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15
16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18

19
20 UNITED STATES OF AMERICA,

21 Plaintiff,

22 v.

23 JPMORGAN CHASE BANK N.A.,
24 *et al.*,

25 Defendants.

Case No. 2:16-cv-08127

CONSENT DECREE

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I. BACKGROUND

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

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

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

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

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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WMI Investment Corp., JPMC, DTSC and the BKK Joint Defense Group and concerning the Site, (ii) the Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code dated December 12, 2011, and as modified thereafter (including Section 27.6 thereof), and (iii) Paragraph 12 of the Findings of Fact, Conclusions of Law, and Order Confirming the Seventh Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code filed February 24, 2013 (WMI Holdings Corp., together with WMI Liquidating Trust, is identified as a Debtor and Reorganized Debtor in the Seventh Amended Joint Plan); and

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

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

“State” shall mean the State of California.

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

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for JPMC, on behalf of Settling Defendants, to make a cash payment that, taken in light of the DTSC Consent Decree, resolves Settling Defendants’ alleged civil liability for the Site under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and under Section 7003 of RCRA, 42 U.S.C. § 6973, as

provided in the Covenants by The United States in Section VIII, and subject to the Reservations of Rights by United States in Section IX.

VI. PAYMENT OF RESPONSE COSTS

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

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

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

and

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

on behalf of Settling Defendants. JPMC, on behalf of Settling Defendants, may 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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accordance with Section XIII (Notices and Submissions), (b) to DOJ in accordance with Section XIII; and (c) to the EPA Cincinnati Finance Office (CFO) at:

EPA CFO by email: cinwd_acctsreceivable@epa.gov

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

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

VII. FAILURE TO COMPLY WITH CONSENT DECREE

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

10. Stipulated Penalty.

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

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

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

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

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

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

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

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

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

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

VIII. COVENANTS BY THE UNITED STATES

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

15. As to WMI Rainier, LLC, the covenants set forth in Paragraph 14 are further conditioned upon the veracity and completeness of the Financial Information and the Insurance Information provided to EPA by WMI Rainier, LLC and the financial, insurance, and indemnity certification made by WMI Rainier, LLC in Paragraphs 33-34. If the Financial Information or the Insurance Information provided by WMI Rainier, LLC, or the financial, insurance, or indemnity certification made by WMI Rainier, LLC in Paragraphs 33-34, is subsequently determined by EPA to be false or, in any material respect, inaccurate, WMI Rainier, LLC shall forfeit all payments made pursuant to this Consent Decree and these covenants and the contribution protection in Paragraph 24 shall be null

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

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

XII. RETENTION OF RECORDS AND CERTIFICATION

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

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

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

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

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

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, 19th Floor
 New York, NY 10004-2413

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

XIV. RETENTION OF JURISDICTION

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

XV. INTEGRATION/APPENDICES

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

“Appendix A” is the map of the Site.

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

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

XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

38. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent 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 39. If for any reason this Court should decline to approve this Consent
2 Decree in the form presented, this Consent Decree is voidable at the sole discretion
3 of any Party and the terms of the Consent Decree may not be used as evidence in
4 any litigation between the Parties.

5 **XVII. SIGNATORIES/SERVICE**

6 40. Each undersigned representative of Settling Defendants, EPA, and the
7 Assistant Attorney General, U.S. Department of Justice, Environment and Natural
8 Resources Division, Environmental Enforcement Section, certifies that he or she is
9 authorized to enter into the terms and conditions of this Consent Decree and to
10 execute and bind legally such Party to this document.

11 41. Settling Defendants agree not to oppose entry of this Consent Decree
12 by this Court or to challenge any provision of this Consent Decree, unless the
13 United States has notified Settling Defendants in writing that it no longer supports
14 entry of the Consent Decree.

15 42. Settling Defendants shall identify, on the attached signature page, the
16 name and address of an agent who is authorized to accept service of process by
17 mail on their behalf with respect to all matters arising under or relating to this
18 Consent Decree. Settling Defendants agree to accept service in that manner and to
19 waive the formal service requirements set forth in Rule 4 of the Federal Rules of
20 Civil Procedure and any applicable local rules of this Court, including but not
21 limited to, service of a summons. The Parties agree that Settling Defendants need
22 not file an answer to the complaint in this action unless or until the Court expressly
23 declines to enter this Consent Decree.

