writing within 10 days after service of the complaint or claim. In addition,  
5 Settling Defendants shall notify EPA and DOJ within 10 days after service or  
6 receipt of any Motion for Summary Judgment, and within 10 days after receipt of  
7 any order from a court setting a case for trial, for matters related to this Consent  
8 Decree.

9         26. In any subsequent administrative or judicial proceeding initiated by  
10 the United States for injunctive relief, recovery of response costs, or other relief  
11 relating to the Site, Settling Defendants shall not assert, and may not maintain, any  
12 defense or claim based upon the principles of waiver, res judicata, collateral  
13 estoppel, issue preclusion, claim-splitting, or other defenses based upon any  
14 contention that the claims raised by the United States in the subsequent proceeding  
15 were or should have been brought in the instant case; provided, however, that  
16 nothing in this Paragraph affects the enforceability of the Covenants by The United  
17 States set forth in Section VIII.

## 18                 **XII. RETENTION OF RECORDS AND CERTIFICATION**

19         27. Until 10 years after the entry of this Consent Decree, JPMC shall  
20 preserve and retain all non-identical copies of records, reports, or information,  
21 including documents referred to in Paragraph 32 below, (hereinafter referred to as  
22 “Records”) now in its possession or control, or that come into its possession or  
23 control, that relate in any manner to its liability under CERCLA with respect to the  
24 Site. JPMC must retain, in addition, all Records that relate to the liability of any  
25 other person under CERCLA with respect to the Site. Each of the above record  
26  
27

1 retention requirements shall apply regardless of any corporate retention policy to  
2 the contrary.

3 28. After the conclusion of the record retention period, JPMC shall notify  
4 EPA and DOJ at least 90 days prior to the destruction of any such Records, and,  
5 upon request by EPA or DOJ, except as provided in Paragraph 29 (Privileged and  
6 Protected Claims), JPMC shall deliver any such Records to EPA.

7 29. Privileged and Protected Claims.

8 a. JPMC may assert that all or part of a Record is privileged or  
9 protected as provided under federal law, provided it complies with Paragraph 29.b,  
10 and except as provided in Paragraph 29.c.

11 b. If JPMC asserts a claim of privilege or protection, it shall  
12 provide the United States with the following information regarding such Record:  
13 its title; its date; the name, title, affiliation (e.g., company or firm), and address of  
14 the author, each addressee, and of each recipient; a description of the Record's  
15 contents; and the privilege or protection asserted. If a claim of privilege or  
16 protection applies only to a portion of a Record, JPMC shall provide the Record to  
17 the United States in redacted form to mask the privileged or protected information  
18 only. JPMC shall retain all Records that it claims to be privileged or protected  
19 until the United States has had a reasonable opportunity to dispute the privilege or  
20 protection claim and any such dispute has been resolved in the JPMC's favor.

21 c. JPMC may make no claim of privilege or protection regarding:  
22 (1) any data regarding the Site, including, but not limited to,  
23 all sampling, analytical, monitoring, hydrogeologic, scientific,  
24 chemical, radiological, or engineering data, or the portion of any other  
25 Record that evidences conditions at or around the Site; or  
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27

1 (2) the portion of any Record that Settling Defendants are  
2 required to create or generate pursuant to this Consent Decree.

3 30. Business Confidential Claims. JPMC may assert that all or part of a  
4 Record submitted to the United States under this Section is business confidential to  
5 the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42  
6 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). JPMC shall segregate and clearly  
7 identify all Records or parts thereof submitted under this Consent Decree for which  
8 JPMC asserts a business confidentiality claim. Records submitted to EPA  
9 determined to be confidential by EPA will be accorded the protection specified in  
10 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records  
11 when they are submitted to EPA, or if EPA has notified JPMC that the Records are  
12 not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R.  
13 Part 2 Subpart B, the public may be given access to such Records without further  
14 notice to JPMC.

15 31. JPMC certifies that, to the best of its knowledge and belief, after  
16 thorough inquiry, Settling Defendants have not altered, mutilated, discarded,  
17 destroyed or otherwise disposed of any Records (other than identical copies)  
18 relating to their potential liability regarding the Site since notification of potential  
19 liability by the United States or the State, and that they have fully complied with  
20 any and all EPA and State requests for information regarding the Site and Settling  
21 Defendants' financial circumstances, including but not limited to insurance and  
22 indemnity information, pursuant to Sections 104(e) and 122(e) of CERCLA, 42  
23 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and  
24 State law.

25 32. JPMC certifies that to the best of its knowledge and belief, after  
26 thorough inquiry, Washington Mutual, Inc. and WMI Rainier, LLC have made  
27

1 available to DTSC and JPMC all Records in their possession or control that relate  
2 in any manner to response actions taken at the Site or the liability of any person  
3 under CERCLA with respect to the Site, and that JPMC has provided copies of  
4 such documents to DTSC.

5 33. WMI Rainier, LLC certifies that, to the best of its knowledge and  
6 belief, after thorough inquiry, it has:

7 a. submitted to EPA financial information that fairly, accurately,  
8 and materially sets forth its financial circumstances, and that those circumstances  
9 have not materially changed between the time the financial information was  
10 submitted to EPA and the time WMI Rainier, LLC executed this Consent Decree;  
11 and

12 b. fully disclosed any information regarding the existence of any  
13 insurance policies or indemnity agreements that may cover claims relating to  
14 cleanup of the Site, and submitted to EPA upon request such insurance policies,  
15 indemnity agreements, and information.

