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 7 GBF HOLDINGS LLC,  
 8 TRC COMPANIES, INC., THE PREWETTS, and  
 9 THE GENERATOR DEFENDANTS

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA

12 SPPI-SOMERSVILLE, INC., AND  
 13 SOMERSVILLE-GENTRY, INC.,  
 14 Plaintiffs,  
 15 v.  
 16 TRC COMPANIES, INC., *et al.*,  
 17 Defendants.

Case No. C 04-2468 SI  
 (consolidated with C 07-5824)  
 Case No. C 04-2225 SI

**STIPULATION FOR ORDER DETERMINING  
 GOOD FAITH OF SETTLEMENT BETWEEN  
 PLAINTIFFS SPPI-SOMERSVILLE, INC.,  
 SOMERSVILLE-GENTRY, INC., WEST  
 COAST HOMEBUILDERS, INC. AND  
 DEFENDANTS TRC COMPANIES, INC., GBF  
 HOLDINGS, LLC, THE "GENERATOR  
 DEFENDANTS," THE PREWETTS, THE  
 "CCWS DEFENDANTS," THE CITY OF  
 PITTSBURG, THE "FEDERAL  
 DEFENDANTS," AND [PROPOSED] ORDER  
 THEREON**

22 WEST COAST HOME BUILDERS, INC.,  
 23 Plaintiff,  
 24 v.  
 25 AVENTIS CROPSCIENCE USA INC., *et*  
 26 *al.*,  
 27 Defendants.

1 **INTRODUCTION**

2 This Stipulation for Order Determining Good Faith of Settlement (the “Stipulation”) is  
3 entered into by the following parties (collectively, the “Parties):

4 (i) Plaintiffs SPPI-Somersville, Inc. (“SPPI”), Somersville-Gentry, Inc. (“SGI”), and  
5 West Coast Home Builders, Inc. (“WCHB”) (collectively, the “Plaintiffs” and/or  
6 “WCHB/Somersville”), by and through their counsel of record Farella, Braun + Martel;

7 (ii) Defendants TRC Companies, Inc. (“TRC”), GBF Holdings, LLC (“GBF” and  
8 together with TRC, the “TRC Parties”), the “Generator Defendants” which are comprised of  
9 Aventis Cropscience USA Inc., Ashland, Inc., Beazer East, Inc., Boeing Satellite Systems, Inc.,  
10 Caterpillar, Inc., Chemical & Pigment Co., Colgate-Palmolive Company, Cooper Industries, Inc.,  
11 Crown Beverage Packaging, Inc., The Dow Chemical Company, E.I. DuPont de Nemours and  
12 Company, Exxon Mobil Corporation, Fairchild Semiconductor Corporation, Fairchild  
13 Semiconductor Corporation of California, Gaylord Container Corporation, Hewlett Packard  
14 Company, Lockheed Martin Corporation, Nestle USA, inc., Occidental Chemical Corporation,  
15 Ocean View Capital, Inc., Paccar Inc., Inc., Quebecor Printing San Jose, Inc., Shell Oil Company,  
16 Shuller International, Inc., Union Oil Company of California, Union Pacific Railroad Company,  
17 and USX Corporation (collectively, the “Generator Defendants”), and Harold William Prewett  
18 and Mary Grace (Prewett) Bertsch (collectively, the “Prewetts”), by and through their counsel of  
19 record Downey Brand LLP;

20 (iii) Defendants City of Pittsburg (“Pittsburg”), Contra Costa Waste Services, Inc.,  
21 Estate of Silvio Garaventa, Sr., Mary Garaventa, as Administratrix of the Estate of Silvio  
22 Garaventa, Sr., Mary C. Garaventa, Silvio Garaventa, Jr., Mary C. Garaventa, as Trustee of the  
23 Garaventa Family Trust, and Pittsburg Disposal & Debris Box Service, Inc. (collectively, the  
24 “CCWS Defendants”), by and through their counsel of record Bassi, Edlin, Huie & Blum LLP;  
25 and

26 (iv) Defendants the United States Department of the Army, United States Department  
27 of Defense, Defense Logistics Agency and United States Department of the Navy (collectively,  
28 the “Federal Defendants” and together with the Defendants identified above, the “Defendants”)

1 by and through their counsel of record the United States Department of Justice.