24 **XVIII. FINAL JUDGMENT**

25 43. Upon entry of this Consent Decree by the Court, this Consent Decree
26 shall constitute the final judgment between and among the United States and
27

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 __ DAY OF _____, 2016.

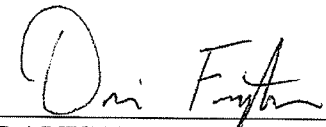
4
5
6 _____
7 United States District Judge
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27

Signature Page for Consent Decree Regarding BKK Sanitary Landfill Site

FOR THE UNITED STATES OF AMERICA:

11/1/16
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


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

Signature Page for Consent Decree Regarding BKK Sanitary Landfill Site

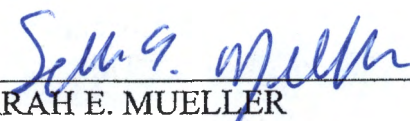
FOR THE UNITED STATES OF AMERICA
(cont.):

8/23/16
Date



ENRIQUE MANZANILLA
Director, Superfund Division
Region IX
U.S. Environmental Protection Agency
75 Hawthorne St.
San Francisco, CA 94105

8/4/16



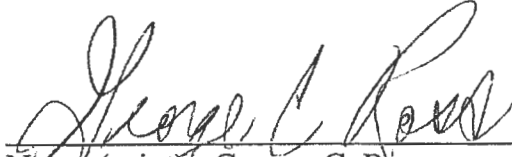
SARAH E. MUELLER
Assistant Regional Counsel
Region IX
U.S. Environmental Protection Agency
75 Hawthorne St.
San Francisco, CA 94105

Signature Page for Consent Decree Regarding BKK Sanitary Landfill Site

FOR JPMORGAN CHASE BANK N.A.,

Date

7/20/16



Name (print): George C. Ross

Title: Executive Vice President

Address: 270 Park Avenue

New York, NY 10017

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Albert M. Cohen

Title: Partner

Company: Loeb & Loeb LLP

Address: 10100 Santa Monica Blvd., Suite 2200

Los Angeles, CA 90067

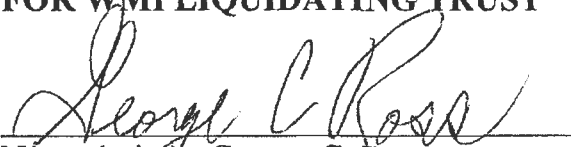
Phone: 310-282-2228

email: acohen@loeb.com

Signature Page for Consent Decree Regarding BKK Sanitary Landfill Site

FOR WMI LIQUIDATING TRUST

7/20/16
Date


Name (print): George C. Ross
Title: Executive Vice President
Address: 270 Park Avenue
New York, NY 10017

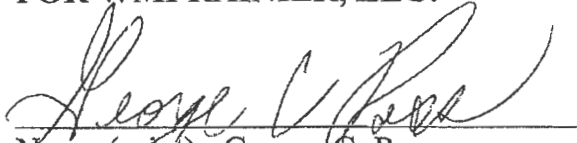
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Albert M. Cohen
Title: Partner
Company: Loeb & Loeb LLP
Address: 10100 Santa Monica Blvd., Suite 2200
Los Angeles, CA 90067
Phone: 310-282-2228
email: acohen@loeb.com

Signature Page for Consent Decree Regarding BKK Sanitary Landfill Site

FOR WMI RAINIER, LLC:

