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Chapter 7 Trustee*

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
NORTHERN DIVISION

In re:  
  
HALACO ENGINEERING  
COMPANY,  
  
Debtor.

Case No. 9:02-bk-12255-RR  
  
Chapter 7  
  
SETTLEMENT AGREEMENT

**I. BACKGROUND**

1 WHEREAS Halaco Engineering Co. (the “Debtor”) commenced this case (the  
2 “Bankruptcy Case”) by filing a voluntary Petition under chapter 11 of Title 11 of the  
3 United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) on July 24,  
4 2002. By order entered on or about January 10, 2006 (the “Conversion Date”), the  
5 case was converted from one under chapter 11 of the Bankruptcy Code to one under  
6 chapter 7 and Brad D. Krasnoff was appointed chapter 7 Trustee. After a hearing on  
7 March 1, 2006, Krasnoff withdrew and David Seror was appointed successor chapter 7  
8 Trustee of the Debtor’s bankruptcy estate;

9 WHEREAS, on July 7, 2006, the United States, on behalf of the U.S.  
10 Environmental Protection Agency (“EPA”), the National Oceanic and Atmospheric  
11 Administration of the Department of Commerce (“NOAA”), and the Fish and Wildlife  
12 Service of the Department of Interior (“DOI”) (collectively, the “Settling Federal  
13 Agencies”) filed a Proof of Claim and Claim for Administrative Expense (“U.S. Proof  
14 of Claim”) (Doc. No. 628) in this matter seeking the recovery of environmental  
15 response costs incurred or obligated, or that will be incurred or obligated, under the  
16 Comprehensive Environmental Response, Compensation, and Liability Act  
17 (“CERCLA”), 42 U.S.C. §§ 9601 *et seq.*, as amended, and for natural resource  
18 damages and assessment costs, at the Halaco Superfund Site located at 6200 Perkins  
19 Road in the City of Oxnard, County of Ventura, State of California (“the Site”), for  
20 which the United States alleged the estate of Halaco Engineering Company is liable;

21 WHEREAS the United States filed a Request for Payment of Environmental  
22 Response Costs as Chapter 7 Administrative Expenses and Updated Proof of Claim  
23 (“U.S. Updated Claim”) (Claim. No. 138-1) at the request of the Settling Federal  
24 Agencies: (i) seeking payment of \$335,686.86 in response costs incurred by EPA as  
25 Chapter 7 administrative expenses pursuant to section 503(b)(1)(A) of the Bankruptcy  
26 Code, 11 U.S.C. § 503(b)(1)(A); (ii) asserting a general unsecured claim for at least  
27 \$10,593,544.15 in response costs incurred by EPA at the Site through September 15,  
28

1 2010, plus at least \$42 million in response costs estimated to be needed to complete the  
2 remedy for the Site; (iii) asserting a general unsecured claim for at least \$128,199 in  
3 unreimbursed costs incurred by NOAA in connection with the Site through September  
4 15, 2010, at least \$359,000 in natural resource damage assessment costs estimated by  
5 NOAA relating to the Site, and natural resource restoration costs potentially amounting  
6 to many millions of dollars; and (iv) asserting a general unsecured claim for at least  
7 \$37,267.25 incurred by DOI through September 15, 2010, in unreimbursed costs in  
8 connection with the Site, at least \$292,000 in natural resource damage assessment  
9 costs estimated by DOI relating to the Site, and natural resource restoration costs  
10 potentially amounting to many millions of dollars;

11 WHEREAS the California Regional Water Quality Control Board, Los Angeles  
12 Region (“LA Water Board”) and the California State Water Resources Control Board  
13 (“State Water Board”) have filed Chapter 11 and Chapter 7 Proofs of Claim and  
14 Amended Proofs of Claim and Supplemental Statements on January 16, 2003; April  
15 22, 2003; August 12, 2004; July 3, 2006; July 6, 2006; July 7, 2006; and November 1,  
16 2010 (Claim Nos. 69-1, 69-2, 88-1, 132-1, 132-2, 133-1, 134-1, and 134-2; Doc. No.  
17 204);

18 WHEREAS, on October 31, 2005, the LA Water Board filed a Chapter 11  
19 Request for Allowance and Payment of Administrative Expense Priority Claim (Doc.  
20 Nos. 466, 472, 473, 474, 475, and 476) setting forth a Chapter 11 Administrative  
21 Expense Claim for civil penalties for, among other things, violations of the Porter-  
22 Cologne Act, permits, and administrative orders accruing during the Chapter 11  
23 proceedings in this case in the amount of \$4 million to \$14 million;

24 WHEREAS, on July 6, 2006, the LA Water Board filed a Chapter 11 Second  
25 Amended Request for Allowance and Payment of Administrative Expense Priority  
26 Claim (Doc. No. 624) for post-petition civil penalties for violations of the Porter-  
27 Cologne Act, permits, and administrative orders in the amount of between \$6 million  
28 to \$18 million and for enforcement/investigative costs relating to the Site accruing

1 during the pendency of the Chapter 11 proceedings in this case in the amount of  
2 \$386,793;

3 WHEREAS, on July 6, 2006, the LA Water Board filed a Chapter 7 Request for  
4 Allowance and Payment of Chapter 7 Administrative Expense Priority Claim (Doc.  
5 No. 625) for all additional enforcement/investigative costs in the amount of \$25,000  
6 and civil penalties incurred or accruing during the pendency of the Chapter 7  
7 proceedings in this case;

8 WHEREAS, on November 1, 2010, the LA Water Board filed a Chapter 7 Post  
9 Conversion Date Claim and Chapter 7 Amended Request for Allowance and Payment  
10 of Administrative Expense Priority Claim (Claim. No. 132-2; Doc. No. 892) updating  
11 its claims for enforcement/investigative costs in the amount of \$100,315.50 and its  
12 claim for civil penalties incurred or accruing during the Chapter 7 proceedings in this  
13 case in the minimum amount of \$16,472,000;

14 WHEREAS, on July 7, 2006, the State Water Board filed a Request For  
15 Allowance and Payment of Chapter 11 Administrative Expense Priority Claim (Doc.  
16 No. 627) setting forth a Chapter 11 Administrative Expense Claim for civil penalties  
17 and annual permit fees under the Porter-Cologne Act for permits relating to stormwater  
18 discharges at the Site during the Chapter 11 proceedings in this case;

19 WHEREAS, on July 7, 2006, the State Water Board filed a Request For  
20 Allowance and Payment of Chapter 7 Administrative Expense Priority Claim (Doc.  
21 No. 626) setting forth Chapter 7 Administrative Expense Claim for civil penalties and  
22 annual permit fees under the Porter-Cologne Act for permits relating to stormwater  
23 discharges at the Site during the Chapter 7 proceedings in this case;

24 WHEREAS, on November 1, 2010, the State Water Board filed a Chapter 7  
25 Post Conversion Date Claim and First Amended Request for Allowance and Payment  
26 of Administrative Expense Priority Claim (Claim No. 134-2; Doc. No. 891) setting  
27 forth a Chapter 7 and an amended Chapter 11 Administrative Expense Claim for civil  
28 penalties and annual permit fees under the Porter-Cologne Act for permits relating to

1 stormwater discharges at the Site during the Chapter 7 proceedings in this case for  
2 unpaid permit fees in the amount of \$50,632 and for civil penalties in the amount of  
3 \$9,986,000 in the Chapter 7 proceedings, and for unpaid permit fees in the amount of  
4 \$21,572 and for civil penalties in the amount of \$556,000 in the Chapter 11  
5 proceedings;

6 WHEREAS the Debtor has filed various Petitions with the State Water Board  
7 (SWRCB/OCC File Nos. A-1602, A-1638, and A-1645) challenging, among other  
8 things, the issuance of Cleanup and Abatement Order No. R4-2003-0135 and certain  
9 orders requiring technical reports and has requested all of those Petitions to be held in  
10 abeyance;

11 WHEREAS the Trustee, on behalf of Debtor's estate, disputes the claims of the  
12 LA Water Board and the State Water Board (collectively, the "Settling State  
13 Agencies") and, but for this Settlement Agreement, the Trustee would object, in whole  
14 or in part to those claims;

15 WHEREAS, on September 15, 2006, in accordance with an Order entered in  
16 this action on September 13, 2006 (Doc. No. 662), the Trustee sold the Debtor-owned  
17 portion of the Site and assigned the leased portion of the Site; and neither the Site nor  
18 any part thereof is currently held in Debtor's bankruptcy estate;

19 WHEREAS certain liability insurance policies issued to or for the benefit of  
20 Debtor, including but not limited to policies for which Debtor is an "insured," "named  
21 insured," or "additional insured," and including but not limited to comprehensive,  
22 primary, umbrella, and excess policies, and including but not limited to policies which  
23 have been identified by the Settling Federal Agencies to date (collectively, the  
24 "Insurance Policies," as defined below), may provide coverage, in whole or in part, for  
25 the liability of Debtor or Debtor's bankruptcy estate for the response costs, natural  
26 resource damages, and natural resource damage assessment costs claimed by the  
27 Settling Federal Agencies.

