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SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF HUMBOLDT

**PEOPLE OF THE STATE OF
CALIFORNIA, ex rel STATE WATER
RESOURCES CONTROL BOARD;
PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiffs,

v.

**BIG OIL & TIRE CO., a California
Corporation, RICHARD W. POMHREN,
Individually, and DOES 1 through 10,**

Defendants.

Case No. **CV100221**

**CONSENT JUDGMENT AND
STIPULATION FOR ENTRY OF FINAL
JUDGMENT, CIVIL PENALTIES AND
PERMANENT INJUNCTION;
[PROPOSED] ORDER**

Date:
Time:
Dept:
Judge
Trial Date
Action Filed:

1 INTRODUCTION

2 This Consent Judgment and Stipulation for Entry of Final Judgment, Civil Penalties and
3 Permanent Injunction and Order (“Consent Judgment”) is entered into by Plaintiffs the PEOPLE
4 OF THE STATE OF CALIFORNIA, ex rel. STATE WATER RESOURCES CONTROL
5 BOARD and People of the State of California, acting by and through the District Attorney for the
6 County of Humboldt, (together, “People”) and Defendants BIG OIL & TIRE Co. (hereinafter
7 “Big Oil”) and RICHARD W. POMREHN in his capacity as President of Big Oil. For purposes
8 of this Consent Judgment, the People, Big Oil, and Richard Pomrehn shall be referred to
9 collectively as the “Parties,” or individually as “Party.”

10 The Parties have agreed to settle the above-captioned matter without further litigation, as
11 set forth below.

12 On March 25, 2010, the People filed the Complaint in this matter, alleging that Big
13 Oil and Richard Pomrehn, in his capacity as President of Big Oil, violated various laws and
14 regulations governing the operation, maintenance and repair of underground storage tanks
15 (“USTs”) and UST systems at Covered Facilities owned or operated by Big Oil.

16 The Parties enter into this Consent Judgment pursuant to a compromise and settlement of
17 disputed claims. The People believe that the resolution contained herein is fair and reasonable
18 and fulfills the People’s enforcement objectives; that no further action is warranted concerning
19 the specific violations alleged in the Complaint except to the extent provided herein; and that
20 entry of this Consent Judgment in is the best interest of the public welfare and environment. Big
21 Oil concurs that this Consent Judgment is a fair and reasonable resolution of this matter.

22 By signing this stipulation, based in part on representations made and reaffirmed by the
23 named Defendants, Big Oil and Richard Pomrehn neither admit nor deny the allegations of the
24 Complaint, but agree that certain penalty payments will be made by Big Oil according to the
25 terms of the Consent Judgment to resolve this matter without further litigation. This Consent
26 Judgment shall not constitute evidence of admissions or concessions by the named Defendants
27 regarding all allegations of law and fact alleged in the Complaint on file herein.

1 **FINAL JUDGMENT AND PERMANENT INJUNCTION PURSUANT TO**
2 **STIPULATION; ORDER**

3 The Parties, after an opportunity for review by counsel of record, hereby stipulate and
4 consent to the entry of this Consent Judgment as set forth below.

5 **1. DEFINITIONS**

6 Except where otherwise expressly defined herein, all terms shall be interpreted consistent
7 with Chapter 6.7 of Division 20 of the Health and Safety Code and the regulations promulgated
8 under this Chapter.

9 “Covered Facilities” means the UST facilities owned or operated by Big Oil and located
10 in Humboldt County, as set forth in **Exhibit A** to the Complaint.

11 “Certified Unified Program Agency” or “CUPA” is an agency certified by the Secretary of
12 the California Environmental Protection Agency pursuant to the requirements of Chapter 6.11 of
13 the Health and Safety Code and California Code of Regulations, title 27, to implement certain
14 State environmental programs within a local agency’s jurisdiction. As used in this Consent
15 Judgment, “CUPA” includes any Participating Agency or Unified Program Agency.

16 “Local Agency” means the local agency authorized, pursuant to Health and Safety Code
17 section 25283, to implement Health and Safety Code Chapter 6.7.

18 **2. JURISDICTION**

19 The Parties agree that the Superior Court of California, County of Humboldt, has subject
20 matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties
21 hereto.

22 **3. PAYMENTS FOR PENALTIES, ENVIRONMENTAL PROTECTION**
23 **ENFORCEMENT AND OTHER PROJECTS**

24 Big Oil, and its successors and assigns, shall be liable for a total of \$1,100,000, allocated
25 as set forth in Paragraphs 3.1 through 3.4, below. On entry of this Consent Judgment, Big Oil
26 shall deliver all required payments to Robert W. Byrne, Supervising Deputy Attorney General,
27 California Department of Justice, Natural Resources Law Section, 455 Golden Gate Ave., Suite
28 11000, San Francisco, CA 94102-7004, for distribution pursuant to the terms of this Consent

1 Judgment.

2 **3.1 Payment of Penalty**

3 3.1.a. No later than July 15, 2010, Big Oil shall pay \$35,000, as civil penalties to
4 the State Water Resources Control Board and the County of Humboldt in accordance with the
5 terms in **Exhibit B**, incorporated herein by reference as though fully set forth.

6 3.1.b. No later than July 15, 2011, Big Oil shall pay \$35,000, as civil penalties to
7 the State Water Resources Control Board and the County of Humboldt in accordance with the
8 terms in **Exhibit B**.

