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ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 21 1993

RONALD G. OVERMOLT, Exec. Clk/Clerk  
By Adrienne Palmer

8 Attorneys for Plaintiffs  
People of the State of California

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13 Attorneys for Plaintiffs  
Environmental Defense Fund and  
14 Natural Resources Defense Council

15 [SEE ATTACHED FOR ADDITIONAL  
COUNSEL]

16  
17 SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA

18	PEOPLE OF THE STATE OF CALIFORNIA	)	Consolidated Cases
19	ex. rel. DANIEL E. LUNGREN,	)	
20	Attorney General of the State of	)	No. 733686-7
	California,	)	
	Plaintiffs,	)	
	vs.	)	
21	AERMOTOR PUMPS AND WATER SYSTEMS,	)	
22	et al	)	
	Defendants.	)	
23	<hr/> ENVIRONMENTAL DEFENSE FUND and	)	No. 733842-9
24	NATURAL RESOURCES DEFENSE COUNCIL,	)	
25	individually and on behalf of the	)	
	general public,	)	<u>CONSENT JUDGMENT</u>
	Plaintiffs,	)	
26	vs.	)	
27	STA-RITE, INC.; et al	)	
	Defendants.	)	
28	<hr/>	)	

1 ALBERT H. MEYERHOFF, State Bar No. 54134  
GRAHAM A. BOYD, State Bar No. 167727  
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10 Attorneys for Plaintiff  
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15 Attorneys for Plaintiffs  
Environmental Defense Fund and  
16 Natural Resources Defense Council

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1           The People of the State of California, ex rel. Daniel E.  
2 Lungren ("People"), Plaintiff Environmental Defense Fund ("EDF"),  
3 Plaintiff Natural Resources Defense Council ("NRDC"), and  
4 Defendant Aermotor Pumps Inc. (erroneously named in the action  
5 described at 1.2 below as Aermotor Pumps and Water Systems)  
6 ("Defendant"), collectively referred to as "the Parties" hereby  
7 stipulate as follows:

8       1. Introduction

9           1.1 As used herein, the phrases "Submersible Water Well  
10 Pumps" or "Submersible Pumps," shall refer to pumps, submerged in  
11 a well, which are intended primarily to deliver water for  
12 household use and consumption.

13          1.2 On or about February 15, 1994, EDF and NRDC served a 60-  
14 Day Notice on the People, Defendant, and others, alleging that  
15 Defendant had violated Proposition 65 by virtue of the sale of  
16 certain Submersible Water Well Pumps in California.

17          1.3 Defendant represents that during the period of alleged  
18 violation of Proposition 65 (July 27, 1988 to March 31, 1994),  
19 there were four distinct owners of the Defendant manufacturing  
20 facilities (collectively referred to as "Aermotor Pumps"),  
21 including Tyco International, Ltd. (2/86-10/88); AMW Pump Co.  
22 (10/88-11/91); Crane Pumps & Systems, Inc. (previously Burks  
23 Pumps, Inc.) (11/91-10/92); and Aermotor Pumps, Inc. (10/92-  
24 3/31/94).

25          1.4 On April 18, 1994, plaintiffs People of the State of  
26 California filed a civil action entitled People of the State of  
27 California, ex rel. Daniel E. Lungren v. Aermotor Pumps and Water  
28 Systems, et al., No. 733686-7; and on the same day, plaintiffs  
EDF and NRDC filed a civil action entitled EDF and NRDC v. Sta-

1 Rite, Inc., et al., No. 733842-9 (hereinafter together referred  
2 to as the "Complaints.") Both actions allege that Submersible  
3 Water Well Pumps manufactured by the Defendant violate California  
4 law: the People alleged violations of California Health and  
5 Safety Code section 25249.5 et seq. ("Proposition 65") and of the  
6 Business & Professional Code sections 17200 et seq. ("Unfair  
7 Competition Act"); EDF and NRDC alleged violations of the Unfair  
8 Competition Act as well as other violations of law. Defendant  
9 denied and continues to deny those allegations.

10 1.5 On or about June 1, 1994, Defendant and EDF and NRDC  
11 executed a stipulation, wherein Defendant stipulated that,  
12 effective as of the signing of the stipulation, it "will ship for  
13 sale in California only 4" and 6" Submersible Pumps that meet the  
14 criteria set out in paragraph 3 of this stipulation. Within one  
15 week after the signing of this stipulation, Defendant will have  
16 recalled from its California distributors . . . all of the  
17 existing models of 4" and 6" Submersible Pumps . . . which are  
18 the subject of this action."

19 1.6 Defendant is a corporation that employs more than ten  
20 persons and offers Submersible Water Well Pumps for sale within  
21 the State of California.