28

1           WHEREAS subject to certain exclusions, conditions, and limitations, the  
2 Trustee alleges that the Insurance Policies may provide coverage for sums which  
3 Debtor (or the Trustee, on behalf of Debtor’s bankruptcy estate), shall become legally  
4 obligated to pay as damages because of damage to property. The Trustee, on behalf of  
5 Debtor’s estate, agrees that, as set forth herein, Debtor’s estate is liable to the Settling  
6 Federal Agencies in connection with their Claims. The United States therefore  
7 contends that any proceeds owed under the Insurance Policies are not the property of  
8 the Debtor’s estate and not available to pay creditors generally, but instead are payable  
9 only for the benefit of those harmed by the Debtor (including, in this instance, the  
10 Settling Federal Agencies);

11           WHEREAS although proceeds under the Insurance Policies may not be  
12 property of Debtor’s bankruptcy estate, Debtor’s contractual rights under the Insurance  
13 Policies, including but not limited to contractual rights to assert claims under the  
14 policies, and any contractual rights to receive and retain proceeds under the policies,  
15 are property of Debtor’s bankruptcy estate and, as such, proceeds may be assigned and  
16 administered by the Trustee as part of a resolution of the Settling Federal Agencies’  
17 Claims;

18           WHEREAS the Trustee has made good-faith efforts to pursue insurance claims.  
19 However, it now appears unlikely that those claims can be resolved expeditiously or  
20 without litigation. Thus to facilitate closing this case, the preparation of the Trustee’s  
21 Final Report, and distribution of the assets of the estate, the Parties seek hereby to  
22 liquidate, and provide for the entry of a judgment with respect to, the liability of the  
23 Trustee, on behalf of Debtor’s bankruptcy estate, and Debtor’s bankruptcy estate to the  
24 Settling Federal Agencies, and, in addition, to assign to the Settling Federal Agencies  
25 any and all of Debtor’s or Debtor’s bankruptcy estate’s contractual rights under the  
26 Insurance Policies, including but not limited to contractual rights to assert claims under  
27 the policies, and any contractual rights to receive and retain proceeds under the  
28 policies. The Trustee has concluded in a reasonable exercise of his business judgment

1 that, among other things, consent to judgment with respect to the liability of Debtor's  
2 bankruptcy estate and assignment of Debtor's and Debtor's bankruptcy estate's  
3 contractual and other rights under the Insurance Policies in accordance with this  
4 settlement will prevent the remaining assets in Debtor's bankruptcy estate from being  
5 diminished through negotiations and litigation with insurers and will allow such  
6 negotiations and litigation to be handled by the United States, whose enforcement  
7 costs are recoverable under CERCLA;

8 WHEREAS the Trustee, on behalf of Debtor's bankruptcy estate, and the  
9 Settling Federal Agencies wish to resolve their differences with respect to the Site as  
10 provided herein;

11 WHEREAS the Trustee, on behalf of Debtor's bankruptcy estate, and the  
12 Settling State Agencies wish to resolve their differences with respect to the Site as  
13 provided herein;

14 WHEREAS the treatment of liabilities provided for herein represents a  
15 compromise of the contested positions of the Parties that is entered into solely for  
16 purposes of this settlement, and the Parties reserve their legal arguments as to any  
17 issues involved in other matters;

18 WHEREAS, in consideration of, and in exchange for, the promises and  
19 covenants provided herein, including, without limitation, the covenants not to sue set  
20 forth in Paragraphs 20 and 24, and subject to the provisions of Paragraphs 21-23,  
21 intending to be legally bound hereby, the Trustee on behalf of Debtor's bankruptcy  
22 estate, the United States on behalf of the Settling Federal Agencies, and the Settling  
23 State Agencies hereby agree to the terms and provisions of this Settlement Agreement;

24 WHEREAS settlement of the matters governed by this Settlement Agreement is  
25 in the public interest and is an appropriate means of resolving these matters;

26 NOW, THEREFORE, upon the consent and agreement of the Parties to this  
27 Settlement Agreement by their attorneys and authorized officials, it is hereby agreed as  
28 follows:

1 **II. DEFINITIONS**

2 1. Unless otherwise expressly provided herein, terms used in this Settlement  
3 Agreement that are defined in CERCLA or its regulations or in the Bankruptcy Code  
4 shall have the meaning assigned to them in CERCLA, its regulations, or the  
5 Bankruptcy Code. Whenever terms listed below are used in this Settlement  
6 Agreement, the following definitions shall apply:

- 7 a. "Allowed" means a Claim that is not subject to objection and is being  
8 allowed in accordance with the provisions of the Bankruptcy Code on a  
9 final basis.
- 10 b. "Bankruptcy Case" has the meaning set forth in the recitals.
- 11 c. "Bankruptcy Code" means title 11 of the United States Code.
- 12 d. "Bankruptcy Court" means the United States Bankruptcy Court for the  
13 Central District of California, Northern Division, or such other Bankruptcy  
14 Court with jurisdiction over the Bankruptcy Case.
- 15 e. "CERCLA" means the Comprehensive Environmental Response,  
16 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et*  
17 *seq.*
- 18 f. "Chapter 7 Administrative Expense Claim" shall mean a claim having the  
19 priority accorded chapter 7 administrative expense claims provided by  
20 sections 503, 507, and 726 of the Bankruptcy Code, 11 U.S.C. §§ 503,  
21 507, and 726.
- 22 g. "Chapter 11 Administrative Expense Claim" shall mean a claim having the  
23 priority accorded chapter 11 administrative expense claims provided by  
24 sections 503, 507, and 726 of the Bankruptcy Code, 11 U.S.C. §§ 503,  
25 507, and 726.
- 26 h. "Claim" has the meaning provided in section 101(5) of the Bankruptcy  
27 Code, 11 U.S.C. § 101(5).
- 28

- 1 i. “Day” means a calendar day unless expressly stated to be a “Working  
2 Day.” “Working Day” shall mean a day other than a Saturday, Sunday, or  
3 federal holiday. In computing any period of time under this Settlement  
4 Agreement where the last day would fall on a Saturday, Sunday, or federal  
5 holiday, the period shall run until the close of business of the next Working  
6 Day.
- 7 j. “Debtor” means Halaco Engineering Co., a California corporation.
- 8 k. “DOI” means the United States Department of the Interior and any  
9 successor departments or agencies of the United States.
- 10 l. “Effective Date” means the first business day after the date on which both  
11 (i) an order of the Court approving this Settlement Agreement has become  
12 a “Final Order” and (ii) the Court’s order approving the Trustee’s Final  
13 Report has become a “Final Order.”
- 14 m. “EPA” means the United States Environmental Protection Agency and any  
15 successor departments or agencies of the United States.
- 16 n. “Final Report” means the Trustee’s Final Report for the Bankruptcy Case  
17 filed with the Bankruptcy Court pursuant to section 704(a)(9) of the  
18 Bankruptcy Code, 11 U.S.C. § 704 (a)(9).
- 19 o. “Final Order” means such time as (i) fourteen (14) days (as computed in  
20 accordance with Fed. R. Bankr. P. 9006) shall have passed from the date of  
21 the entry of the order, and (ii) the time to file a timely appeal under Fed. R.  
22 Bankr. P. 8002 from the order passes and no such timely appeal is filed, or  
23 (iii) if a timely appeal is filed, then all timely filed appeals have been  
24 dismissed with prejudice or the order is affirmed on appeal and is not  
25 subject to further timely appellate review.
- 26 p. “General Unsecured Claim” shall mean an unsecured, non-priority pre-  
27 petition Claim.
- 28

- 1 q. "Insurance Policies" shall mean all insurance policies, including but not  
2 limited to comprehensive, primary, umbrella, and excess policies, for  
3 which Debtor or a predecessor is an "insured," "named insured," or  
4 "additional insured," which may provide coverage for the Settling Federal  
5 Agencies' Claims, including (without limitation):  
6 Industrial Indemnity Insurance Company Policies: (i) LG 735-9912,  
7 effective April 1, 1975 to April 1, 1978; (ii) LG 775-9198, effective April  
8 1, 1978 to April 1, 1981; (iii) LG 819-8621, effective April 1, 1981 to  
9 April 1, 1984; and (iv) LG 857-7831, effective April 1, 1984 to April,  
10 1985; and  
11 The Aetna Casualty and Surety Company Policies: (i) Excess Indemnity  
12 (Umbrella) Policy 33 XS 824 WCA (9/21/73-2/28/76); (ii) General  
13 Liability Insurance Policy No. 33AL178860 CMA (2/28/73-2/28/74); (iii)  
14 General Liability Insurance Policy No. 33AL90782 CCA (2/28/72-  
15 2/28/73); (iv) General Liability Insurance Policy No. 33AL181008 CMA  
16 (2/28/74-2/28/75); (v) Policy No. 33AL4733 (2/28/65-2/28/66); and (vi)  
17 Policy No. 33AL051521 (2/28/66-2/28/67).
- 18 r. "Insurers" shall mean United States Fire Insurance Company as successor  
19 in interest to policies issued to Debtor by Industrial Indemnity Insurance  
20 Company, Travelers Casualty and Surety Company, including as  
21 successor in interest to Aetna Casualty and Surety Company, and any other  
22 insurer that issued a policy to Debtor that provides coverage for the  
23 Settling Federal Agencies' Claims.
- 24 s. "LA Water Board" means the California Regional Water Quality Control  
25 Board, Los Angeles Region and any successor agencies or departments of  
26 the State of California.
- 27 t. "LA Water Board Claims" means, collectively, all the LA Water Board  
28 General Unsecured Claims, Chapter 7 and Chapter 11 proofs of claim and

1 supplemental statements, Chapter 7 and Chapter 11 Administrative  
2 Expense Claims, including amended proofs of claim and amended  
3 requests for allowance and payment of administrative expense claims, each  
4 as identified and described in the recitals.