2 **RECITALS**

3 **The Actions**

4 A. On June 7, 2004, WCHB filed a complaint against TRC, GBF, the Generator  
5 Defendants, the Prewetts and the Federal Defendants, alleging damages due to contamination  
6 emanating from the former Contra Costa Sanitary Landfill (the "CCSL") which caused  
7 groundwater/soil gas contamination to certain property it owns, thus initiating the above entitled  
8 matter (the "WCHB Action").

9 B. On June 30, 2004, SPPI and SGI filed a complaint against the Defendants alleging  
10 damages due to contamination emanating from the CCSL which caused groundwater/soil gas and  
11 solid waste contamination to certain properties they own thus initiating the above entitled matter  
12 (the "SPPI Action" and together with the WCHB Action, the "Actions").

13 C. On or about November 15, 2007, SPPI and SGI filed a separate action against  
14 Chevron USA, Inc. ("Chevron"), Case No. C 07-5824. That case was later consolidated with the  
15 C 04-2648. Various third party claims and cross-claims were filed in the consolidated case  
16 among Chevron, SPPI, SGI, Defendant City of Antioch ("Antioch") the TRC Parties, the  
17 Prewetts, Pittsburg, and the CCWS Defendants.

18 D. On or about September 22, 2009, the Court approved the settlement by and  
19 between the Plaintiffs and Antioch in connection with the SPPI Action (Dkt. No. 701). There is  
20 no settlement by and between the Defendants and Antioch, but all claims by Antioch against all  
21 other parties were dismissed as part of the Court's order approving the settlement.

22 E. On or about September 22, 2009, the Court approved the settlement by and  
23 between the Plaintiffs and Defendant Chevron in connection with the SPPI Action (Dkt. No. 702).  
24 There is no settlement between the Defendants and Chevron. Chevron's claims remain pending  
25 against Antioch, the TRC Parties, the Prewetts, Pittsburg, and the CCWS Defendants only.

26 F. The only defendants remaining in the SPPI Action are the Defendants, as defined  
27 above in the Introduction at paragraphs (ii), (iii), and (iv).

28 G. The only defendants remaining in the WCHB Action are the TRC Parties, the

1 Generator Defendants, the Federal Defendants and the Prewetts, as defined above in the  
2 Introduction at paragraphs (ii) and (iv).

3 **The Mediation and Agreement**

4 H. On or about September 25, 2009, and thereafter, the Parties participated in a  
5 mediation before Hon. Judge James Warren, Ret. of JAMS Endispute (the “Mediation”).

6 I. In connection with the Mediation, the Parties agreed to resolve all disputes  
7 between them relative to the SPPI Action and the WCHB Action pursuant to that certain  
8 Settlement Agreement (the “Agreement”), a true and correct copy of which is attached hereto as  
9 **Exhibit 1**. The Agreement provides, in part, as follows:

10 i. At section IV.A., the Agreement provides for a monetary payment by the  
11 TRC Parties to the Plaintiffs in the sum of \$610,000 (the “Settlement Payment”) within forty five  
12 days of the last signature to the Agreement;

13 ii. At section IV.B.1, the Agreement provides that the TRC Parties shall have  
14 certain testing and study obligations relative to the Plaintiffs’ properties;

15 iii. At section IV.C, the Agreement provides that the TRC Parties shall have  
16 certain mitigation obligations, dependent upon the results of the testing and study obligations;

17 iv. At section IV.D., the Agreement provides that the TRC Parties shall have  
18 certain reimbursement obligations, dependent upon the manner (if any) of mitigation;

19 v. At section IV.E., the Agreement provides that the TRC Parties shall  
20 continue to take full responsibility for conducting investigation, remediation and/or monitoring of  
21 the groundwater/soil gas plume;

22 vi. At section IV.I., the Agreement provides that the Parties consent and  
23 stipulate to the entry of an Order from the Court in the Actions which (1) shall bar any claims for  
24 contribution or indemnity incurred or to be incurred with respect to the allegations in the Actions,  
25 and (2) shall adjudicate the settlement embodied in the Agreement as good faith under California  
26 Code of Civil Procedure section 877.6, and bar any and all state law equitable indemnity or  
27 contribution claims or common law claims of any type concerning, relating to, or arising out of  
28 the allegations in the Actions (the “Good Faith Order”).