9 3.1.c. No later than July 15, 2012, Big Oil shall pay \$35,000, as civil penalties to
10 the State Water Resources Control Board and the County of Humboldt in accordance with the
11 terms in **Exhibit B**.

12 3.1.d. No later than July 15, 2013, Big Oil shall pay \$35,000, as civil penalties to
13 the State Water Resources Control Board and the County of Humboldt in accordance with the
14 terms in **Exhibit B**.

15 3.1.e. No later than July 15, 2014, Big Oil shall pay \$85,000, as civil penalties to
16 the State Water Resources Control Board and the County of Humboldt in accordance with the
17 terms in **Exhibit B**.

18 3.1.f. Big Oil shall be permitted to make any of the above-listed payments at any
19 time prior to the due date, and there shall be no penalty for early payment.

20 3.1.g. Civil penalties paid to the State Water Resources Control Board pursuant to
21 Paragraphs 3.1.a through 3.1.e and **Exhibit B** shall be deposited into the State Water Pollution
22 Cleanup and Abatement Account, and may be used by the State Water Resources Control Board,
23 at its discretion, to fund activities associated with the investigation and/or enforcement of UST
24 requirements, including those codified at Chapter 6.7 of the California Health and Safety Code
25 and its implementing regulations, and the investigation and/or protection of the Underground
26 Storage Tank Cleanup Fund. These activities may include, but are not limited to, training State
27 and local enforcement staff, hiring State enforcement staff, expert witness support, and criminal
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1 investigation development and support.

2 3.1.h. Civil penalties paid to the County of Humboldt pursuant to Paragraphs 3.1.a
3 through 3.1.e and **Exhibit B** shall be contingent upon the County of Humboldt first identifying a
4 special account and submitting to Robert W. Byrne, Supervising Deputy Attorney General,
5 California Department of Justice, Natural Resources Law Section, 455 Golden Gate Ave., Suite
6 11000, San Francisco, CA 94102-7004, a declaration by an authorized representative stating that
7 the funds deposited to that identified special account pursuant to this Consent Judgment shall be
8 expended only to fund the activities of the County in enforcing Chapter 6.7 of the California
9 Health and Safety Code within the County's jurisdiction pursuant to Chapter 6.11 of the
10 California Health and Safety Code. In the event that the County does not submit the declaration
11 required by this paragraph within ninety (90) days of entry of the Consent Judgment, the
12 County's share of the civil penalties shall be tendered to the State Water Resources Control Board
13 and deposited in the State Water Pollution Cleanup and Abatement Account in the same manner
14 as referenced in section 3.1.g. above.

15 **3.2 Credit**

16 Against Big Oil's total liability of \$1,100,000, Big Oil shall be credited \$418,000 for
17 various improvements that Big Oil voluntarily undertook related to its UST systems that are
18 above and beyond that required by law.

19 **3.3 Reimbursement of Costs of Investigation and Enforcement**

20 By March 31, 2010, Big Oil shall pay \$50,000 for reimbursement of attorneys' fees, costs
21 of investigation and other enforcement costs in accordance with the terms of **Exhibit C**,
22 incorporated herein by reference as though fully set forth.

23 **3.4 Suspended Penalties**

24 Of Big Oil's total liability of \$1,100,000, \$407,000 shall be suspended provided that Big
25 Oil does not violate one or more of the provisions referenced in Paragraphs 4.1, 4.2, 4.3, 4.4, and
26 4.5 ("Suspended Penalty Conduct") for a period of five (5) years, beginning with the entry of this
27 Consent Judgment.

1 3.4.a. The assessment of the suspended penalty shall be brought by noticed
2 motion by the People. Big Oil retains all of its rights to contest the People's claim that it has
3 engaged in Suspended Penalty Conduct, including the right to assert that the alleged violation was
4 due to a *Force Majeure Event*. If the Court finds that Big Oil has engaged in conduct, or failed to
5 act where it had a duty to act, on one or more occasions that constitute a violation of one or more
6 of the provisions referenced in Paragraphs 4.1 through 4.5, the Court shall impose a penalty for
7 each violation for each day such violation occurred, except that each 30 day period that elapses
8 for the testing and maintenance requirements in sections 4.1 - 4.5 below shall be considered one
9 violation for purposes of calculating and/or imposing any suspended penalties pursuant to this
10 section. The first failure to perform any of the duties identified in Paragraphs 4.1 through 4.5,
11 shall result in a twenty percent (20%) payment of the total stayed amount stated in Paragraph 3.4
12 above. The second failure to perform any of the duties identified in Paragraphs 4.1 through 4.5,
13 shall result in a twenty-five percent (25%) payment of the total stayed amount stated in Paragraph
14 3.4 above. The third failure to perform any of the duties identified in Paragraphs 4.1 through 4.5,
15 shall result in a twenty-five percent (25%) payment of the total stayed amount stated in Paragraph
16 3.4 above. The fourth failure to perform any of the duties identified in Paragraphs 4.1 through
17 4.5, shall result in a thirty percent (30%) payment of the total stayed amount stated in Paragraph
18 3.4 above. The Court shall have no discretion to reduce or otherwise modify the amount of the
19 Suspended Penalty above if the Court determines Suspended Penalty Conducted has occurred,
20 Suspended Penalties may be imposed until the entire Suspended Penalty amount of \$407,000 is
21 exhausted. Payment of the suspended penalty shall be due within thirty (30) days of the final
22 order. The People shall designate the payee or payees of the suspended penalty in its moving
23 papers, consistent with Paragraphs 3.1.g. and 3.1.h. of this Consent Judgment. If the Suspended
24 Penalty amount is exhausted, any further violations of this Consent Judgment that would
25 otherwise constitute an action or omission for which a Suspended Penalty must be imposed, may
26 be separately penalized as an independent and distinct violation in another proceeding. If Big Oil
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1 does not engage in Suspended Penalty Conduct for a period of five (5) years, beginning with
2 entry of this Consent Judgment, the suspension of penalties shall become permanent.