5 u. “NOAA” means the National Oceanic and Atmospheric Administration of  
6 the United States Department of Commerce and any successor  
7 departments or agencies of the United States.

8 v. “Parties” means the Trustee, on behalf of Debtor’s bankruptcy estate, the  
9 United States on behalf of the Settling Federal Agencies, and the Settling  
10 State Agencies.

11 w. “Porter-Cologne Act” means the Porter-Cologne Water Quality Control  
12 Act, California Water Code section 13000 *et seq.*

13 x. “Settling Federal Agencies” means, collectively, EPA, DOI, and NOAA.

14 y. “Settling Federal Agencies’ Claims” mean the U.S. Proof of Claim and the  
15 U.S. Updated Claim, each as defined in the recitals.

16 z. “Settling State Agencies” means, collectively, the LA Water Board and the  
17 State Water Board.

18 aa. “Settling State Agencies’ Claims” means the LA Water Board Claims and  
19 the State Water Board Claims.

20 bb. “Site” means the Halaco Engineering Company Superfund Site,  
21 encompassing approximately 38 acres, located at 6200 Perkins Road in the  
22 City of Oxnard, County of Ventura, State of California, and any areas  
23 where hazardous substances from the Halaco facility have come to be  
24 located. The Site generally consists of two parcels on either side of the  
25 Oxnard Industrial Drain (“OID”), including portions of the OID impacted  
26 by the Halaco facility, and is depicted generally on the map attached as  
27 Appendix A.  
28

1 cc. "State Water Board" means the California State Water Resources Control  
2 Board and any successor agencies or departments of the State of  
3 California.

4 dd. "State Water Board Claims" means, collectively, all the State Water Board  
5 General Unsecured Claims, Chapter 7 and Chapter 11 proofs of claims and  
6 supplemental statements, Chapter 7 and Chapter 11 Administrative  
7 Expense Claims, including amended proofs of claim and amended  
8 requests for allowance and payment of administrative expense claims, each  
9 as identified and described in the recitals.

10 ee. "Trustee" means David Seror, solely in his capacity as successor Chapter 7  
11 Trustee of the Debtor's bankruptcy estate.

### 12 **III. JURISDICTION**

13 2. The Court has jurisdiction over the subject matter hereof pursuant to 28  
14 U.S.C. §§ 157, 1331, and 1334, and 42 U.S.C. §§ 9607 and 9613(b).

### 15 **IV. PARTIES BOUND; SUCCESSION AND ASSIGNMENT**

16 3. This Settlement Agreement applies to, is binding upon, and shall inure to  
17 the benefit of the United States on behalf of the Settling Federal Agencies, the Settling  
18 State Agencies, and the Trustee, on behalf of Debtor's bankruptcy estate.

### 19 **V. ALLOWANCE OF SETTLING FEDERAL AGENCIES' CLAIMS**

20 4. The United States, on behalf of the Settling Federal Agencies, shall have  
21 Allowed Claims, of the priority and in the amounts, set forth below:

22 a. The United States, on behalf of EPA, shall have an Allowed Chapter 7  
23 Administrative Expense Claim in the amount of \$335,686.86.

24 b. The United States, on behalf of EPA, shall have an Allowed General  
25 Unsecured Claim of \$52,593,544.00;

26 c. The United States, on behalf of DOI, shall have an Allowed General  
27 Unsecured Claim of \$329,267.00;

28

1 d. The United States, on behalf of NOAA, shall have an Allowed General  
2 Unsecured Claim of \$487,199.00.

3 5. With respect to the Allowed Claims set forth in Paragraph 4.a - d for the  
4 Settling Federal Agencies, only the amount of cash received by each such entity from  
5 Debtor's bankruptcy estate or from the Insurance Policies, and not the total amount of  
6 the Allowed Claims against Debtor's bankruptcy estate, shall be credited by each such  
7 entity to its account for the Site, which credit shall reduce the liability of non-settling  
8 potentially responsible parties for the particular site by the amount of the credit. The  
9 Settling Federal Agencies may, in their sole discretion, direct any portion of any cash  
10 distribution received on account of an Allowed Claim into a special account  
11 established to fund response actions at the Site.

12 6. The Allowed Claims set forth in this Section shall be paid within 10 Days  
13 of the Effective Date.

14 **VI. ALLOWANCE OF SETTLING STATE AGENCIES' CLAIMS AND**  
15 **RESOLUTION OF DEBTOR'S PETITIONS TO STATE WATER BOARD**

16 7. The Settling State Agencies shall have a single Allowed Chapter 11  
17 Administrative Expense Claim in the amount of \$630,000.00. Subject to Section XIII  
18 of this Settlement Agreement (Unwind Terms Among the Parties), such Allowed  
19 Chapter 11 Administrative Expense Claim shall be paid in full in cash. Upon  
20 payment of this Claim, all Settling State Agencies' Claims against Debtor's  
21 bankruptcy estate shall be deemed satisfied in full in accordance with the terms of this  
22 Settlement Agreement.

23 8. With respect to the Allowed Claim set forth in Paragraph 7 for the Settling  
24 State Agencies, only the amount of cash received by the Settling State Agencies from  
25 the Debtor under this Settlement Agreement, and not the total amount of the Allowed  
26 Claim against Debtor's bankruptcy estate, shall be credited by each such entity to its  
27 account for the Site, which credit shall reduce the liability of non-settling potentially  
28 responsible parties for the particular Site by the amount of the credit. The Settling

1 State Agencies shall reserve eighty-five percent (85%) of any cash distribution  
2 received on account of the Allowed Claim set forth in Paragraph 7 for sites and/or  
3 projects within or benefitting Ventura County. In consultation with the State Water  
4 Board, the LA Water Board may, in its sole discretion, use any portion of the above  
5 cash distribution consistent with the purposes of California Water Code section 13443  
6 or select a local agency project consistent with California Water Code section 13442.  
7 The Settling State Agencies hereby direct fifteen percent (15%) of any cash  
8 distribution received on account of the Allowed Claim set forth in Paragraph 7 to the  
9 Department of Justice, Office of the Attorney General.

10 9. The Allowed Claims set forth in this Section shall be paid within 10 Days  
11 of the Effective Date.

12 10. In settlement and satisfaction of the liabilities set forth in the Settling State  
13 Agencies' Claims, the Trustee will withdraw, with prejudice, all of Debtor's Petitions  
14 with the State Water Board (SWRCB/OCC File Nos. A-1602, A-1638, and A-1645)  
15 within 10 Days of the Effective Date by filing notices of withdrawal, with prejudice,  
16 thereof substantially in the form of Appendix B hereto.

17 **VII. SUMMARY AND TREATMENT OF ALLOWED CLAIMS**

18 11. As itemized in Paragraphs 4 and 7, the Settling Federal Agencies and the  
19 Settling State Agencies shall have Allowed Claims against the Debtor's bankruptcy  
20 estates in the total amounts listed below:  
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<u>Claimant</u>	<u>Allowed Chapter 7 Administrative Expense Claims</u>	<u>Allowed Chapter 11 Administrative Expense Claims</u>	<u>Allowed General Unsecured Claims</u>
United States on behalf of EPA	\$335,686.86		\$52,593,544.00
United States on behalf of DOI			\$329,267.00
United States on behalf of NOAA			\$487,199.00
Settling State Agencies		\$630,000.00	

12. In consideration of the assignment of the rights and benefits under the Insurance Policies and the judgment on the Settling Federal Agencies' Claims provided for herein, if funds remain in the Debtor's estate for the benefit of Allowed General Unsecured Claims after the payment in full of all Chapter 7 Administrative Expense Claims and Chapter 11 Administrative Expense Claims as such shall be allowed by the Bankruptcy Court, the Trustee and the Settling Federal Agencies agree to the following treatment of Allowed General Unsecured Claims held by, on the one hand, the Settling Federal Agencies (the "Federal Unsecured Claimants"), and, on the other hand, all other claimants (the "Other Unsecured Claimants") with Allowed General Unsecured Claims –