22 1.7 The Complaints allege that Defendant, through the sale  
23 to consumers in California of certain Submersible Water Well  
24 Pumps violated provisions of Proposition 65, the Unfair  
25 Competition Act, or both, by knowingly and intentionally exposing  
26 persons to a chemical known to the State of California to cause  
27 reproductive toxicity, without first providing a clear and  
28 reasonable warning to such individuals, and by knowingly

1 discharging a chemical known to cause reproductive toxicity into  
2 a source of drinking water. Defendant denied those allegations,  
3 asserted certain affirmative defenses, and denied that it was in  
4 violation of Proposition 65, the Unfair Competition Act, or any  
5 other law. The purpose of this Consent Judgment is to resolve  
6 the Parties' disagreements, with each party continuing to assert  
7 its position is correct, and with no party conceding anything  
8 with respect to the allegations and defenses that have been  
9 asserted.

10 1.8 On June 13, 1994, pursuant to stipulation of the  
11 Parties, the Court consolidated the actions for pretrial  
12 purposes. The Parties hereby agree, and the Court hereby orders,  
13 that these actions are consolidated for purposes of entering this  
14 single Consent Judgment.

15 1.9 For purposes of this Consent Judgment only, the Parties  
16 stipulate that this Court has jurisdiction over the allegations  
17 of violations contained in the Complaints and personal  
18 jurisdiction over Defendant as to the acts alleged in the  
19 Complaints, that venue is proper in the County of Alameda, and  
20 that this Court has jurisdiction to enter this Consent Judgment  
21 as a resolution of the allegations contained in the Complaints.

22 1.10 The Parties enter into this Consent Judgment pursuant to  
23 a full settlement of disputed claims between the Parties as  
24 alleged in the Complaints for the purpose of avoiding prolonged  
25 litigation and the incurring of further costs. By execution of  
26 this Consent Judgment, Defendant does not admit any violation of  
27 Proposition 65, the Unfair Competition Act, or any other cause of  
28 action contained in the Complaints and specifically denies that

1 it has committed any such violation. Nothing in this Consent  
2 Judgment shall be construed in any manner, directly or  
3 indirectly, by implication or otherwise, as an admission by  
4 Defendant of any fact, issue of law or violation of law, nor  
5 shall compliance with this Consent Judgment constitute or be  
6 construed as an admission by Defendant of any fact, issue of law,  
7 or violation of law. Nothing in this Consent Judgment shall  
8 prejudice, waive or impair any right, remedy or defense Defendant  
9 may have in any other or future legal proceedings. However, this  
10 paragraph shall not diminish or otherwise affect the obligations,  
11 responsibilities and duties of Defendant under this Consent  
12 Judgment.

13 1.11 Defendant represents that as of June 1, 1994, none of  
14 the Submersible Pumps that are the subject of these Complaints  
15 remains anywhere within Defendant's distribution system in  
16 California.

17 2. Injunctive Relief

18 2.1 After the date on which the Court enters this Consent  
19 Judgment, Defendant shall not offer for sale in California any  
20 Submersible Pump unless it meets one of the criteria set forth in  
21 paragraph 2.2 below.

22 2.2 The criteria referred to in paragraph 2.1 are:

23 2.2.1 the pump contains less than 0.05% (1/20 of 1%)  
24 lead by weight in any component; or

25 2.2.2 the pump, when tested under the appropriate  
26 protocols set forth in ANSI/NSF 61-1992 for static  
27 testing, with flow normalization ( $V_f$ ) equal to the  
28 number of gallons delivered by the pump in one minute of  
its rated capacity, yields a result lower than 1.0 parts  
per billion (1.0 micrograms per liter) lead  
concentration.

1           2.3 The criterion stated in paragraph 2.2.2 above is based  
2 on determinations specific to the particular laboratory test used  
3 and factors unique to Submersible Pumps. No party shall be  
4 deemed to have agreed that the test method set forth in paragraph  
5 2.2.2 constitutes a "method of analysis" as defined in 22  
6 California Code of Regulations, Section 12901.

7           2.4 The criteria stated in paragraph 2.2 are the product of  
8 negotiation and compromise and are accepted by the Parties,  
9 including the Attorney General in the name of the People of the  
10 State of California, for purposes of resolving issues disputed in  
11 this specific matter only, and shall not be used for any other  
12 purpose, in any other matter.

13       3. California Public Health

14           3.1 In compromise and settlement of the prayers of the  
15 complaint for restitution and disgorgement to affected members of  
16 the public, Defendant shall make the following payment: thirty  
17 days after entry of this Consent Judgment, Defendant shall pay  
18 \$25,000 to the California Public Health Foundation, a tax-exempt  
19 charitable organization under section 501(c)(3) of the Internal  
20 Revenue Code, to be used by the California Public Health Trust  
21 ("Trust"), for activities related to lead in water as selected by  
22 the Trust and with the consent of the Attorney General, EDF and  
23 NRDC. Payment shall be made by delivery of certified funds  
24 payable to the California Public Health Foundation, 2001 Addison  
25 Street, Berkeley, California, attention James Simpson, General  
26 Counsel.

27       / / /

28       / / /

1     4.   Payment of Costs and Fees

2           4.1   As reimbursement of the Attorney General's investigation  
3   and expert witness costs, Defendant shall pay the sum of \$5,000.  
4   Said payment shall be made no later than thirty days after entry  
5   of Consent Judgment, and at the Attorney General's request, shall  
6   be delivered to the California Public Health Foundation,  
7   attention James Simpson, General Counsel, 2001 Addison Street,  
8   Berkeley, California 94704, payable to the "Environmental Health  
9   Account."