3 **3.5 Late Payments**

4 Big Oil shall be liable for a stipulated civil penalty of \$500 for each day that a payment
5 required pursuant to this Consent Judgment is late.

6 **4. INJUNCTIVE RELIEF**

7 Pursuant to the provisions of Health and Safety Code section 25299.01, Business and
8 Professions Code section 17203, and the Court's inherent equitable powers, Big Oil and its
9 employees, officers, agents, successors, and assigns, including Richard Pomrehn in his capacity
10 as President of Big Oil, ("Big Oil & Pomrehn") are permanently enjoined for a period of five
11 years to comply with Chapter 6.7 of Division 20 of the Health and Safety Code and the
12 regulations promulgated under this Chapter pertaining to UST systems at Big Oil's Covered
13 Facilities which have not been permanently closed as of the effective date of the Consent
14 Judgment and any other UST facility owned or operated by Big Oil in Humboldt County which
15 first commences operations after the effective date of the Consent Judgment. Big Oil &
16 Pomrehn's failure to comply with the specific injunctive provisions that follow in Paragraphs 4.1
17 through 4.5 will subject it to the Consent Judgment enforcement provisions and penalties as set
18 forth in Paragraphs 3.4, 6.1, and 6.2, as applicable. Any violation of the permanent injunction
19 contained in this Consent Judgment shall be considered separate and in addition to any claim or
20 other cause of action for any violation of the statutory or regulatory requirements.

21 **4.1 Secondary Containment Testing**

22 4.1.a. *Certification of Secondary Containment Testing Compliance:* Within thirty
23 (30) days of the entry of this Consent Judgment, Big Oil & Pomrehn shall submit a certification
24 that as of February 1, 2010, each UST system then in operation has passed secondary containment
25 testing in compliance with requirements of title 23 of the California Code of Regulations, section
26 2637(a) or (b), or Health and Safety Code section 24284.1(a)(4)(B)(ii).

27 4.1.b. *Repeat Secondary Containment Testing:* Within thirty (30) days of entry of
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1 this Consent Judgment, Big Oil & Pomrehn shall submit a report to the People identifying dates
2 when each UST system owned or operated by Big Oil last passed its secondary containment test
3 (using SB989 test). For subsequent tests, Big Oil & Pomrehn shall conduct such tests no less
4 frequently than thirty-six (36) months after the immediately preceding date on which the UST
5 system passes its secondary containment test.

6 4.1.c. *Repair of Tank System that Fails Secondary Containment Testing*: for any
7 UST system failing a secondary containment test, Big Oil & Pomrehn shall do one of the
8 following: i) repair such UST system within the time required by the UST system permit or
9 applicable CUPA or Local Agency ordinance, but no later than sixty (60) days after the test
10 failure; ii) if the repair of the system failing the secondary containment test requires a permit or
11 other regulatory authorization in advance of undertaking the repairs, Big Oil & Pomrehn shall file
12 a complete application with the agency or agencies for a permit or authorization no later than
13 thirty (30) days after the test failure, and Big Oil & Pomrehn shall complete the repairs within
14 sixty (60) days of filing the application; or iii) within fifteen (15) days of such a test failure, file
15 an application with the CUPA or Local Agency to temporarily or permanently close the UST
16 system and implement the closure in accordance with the Local Agency's or CUPA's
17 requirements. If Big Oil experiences problems obtaining parts or vendors due to availability
18 limitations precluding repair within sixty (60) days of failed secondary containment test, Big Oil
19 & Pomrehn shall: (1) notify the State Water Resources Control Board, CUPA or Local Agency no
20 less than two (2) weeks prior to the sixty (60)-day deadline; and (2)(a) state the specific basis for
21 the delay; (2)(b) estimate the time when parts or vendors will be available; (2)(c) identify the
22 entities or persons contacted in attempts to procure parts and vendors; (2)(d) provide the most
23 recent CUPA or Local Agency annual inspection report form; (2)(e) state that all reasonable and
24 diligent efforts to effect the repair have been, are and will be undertaken to complete the repair as
25 soon as practicable but no later than ninety (90) days from the failed secondary containment test;
26 and (2)(f) obtain written approval from the CUPA or Local Agency of the requested extension of
27 time. If the CUPA or Local Agency fails to respond to a request for extension of time, the request
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1 for extension of time will be deemed granted. If the UST system failing secondary containment
2 testing has not been repaired or closed within fourteen (14) days of the time frames listed above,
3 Big Oil & Pomrehn shall not operate that UST system, including storage of fuels (except for the
4 purpose of performing secondary containment testing), until that UST system passes a valid
5 secondary containment test.

