

1 Peter W. McGaw (Bar No. 104691)
 2 John L. Kortum (Bar No. 148573)
 3 ARCHER NORRIS
 2033 North Main Street, Suite 800
 4 PO Box 8035
 Walnut Creek, CA 94596-3728
 Telephone: 925.930.6600
 Facsimile: 925.930.6620

5 Attorneys for Plaintiff WEST COAST HOME
 6 BUILDERS, INC.

7
 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10
 11 WEST COAST HOME BUILDERS, INC.

Case No. C 04-2225 SI

12 Plaintiff,

**STIPULATION TO ALLOW PLAINTIFF
 TO FILE THIRD AMENDED
 COMPLAINT**

13 v.

14 AVENTIS CROPSCIENCE USA, INC., et
 15 al.

AND

16 Defendants,

(PROPOSED) ORDER

17
 18 **STIPULATION**

19 The parties to this action hereby stipulate:

- 20 1. On July 6, 2006, in response to a motion filed by various defendants to dismiss certain
 21 causes of action alleged in Plaintiff's First Amended Complaint, the Court ruled partially in favor
 22 of defendants' motion and dismissed Plaintiffs causes of action for negligence, negligence per se,
 23 ultrahazardous activity and state law declaratory relief (*See Order Granting in Part and Denying*
 24 *in Part Defendants' Motion to Dismiss State Law Claims; Granting Defendants' Motion to Stay*
 25 *and Staying Action until September 30, 2006*; entered July 6, 2006, Docket No. 83).
- 26 2. On March 7, 2008, pursuant to a stipulation of the parties and order of the court, Plaintiff
 27 filed a Second Amended Complaint in this action.

28 1 **STIPULATION TO ALLOW PLAINTIFF TO FILE
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1 3. The Parties now agree that that Second Amended Complaint inadvertently contained the
2 same causes of action against the non-Federal defendants for negligence, negligence per se,
3 ultrahazardous activity and state law declaratory relief that had previously been dismissed by the
4 Court, and the parties further agree that were the non-Federal defendants to re-file their motion to
5 dismiss these causes of action, the Court's ruling would be the same as before.

6 4. THEREFORE, in the interest of judicial economy, the parties hereby stipulate that
7 Plaintiff may file a Third Amended Complaint that removes the causes of action for negligence,
8 negligence per se, ultrahazardous activity and state law declaratory relief, and that by doing so,
9 Plaintiff does not waive any issues that it may have on appeal pertaining to the Court's prior
10 ruling, and that the Court's prior ruling dismissing the causes of action for negligence, negligence
11 per se, ultrahazardous activity and state law declaratory relief in Plaintiff's First Amended
12 Complaint will be treated for all purposes as if it were applied to Plaintiff's Second Amended
13 Complaint.

14
15 Dated: January 14, 2009

ARCHER NORRIS



Peter W. McGaw
John L. Kortum
Attorneys for Plaintiff West Coast Home
Builders, Inc.

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19
20 Dated: January 14, 2009

DOWNEY BRAND LLP



Clif McFarland
Janlynn R. Fleener
Attorneys for Defendants GBF Holdings LLC,
TRC Companies, Inc. and Generator
Defendants

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Dated: January 14, 2009

Leslie Hill by JHK

Leslie Hill, Attorney
UNITED STATES DEPARTMENT OF
JUSTICE
Environment & Natural Resources Division
Environmental Defense Section
P.O. 23986
Washington, DC 2006-3986
Attorneys for the FEDERAL DEFENDANTS

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THIRD AMENDED COMPLAINT; AND ORDER**
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ORDER

The Court having reviewed the foregoing stipulation of the parties and for good cause appearing, it is hereby Ordered:

Plaintiff may file a Third Amended Complaint that removes the causes of action for negligence, negligence per se, ultrahazardous activity and state law declaratory relief, and that by doing so, Plaintiff does not waive any issues that it may have on appeal pertaining to the Court's prior ruling, and that the Court's prior ruling dismissing the causes of action for negligence, negligence per se, ultrahazardous activity and state law declaratory relief in Plaintiff's First Amended Complaint will be treated for all purposes as if it were applied to Plaintiff's Second Amended Complaint.



Dated: _____

THE HONORABLE SUSAN ILLSTON
JUDGE, UNITED STATES DISTRICT COURT