- a. if the remaining funds are sufficient for an aggregate distribution in accordance with the Bankruptcy Code and without any adjustment under

1 this Settlement Agreement of at least \$100,000 to the Other Unsecured  
2 Claimants, then the remaining funds shall be distributed to the Federal  
3 Unsecured Claimants and the Other Unsecured Claimants in accordance  
4 with the Bankruptcy Code and without any adjustment under this Settlement  
5 Agreement;

- 6 b. if the remaining funds are insufficient for distribution pursuant to  
7 subparagraph a. of this Paragraph, then the amount for distribution to the  
8 Other Unsecured Claimants shall be adjusted upward (but in no event to an  
9 aggregate greater than \$100,000) to the extent that the distribution to the  
10 Federal Unsecured Claimants, if done in accordance with the Bankruptcy  
11 Code and without any adjustment under this Settlement Agreement, would  
12 exceed \$200,000, and the amount for distribution to the Federal Unsecured  
13 Claimants adjusted downward in the same amount;
- 14 c. if after application of the provisions of subparagraph b. of this Paragraph, the  
15 amount for distribution to the Other Unsecured Claimants remains less than  
16 \$50,000, then the amount for distribution to the Other Unsecured Claimants  
17 shall be further adjusted upwards as necessary to provide a minimum  
18 distribution to the Other Unsecured Claimants of \$50,000, and the amount  
19 for distribution to the Federal Unsecured Claimants further adjusted  
20 downward by the same amount; and
- 21 d. if after application of the provisions of subparagraphs b. and c. of this  
22 Paragraph, the amount for distribution to the Other Unsecured Claimants  
23 remains less than \$50,000, then 100% of the funds remaining for all  
24 Allowed General Unsecured Claims shall be distributed to the Other  
25 Unsecured Claimants, and the Federal Unsecured Claimants shall receive no  
26 distribution from such funds.

27 The Trustee's Final Report shall specifically set forth all adjustments to distribution  
28 amounts done pursuant to this Paragraph. Except as specifically set forth in this

1 Paragraph (i) nothing in this Settlement Agreement shall be construed to alter the  
2 rights or priority of any Other Unsecured Claimant, and (ii) the Settling Federal  
3 Agencies' Allowed General Unsecured Claims shall not be subordinated to any other  
4 Allowed General Unsecured Claim pursuant to any provision of the Bankruptcy Code  
5 or other applicable law that authorizes or provides for subordination of Allowed  
6 Claims, including without limitation sections 105, 510, and 726(a)(4) of the  
7 Bankruptcy Code.

8 13. The Allowed General Unsecured Claims under or pursuant to the terms of  
9 this Settlement Agreement do not constitute, nor shall they be construed as,  
10 forfeitures, fines, or penalties (or payments in lieu thereof), and, except as set forth  
11 above with respect to the liability of Debtor's estate to the Settling Federal Agencies  
12 in connection with their Claims, nothing herein is intended, or shall be construed, as  
13 an admission by the Trustee, on behalf of Debtor's bankruptcy estate, of any facts or  
14 any violation of law.

15 **VIII. CONSENT TO ENTRY OF JUDGMENT AND ASSIGNMENT OF**  
16 **CONTRACTUAL RIGHTS AND BENEFITS UNDER THE INSURANCE**  
17 **POLICIES; WAIVER OF ANY STATE CLAIMS UNDER THE INSURANCE**  
18 **POLICIES**

19 14. Within 10 Days of the Effective Date, the Trustee, on behalf of Debtor's  
20 bankruptcy estate, hereby agrees to entry of a separate judgment in this Bankruptcy  
21 Case in accordance with Rule 9001(7) of the Federal Rules of Bankruptcy Procedure,  
22 in the form attached hereto as Appendix C, in favor of the United States, on behalf of  
23 the Settling Federal Agencies, in the total amount of the Settling Federal Agencies'  
24 Allowed Claims set forth in Paragraph 4 above, provided that such judgment shall be  
25 satisfied solely through the distributions from Debtor's bankruptcy estate under this  
26 Settlement Agreement and the United States' recovery of proceeds from the Insurance  
27 Policies. In addition, the Trustee, within 10 Days of the Effective Date, shall execute  
28 and deliver an assignment, in the form attached hereto as Appendix D, to the United

1 States, on behalf of the Settling Federal Agencies, of all contractual rights and benefits  
2 under the Insurance Policies, without warranty, including but not limited to all  
3 contractual rights to assert claims under the Insurance Policies with respect to  
4 Debtor's, or Debtor's bankruptcy estate's, liability at the Site, and any contractual  
5 rights to receive and retain proceeds under the Insurance Policies with respect to  
6 Debtor's, or Debtor's bankruptcy estate's, liability, including claims for "bad faith," if  
7 any, and all such other claims as may be held by the Trustee with respect to the  
8 Insurance Policies. In addition, prior to his discharge upon the closing of the  
9 Bankruptcy Case, the Trustee agrees to execute any documents that may be  
10 reasonably necessary to allow the United States, or its designees, to obtain payment of  
11 its claims or collection of the judgment from insurance claim proceeds. Any  
12 distributions by the Trustee from Debtor's bankruptcy estate on account of the  
13 Settling Federal Agencies' Claims shall reduce the amounts payable under the  
14 Insurance Policies by the amount of the distributions, but shall not otherwise affect the  
15 United States' claims against the Insurers or the Insurance Policies.

16 15. The Trustee, on behalf of the Debtor's estate, contends that the proceeds of  
17 the Insurance Policies may not be available to pay the Settling State Agencies' claims  
18 for various reasons. The Settling State Agencies, in recognition of this contention,  
19 and the response actions taken and to be taken, and the costs incurred and to be  
20 incurred, by EPA at the Site, hereby waive and relinquish any rights or benefits they  
21 may have under the Insurance Policies.

22 **IX. EFFECT OF SETTLEMENT**

23 16. The approval of this Settlement Agreement by the Court, together with the  
24 Settling Federal Agencies' Claims and the Settling State Agencies' Claims, shall be  
25 deemed to satisfy any requirement for the Settling Federal Agencies or the Settling  
26 State Agencies to file in this Bankruptcy Case any claim, request, or demand for the  
27 disbursement of funds as provided herein. No further proof of claim or other request  
28

1 or demand by the Settling Federal Agencies or the Settling State Agencies shall be  
2 required.

3 17. Upon the Effective Date, and conditioned on the satisfactory performance  
4 of the Trustee, on behalf of Debtor's estate, of his obligations under this Settlement  
5 Agreement, the Claims set forth in the Settling Federal Agencies' Claims and the  
6 Settling State Agencies' Claims, and any proofs of claim deemed to be filed pursuant  
7 to Paragraph 16 above, against the Trustee, on behalf of Debtor's bankruptcy estate,  
8 shall be deemed satisfied in full in accordance with the terms of this Settlement  
9 Agreement. The United States, on behalf of the Settling Federal Agencies, and the  
10 Settling State Agencies shall receive no distributions from the Debtor's bankruptcy  
11 estate in the Bankruptcy Case with respect to the Settling Federal Agencies' Claims  
12 and the Settling State Agencies' Claims, or any proofs of claim deemed to be filed  
13 pursuant to Paragraph 16 above, other than as set forth in this Settlement Agreement.  
14 Nothing in this Paragraph, however, shall affect, and the United States reserves, its  
15 rights and claims against the Insurers based on its own rights and those of Debtor and  
16 Debtor's estate, the judgment granted, and the assignment of rights and claims with  
17 respect to the Insurance Policies granted as set forth herein.

18 **X. DISTRIBUTION INSTRUCTIONS**

19 18. Cash distributions to the Settling Federal Agencies shall be made by  
20 official bank check made payable to "U.S. Department of Justice," referencing  
21 the name and address of the Trustee, Department of Justice case number 90-11-  
22 2-08829, and the Consolidated Debt Collection System ("CDCS") number,  
23 which shall be used to identify all distributions required to be made in  
24 accordance with this Settlement Agreement. The Trustee shall send the  
25 check(s):  
26  
27  
28

1 **By regular mail to:**

2 U.S. Department of Justice  
3 Nationwide Central Intake Facility  
4 P.O. Box 70932  
Charlotte, NC 28272-0932

5 **Or by overnight mail to:**

6 QLP Wholesale Lockbox - D1113-022  
7 Lockbox #70932  
8 1525 West WT Harris Blvd.  
Charlotte, NC 28262

9 The CDCS number and any additional distribution instructions will be provided  
10 to the Trustee by the Financial Litigation Unit (“FLU”) of the United States  
11 Attorney’s Office for the Central District of California after the Effective Date.  
12 The FLU shall provide this information to:

13 David Seror, Trustee  
14 21650 Oxnard Street, Suite 500  
15 Woodland Hills, CA 91367  
dseror@ebg-law.com

16 on behalf of Debtor’s estate. The Trustee may change the individual to receive  
17 distribution instructions on his behalf by providing written notice of such change  
18 to the U.S. Department of Justice in accordance with Section XIV (Notices and  
19 Submissions). At the time of distribution, the Trustee shall send notice that  
20 payment has been made to the U.S. Department of Justice in accordance with  
21 Section XIV (Notices and Submissions). In addition, at the time of any  
22 distribution to the United States on behalf of EPA, the Trustee shall send notice  
23 that payment has been made to the EPA Cincinnati Finance Office by email at  
24 acctsreceivable.cinwd@epa.gov, or by mail to:

25  
26 US Environmental Protection Agency  
27 Superfund Payments  
28 Cincinnati Finance Center  
PO Box 979076  
St. Louis, MO 63197-9000

1 Such notice shall reference the Site ID 09X6, CERCLIS No. CAD009688052,  
2 and U.S. Department of Justice case number 90-11-2-08829. The total amount  
3 of any distributions to the United States on behalf of EPA shall be deposited by  
4 EPA in the Halaco Site Special Account to be retained and used to conduct or  
5 finance response actions at or in connection with the Site, or to be transferred by  
6 EPA to the EPA Hazardous Substance Superfund.

