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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEPARTMENT OF TOXIC )  
SUBSTANCES CONTROL, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ESTATE OF HERBERT S. MCDUFFEE, JR., )  
DECEASED, ET AL., )  
 )  
Defendants. )  
 )  
 )  
AND RELATED CROSS-CLAIMS, )  
COUNTERCLAIMS, and THIRD-PARTY )  
ACTIONS )  
 )

2:02-cv-0018-GEB-GGH  
ORDER

On April 1, 2010, Plaintiff California Department of Toxic Substances Control (the "Department") filed a motion for approval and entry of the proposed Consent Decree (the "Consent Decree") in this cost recovery action brought by the Department under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") 42 U.S.C. §§ 9601 et seq., and California statutory and common law, against a number of defendants. The Department and the settling defendants also seek an order declaring that the settlement was made in good faith under California Code of Civil Procedure sections 877 and 877.6. These parties further seek an order barring claims against the settling parties for contribution or indemnity arising out of the settled claims under 42 U.S.C. § 9613 and § 113(f)(2).

1           This case involves the alleged release or threatened release  
2 of hazardous substances in, at, around, beneath, and from a tract of  
3 land located at the intersection of White Rock and Kilgore Roads in  
4 Rancho Cordova, Sacramento County, California, Assessor's Parcels  
5 Number 072-0260-006 ("Parcel A"), 072-0260-031 ("Parcel B"), and 072-  
6 0260-032 ("Parcel C") (collectively, the "Site"). The Department's  
7 Third Amended Complaint (the "Complaint") seeks, inter alia, recovery  
8 of response costs incurred or to be incurred by the Department in  
9 monitoring, assessing, and evaluating the alleged release and  
10 threatened release of hazardous substances from the Site and in  
11 removing, remediating, and overseeing the removal and remediation of  
12 hazardous substances at the Site; and declaratory relief regarding the  
13 defendants named in the Complaint's alleged liability for future  
14 response costs with respect to the Site. The defendants in this  
15 action consist of parties who are alleged to be liable because they  
16 arranged for disposal or treatment of hazardous substances at the Site  
17 ("Arranger Defendants"), and parties who are alleged to be liable  
18 based on their ownership or operation of the Site ("Owner/Operator  
19 Defendants").

20           Several of the defendants in this action filed counterclaims  
21 against the Department, the Department acting as the State of  
22 California, or the State of California based on the actions of the  
23 California Highway Patrol, the California Department of  
24 Transportation, the California Department of General Services and its  
25 other political subdivisions. The California Highway Patrol, the  
26 California Department of Transportation, and the California Department  
27 of General Services have actively participated in this litigation and  
28 the settlement negotiations as Arranger Defendants. These three state

1 agencies (the "State Agency Defendants") are signatories to the  
2 Consent Decree.

3 Magistrate Judge Gregory G. Hollows presided over the  
4 settlement conference held on May 29, 2009 in which the parties agreed  
5 to the Consent Decree. The agreement was reached on the Consent  
6 Decree subject to a 30-day time period (ending June 29, 2009) for any  
7 party to inform Magistrate Judge Hollows by email that it did not have  
8 the authority to agree to the Consent Decree.

9 **MOTION FOR APPROVAL AND ENTRY OF CONSENT DECREE**

10 "A consent decree is essentially a settlement agreement  
11 subject to continued judicial policing." U.S. v. State of Oregon, 913  
12 F.2d 576, 580 (9th Cir. 1990) (quotations omitted). "Before approving  
13 a consent decree, a district court must be satisfied that it is at  
14 least fundamentally fair, adequate and reasonable." Id. A CERCLA  
15 consent decree should be approved when it is: "procedurally and  
16 substantively fair, reasonable, and consistent with the statute's  
17 objectives." Arizona ex rel. Arizona Dep't of Env. Quality v. ACME  
18 Laundry & Dry Cleaning Co., Inc., No. CV-09-01919-PHX-FJM, 2009 WL  
19 5170176, at \*1 (D. Ariz. Dec. 21, 2009) (citing U.S. v. Montrose  
20 Chem. Corp. of California, 50 F.3d 741, 746-48 (9th Cir. 1995)); see  
21 also U.S. v. Cannons Eng'g Corp., 899 F.2d 79, 84 (1st Cir. 1990).

