

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement" or "Release") is entered into by and between the County of Fresno, California, by and through its Board of Supervisors ("Claimant"), on the one hand, and The Dow Chemical Company and Shell Oil Company, individually and dba "Shell Chemical Company" (collectively "Settling Parties"), on the other hand. Claimant and Settling Parties are referred to collectively and/or interchangeably herein as a "Party" or the "Parties."

RECITALS

1. Claimant County of Fresno, California, is a California County established pursuant to the Constitution of the State of California. Claimant owns and/or operates a public water system located in an unincorporated area of Fresno County known as "Fresno County Service Area No. 14," and provides drinking water to approximately 44 residences in a subdivision commonly known as "Belmont Manor" (hereinafter "FCSA 14"). The FCSA 14 drinking water system consists of two drinking water wells, Well No. 1 and Well No. 2, along with associated rights to extract and use groundwater from those wells and pumping, storage, treatment and distribution facilities and equipment (the "FCSA 14 Water System").

2. Claimant has submitted a claim to the Settling Parties seeking damages related to the alleged contamination of the FCSA 14 Water System and drinking water supply by the chemical 1,2,3-Trichloropropane ("TCP") (the "Claim").

3. Claimant asserts that the Settling Parties and their product distributors manufactured, marketed, distributed, sold, applied, released, discharged and/or disposed of TCP and/or TCP-containing products that are the alleged source and cause of any TCP well water contamination in the FCSA 14 Water System.

4. The Settling Parties deny any responsibility or liability for any alleged TCP contamination in the FCSA 14 Water System asserted in the Claim. Consideration paid for the release of claims set forth in paragraph 7, below, is not an admission of liability or an admission that any of the facts alleged by Claimant are true.

5. Claimant and the Settling Parties desire to resolve the Claim by settlement and release.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

6. **Payment to Claimant.** Within forty-five (45) days after counsel for the Settling Parties, The Dow Chemical Company ("Dow") and Shell Oil Company, individually and dba Shell Chemical Company ("Shell"), receive a fully executed copy of this Settlement Agreement and Release of Claims, Dow and Shell collectively shall execute a wire transfer to Claimant County of Fresno's designated account in the amount of \$2,000,000. (Specific wiring instructions are provided in Exhibit A hereto and are incorporated herein by reference.)

7. **Release.** Subject to the provisions of this Agreement, on behalf of itself, its predecessors, successors, assigns, representatives and past, present or future agents, Claimant hereby releases Settling Parties, Dow's subsidiary known as "Dow AgroSciences LLC," and their product distributors – i.e., Wilbur-Ellis Company LLC, Occidental Chemical Corporation, Occidental Petroleum Corporation, J.R. Simplot Company, PureGro Company, Nutrien Ag Solutions, Inc. (fka "Crop Production Services, Inc."), Chevron U.S.A. Inc., Trical, Inc. and FMC Corporation - and any and all past, present and future parents, subsidiaries, members, domestic and foreign corporations, divisions, affiliates, partners, joint ventures, stockholders, predecessors, successors, assigns, insurers, officers, directors, employees, attorneys, agents, representatives, and any other person, firm or corporation with whom they have been, are now, or may hereinafter be affiliated (collectively, "Released Parties") 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 Claimant against the Released Parties, including but not limited to all allegations associated with TCP or TCP-containing products manufactured, marketed, distributed, sold, applied, released, discharged and/or disposed of by the Released Parties, related to any past, present, continuing and/or future presence of TCP or any other contamination from TCP-containing products in the past, present or future wells of FSCA 14 ("Released Claims").

8. **California Civil Code Section 1542.** Each Party acknowledges that it is familiar with the terms of California Civil Code Section 1542, which reads:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Claimant hereby waives the provisions of Section 1542 and releases and relinquishes any rights it may have under that section or any similar law and the application of said Section or law to any future disputes with respect to the Claimant's Released Claims in paragraph 7 above. Settling Parties, and each of them, hereby waive the provisions of Section 1542 and release and relinquish any rights they may have under that section. Each Party acknowledges that before executing this waiver it was fully advised by legal counsel about the effects of waiving the provisions of, and its rights under, Civil Code Section 1542.

9. **Third-Party Interests.** Claimant declares and warrants that, to the best of its knowledge, no other person or entity has had or now has any interest in the Claimant's Released Claims released in paragraph 7 above; and that Claimant has not sold, assigned, transferred, conveyed, or otherwise disposed of any Released Claim released in paragraph 7 above. Claimant hereby agrees to indemnify and hold harmless each Released Party for any attorneys' fees, costs, damages, or other injury incurred as a result of the assertion by a third party of a Released Claim released in paragraph 7 above. Claimant further agrees that it is solely responsible to satisfy or otherwise resolve any and all claims or liens for attorneys' fees or costs asserted in the Pending Action and Claimant agrees to indemnify and hold harmless each Released Party for any such claims or liens. Notwithstanding any other provision set forth herein, Claimant shall have no obligation to indemnify and/or hold harmless any Released Party for any attorneys' fees, costs,

damages, or other injury incurred as a result of the assertion by a third party of any claim for damages, including but not limited to personal injuries or property damage, allegedly caused by, based on or related to the presence of TCP in water the claimant allegedly consumed, purchased or to which they were otherwise exposed.