7 19. Cash distributions to the Settling State Agencies shall be made according  
8 to the following instructions:

- 9 a. Eighty-five percent (85%) of the cash distributions shall be made by official  
10 bank check made payable to the “State Water Pollution Cleanup and  
11 Abatement Account” and shall be made in person or sent by first class or  
12 overnight mail to the following address, with a reference to the  
13 “LARWQCB Halaco Settlement”: State Water Resources Control Board,  
14 Accounting Office, 18th Floor, P.O. Box 100, Sacramento, CA 95812-0100.
- 15 b. Fifteen percent (15%) of the cash distributions shall be made by official  
16 bank check made payable to the “California Department of Justice” and  
17 shall be made in person or sent by first class or overnight mail with a cover  
18 letter to the following address, with a reference to the “In Re Halaco  
19 Bankruptcy Settlement, Case No. 9:02-bk-12255-RR”: Office of the  
20 Attorney General, Attention: Marilyn Levin, 300 South Spring Street, 11<sup>th</sup>  
21 Floor-North, Los Angeles, CA 90013-1230.
- 22 c. The Trustee shall transmit written confirmation of such payments to the  
23 Settling State Agencies at the addresses specified in Section XIV (Notices  
24 and Submissions).

25 **XI. COVENANTS NOT TO SUE AND RESERVATION OF RIGHTS**

26 20. In consideration of all of the foregoing, including, without limitation, the  
27 payments that will be made pursuant to Paragraphs 4.a - d and 7 and the assignment to  
28 the United States, on behalf of the Settling Federal Agencies, of the Insurance Policies

1 under Paragraph 14 of this Settlement Agreement, and except as specifically provided  
2 in Paragraphs 21-23, the United States, on behalf of the Settling Federal Agencies,  
3 and the Settling State Agencies covenant not to file a civil action or to take any  
4 administrative or other civil action against the Trustee, individually and on behalf of  
5 Debtor's bankruptcy estate, pursuant to sections 106 or 107 of CERCLA, 42 U.S.C.  
6 §§ 9606 or 9607, or the Porter-Cologne Act, with respect to the Site. These covenants  
7 not to sue shall take effect on the Effective Date.

8 21. The covenants not to sue contained in Paragraph 20 of this Settlement  
9 Agreement extend only to the Trustee, individually and on behalf of Debtor's estate,  
10 and do not extend to any other persons. Nothing in this Settlement Agreement is  
11 intended as a covenant not to sue or a release from liability for any person or entity  
12 other than the Trustee, individually and on behalf of Debtor's estate, the United  
13 States, on behalf of the Settling Federal Agencies, and the Settling State Agencies.  
14 The United States, on behalf of the Settling Federal Agencies, expressly reserves all  
15 claims, demands, and causes of action, either judicial or administrative, past, present,  
16 or future, in law or equity, which it may have against all other persons, firms,  
17 corporations, or entities, including claims against the Insurers pursuant to the  
18 judgment granted herein or under the rights and benefits under the Insurance Policies  
19 assigned pursuant to this Settlement Agreement, and further including claims against  
20 any officer, director, agent, employee, successor or predecessor of the Debtor for any  
21 matter arising at or relating in any manner to the Site or the claims addressed herein.  
22 The Settling State Agencies expressly reserve all claims, demands, and causes of  
23 action, either judicial or administrative, past, present, or future, in law or equity, which  
24 they may have against all other persons, firms, corporations, or entities, or against any  
25 officer, director, agent, employee, successor or predecessor of the Debtor for any  
26 matter arising at or relating in any manner to the Site or the claims addressed herein.  
27 The Trustee, on behalf of Debtor's bankruptcy estate, expressly reserves all claims,  
28 demands, and causes of action, either judicial or administrative, past, present, or

1 future, in law or equity, which he may have against all other persons, firms,  
2 corporations, or entities, or against any officer, director, agent, employee, successor or  
3 predecessor of the Debtor for any matter arising at or relating in any manner to the  
4 Site or the claims addressed herein, except that nothing herein shall affect any prior  
5 release of any such claims by the Trustee, on behalf of Debtor's estate.

6 22. Notwithstanding the foregoing, the covenants not to sue contained in this  
7 Settlement Agreement shall not apply to nor affect any action based on: (i) a failure to  
8 meet a requirement of this Settlement Agreement, or (ii) criminal liability.

9 23. Nothing in this Settlement Agreement shall be deemed to limit the  
10 authority of the United States or the Settling State Agencies to take response action  
11 under section 104 of CERCLA, 42 U.S.C. § 9604, the Porter-Cologne Act, or any  
12 other applicable federal or state law or regulation, or to alter the applicable legal  
13 principles governing judicial review of any action taken by the United States or the  
14 Settling State Agencies pursuant to such authority. Nothing in this Settlement  
15 Agreement shall be deemed to limit the information-gathering authority of the United  
16 States or the Settling State Agencies under sections 104 and 122 of CERCLA, 42  
17 U.S.C. §§ 9604 and 9622, the Porter-Cologne Act, or any other applicable federal or  
18 state law or regulation, or to excuse the Debtor from any disclosure or notification  
19 requirements imposed by CERCLA, the Porter-Cologne Act, or any other applicable  
20 federal or state law or regulation.

21 24. The Trustee, on behalf of the Debtor's bankruptcy estate, hereby covenants  
22 not to sue and agrees not to assert or pursue any claims or causes of action against the  
23 United States and the Settling State Agencies with respect to the Site including, but  
24 not limited to, any direct or indirect claim for reimbursement from the Hazardous  
25 Substances Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C.  
26 § 9507) through sections 106(b)(2), 111, 112, or 113 of CERCLA, 42 U.S.C.  
27 §§ 9606(b)(2), 9611, 9612, or 9613, or any other provision of law; any claim against  
28 the United States or the Settling State Agencies, including any department, agency, or

1 instrumentality of the United States or the Settling State Agencies, under sections 107  
2 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, related to the Site, or any claims  
3 arising out of response activities at the Site. Nothing in this Settlement Agreement  
4 shall be deemed to constitute preauthorization of a claim within the meaning of  
5 section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d). The  
6 covenants not to sue contained in this Paragraph extend only to the United States and  
7 the Settling State Agencies, and do not extend to any other persons.

## 8 **XII. CONTRIBUTION PROTECTION**

9 25. The Parties agree, and by entering this Settlement Agreement this Court  
10 finds, that this settlement constitutes a judicially-approved settlement for purposes of  
11 section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Trustee, on behalf  
12 of Debtor's estate, is entitled, as of the Effective Date, to protection from contribution  
13 actions or claims as provided by section 113(f)(2) of CERCLA, 42 U.S.C.

14 § 9613(f)(2), or as may be otherwise provided by law, for "matters addressed" in this  
15 Settlement Agreement. The "matters addressed" in this Settlement Agreement, as  
16 that phrase is used in section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), include,  
17 without limitation, claims by the Settling Federal Agencies or potentially responsible  
18 parties for response costs, any response actions taken at the Site, and natural resource  
19 damages (including assessment costs) at the Site.

20 26. The Trustee, on behalf of the Debtor's bankruptcy estate, agrees that with  
21 respect to any suit for contribution brought against any of them after the Effective  
22 Date for matters related to this Settlement Agreement, he will notify the United States  
23 within 15 Working Days of service of the complaint upon them. In addition, in  
24 connection with such suit, the Trustee shall notify the United States within 15  
25 Working Days of service or receipt of any Motion for Summary Judgment and within  
26 15 Working Days of receipt of any order from a court setting a case for trial  
27 (provided, however, that the failure to notify the United States pursuant to this  
28

1 Paragraph shall not in any way affect the protections afforded under Section XI  
2 (Covenants Not to Sue and Reservation of Rights)).