22 "To measure procedural fairness, a court should ordinarily  
23 look to the negotiation process and attempt to gauge its candor,  
24 openness, and bargaining balance." Cannons, 899 F.2d at 86.  
25 "Substantive fairness introduces into the equation concepts  
26 of corrective justice and accountability: a party should bear the cost  
27 of the harm for which it is legally responsible." Id. at 87. In  
28 determining whether a settlement is reasonable, courts look to whether

1 the proposed settlement will be effective in ensuring a cleanup of the  
2 property, whether it satisfactorily compensates the public for the  
3 costs of cleanup, and whether the settlement reflects the relative  
4 strengths of the parties' bargaining positions. Id. at 89-90.  
5 Finally, the settlement should be consistent with the purposes of  
6 CERCLA, two of which are: (1) to create a prompt and effective  
7 response to hazardous waste problems; and (2) to ensure that the cost  
8 of remedying the hazardous waste problem is paid for by those who  
9 caused the problem. Id. at 90-91.

10 Here, the parties have made the required showing that the  
11 settlement documented in the Consent Decree is procedurally and  
12 substantively fair, reasonable, and consistent with the purposes of  
13 CERCLA. The settlement was the result of arm's-length negotiations  
14 conducted under the supervision of the Magistrate Judge, in which all  
15 parties had the opportunity to participate. Additionally, the  
16 settlement reflects a "reasonable method of weighing comparative  
17 fault" based on the information available to the settling parties at  
18 the time of settlement. Id. at 88. The Consent Decree provides that  
19 \$2,510,000 shall be paid to the Department through the settlement and  
20 that this payment is expected to "be enough money to complete the  
21 remedial actions" at the Site, ensuring that taxpayer funds will not  
22 be needed for such remedial actions. (Amador Decl. 4:20-124.)  
23 Although this payment does not include the Department's oversight  
24 costs, which are estimated to total \$846,140.04, the Department has  
25 the ability to seek these costs from other non-settling parties and to  
26 apply any unused funds obtained in the proposed settlement to cover  
27 these costs. Finally, the proposed Consent Decree promptly and  
28 effectively responds to the hazardous waste problem, using funds from

1 a large group of defendants who are allegedly responsibly for causing  
2 the problem. Therefore, the proposed Consent Decree is approved as  
3 procedurally and substantively fair, reasonable, and consistent with  
4 the purposes of CERCLA.

5 The parties also seek an order "barring contribution claims  
6 and actions" for the "Matters Addressed" in the Consent Decree under  
7 CERCLA section 113(f), codified as 42 U.S.C. § 9613(f), which  
8 provides:

9 A person who has resolved liability to the United  
10 States or a State in an administrative or  
11 judicially approved settlement shall not be liable  
12 for claims for contribution regarding matters  
13 addressed in the settlement. Such settlement does  
not discharge any of the other potentially liable  
persons unless its terms so provide, but it reduces  
the potential liability of the others by the amount  
of the settlement.

14 42 U.S.C. § 9613(f) (2). Under this section, "[c]ontribution  
15 protection is conferred on the settling parties at the time the  
16 settling parties enter into the agreement." U.S. v. Colorado & E.  
17 R.R. Co., 50 F.3d 1530, 1538 (10th Cir. 1995). Therefore, the  
18 settling parties' request for an order barring contribution claims for  
19 the "Matters Addressed" in the Consent Decree is granted.