1 v. No prior hearing on the Agreement's fairness or good faith is necessary.  
2 *Edward Hines Lumber Co. v. Vulcan Materials Co.*, 1987 WL 27368 (N.D. Ill. Dec. 4, 1987).

3 vi. Since federal law controls in determining the effect of partial settlements in  
4 CERCLA cases, the provisions of California Code of Civil Procedure section 877 regarding  
5 determination of good faith settlement are applicable to any potential state law claims and are  
6 only illustrative of the good faith nature of the settlement of CERCLA claims.

7 vii. Notwithstanding the foregoing, the Agreement satisfies the requirements  
8 for a good faith determination under California Code of Civil Procedure section 877.6 and *Tech*  
9 *Bilt Inc. v. Woodward Clyde & Associates*, 38 Cal.3d 488 for the following reasons:

10 a. the Settlement Payment and non-monetary performances due under  
11 the Agreement (when monetized) are reasonably proportionate to the Defendants' share of  
12 liability for the alleged surface and groundwater contamination;

13 b. the amount of the Settlement Payment and the non-monetary  
14 performances due under the Agreement (when monetized) are substantial;

15 c. the Settlement Payment and the non-monetary performances due  
16 under the Agreement (when monetized) are likely less than the amounts Defendants would be  
17 found liable for after trial; and

18 d. the Agreement was entered into without collusion, fraud, or  
19 tortuous conduct intended to impair non-settling defendants' interests.

20 3. There is no prejudice to Antioch since it reached a settlement with Plaintiffs and as  
21 a result dismissed its cross claims in the SPPI Action.

22 4. There is no prejudice to Chevron since it reached a separate settlement with  
23 Plaintiffs and has demonstrated that it does not intend to pursue its cross claims in the SPPI  
24 Action.

25 5. A good faith settlement operates to discharge the settling parties from liability to  
26 any other alleged tortfeasor for partial or comparative indemnity or contribution in the Actions,  
27 regardless of whether the other alleged tortfeasors are presently parties to the action or have ever  
28 been parties to the action. Code of Civil Procedure §877.6, *Mill Valley Refuge Co. v. Superior*

1 Court, 108 Cal.App.3d 707 (1981).

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Dated: March 24, 2010

FARELLA, BRAUN + MARTEL LLP

By: /s/ Paul P. "Skip" Spaulding, III  
Paul P. "Skip" Spaulding, III  
Attorneys for Plaintiffs

Dated: March 24, 2010

DOWNEY BRAND LLP

By: /s/ Clifton J. McFarland  
Clifton J. McFarland  
Attorneys for the TRC Parties, the  
Generator Defendants, and the  
Prewetts

Dated: March 24, 2010

BASSI, EDLIN, HUIE & BLUM

By: /s/ Fred Blum  
Fred Blum  
Attorneys for Pittsburg and the  
CCWS Defendants

Dated: March 24, 2010

U.S. DEPARTMENT OF JUSTICE

By: /s/ Leslie Hill  
Leslie Hill  
Attorneys for the Federal Defendants

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**ORDER**

UPON CONSIDERATION OF THE FOREGOING, the Court hereby finds that this Agreement is fair and reasonable, both procedurally and substantively, consistent with applicable law, in good faith, and in the public interest. THE FOREGOING Agreement is hereby APPROVED.

IT IS HEREBY ORDERED that:

Defendants are entitled to, as of the effective date of the Agreement, contribution protection pursuant to section 113(f) of CERCLA, 42 U.S.C. § 9613(f), the Uniform Comparative Fault Act, and any other applicable provision of federal or state law, including but not limited to the provisions and protections afforded by the California Code of Civil Procedure sections 877 and 877.6, whether by statute or common law for claims of any type concerning, relating to or arising out of the allegations in the Actions, and not for any excluded matters as described in Paragraph VII.O of the Agreement.

Dated: 3/25, 2010

By:   
HON. SUSAN ILLSTON  
UNITED STATES DISTRICT JUDGE