6 4.1.d. *Notification of Secondary Containment Testing:* Big Oil & Pomrehn shall
7 notify the applicable Local Agency or CUPA at least forty-eight (48) hours prior to conducting a
8 secondary containment test on a UST system.

9 4.1.e. *Secondary Containment Test Results:* Big Oil & Pomrehn shall submit a
10 written copy of all test reports for each underground tank system to the applicable Local Agency
11 or CUPA within thirty (30) days of the completion of the test.

12 4.1.f. *Violation(s):* Failure to perform any of the above listed requirements in
13 Paragraphs 4.1.a through 4.1.e shall constitute a violation for the purposes of Suspended Penalties.

14 **4.2 Overfill Prevention**

15 Big Oil & Pomrehn shall at all times install and maintain functional spill and overfill
16 prevention equipment in accordance with Health and Safety Code sections 25290.1(f), 25290.2(e),
17 25291(c), and 25292(d) and title 23 of the California Code of Regulations, sections 2635(b) and
18 2665, and as described in State Water Resources Control Board Local Guidance Letter LG-150-2.
19 If Big Oil experiences problems obtaining parts or vendors due to availability limitations
20 precluding repair functional overfill protection within sixty (60) days of failed test, Big Oil &
21 Pomrehn shall: (1) notify the State Water Resources Control Board, CUPA or Local Agency no
22 less than two (2) weeks prior to the sixty (60)-day deadline; and (2)(a) state the specific basis for
23 the delay; (2)(b) estimate the time when parts or vendors will be available; (2)(c) identify the
24 entities or persons contacted in attempts to procure parts and vendors; (2)(d) provide the most
25 recent CUPA or Local Agency annual inspection report form; (2)(e) state that all reasonable and
26 diligent efforts to effect the repair have been, are and will be undertaken to complete the repair as
27 soon as practicable but no later than ninety (90) days from the failed overfill test; and (2)(f) obtain
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1 written approval from the CUPA or Local Agency of the requested extension of time. If the
2 CUPA or Local Agency fails to respond to a request for extension of time, the request for
3 extension of time will be deemed granted.

4 **4.3 10-year Lining Inspections**

5 4.3.a. *Certification of 10-Year Lining Inspection Compliance:* Within thirty (30)
6 days of the entry of this Consent Judgment, Big Oil & Pomrehn shall submit a certification that as
7 of February 1, 2010, each UST system that has been lined for the purpose of repairing the UST
8 system or upgrading the UST system to satisfy the requirements of title 23 of the California Code
9 of Regulations, section 2662(c), has been inspected by a coatings expert or special inspector
10 within 10 years of lining, in accordance with the lining inspection requirements of title 23 of the
11 California Code of Regulations, section 2663(h).

12 4.3.b. *Repeat Lining Inspection:* Within thirty (30) days of entry of this Consent
13 Judgment, Big Oil & Pomrehn shall submit a report to the People identifying dates when each
14 UST system owned or operated by Big Oil was last inspected for compliance with the lining
15 inspection requirements of title 23 of the California Code of Regulations section 2663(h). Big Oil
16 & Pomrehn shall conduct subsequent lining inspections no less frequently than required by title
17 23 of the California Code of Regulations, section 2663(h).

18 4.3.c. *Closure of UST System that Fails Lining Inspection:* for any UST system
19 that is not certified by the special inspector or coatings expert as meeting the criteria described in
20 title 23 of the California Code of Regulations, section 2663(h)(8)(A) and 2663(h)(8)(B), Big Oil
21 & Pomrehn shall, within sixty (60) days of the inspection date, file an application with the CUPA
22 or Local Agency to temporarily or permanently close the UST system and implement the closure
23 in accordance with the Local Agency's or CUPA's requirements.

24 4.3.d. *Notification of Lining Inspection:* Big Oil & Pomrehn shall notify the
25 applicable Local Agency or CUPA at least forty-eight (48) hours prior to conducting a lining
26 inspection on a UST system.

1 4.3.e. *Lining Inspection Results*: Big Oil & Pomrehn shall submit a written copy
2 of all lining inspections for each UST system to the applicable Local Agency or CUPA within
3 thirty (30) days of the completion of the inspection.

4 4.3.f. *Violation(s)*: Failure to perform any of the above listed requirements in
5 Paragraphs 4.3.a through 4.3.e shall constitute a violation for the purposes of Suspended Penalties.

6 **4.4 Cathodic Protection Testing**

7 4.4.a. *Certification of Cathodic Protection Compliance*: Within thirty (30) days
8 of the entry of this Consent Judgment, Big Oil & Pomrehn shall submit a certification that as of
9 February 1, 2010, each UST system with an outer surface constructed of steel meets the cathodic
10 protection requirements of title 23 of the California Code of Regulations section 2635(a)(2)(A)
11 and 2662(c).

12 4.4.b. *Cathodic Protection Testing*: Within thirty (30) days of entry of this
13 Consent Judgment, Big Oil & Pomrehn shall submit a report to the People identifying dates when
14 each UST system with an outer surface constructed of steel was last tested by a cathodic
15 protection tester, in accordance with the requirements of title 23 of the California Code of
16 Regulations, section 2635(a)(2)(A). Big Oil & Pomrehn shall conduct subsequent cathodic
17 protection tests no less frequently than required by title 23 of the California Code of Regulations,
18 section 2635(a)(2)(A).