20 **MOTION FOR DECLARATION OF GOOD FAITH AND BAR ORDER**

21 The parties also seek a declaration that the settlement was  
22 reached in good faith and an order barring claims for contribution and  
23 indemnity under California law. Section 877.6 of the California Code  
24 of Civil Procedure provides:

25 A determination by the court that the settlement  
26 was made in good faith shall bar any other joint  
27 tortfeasor from any further claims against the  
28 settling tortfeasor or co-obligor for equitable  
comparative contribution, or partial or comparative  
indemnity, based on comparative negligence or  
comparative fault.

1 Cal. Code Civ. P. 877.6(c). Whether a settlement is made in "good  
2 faith" within the meaning of section 877.6 is determined based on a  
3 variety of factors identified in the California Supreme Court's  
4 decision in Tech-Bilt, Inc. v. Woodward-Clyde & Assoc., 38 Cal. 3d 488  
5 (1985), including: (i) a rough approximation of plaintiff's total  
6 recovery and the settlor's proportionate liability; (ii) the amount  
7 paid in settlement; (iii) the allocation of settlement proceeds among  
8 plaintiffs; (iv) a recognition that the settlor should pay less in  
9 settlement than he would if he were found liable after trial; (v) the  
10 financial conditions and insurance policy limits of settling  
11 defendants; and (vi) the existence of collusion, fraud, or tortious  
12 conduct aimed to injure the interests of non-settling defendants. Id.  
13 at 499.

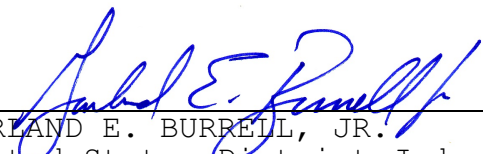
14 Based on the Tech-Bilt factors, the settlement in this case  
15 qualifies as a good faith settlement within the meaning of section  
16 877.6. "The first factor, an approximation of recovery and potential  
17 liability, is the most important." AmeriPride Serv., Inc. v. Valley  
18 Indust. Serv., Inc., 2009 WL 194663, at \*3 (E.D. Cal. July 2, 2007).  
19 "The settlement amount need only be 'in the ballpark' [to satisfy this  
20 factor], with any party challenging a settlement having the burden of  
21 establishing that it is so far out of the ballpark that the equitable  
22 objectives of section 877 are not satisfied." Id. Here, the  
23 settlement is within the "ballpark" of a "rough approximation" of the  
24 Department's total recovery and the settling Defendants' proportionate  
25 liability based on the information available to the parties at the  
26 time of settlement. Further, there is no evidence of collusion,  
27 fraud, or conduct seeking to impose an undue share of liability on the  
28 non-settling parties. Here, the settlement conference over which

1 Magistrate Judge Hollows presided, which culminated in the Consent  
2 Decree, was reached following extensive negotiations conducted at  
3 arm's-length. Finally, the parties have demonstrated that the  
4 decision was motivated by the desire of each to avoid the significant  
5 costs required to litigate this case as well as to avoid the  
6 uncertainty of litigation. Accordingly, this settlement was reached  
7 in good faith. Therefore, any claims against the settling parties  
8 "for equitable comparative contribution, or partial or comparative  
9 indemnity, based on comparative indemnity, based on comparative  
10 negligence, or comparative fault" are barred by California Code of  
11 Civil Procedure section 877.6.

12 For the stated reasons, it is ORDERED:

- 13 1. The Consent Decree is approved and entered as a good faith  
14 settlement and as procedurally and substantively fair,  
15 reasonable, and consistent with the purposes of CERCLA.
- 16 2. Any and all claims for contribution or indemnity against the  
17 settling parties for the "Matters Addressed" in the Consent  
18 Decree are barred by 42 U.S.C. § 9613(f).
- 19 3. The Consent Decree was entered into in good faith within the  
20 meaning of California Code of Civil Procedure sections 877 and  
21 877.6, and any and all claims against the settling parties for  
22 contribution or indemnity are barred by section 877.6.

23 Dated: April 28, 2010

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GARLAND E. BURRELL, JR.  
United States District Judge