

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement" or "Release") is entered into by and between plaintiff City of Redlands ("Plaintiff"), on the one hand, and defendant The Dow Chemical Company ("Dow") on the other hand. Plaintiff and Dow are referred to collectively and/or interchangeably herein as a "Party" or the "Parties."

RECITALS

1. Plaintiff City of Redlands is a California municipality and water purveyor that owns and/or operates a number of water wells in and around the City of Redlands.
2. There is now pending in the Superior Court of the State of California for the County of San Bernardino a civil action brought by the City of Redlands entitled *City of Redlands v. Shell Oil Company, et al.*, Civil Case No. SCVSS 120627 (the "Pending Action"). Plaintiff's operative Second Amended Complaint ("Complaint" or "Operative Complaint") seeks damages and other relief related to the alleged contamination of its water wells with the chemicals 1,2,3-trichloropropane ("TCP") and 1,2-dibromo-3-chloropropane ("DBCP"). Dow is a named defendant in the Complaint.
3. Plaintiff's original complaint was filed on June 17, 2004 in the Superior Court of the State of California for the County of San Francisco (Case no. CGC-04-432302) and subsequently transferred to the Superior Court of the State of California for the County of San Bernardino. The Pending Action is one of a number of actions included in California Judicial Council Coordination Proceeding No. 4435 ("TCP Cases") in the Superior Court of the State of California for the County of San Bernardino.
4. Plaintiff alleges in its Complaint that a number of its water wells are contaminated with TCP and/or DBCP.
5. Plaintiff alleges in its Complaint that Dow manufactured, marketed, distributed and/or sold certain soil fumigant products containing TCP and/or DBCP that, in part, caused the well water contamination alleged in the Complaint.
6. Dow denies any responsibility or liability for any contamination alleged in the Complaint. Consideration paid for the release of claims set forth in paragraph 9, below, is not an admission of liability or an admission that any of the facts alleged by Plaintiff in the Complaint are true.
7. Plaintiff and Dow desire to resolve by settlement and dismissal Plaintiff's claims in the Pending Action, subject to a Stipulation between Plaintiff and Dow regarding future claims. Execution of a Stipulation regarding future claims is a material term of this Settlement Agreement and Release.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

8. **Cash Payment:** Within fifteen days (15) days of the execution of this Settlement Agreement and Release, Dow shall pay Plaintiff a total of Five Hundred Thousand Dollars (\$500,000).

9. **Release.** Subject to the provisions of this Agreement, on behalf of itself, its predecessors, successors, assigns, representatives and past, present or future agents, Plaintiff hereby releases Dow and its predecessors, successors, assigns, insurers, subsidiaries, affiliates, members, attorneys, and past or present employees, directors, officers, agents, shareholders, and representatives from any and all claims, demands, actions, causes of action, obligations, liens, damages, and liabilities, of any nature whatsoever, whether or not known, suspected or claimed, past, present or future, relating to or arising out of any act, cause, matter or thing stated, claimed, or alleged, or that could have been stated, claimed or alleged by Plaintiff in the Complaint against Dow, including but not limited to all allegations associated with Dow's Telone, Telone II, Vidden D, Dowfume N and/or Fumazone products and any other alleged TCP-containing product or DBCP-containing product manufactured, sold and/or distributed by Dow, related to any past, present, continuing and/or future presence of TCP or DBCP in the New York Street well and wells 38 and 39.

10. **Third-Party Interests.** Plaintiff declares and warrants that, to the best of its knowledge no other person or entity has had or now has any interest in the claims, demands, actions, causes of action, obligations, liens, damages and liabilities released in paragraph 9 above; and that it has not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand, action, cause of action, obligation, lien, damage and liability released in paragraph 9 above.

11. **Dismissal.** Upon receipt of the full and complete payment required to be paid by Dow under this Agreement, Plaintiff shall execute, file and serve upon Dow's representative a Request for Dismissal of all claims set forth in the Operative Complaint as to Dow. Plaintiff further agrees it will not attempt to reassert any claim against Dow in the Pending Action. All Parties authorize their respective counsel to execute whatever documents are necessary to implement this Agreement.

12. **Voluntary and Good Faith Agreement.** The Parties, and each of them, declare that, prior to execution of this Agreement, each has apprised itself of sufficient data, either through experts or other sources of its own selection, in order that it might intelligently exercise its judgment in deciding on the contents of this Agreement and in deciding whether to execute it. The Parties acknowledge that they have an understanding of the facts underlying the Pending Action and this Agreement, and have negotiated in good faith, and that this Agreement represents a good faith settlement with regard to the interests of all Parties to the Agreement.

13. **Entire Agreement.** This document embodies the entire terms and conditions of the Agreement between the Parties, and supercedes any prior documents signed by the parties in the course of resolving Plaintiff's claims against Dow that are, or

could have been, alleged in the Operative Complaint. All words, phrases, sentences, and paragraphs, including the recitals hereto, are material to the execution of this Agreement.

14. **Binding Agreement.** This Agreement shall bind the Parties and each successor and assign of each Party.

15. **Governing Law; Disputes.** This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of California. If any dispute arises out of this Agreement that the Parties are unable to resolve among themselves, the Parties agree to attempt to resolve the dispute through mediation with Judge Alfred Chiantelli (ret.) or another mutually acceptable mediator. If any Party shall ever be in default with respect to this Agreement, and any other Party shall incur expenses, fees and costs or employ legal counsel to make any demand or to otherwise protect or enforce its rights under this Agreement, the Party in default shall pay all such costs and expenses incurred by the other Party, including court costs and reasonable attorneys' fees.

16. **Notices.** All notices, documents, and other papers required to be served pursuant to this Agreement and correspondence shall be sent to the following addresses, or such other addresses as counsel may provide:

For Plaintiff: Duane C. Miller, Esq.
Miller, Axline & Sawyer
1050 Fulton Ave., Suite 100
Sacramento, CA 95825

For Dow: Nicholas D. Kayhan, Esq.
Filice Brown Eassa & McLeod, LLP
1999 Harrison Street, Suite 1800
Oakland, CA 94612

Legal Department
The Dow Chemical Department
2030 Dow Center
Midland, Michigan 48674

17. **Severability.** In the event that any of the terms, conditions, covenants contained in this Agreement are held to be invalid, then any such invalidity shall not affect any other terms, conditions, covenants contained herein, which shall remain in full force and effect.

18. **Authorization.** Each of the signatories to this Agreement warrants that he or she is fully authorized to enter into the terms and conditions stated herein and to execute this Agreement.

19. **Counterparts.** This Agreement may be executed in counterparts, and all counterparts so executed shall be deemed to be one and the same instrument, binding on all of the Parties hereto, notwithstanding that all of the Parties are not signatories to the

original or the same counterparts. Signatures for such counterparts may be obtained by facsimile transmission. For all purposes, executed pages of the counterparts may be assembled as one document.

20. **Expenses, fees, and Costs.** The Parties to this Agreement shall bear all of their own expenses, fees, and costs.

21. **Confidentiality.** Plaintiff and its counsel of record agree not to disclose the terms of this Settlement Agreement and Release except to the extent they are required to do so under the law or by court order.

22. **Effective Date.** This Agreement is effective upon its execution on the signature lines below.

Dated: 2/3/10

CITY OF REDLANDS
By *Pat Silveira*
Its: Mayor

Dated: 1 March 10

THE DOW CHEMICAL COMPANY
By *Kenneth D. Riley*
Its: Associate General Counsel

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CITY OF REDLANDS

By *Pat Silheath*

Its: Mayor

Dated: _____

THE DOW CHEMICAL COMPANY

By _____

Its: _____