10. **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.

11. **Entire Agreement.** This document embodies the entire terms and conditions of the Agreement between the Parties, and supersedes any prior agreements, understandings and documents exchanged and/or signed by the Parties in the course of resolving Claimants' claims against the Released Parties that are, or could have been, alleged in the Claim. All words, phrases, sentences, and paragraphs, including the recitals hereto, are material to the execution of this Agreement. This Agreement may not be altered, amended or modified in any respect other than by way of a writing duly executed by all Parties.

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

13. **Governing Law.** This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of California.

14. **Mediation of Disputes.** If any dispute arises out of this Agreement that the Parties are unable to resolve among themselves, the Parties agree to first attempt to resolve the dispute through mediation. For purposes of mediation, the Parties agree to use JAMS, or another mutually agreed-upon mediator. If any Party is found to 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.

15. **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 the County of Fresno:

Daniel C. Cederborg, Esq.
County Counsel
Fresno County, California
2220 Tulare Street, Suite 500
Fresno, CA 93721

For The Dow Chemical Company:

Nicholas D. Kayhan, Esq.

King & Spalding LLP
101 Second Street, 23rd Floor
San Francisco, CA 94105

For Shell Oil Company:

Jay E. Smith, Esq.
Steptoe & Johnson LLP
633 West Fifth Street, Suite 1900
Los Angeles, CA 90071

16. **Construction.** This Agreement shall not be construed against the party or parties whose attorney(s) drafted this Agreement or any portion hereof.

17. **Severability.** In the event that any of the terms, conditions, or covenants contained in this Agreement are held to be invalid, then any such invalidity shall not affect any other terms, conditions, or 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 or electronic 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 related to the Claim.

21. **Confidentiality:** The Parties and their counsel of record agree not to disclose the terms of this Agreement, except that disclosure shall be permitted as follows:

- a. in any proceeding to enforce the terms of this Agreement;
- b. to the extent the disclosing Party is required to do so under the law, including but not limited to the California Public Records Act (California Government Code, § 6250 et seq.) and the Ralph M. Brown Act (California Government Code, § 54950 et seq.), or by court order;
- c. by the Parties to their respective insurers, auditors, financial consultants, attorneys, or lenders, provided, however, that the person(s) to whom this information is disclosed pursuant to this subparagraph “c” shall be advised that this Agreement is confidential, and the Parties agree to use reasonable efforts to have such person(s) agree to be bound by such confidentiality; and

d. by mutual written agreement of the Parties.

22. **Effective Date.** The latest date noted on the signature lines below shall be the "Effective Date" of this Agreement, and this Agreement shall be deemed in effect as of the Effective Date as defined herein.

Dated: 10-8-19

COUNTY OF FRESNO

ATTEST:
BERNICE E. SEIDEL
Clerk of the Board of Supervisors
County of Fresno, State of California

By Susan Bishop
Deputy

By 
Nathan Magsig, Chairman of the Board
of Supervisors of the County of Fresno

Dated: _____

THE DOW CHEMICAL COMPANY

By _____

Its: _____

Dated: _____

SHELL OIL COMPANY, individually and
dba SHELL CHEMICAL COMPANY

By _____

Its: _____

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22. **Effective Date.** The latest date noted on the signature lines below shall be the "Effective Date" of this Agreement, and this Agreement shall be deemed in effect as of the Effective Date as defined herein.

Dated: _____

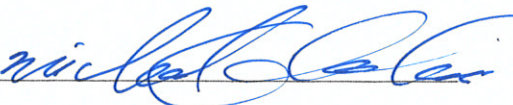
COUNTY OF FRESNO

By _____

Its: _____

Dated: 11/1/2019

THE DOW CHEMICAL COMPANY

By 

Its: Michael A. Glackin
Associate General Counsel

Dated: 10-8-19

SHELL OIL COMPANY, individually and
dba SHELL CHEMICAL COMPANY

By Karen A Benetti

Its: Attorney in Fact

EXHIBIT A

The incoming wiring information for the County of Fresno general account is:

Bank Name:	Bank of the West
Bank Address:	2035 West Fresno Street, Fresno, California 93721
ABA / Routing #:	121100782
BIC / SWIFT Code:	N/A
Beneficiary Name:	For the Account of Treasurer of Fresno County
Beneficiary Account #:	097000970
Memo:	County of Fresno FSCA 14