7/20/16
Date

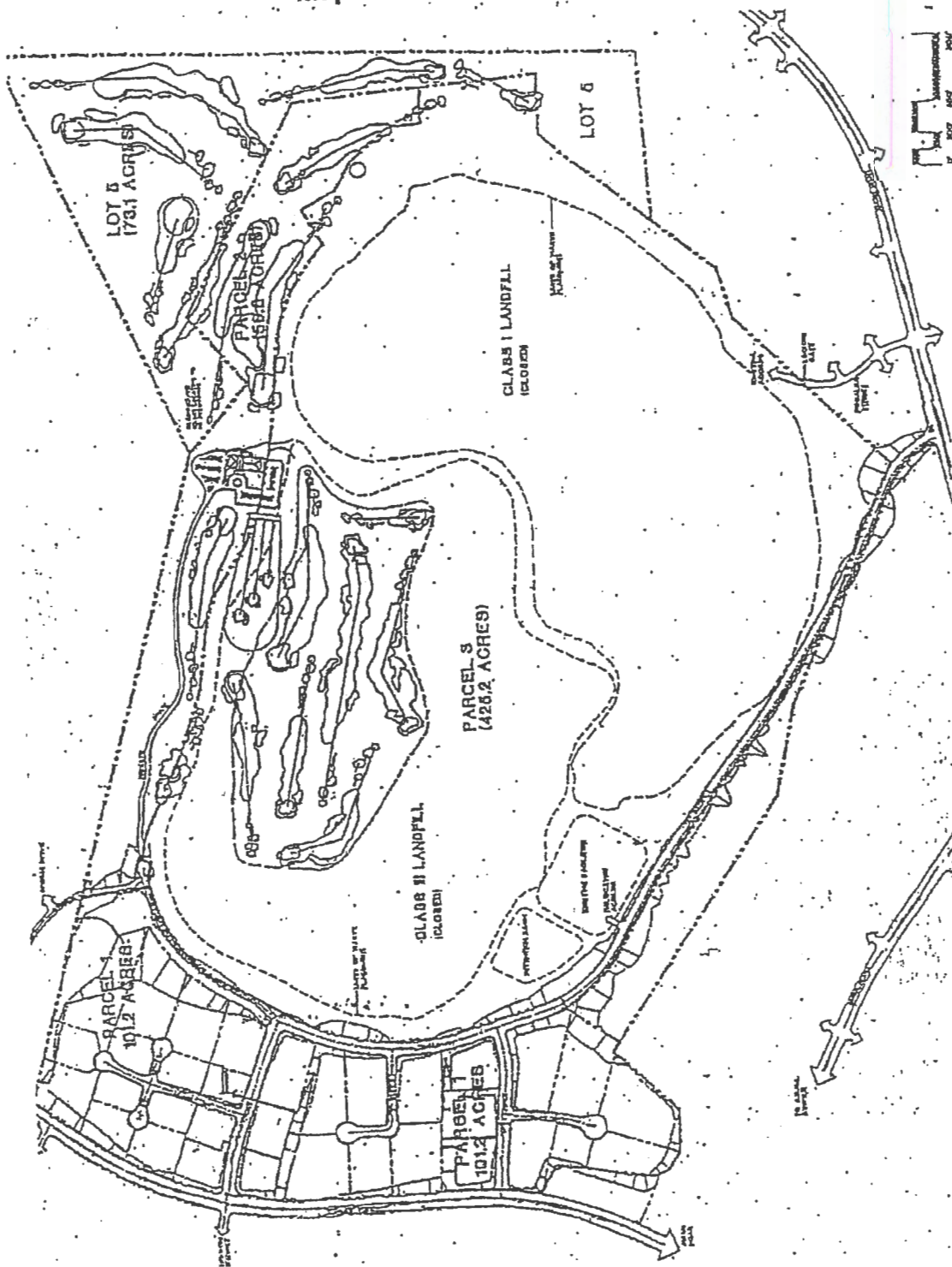

Name (print): George C. Ross
Title: Executive Vice President
Address: 270 Park Avenue
New York, NY 10017

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Albert M. Cohen
Title: Partner
Company: Loeb & Loeb LLP
Address: 10100 Santa Monica Blvd., Suite 2200
Los Angeles, CA 90067
Phone: 310-282-2228
email: acohen@loeb.com

APPENDIX A

Map of BKK Facility and Surrounding Area



* The parcel names and boundaries on this map may not be up-to-date.