3 **XIII. UNWIND TERMS AMONG THE PARTIES**

4 27. If, at any time prior to the Effective Date, the Trustee determines that there  
5 are insufficient funds in the Debtor's estate to pay in full the Allowed Chapter 11  
6 Administrative Expense Claim of the Settling State Agencies, the Trustee shall  
7 immediately provide written notice of such fact to the Settling State Agencies and the  
8 United States. Upon receipt of such written notice, the Settling State Agencies may  
9 agree in writing to accept a lesser amount as payment in full of their Allowed Chapter  
10 11 Administrative Expense Claim. If the Settling State Agencies do not agree to  
11 accept a lesser amount, this Settlement Agreement shall be deemed withdrawn as to  
12 all Parties and shall have no further effect as set forth in Paragraph 31.

13 **XIV. NOTICES AND SUBMISSIONS**

14 28. Whenever, under the terms of this Settlement Agreement, written notice is  
15 required to be given, or a report or other document is required to be sent by one party  
16 to another, it shall be directed to the individuals at the addresses specified below via  
17 U.S. certified mail, return receipt requested, unless those individuals or their  
18 successors give notice of a change of address to the other Parties in writing. Written  
19 notice may be submitted electronically, rather than by U.S. Mail, where an e-mail  
20 address is provided below. All U.S. Mail notices and submissions shall be considered  
21 effective upon receipt, unless otherwise provided. Electronic submissions will be  
22 deemed submitted on the date they are transmitted. Except as otherwise provided in  
23 this Settlement Agreement, written notice as specified herein shall constitute complete  
24 satisfaction of any written notice requirement in the Settlement Agreement with  
25 respect to the United States, the Settling State Agencies, the Debtor, and the Trustee  
26 respectively.

27 As to the United States:

28

1 Chief, Environmental Enforcement Section  
2 Environment and Natural Resources Division  
3 U.S. Department of Justice  
4 P.O. Box 7611  
5 Ben Franklin Station  
6 Washington, DC 20044  
7 [thomas.carroll@usdoj.gov](mailto:thomas.carroll@usdoj.gov)  
8 Ref. File No. 90-11-2-08829

9 -- and --

10 Janet Magnuson  
11 Assistant Regional Counsel  
12 United States Environmental Protection Agency  
13 Region IX  
14 75 Hawthorne Street  
15 San Francisco, CA 94105  
16 [Magnuson.Janet@epa.gov](mailto:Magnuson.Janet@epa.gov)

17 -- and --

18 Laurie J. Lee  
19 Attorney Advisor  
20 Office of General Counsel for Natural Resources  
21 National Oceanic and Atmospheric Administration  
22 U.S. Department of Commerce  
23 501 West Ocean Boulevard, Suite 4470  
24 Long Beach, CA 90802  
25 [laurie.lee@noaa.gov](mailto:laurie.lee@noaa.gov)

26 -- and --

27 John Carlucci  
28 Office of the Solicitor  
U.S. Department of the Interior  
Office of the Solicitor  
1849 C Street, N.W.  
Washington, D.C. 20240  
[John.Carlucci@sol.doi.gov](mailto:John.Carlucci@sol.doi.gov)

1           As to the State Water Board:

2  
3           Marilyn H. Levin  
4           Deputy Attorney General  
5           Office of the California Attorney General  
6           300 South Spring Street, 11th Floor  
7           Los Angeles, CA 90013  
8           [Marilyn.Levin@doj.ca.gov](mailto:Marilyn.Levin@doj.ca.gov)

9           -- and --

10           Jennifer Fordyce  
11           Attorney  
12           State Water Resources Control Board  
13           P.O. Box 100  
14           Sacramento, CA 95812  
15           [Jennifer.Fordyce@waterboards.ca.gov](mailto:Jennifer.Fordyce@waterboards.ca.gov)

16           As to the LA Water Board:

17           Marilyn H. Levin  
18           Deputy Attorney General  
19           Office of the California Attorney General  
20           300 South Spring Street, 11th Floor  
21           Los Angeles, CA 90013  
22           [Marilyn.Levin@doj.ca.gov](mailto:Marilyn.Levin@doj.ca.gov)

23           -- and --

24           Jennifer Fordyce  
25           Attorney  
26           State Water Resources Control Board  
27           P.O. Box 100  
28           Sacramento, CA 95812  
29           [Jennifer.Fordyce@waterboards.ca.gov](mailto:Jennifer.Fordyce@waterboards.ca.gov)

30           -- and --

31           Samuel Unger

1 Executive Officer  
2 Los Angeles Regional Water Quality Control Board  
3 320 West 4<sup>th</sup> Street, Suite 200  
4 Los Angeles, CA 90013  
5 [Samuel.Unger@waterboards.ca.gov](mailto:Samuel.Unger@waterboards.ca.gov)

6 As to the Trustee:

7 David Seror, Trustee  
8 21650 Oxnard Street, Suite 500  
9 Woodland Hills, CA 91367  
10 [dseror@ebg-law.com](mailto:dseror@ebg-law.com)

11 -- and --

12 C. John M. Melissinos  
13 GREENBERG GLUSKER FIELDS CLAMAN  
14 & MACHTINGER LLP  
15 1900 Avenue of the Stars, 21st Floor  
16 Los Angeles, California 90067  
17 [JMelissinos@greenbergglusker.com](mailto:JMelissinos@greenbergglusker.com)

18 **XV. JUDICIAL APPROVAL AND OPPORTUNITY FOR PUBLIC**  
19 **COMMENT**

20 29. This Settlement Agreement shall be subject to approval of the Bankruptcy  
21 Court. The Trustee shall promptly seek authority to enter into this Settlement  
22 Agreement under Bankruptcy Rule 9019 or applicable provisions of the Bankruptcy  
23 Code.

24 30. This Settlement Agreement shall be lodged with the Bankruptcy Court and  
25 shall thereafter be subject to public comment for a period of 30 Days following  
26 publication of notice of the Settlement Agreement in the Federal Register. The  
27 Settlement Agreement shall also be subject to public notice and comment under any  
28 applicable provision of state law. Any public comment period under state law may  
run concurrently with the public comment period provided for in the first sentence of  
this Paragraph, and any public comment period provided for in this Paragraph may

1 run concurrently with any notice period required pursuant to Bankruptcy Rule 2002 or  
2 applicable local rule in connection with judicial approval of the Settlement Agreement  
3 pursuant to the preceding Paragraph. After the conclusion of the public comment  
4 period, the United States will file with the Bankruptcy Court any comments received,  
5 as well as the United States' and Settling State Agencies' responses to the comments,  
6 and at that time, if appropriate, the United States and the Settling State Agencies will  
7 request approval of the Settlement Agreement. The United States and the Settling  
8 State Agencies reserve the right to withdraw or withhold their consent if the  
9 comments regarding the Settlement Agreement disclose facts or considerations which  
10 indicate that the Settlement Agreement is not in the public interest.

11 31. If for any reason (i) the Settlement Agreement is withdrawn, either  
12 pursuant to Paragraph 27 or as provided in Paragraph 30, (ii) the Settlement  
13 Agreement is not approved, or (iii) the Bankruptcy Case is dismissed before the  
14 Effective Date: (a) this Settlement Agreement shall be null and void and the Parties  
15 shall not be bound hereunder or under any documents executed in connection  
16 herewith; (b) the Parties shall have no liability to one another arising out of or in  
17 connection with this Settlement Agreement or under any documents executed in  
18 connection herewith; and (c) this Settlement Agreement and any documents prepared  
19 in connection herewith shall have no residual or probative effect or value, and it shall  
20 be as if they had never been executed.

21 32. The Trustee shall not propose or seek approval of a Final Report or take  
22 any other action in the Bankruptcy Case that is inconsistent with the terms and  
23 provisions of this Settlement Agreement. The Settling Federal Agencies and the  
24 Settling State Agencies shall not oppose any proposed distribution by the Trustee that  
25 is addressed by and consistent with this Settlement Agreement. The Parties reserve  
26 all other rights and defenses they may have with respect to any Final Report or  
27 proposed distribution by the Trustee.

28

1           **XVI.        AMENDMENTS/INTEGRATION AND COUNTERPARTS**

2           33. This Settlement Agreement and any other documents to be executed in  
3 connection herewith and referred to herein shall constitute the sole and complete  
4 agreement of the Parties hereto with respect to the matters addressed herein. This  
5 Settlement Agreement may not be amended except by a writing signed by all Parties  
6 to this Settlement Agreement.

7           34. This Settlement Agreement may be executed in counterparts, each of  
8 which shall constitute an original, and all of which shall constitute one and the same  
9 agreement. Each undersigned representative of a Party certifies that he or she is fully  
10 authorized to execute this Settlement Agreement on behalf of such Party and bind it  
11 legally to the terms and provisions herein.

12                           **XVII.    RETENTION OF JURISDICTION**

13           35. The Court (or, upon withdrawal of the Court's reference, the United States  
14 District Court of the Central District of California) shall retain jurisdiction over the  
15 subject matter of this Settlement Agreement and the Parties hereto for the duration of  
16 the performance of the terms and provisions of this Settlement Agreement for the  
17 purpose of enabling any of the Parties to apply to the Court at any time for such  
18 further order, direction, and relief as may be necessary or appropriate for the  
19 construction or interpretation of this Settlement Agreement or to effectuate or enforce  
20 compliance with its terms.