19 4.4.c. *Repair of UST System that Fails Cathodic Protection Test*: for any UST
20 system which fails a cathodic protection test, Big Oil & Pomrehn shall do one of the following: i)
21 repair such UST system within the time required by the UST system permit or applicable CUPA
22 or Local Agency ordinance, but no later than 120 days after the test failure; ii) if the repair of the
23 UST system failing the cathodic protection test requires a permit or other regulatory authorization
24 in advance of undertaking the repairs, Big Oil & Pomrehn shall file a complete application with
25 the agency or agencies for a permit or authorization no later than forty-five (45) days after the test
26 failure, and Big Oil & Pomrehn shall complete the repairs within seventy-five (75) days of filing
27 the application; or iii) within sixty (60) days of such a test failure, file an application with the
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1 CUPA or Local Agency to temporarily or permanently close the UST system and implement the
2 closure in accordance with the Local Agency's or CUPA's requirements. If the UST system
3 failing cathodic protection testing has not been repaired or closed within the timeframes listed
4 above, Big Oil & Pomrehn shall not operate that UST system, including storage of fuels (except
5 for the purpose of performing cathodic protection testing, if necessary), until the UST system
6 passes a valid cathodic protection test.

7 4.4.d. *Notification of Cathodic Protection Test:* Big Oil & Pomrehn shall notify
8 the applicable Local Agency or CUPA at least forty-eight (48) hours prior to conducting a
9 cathodic protection test on a UST system.

10 4.4.e. *Cathodic Protection Test Results:* Big Oil & Pomrehn shall submit a
11 written copy of all cathodic protection test results for each UST system to the applicable Local
12 Agency or CUPA within thirty (30) days of the completion of the inspection.

13 4.4.f. *Violation(s):* Failure to perform any of the above listed requirements in
14 Paragraphs 4.4a through 4.4e shall constitute a violation for the purposes of Suspended Penalties.

15 **4.5 Cathodic Protection Test Records**

16 Big Oil & Pomrehn shall at all times keep and maintain records of cathodic protection
17 testing in accordance with Health & Safety Code section 25293.

18 **5. FORCE MAJEURE**

19 **5.1** Any event that is beyond Big Oil & Pomrehn's control and that prevents Big Oil &
20 Pomrehn from timely performing any obligation under Paragraphs 4.1 through 4.5 of this Consent
21 Judgment, despite Big Oil & Pomrehn's best efforts, is a "Force Majeure" event. The
22 requirement that Big Oil & Pomrehn exercise their best efforts obligates Big Oil & Pomrehn to
23 address the effects of any potential Force Majeure event (1) as it is occurring, and (2) following
24 the Force Majeure event, such that the delay is minimized. Force Majeure does not include Big
25 Oil's financial inability to fund or complete the obligation that Big Oil & Pomrehn could have
26 avoided if it had complied with preventative requirements imposed by law, regulation or
27 ordinance.
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1 **5.2** If any Force Majeure event occurs that may prevent or delay Big Oil & Pomrehn’s
2 performance of any obligation under Paragraphs 4.1 through 4.5, within ten (10) days of when
3 Big Oil & Pomrehn first learns of the event, Big Oil & Pomrehn shall provide to the People, State
4 Water Resources Control Board, Local Agency and CUPA a written explanation and description
5 of the event; the anticipated duration of any delay; all actions taken or planned to prevent or
6 minimize the delay; a schedule of each such action; and the rationale for categorizing the event as
7 a Force Majeure, including all available documentation supporting its claim.

8 **5.3** Within fourteen (14) days of receiving the notice set forth in Paragraph 5.2, the
9 State Water Resources Control Board shall notify Big Oil & Pomrehn whether it agrees with the
10 Force Majeure assertion. If the State Water Resources Control Board agrees, it shall determine
11 what reasonable accommodations for deadlines should be applied by the Local Agencies or
12 CUPAs to allow Big Oil & Pomrehn to complete the obligations.

13 **5.4** If the Parties disagree about the existence or effect of Force Majeure, any Party
14 may petition the Court to resolve the dispute. If any Party petitions the Court to resolve such a
15 dispute, it will neither preclude nor prejudice the People from bringing a motion to enforce the
16 terms and conditions of this Consent Judgment. Nor will such a petition prejudice Big Oil &
17 Pomrehn’s ability to oppose a petition or motion to enforce provisions of this Consent Judgment.
18 In all instances, Big Oil & Pomrehn shall have the burden of proof to demonstrate Force Majeure.

19 **6. ENFORCEMENT AND PENALTIES**

20 **6.1 Procedure**

21 The People may move this Court to enforce any provision of this Consent Judgment and
22 to award appropriate relief, including Suspended Penalties described in Paragraph 3, by filing and
23 serving a regularly noticed motion in accordance with Code of Civil Procedure 1005 (“Motion to
24 Enforce”). At least thirty (30) days before a Motion to Enforce is filed, the People must meet and
25 confer with Big Oil to attempt to resolve the matter without judicial intervention.

26 **6.2 Remedies and Sanctions**

27 The Court has the authority to enjoin any violation of this Consent Judgment. On a
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1 Motion to Enforce brought by the People, the specific Suspended Penalty provided shall control.
2 The Court retains its powers to enforce this Consent Judgment through contempt.