16 34. WMI Rainier, LLC certifies that it has no other assets other than those  
17 described in Appendix B and that those assets have been or will be provided, in  
18 full, to DTSC in satisfaction of Settling Defendants' obligations under the DTSC  
19 Consent Decree. WMI Rainier, LLC further certifies that all proceeds from Site-  
20 related claims made on its insurance policies listed in Appendix C have been or  
21 will be provided in full to DTSC in satisfaction of Settling Defendants' obligations  
22 under the DTSC Consent Decree.

### 23 **XIII. NOTICES AND SUBMISSIONS**

24 35. Whenever, under the terms of this Consent Decree, notice is required  
25 to be given or a document is required to be sent by one party to another, it shall be  
26

1 directed to the individuals at the addresses specified below, unless those  
2 individuals or their successors give notice of a change to the other Parties in  
3 writing. Written notice as specified in this Section shall constitute complete  
4 satisfaction of any written notice requirement of the Consent Decree with respect  
5 to EPA, DOJ, and Settling Defendants, respectively.

6 **As to DOJ by email:** eescdcopy.enrd@usdoj.gov

7 **As to DOJ by regular mail:** EES Case Management Unit  
8 U.S. Department of Justice  
9 Environment and Natural Resources Division  
10 P.O. Box 7611  
11 Washington, D.C. 20044-7611  
12 Re: DJ # 90-11-3-10782

13 **As to EPA:** Sarah Mueller  
14 Assistant Regional Counsel  
15 U.S. Environmental Protection Agency  
16 Region IX  
17 75 Hawthorne St., ORC-3  
18 San Francisco, CA 94105

19 **As to Setting Defendants:** William Viets  
20 Managing Director  
21 JPMorgan Chase Bank, N.A.  
22 237 Park Avenue, 12th Floor  
23 New York, NY 10017

24 Arthur Korzec  
25 Executive Director and Assistant General Counsel  
26 Legal Department  
27 JPMorgan Chase Bank, N.A.  
4 New York Plaza, 19<sup>th</sup> Floor  
New York, NY 10004-2413

1  
2 Albert M. Cohen  
3 Loeb & Loeb LLP  
4 10100 Santa Monica Blvd., Suite 2200  
5 Los Angeles, CA 90067

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7  
8 **XIV. RETENTION OF JURISDICTION**

9 36. This Court shall retain jurisdiction over this matter for the purpose of  
10 interpreting and enforcing the terms of this Consent Decree.

11 **XV. INTEGRATION/APPENDICES**

12 37. This Consent Decree and its appendices constitute the final, complete  
13 and exclusive agreement and understanding between the Parties with respect to the  
14 settlement embodied in this Consent Decree. The Parties acknowledge that there  
15 are no representations, agreements, or understandings relating to the settlement  
16 other than those expressly contained in this Consent Decree. The following  
17 appendices are attached to and incorporated into this Consent Decree:

18 “Appendix A” is the map of the Site.

19 “Appendix B” is a list of the financial documents submitted to EPA by WMI  
20 Rainier, LLC.

21 “Appendix C” is a list of the insurance documents submitted to EPA by  
22 WMI Rainier, LLC.

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

24 38. This Consent Decree shall be lodged with the Court for a period of not  
25 less than 30 days for public notice and comment. The United States reserves the  
26 right to withdraw or withhold its consent if the comments regarding the Consent  
27 Decree disclose facts or considerations that indicate that this Consent Decree is  
inappropriate, improper, or inadequate. Settling Defendants consent to the entry of  
this Consent Decree without further notice.





1 Settling Defendants. The Court enters this judgment as a final judgment under  
2 Fed. R. Civ. P. 54 and 58.

3 SO ORDERED THIS 26th DAY OF January, 2017.

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United States District Judge

1 Signature Page for Consent Decree Regarding BKK Sanitary Landfill Site

2 **FOR THE UNITED STATES OF AMERICA:**

3  
4  
5 \_\_\_\_\_  
6 Date

\_\_\_\_\_ **JOHN C. CRUDEN**  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044-7611

10  
11  
12 \_\_\_\_\_ **DAVIS H. FORSYTHE**  
Trial Attorney  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
999 18th Street, South Terrace Suite 370  
Denver, CO 80211

1 Signature Page for Consent Decree Regarding BKK Sanitary Landfill Site

2 **FOR THE UNITED STATES OF AMERICA**  
3 **(cont.):**

4  
5 \_\_\_\_\_  
6 Date

\_\_\_\_\_

7 ENRIQUE MANZANILLA  
8 Director, Superfund Division  
9 Region IX  
10 U.S. Environmental Protection Agency  
11 75 Hawthorne St.  
12 San Francisco, CA 94105

\_\_\_\_\_

13 SARAH E. MUELLER  
14 Assistant Regional Counsel  
15 Region IX  
16 U.S. Environmental Protection Agency  
17 75 Hawthorne St.  
18 San Francisco, CA 94105