Appendix B

WMI Rainier, LLC Balance Sheet – Unaudited, as of December 31, 2012

WMI Rainier, LLC Profit & Loss – Unaudited, January 2009 – December, 2012

WMI Rainier, LLC Statement of Cash Flows – Unaudited, Years ended 2009 through 2012

WMI Rainier, LLC Cumulative-to-Date Income Statement, September 26, 2008 through April 30, 2013

Email from A. Cohen, Loeb & Loeb, to S. Mueller, U.S. EPA, and D. Forsythe, U.S. DOJ, dated May 6, 2013, re BKK Landfill/WMI, with attachment, WMI Rainier, LLC Balance Sheet, as of April 30, 2013

WAMU 1031 Exchange Unconsolidated Balance Sheet – Unaudited, as of December 31, 2012

WAMU 1031 Exchange Unconsolidated Profit and Loss – Unaudited, January 2009 – December 2012

WAMU 1031 Statement of Cash Flows – Unaudited, Years ended 2009-2012

APPENDIX C

SCHEDULE 2.21

**LIST OF BKK-RELATED POLICIES
AND BKK-RELATED CARRIERS**

BKK-RELATED POLICIES

<u>CARRIER</u>	<u>POLICY</u>	<u>YEARS</u>
Aetna/Associated Int'l Ins. Co.	59XN20WCA and all policies identified as underlying insurance in such policy	4/1/85 – 4/1/86
Aetna/Travelers	59XN10WCA and all policies identified as underlying insurance in such policy	04/01/84 – 04/01/85
Aetna/Travelers	59XN6WCA and all policies identified as underlying insurance in such policy	04/01/83 – 04/01/84
Aetna/Travelers	33AL800011SC(Y)	04/01/68 – 05/16/71
American Home/AIG	275-00-26 and all policies identified as underlying insurance in such policy	Excess Umbrella 11/28/72 – 11/28/75
American Home/AIG	359-15-34 and all policies identified as underlying insurance in such policy	Excess Umbrella 04/01/75 – 04/01/78
Central National of Omaha (ACE)	CNU 16-38-24	04/01/82 – 04/01/83
Central National of Omaha (ACE)	CNU 00-14-16 and all policies identified as underlying insurance in such policy	04/01/83 – 04/01/84
Century Indemnity Company (ACE)	CIU 55-05-74 and all policies identified as underlying insurance in such policy	04/01/84 – 04/01/85
Century Indemnity Company (ACE)	CIU 551990 and all policies identified as underlying insurance in such policy	04/01/85 – 04/01/86
Century Indemnity Company (ACE)	CIU 55-25-53 and all policies identified as underlying insurance in such policy	4/1/86 – 4/1/87

Federal Insurance Company	79205803 and all policies identified as underlying insurance	04/01/75 – 04/01/78
Federal Insurance Company	FMP6825264 (64A, 64B 64C)	05/16/71 – 05/16/76
Federal Insurance Company	3510-74-10	12/31/76 – 04/01/86
Federal Insurance Company	GLP(85)7143-81-57	04/01/80 – 04/01/86
Federal Insurance Company	GLP(79)7762-37-44	04/01/72 – 12/31/79
Fireman's Fund Ins. Co.	XLX 1438712 and all policies identified as underlying insurance in such policy	04/01/83 - 04/01/84
Fireman's Fund Ins. Co.	TP 60435	04/01/65 – 04/01/68
Fireman's Fund Ins. Co.	XLX 1619882 and all policies identified as underlying insurance in such policy	04/01/84 – 04/01/85
Fireman's Fund Ins. Co.	XLX 1689534 and all policies identified as underlying insurance in such policy	04/01/85 – 04/01/86
Pacific Indemnity Co.	LC77187488	04/01/63 – 04/01/65
U.S. Fire Ins. Co.	CCL 142226 and all policies identified as underlying insurance in such policy	04/01/63 – 04/01/66
U.S. Fire Ins. Co.	CCL 208348 and all policies identified as underlying insurance in such policy	04/01/66 – 04/01/69
U.S. Fire Ins. Co.	DCL 494927 and all policies identified as underlying insurance in such policy	04/01/69 – 04/01/72
Any other policies that may be identified as possibly providing coverage for the liabilities identified as the BKK Liabilities		