3 **7. MATTERS COVERED BY THIS CONSENT JUDGMENT**

4 **7.1** This Consent Judgment is a final and binding resolution and settlement of all
5 claims, violations or causes of action alleged by the People in the Complaint, and of all claims,
6 violations or causes of action related to the Covered Facilities which were known and could have
7 been asserted by the People based on the facts that are the subject of the Complaint against Big
8 Oil, its employees, successors, heirs and assigns, including Richard Pomrehn in his capacity as
9 President. The matters described in the previous sentence are "Covered Matters." The Parties
10 reserve the right to pursue any claim that is not a Covered Matter ("Reserved Claim(s)") and to
11 defend against any Reserved Claim(s). Claims, violations or causes of action against Big Oil's
12 independent contractors or subcontractors, if any, are not resolved by this Consent Judgment,
13 except for acts alleged in the Complaint that were performed at Big Oil's express direction.

14 **7.2** The provisions of Paragraph 7.1 are effective as of the date of the entry of this
15 Consent Judgment, but the continuing effect of such provisions is expressly conditioned on Big
16 Oil's full payment of civil penalties, costs, and other payments specified above.

17 **7.3** Any claims, violations or causes of action that are not based on facts alleged in the
18 Complaint, including but not limited to any violations that do not relate to the Covered Facilities,
19 or occurred after the date of this Consent Judgment are not resolved, settled or covered by this
20 Consent Judgment except as expressly provided in Paragraph 3.4.

21 **7.4** Notwithstanding any provision contained herein, any claims or causes of action for
22 performance of cleanup, corrective action or response action concerning or arising out of actual
23 past or future releases, spills, leaks, discharges or disposal of motor vehicle fuels, hazardous
24 materials, substances and wastes caused or contributed to by Big Oil at its Covered Facilities, are
25 not Covered Matters and are Reserved Claims.

26 **7.5** In any subsequent action that may be brought by the People based on any
27 Reserved Claim, Big Oil & Pomrehn agree that they will not assert that failing to pursue the
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1 Covered Matters in this Consent Judgment shall be construed to relieve any Party of its
2 obligations under the terms and provisions of this Consent Judgment.

3 **11. REGULATORY CHANGES**

4 Nothing in this Consent Judgment shall excuse Big Oil from meeting any more stringent
5 requirements that may be imposed by changes in the applicable law.

6 **12. APPLICATION OF CONSENT JUDGMENT**

7 This Consent Judgment shall apply to and be binding upon the People and upon Big Oil
8 and its employees, agents, successors, and assigns except that the obligation to pay any civil or
9 suspended penalties described in Paragraph 3 of the Consent Judgment does not apply to Big
10 Oil's employees and officers, including Richard Pomrehn in his capacity as President.

11 **13. AUTHORITY TO ENTER CONSENT JUDGMENT**

12 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
13 Party he or she represents or is acting on behalf of to enter into this Consent Judgment, to execute
14 it on behalf of the Party represented and legally binding on that Party.

15 **14. CONTINUING JURISDICTION**

16 The Parties agree that this Court has exclusive jurisdiction to interpret and enforce the
17 Consent Judgment. The Court shall retain continuing jurisdiction to enforce the terms of this
18 Consent Judgment and to address any other matters arising out of or regarding this Consent
19 Judgment. The Parties shall meet and confer prior to filing any motion related to the Consent
20 Judgment and shall negotiate in good faith in an attempt to resolve any dispute without judicial
21 intervention.

22 **15. NON-DISCHARGEABILITY OF DUTIES AND OBLIGATIONS**

23 Payments required by this Consent Judgment are not dischargeable in bankruptcy.

24 **16. ABILITY TO INSPECT AND COPY RECORDS AND DOCUMENTS**

25 On reasonable notice of at least thirty (30) days, and subject to all defenses available to
26 requests for documents made by subpoena or Inspection Demands, Big Oil shall permit any duly
27 authorized representative of the People, State Water Resources Control Board, Local Agency or
28

1 Reserved Claim as part of this action constitutes claim-splitting, laches or is otherwise inequitable
2 because of this failure.

3 7.6 Paragraph 7.1 shall not prevent, preclude or bar the People's right to enforce the
4 terms of the Consent Judgment.

5 7.7 Big Oil & Pomrehn release all civil or administrative claims against the People or
6 any agency of the State of California, any counties within the State, or any CUPA or Local
7 Agency arising out of any Covered Matter, except that Big Oil & Pomrehn do not release, and
8 specifically reserve, any claims or defenses related to the Reserved Claims described in Paragraph
9 7.1, and do not release, and specifically reserve, any claims or defenses arising out of the
10 enforcement or administration of this Consent Judgment. The provisions of this paragraph shall
11 be effective so long as the provisions of Paragraph 7.1 are effective.

12 **8. EFFECT OF JUDGMENT**

13 Except as expressly provided herein, nothing in the Consent Judgment is intended to, nor
14 shall it be so construed, to preclude the People or any state, county or local agency or department,
15 or any CUPA from exercising its authority under any law, regulation or ordinance.

16 **9. LIABILITY OF THE PEOPLE**

17 The People shall not be liable for any injury or damage to persons or property resulting
18 from acts or omissions by Big Oil, its officers, directors, employees, agents, representatives or
19 contractors in carrying out activities pursuant to this Consent Judgment. Nor shall the People be
20 held to be a party to or guarantor of any contract entered into by Big Oil in carrying out the
21 requirements of this Consent Judgment.