1 THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT  
2 AGREEMENT IN *IN RE: HALACO ENGINEERING COMPANY*, Case No. 9:02-  
3 bk-12255-RR (Bankr. C.D. Cal.)

4 FOR THE UNITED STATES OF AMERICA:

5 Date: Sept. 20, 2013

6 By:



7 ELLEN M. MAHAN  
8 Deputy Chief  
9 Environmental Enforcement Section  
10 Environment and Natural Resources  
11 Division

12 By:



13 THOMAS P. CARROLL  
14 Assistant Chief  
15 E-mail: [thomas.carroll@usdoj.gov](mailto:thomas.carroll@usdoj.gov)  
16 Environmental Enforcement Section  
17 Environment & Natural Resources Division  
18 United States Department of Justice  
19 P.O. Box 7611  
20 Washington, D.C. 20044  
21 Telephone: (202) 514-4051  
22 Facsimile: (202) 514-0097

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THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT AGREEMENT IN *IN RE: HALACO ENGINEERING COMPANY*, Case No. 9:02-bk-12255-RR (Bankr. C.D. Cal.)

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 8/2/13

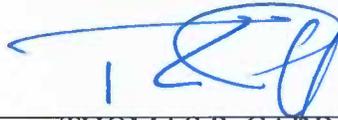
By:   
ENRIQUE MANZANILLA  
Director, Superfund Division

By:   
JANET MAGNUSON  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

1 THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT  
2 AGREEMENT IN *IN RE: HALACO ENGINEERING COMPANY*, Case No. 9:02-  
3 bk-12255-RR (Bankr. C.D. Cal.)

4 FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
5 OF THE DEPARTMENT OF COMMERCE:

6 Date: Sept. 20, 2013 By



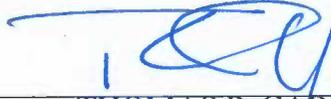
7 THOMAS P. CARROLL  
8 Assistant Chief  
9 E-mail: thomas.carroll@usdoj.gov  
10 Environmental Enforcement Section  
11 Environment & Natural Resources Division  
12 United States Department of Justice  
13 P.O. Box 7611  
14 Washington, D.C. 20044  
15 Telephone: (202) 514-4051  
16 Facsimile: (202) 514-0097

17 *Attorneys for the National Oceanic and*  
18 *Atmospheric Administration of the Department*  
19 *of Commerce*

1 THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT  
2 AGREEMENT IN *IN RE: HALACO ENGINEERING COMPANY*, Case No. 9:02-  
3 bk-12255-RR (Bankr. C.D. Cal.)

4 FOR THE DEPARTMENT OF INTERIOR, FISH AND WILDLIFE SERVICE:

5 Date: Sept. 20, 2013 By



6 THOMAS P. CARROLL  
7 Assistant Chief  
8 E-mail: thomas.carroll@usdoj.gov  
9 Environmental Enforcement Section  
10 Environment & Natural Resources Division  
11 United States Department of Justice  
12 P.O. Box 7611  
13 Washington, D.C. 20044  
14 Telephone: (202) 514-4051  
15 Facsimile: (202) 514-0097

16 *Attorneys for the Department Of Interior, Fish  
17 and Wildlife Service*

1 THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT  
2 AGREEMENT IN *IN RE: HALACO ENGINEERING COMPANY*, Case No. 9:02-  
3 bk-12255-RR (Bankr. C.D. Cal.)

4 FOR THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD:

5 Date: 7/29/13 By: Tom Howard  
6 TOM HOWARD  
7 Executive Director  
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THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT  
AGREEMENT IN *IN RE: HALACO ENGINEERING COMPANY*, Case No. 9:02-  
bk-12255-RR (Bankr. C.D. Cal.)

FOR THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,  
LOS ANGELES REGION:

Date: July 18, 2013 By: Samuel Unger  
SAMUEL UNGER  
Executive Officer

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THE UNDERSIGNED PARTIES ENTER INTO THIS SETTLEMENT  
AGREEMENT IN *IN RE: HALACO ENGINEERING COMPANY*, Case No. 9:02-  
bk-12255-RR (Bankr. C.D. Cal.)

FOR THE TRUSTEE:

Date: September 20, 2013 By:   
DAVID SEROR, Soley in His Capacity as  
Successor Chapter 7 Trustee

Date: Sept. 20, 2013 By:   
C/JOHN M. MELISSINOS  
(State Bar No. 149224)  
GREENBERG GLUSKER FIELDS  
CLAMAN & MACHTINGER LLP LLP  
1900 Avenue of the Stars, 21st Floor  
Los Angeles, California 90067  
Telephone: (310) 553-3610  
Facsimile: (310) 553-0687  
Email: JMelissinos@GreenbergGlusker.com

*Attorneys for David Seror,  
Successor Chapter 7 Trustee*

## APPENDIX A – MAP OF THE SITE



Aerial image © Google Earth, 2007. Annotation by CH2M HILL, 2011.

FIGURE \_  
Halaco Properties  
Halaco Site Remedial Investigation  
Oxnard, California

## APPENDIX B – FORM OF WITHDRAW OF PETITIONS

**APPENDIX B**

DATE

**Via E-Mail and U.S. Mail**

Philip G. Wyels, Assistant Chief Counsel  
Office of Chief Counsel  
State Water Resources Control Board  
1001 "T" Street, 22<sup>nd</sup> Floor [95814]  
P.O. Box 100  
Sacramento, California 95812-0100  
[Philip.Wyels@waterboards.ca.gov](mailto:Philip.Wyels@waterboards.ca.gov)

**Re: Withdrawal of Petitions of Halaco Engineering Co., SWRCB/OCC Files Nos. A-1602, A-1638, and A-1645**

Dear Mr. Wyels:

The undersigned law firm is successor general bankruptcy counsel to David Seror, successor Chapter 7 Trustee of the bankruptcy estate of Halaco Engineering Co., pending in the United State Bankruptcy Court for the Central District of California, Northern Division, Case No. 9:02-bk-12255-RR.

The above-referenced Petitions filed by Halaco Engineering Co. are currently being held in abeyance by the State Water Resources Control Board. On behalf of the petitioner, Halaco Engineering Co., I am hereby withdrawing Petitions SWRCB/OCC File Nos. A-1602, A-1638, and A-1645 with prejudice.

Please do not hesitate to contact me if you have any questions about this.

Very truly yours,

C. John M. Melissinos

cc: Marilyn H. Levin, Office of the California Attorney General  
Jennifer L. Fordyce, State Water Resources Control Board  
David Seror, Trustee

## APPENDIX C – FORM OF SEPARATE JUDGMENT

**APPENDIX C**

C. JOHN M. MELISSINOS (SBN 149224)  
JMelissinos@GreenbergGlusker.com  
GREENBERG GLUSKER FIELDS CLAMAN  
& MACHTINGER LLP  
1900 Avenue of the Stars, 21st Floor  
Los Angeles, California 90067-4590  
Telephone: 310.553.3610  
Fax: 310.553.0687

Successor Attorneys for  
David Seror, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
NORTHERN DIVISION

In re:  
  
HALACO ENGINEERING COMPANY,  
  
Debtor.

Case No. 9:02-bk-12255-RR

Chapter 7

**JUDGMENT GRANTING CLAIMS TO  
THE UNITED STATES OF AMERICA**

Date: \_\_\_\_\_, 2013

Time: 11:00 a.m.

Place: Courtroom 201

United States Bankruptcy Court  
1415 State Street  
Santa Barbara, CA 93101

The motion of David Seror, successor Chapter 7 Trustee (the “Trustee”) of the  
bankruptcy estate of Halaco Engineering Co. (“Halaco” or the “Debtor”) for an order approving  
a Settlement Agreement (the “Settlement Agreement”) among the Trustee and, *inter alia*, the  
United States, on behalf of the U.S. Environmental Protection Agency (“EPA”), the National

Oceanic and Atmospheric Administration of the Department of Commerce (“NOAA”), and the Fish and Wildlife Service of the Department of Interior (“DOI” and, collectively with EPA and NOAA, the “Settling Federal Agencies”) having been approved by order of the Court dated \_\_\_\_\_, 2013 [Docket No. \_\_\_\_] (the “Approval Order”), the Honorable Robin Riblet, United States Bankruptcy Judge, presiding, and good cause appearing therefor,

IT IS ORDERED that:

1. The United States, on behalf of EPA, shall have a chapter 7 administrative claim in the amount of \$335,686.86, only.
2. The United States, on behalf of EPA, shall have a general unsecured claim in the amount of \$52,593,544.00, only.
3. The United States, on behalf of NOAA, shall have a general unsecured claim in the amount of \$487,199.00, only.
4. The United States, on behalf of DOI, shall have a general unsecured claim in the amount of \$329,267.00, only.
5. The claims of the Settling Federal Agencies shall be payable only in accordance with the terms of the Settlement Agreement and the Approval Order.
6. Any and all other claims of the Settling Federal Agencies against the Halaco bankruptcy estate, whether secured, unsecured, administrative, priority or otherwise, are deemed satisfied in full in accordance with the terms of the Settlement Agreement.