22 **10. NO WAIVER OF RIGHT TO ENFORCE**

23 The failure of the People to enforce any provision of the Consent Judgment shall neither
24 be deemed a waiver of such provisions nor affect the validity of this Consent Judgment in any
25 way. The failure of the People to enforce any such provision shall not preclude it from later
26 enforcing the same. No oral advice, guidance, suggestions or comments by employees or
27 officials of any Party, State Water Resources Control Board, CUPA or Local Agency regarding
28

1 CUPA to inspect and copy Big Oil's records and documents to determine whether Big Oil is in
2 compliance with the terms of this Consent Judgment. Nothing in this paragraph is intended to
3 require access to or production of any document or record protected by attorney-client and/or
4 attorney work-product doctrine privileges, or any other applicable privilege afforded Big Oil
5 under law.

6 **17. INTERPRETATION**

7 All Parties equally drafted this Consent Judgment. The Parties agree that the rule of
8 construction holding that ambiguity is construed against the drafting party shall not apply to the
9 interpretation of this Consent Judgment.

10 **18. COUNTERPART SIGNATURES**

11 This Consent Judgment may be executed in counterpart by the Parties.

12 **19. COOPERATION BY BIG OIL & TIRE CO.**

13 Big Oil & Pomrehn shall cooperate with the People in any future investigation involving
14 violations of environmental laws should such violation be revealed to the People. Nothing in this
15 paragraph is intended to require access to or production of any document or record protected by
16 attorney-client and attorney work-product doctrine privileges or any other applicable privilege
17 afforded Big Oil & Pomrehn under law.

18 **20. ENTRY OF CONSENT JUDGMENT**

19 The Parties seek the Court's approval of the Consent Judgment and determination that it is
20 fair and in the public interest. The People have provided notice of the proposed settlement to all
21 State, county and local authorities to bring any claims related to Covered Matters, and is prepared
22 to settle on the terms described herein.

23 **21. INTEGRATION**

24 The Consent Judgment constitutes the entire agreement between the Parties and may not
25 be amended or supplemented except as provided for in this Consent Judgment.

26 **22. MODIFICATION OF CONSENT JUDGMENT**

27 This Consent Judgment may be modified by the only the Court, or upon written consent
28

1 by the Parties and upon approval of the Court.

2 **23. ANNUAL STATUS REPORTS**

3 Beginning one year after entry of this Consent Judgment, and for five years thereafter, Big
4 Oil shall provide annual status report setting forth the specific actions that Big Oil has taken at
5 each facility covered by this Consent Judgment during the previous year in order to comply with
6 its obligations under this Consent Judgment, in addition to any penalties it has paid for
7 noncompliance. Each status report shall be signed by the President of Big Oil, under penalty of
8 perjury.

9 **24. NOTICE**

10 Any notice or report due under this Consent Judgment shall be provided as follows:

11 If to Big Oil or Richard Pomrehn:

12 Richard W. Pomrehn, President
13 5670 West End Road, Suite 1
Arcata, CA 95521

14 with copy to:

15 Nicole E. Granquist
16 Downey Brand Attorneys LLP
621 Capitol Mall, 18th Floor
17 Sacramento, CA 95814

18 If to Plaintiffs:

19 Robert W. Byrne
20 Supervising Deputy Attorney General
California Department of Justice
21 Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
22 San Francisco, CA 94102-7004

23 with copies to:

24 Matthew C. Maclear
Statewide Environmental Circuit Prosecutor
25 921 Eleventh Street, Third Floor
Sacramento, CA 95814
26 Telephone: (916) 443-2017
Fax: (916) 443-2886

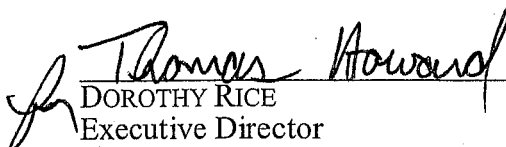
27 And

1 David M. Boyers, Senior Staff Counsel
2 State Water Resources Control Board
3 Office of Enforcement
4 1001 I Street, 16th Floor
5 Sacramento, CA 95814

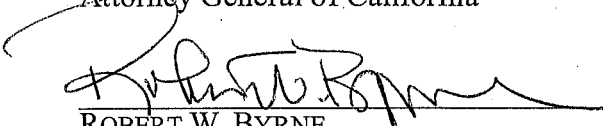
6 **IT IS SO STIPULATED.**

7 FOR THE PEOPLE, ex rel STATE WATER RESOURCES CONTROL BOARD:

8 Dated: 2/18, 2010

9 
10 DOROTHY RICE
11 Executive Director
12 State Water Resources Control Board


13 EDMUND G. BROWN JR.
14 Attorney General of California

15 
16 ROBERT W. BYRNE
17 Supervising Deputy Attorney General

18 FOR THE PEOPLE, acting by and through the District Attorney for the County of Humboldt:

19 Dated: MARCH 22, 2010

20 PAUL GALLEGOS
21 District Attorney, County of Humboldt

22 
23 MATTHEW C. MACLEAR
24 Deputy District Attorney

25 FOR BIG OIL and RICHARD W. POMREHN:

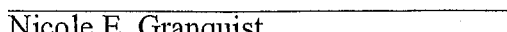
26 Dated: _____, 2010

27 RICHARD W. POMREHN
28 President of Big Oil

Approved as to Form:

Dated: _____, 2010

DOWNEY BRAND LLP


Nicole E. Granquist
Attorneys for Defendants Big Oil and Richard Pomrehn

1 David M. Boyers, Senior Staff Counsel
2 State Water Resources Control Board
3 Office of Enforcement
4 1001 I Street, 16th Floor
5 Sacramento, CA 95814

6 **IT IS SO STIPULATED.**

7 **FOR THE PEOPLE, ex rel STATE WATER RESOURCES CONTROL BOARD:**

8 Dated: _____, 2010

9 _____
10 DOROTHY RICE
11 Executive Director
12 State Water Resources Control Board

13 _____
14 EDMUND G. BROWN JR.
15 Attorney General of California

16 _____
17 ROBERT W. BYRNE
18 Supervising Deputy Attorney General

19 **FOR THE PEOPLE, acting by and through the District Attorney for the County of Humboldt:**

20 Dated: _____, 2010

21 _____
22 PAUL GALLEGOS
23 District Attorney, County of Humboldt

24 _____
25 *Paul V. Gallegos*
26 MATTHEW C. MACLEAR
27 Deputy District Attorney

28 *Paul V. Gallegos*
District Attorney

29 **FOR BIG OIL and RICHARD W. POMREHN:**

30 Dated: March 11, 2010

31 _____
32 *Richard W. Pomrehn*
33 RICHARD W. POMREHN
34 President of Big Oil

35 Approved as to Form:

36 Dated: March 11, 2010

37 _____
38 DOWNEY BRAND LLP

39 *Nicole E. Granquist*
40 Nicole E. Granquist
41 Attorneys for Defendants Big Oil and Richard Pomrehn

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IT IS SO ORDERED.

Dated: March 30, 2010

JOHN T. FEENEY

Judge of the Superior Court
Humboldt County Superior Court

EXHIBIT A – BIG OIL AND TIRE FACILITIES

Big Oil and Tire Facilities	
Location	Address
Arcata 76	2205 Alliance Rd., Arcata, 95521
Uniontown 76	724 G St., Arcata, 95521
Blue Lake 76	295 Blue Lake Blvd., Blue Lake, 95525
Broadway 76	1411 Broadway St., Eureka, 95501
Broadway Gas & Deli 76	4050 Broadway St., Eureka 95503
Plaza 76 Circle K	2480 6th St., Eureka 95501
Riverwalk 76	1791 Riverwalk Dr., Fortuna 95540
Rohnerville 76	3663 Rohnerville Rd., Fotuna 95540
Bigfoot Gas	2801 Central Ave., McKinleyville 95519
Central 76	1980 Central Ave., McKinleyville 95519
Freeway 76	1021 Murray Rd., McKinleyville 95519
McKinleyville 76	2698 Central Ave., McKinleyville 95519

EXHIBIT B – DISBURSEMENT OF CIVIL PENALTIES

Payment Reference	Payment Due Date	Total Payment	Distribution	
Paragraph 3.1.a.	July 15, 2010	\$35,000	\$30,000 to State Water Board	\$5,000 to Humboldt County
Paragraph 3.1.b.	July 15, 2011	\$35,000	\$30,000 to State Water Board	\$5,000 to Humboldt County
Paragraph 3.1.c.	July 15, 2012	\$35,000	\$30,000 to State Water Board	\$5,000 to Humboldt County
Paragraph 3.1.d.	July 15, 2013	\$35,000	\$30,000 to State Water Board	\$5,000 to Humboldt County
Paragraph 3.1.e.	July 15, 2014	\$85,000	\$80,000 to State Water Board	\$5,000 to Humboldt County
		Total = \$225,000	\$200,000	\$25,000

For payments made to the State Water Board, payment will be tendered to the following recipient/address:

Robert W. Byrne
 Supervising Deputy Attorney General
 California Department of Justice
 Office of the Attorney General
 455 Golden Gate Avenue, Suite 11000
 San Francisco, CA 94102-7004

For payments made to Humboldt County, payment will be tendered to the following recipient/address:

Robert W. Byrne
 Supervising Deputy Attorney General
 California Department of Justice
 Office of the Attorney General
 455 Golden Gate Avenue, Suite 11000
 San Francisco, CA 94102-7004

EXHIBIT C – REIMBURSEMENT OF INVESTIGATION AND ENFORCEMENT COSTS

Payment Reference	Payment Due Date	Total Payment	Distribution
Paragraph 3.3	March 31, 2010	\$33,050	<p><u>Payee:</u> State Water Resources Control Board - Underground Storage Tank Cleanup Fund.</p> <p><u>Tax I.D.:</u> 68-0281986</p> <p><u>Tendered to:</u> Robert W. Byrne Supervising Deputy Attorney General California Department of Justice Office of the Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004</p>
Paragraph 3.3	March 31, 2010	\$4,200	<p><u>Payee:</u> The County of Humboldt - Environmental Management Department.</p> <p><u>Tax I.D.:</u> 94-6000513</p> <p><u>Tendered to:</u> Robert W. Byrne Supervising Deputy Attorney General California Department of Justice Office of the Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004</p>
Paragraph 3.3	March 31, 2010	\$12,750	<p><u>Payee:</u> The California District Attorneys Association.</p> <p><u>Tax I.D.:</u> 94-2293805</p> <p><u>Tendered to:</u> Robert W. Byrne Supervising Deputy Attorney General California Department of Justice Office of the Attorney General 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004</p>
Total = \$50,000			