# # #

## APPENDIX D – FORM OF INSURANCE ASSIGNMENT

APPENDIX D

ASSIGNMENT

For good and valuable consideration, the receipt of which are hereby acknowledged, David Seror, successor Chapter 7 Trustee (the "Assignor") of the bankruptcy estate of Halaco Engineering Co. ("Halaco" or the "Debtor") pending in the United States Bankruptcy Court for the Central District of California, Northern Division (the "Bankruptcy Court"), Case No. 9:02-bk-12255-RR (the "Bankruptcy Case"), hereby assigns, conveys, sells and transfers, as is and without warranty or representation of any kind, unto the United States, on behalf of the U.S. Environmental Protection Agency ("EPA"), the National Oceanic and Atmospheric Administration of the Department of Commerce ("NOAA"), and the Fish and Wildlife Service of the Department of Interior ("DOI" and, collectively with EPA and NOAA, "Assignees"), in accordance with the Settlement Agreement (the "Settlement Agreement") among, *inter alia*, Assignor and Assignees, and the order of the Bankruptcy Court in the Bankruptcy Court approving Assignee's entry into this Assignment, all contractual rights to receive and retain proceeds under the Insurance Policies with respect to Debtor's, or Debtor's bankruptcy estate's, liability and all contractual rights and benefits of Assignor under the Insurance Policies set forth in Exhibit A hereto, including but not limited all contractual rights to assert claims under the Insurance Policies with respect to Debtor's, or Debtor's bankruptcy estate's, liability at the Site (as such term is defined in the Settlement Agreement), including claims for "bad faith," if any, and all such other claims as may be held by Assignor with respect to the Insurance Policies.

Signature of Assignor

DATED: May \_\_\_, 2013

By: \_\_\_\_\_  
DAVID SEROR, solely in his capacity as successor  
Chapter 7 Trustee of the bankruptcy estate of  
Halaco Engineering Co.

Signatures of Assignees

DATED: May \_\_\_\_, 2013

THE UNITED STATES ON BEHALF OF THE  
U.S. ENVIRONMENTAL PROTECTION  
AGENCY, THE NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION OF THE  
DEPARTMENT OF COMMERCE, AND THE  
FISH AND WILDLIFE SERVICE OF THE  
DEPARTMENT OF INTERIOR

By: \_\_\_\_\_  
THOMAS P. CARROLL, Assistant Chief, U.S.  
Department of Justice, Environmental Enforcement  
Section  
Attorneys for the United States

**Exhibit A – Insurance Policies Assigned to the United States under Settlement Agreement  
in In re: Halaco Engineering Co., Case No. 9:02 bk-12255-RR (Bankr. C.D. Cal.)**

“Insurance Policies” shall mean for purposes of the foregoing Assignment all insurance policies, including but not limited to comprehensive, primary, umbrella, and excess policies, for which Debtor Halaco Engineering Co. or a predecessor is an “insured,” “named insured,” or “additional insured,” which may provide coverage for the Assignees’ Claims including (without limitation):

- Industrial Indemnity Insurance Company Policies: (i) LG 735-9912, effective April 1, 1975 to April 1, 1978; (ii) LG 775-9198, effective April 1, 1978 to April 1, 1981; (iii) LG 819-8621, effective April 1, 1981 to April 1, 1984; and (iv) LG 857-7831, effective April 1, 1984 to April, 1985; and
- The Aetna Casualty and Surety Company Policies: (i) Excess Indemnity (Umbrella) Policy 33 XS 824 WCA (9/21/73-2/28/76); (ii) General Liability Insurance Policy No. 33AL178860 CMA (2/28/73-2/28/74); (iii) General Liability Insurance Policy No. 33AL90782 CCA (2/28/72-2/28/73); (iv) General Liability Insurance Policy No. 33AL181008 CMA (2/28/74-2/28/75); (v) Policy No. 33AL4733 (2/28/65-2/28/66); and (vi) Policy No. 33AL051521 (2/28/66-2/28/67).

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
1900 Avenue of the Stars, 21st Floor, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (*specify*): **SETTLEMENT AGREEMENT** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) September 20, 2013, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) September 20, 2013, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) September 20, 2013, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA OVERNITE EXPRESS

Honorable Robin Riblet  
United States Bankruptcy Court  
Central District of California  
1415 State Street / Courtroom 201  
Santa Barbara, California 93101-2511

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

September 20, 2013  
Date

Sonia Gaeta  
Printed Name

/s/Sonia Gaeta  
Signature

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

Ron Bender on behalf of Defendant Larry Fine in his Capacity as Trustee	rb@lnbyb.com
Thomas P Carroll on behalf of Creditor United States Of America	thomas.carroll@usdoj.gov, efile_ees.enrd@usdoj.gov
Sara Chenetz on behalf of Creditor Committee Committee Of Unsecured Creditor	schenetz@perkinscoie.com, dlax@perkinscoie.com
Jon L Dalberg on behalf of Attorney Andrews Kurth LLP	jdalberg@lgbfirm.com, ncereseto@lgbfirm.com; marizaga@lgbfirm.com; scolen@lgbfirm.com
David B Golubchik on behalf of 3rd Pty Defendant Estate of Leslie Fine ; 3rd Pty Defendant Larry Fine as Trustee of the Fine Living Trust; 3rd Pty Defendant Larry Fine; Creditor Fine Living Trust Dated 9/9/1982 as amended; Plaintiff Larry Fine	dbg@lnbrb.com, dbg@ecf.inforuptcy.com; mayra@lnbyb.com
Howard B Grobstein (TR)	hbgr trustee@gtfas.com, hgrobstein@ecf.epiqsystems.com
Carl Grumer on behalf of Defendant John Haack; Defendant Robert Haack	cgrumer@manatt.com
Marilyn H Levin on behalf of Creditor California Regional Water Quality Control Board LA Region; Creditor State Water Resources Control Board; Interested Party California Regional Water Quality Control Board	marilyn.levin@doj.ca.gov
Michael B Lubic on behalf of Creditor Aluminum Pechiney	michael.lubic@klgates.com, jonathan.randolph@klgates.com
C John M Melissinos on behalf of Trustee David Seror (TR)	jmelissinos@greenbergglusker.com, jreinglass@greenbergglusker.com; kwoodson@greenbergglusker.com; calendar@greenbergglusker.com; sgaeta@greenbergglusker.com
James P Menton, JR on behalf of Plaintiff Halaco Engineering Co	jmenton@peitzmanweg.com
Jennifer L Nassiri on behalf of Creditor Committee Committee Of Unsecured Creditor	jnassiri@venable.com
Bertrand Pan on behalf of Attorney DLA Piper LLP (US)	bertrand.pan@dlapiper.com
Lawrence Peitzman on behalf of Debtor Halaco Engineering Company	lpeitzman@peitzmanweg.com
Kurt Ramlo on behalf of Interested Party Courtesy NEF	kr@lnbyb.com
S Margaux Ross on behalf of U.S. Trustee United States Trustee (ND)	margaux.ross@usdoj.gov
David Seror (TR) on behalf of Trustee David Seror (TR)	kpacion@ebg-law.com, C133@ecfcbis.com
David B Shemano on behalf of Debtor Halaco Engineering Company	dshemano@peitzmanweg.com
United States Trustee (ND)	ustpregion16.nd.ecf@usdoj.gov
Robert W Woods on behalf of John Haack ; Robert Haack	woods@ikplaw.com

**2. SERVED BY UNITED STATES MAIL:**

Debtor

John Haack  
245 Foundry Lane  
Camden, TN 38320

Atty for Debtor

David B Shemano, Esq.  
Peitzman Weg LLP  
2029 Century Park E Ste 3100  
Los Angeles, CA 90067

Office of the U.S. Trustee

Brian D. Fittipaldi, Esq.  
Northern Division  
United States Trustee  
21051 Warner Center Lane, Suite 115  
Woodland Hills, CA 91367

Chapter 7 Trustee

David Seror, Chapter 7 Trustee  
21650 Oxnard Street, Ste. 500  
Woodland Hills, CA 91367

Attys for California Regional Water  
Quality Control Board, Los Angeles  
Region

Marilyn H. Levin, Esq.  
300 S Spring St., Suite 1702  
Los Angeles, CA 90013-1204

State Water Quality Control Board

Jennifer L. Fordyce, Esq.  
Office of Chief Counsel  
State Water Resources Control Board  
1001 "I" Street, 22nd Floor [95814]  
P.O. Box 100  
Sacramento, CA 95812-0100

United States

Environmental Enforcement Section  
Thomas P. Carroll, Esq.  
P.O. Box 7611  
Washington, DC 20044-7611