10          4.2   No later than thirty days after entry of the Consent  
11   Judgment, Defendant shall pay to EDF and NRDC the sum of \$32,500  
12   payable to Rogers, Joseph, O'Donnell & Quinn as Trustee for the  
13   Environmental Defense Fund, Inc. and Natural Resources Defense  
14   Council, and delivered to Margot Wenger, Esq., Rogers, Joseph,  
15   O'Donnell & Quinn, 311 California Street, 10th Floor, San  
16   Francisco, California 94104, as compensation for attorneys' fees  
17   and costs incurred in the prosecution and investigation of this  
18   matter.

19          4.3   Except as otherwise provided in this paragraph, each  
20   party shall bear its own costs and fees.

21     5.   Other Payments

22           Pursuant to Health and Safety Code Section 25249.7(b), based  
23   on section 25249.6, Defendant shall pay the sum of \$6,250,  
24   delivered to the Office of the Attorney General, attention Edward  
25   G. Weil, Deputy Attorney General, 2101 Webster Street, 12th  
26   Floor, Oakland, California 94712, payable to the Attorney General  
27   of the State of California. Said payment shall be made no later  
28   than thirty days after entry of the Consent Judgment.



1       6. Modification of Judgment

2           This Consent Judgment may be modified upon written approval  
3 of the Parties and upon entry of a modified Consent Judgment by  
4 the court thereon, or upon motion of any party as provided by law  
5 and upon entry of a modified Consent Judgment by the court.

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7       7. Additional Enforcement Actions:  
8           Continuing Obligations

9           By entering into this Consent Judgment, neither the People  
10 nor EDF nor NRDC waive any right to take further enforcement  
11 actions either jointly or separately on any violations not  
12 covered by this Consent Judgment and Complaints. Nothing in this  
13 Consent Judgment shall be construed as diminishing Defendant's  
14 continuing obligation to comply with Proposition 65 or the Unfair  
15 Competition Act in its future activities.

16       8. Enforcement of Judgment

17           People or EDF or NRDC, (or EDF and NRDC jointly) may, by  
18 motion or Order to show cause before the Superior Court of  
19 Alameda County, enforce the terms and conditions contained in  
20 this Consent Judgment. However, if the People file a motion with  
21 respect to a violation of this Consent Judgment, EDF and NRDC  
22 shall not file a separate motion, but shall have the right to  
23 intervene in the People's motion. In any action brought to  
24 enforce this Consent Judgment, the enforcing party or Parties may  
25 seek whatever fines, costs, penalties or remedies are provided by  
26 law for failure to comply with this Consent Judgment; and where  
27 said violations constitute future violations of Proposition 65 or  
28 the Unfair Competition Act or other laws independent of this  
Consent Judgment and/or those alleged in the Complaints, the

1 enforcing Party or Parties are not limited to enforcement of this  
2 Consent Judgment, but may seek in another action whatever fines,  
3 costs, penalties or remedies are provided by the law for failure  
4 to comply with Proposition 65, the Unfair Competition Act or  
5 other laws.

6 9. Application of Judgment

7 This Consent Judgment shall apply to and be binding upon the  
8 Parties, their divisions, subdivisions, and subsidiaries, and the  
9 successors or assigns of any of them.

10 10. Authority to Stipulate to Judgment

11 Each signatory to this Consent Judgment certifies that he or  
12 she is fully authorized by the party he or she represents to  
13 stipulate to this Consent Judgment and to enter into and execute  
14 this Consent Judgment on behalf of the party represented and  
15 legally to bind that party.

16 11. Claims Covered

17 This Consent Judgment is a final and binding resolution  
18 between the People, EDF and NRDC (bringing action in the public  
19 interest under Health and Safety Code section 25249.7(d) and  
20 under Business and Professions Code section 17204) and Defendant,  
21 regarding all claims alleged in the Complaints and any alleged  
22 violation of Proposition 65, Business and Professions Code  
23 Sections 17200 et seq. and any common law claim allegedly  
24 derivative of Business and Professions Code Sections 17200 et  
25 seq. or independent thereof, arising from Defendant's alleged  
26 failure to warn of exposure to lead from use of any Submersible  
27 Water Well Pumps or any alleged discharge or release of lead into  
28 any source of drinking water from its Submersible Water Well

1 Pumps pursuant to Proposition 65. This Consent Judgment is  
2 applicable to Submersible Water Well Pumps manufactured or sold  
3 by Defendant, or Aermotor Pumps (as defined in section 1.3  
4 above), or predecessors in interest, and/or any entity within its  
5 chain of distribution, including but not limited to past and  
6 present distributors, retailers, dealers and installers  
7 (including but not limited to well drillers).

8 12. Retention of Jurisdiction

9 This Court shall retain jurisdiction of this matter to  
10 implement this Consent Judgment.

11 13. Dismissal of Goulds Pumps v. Superior Court

12 A petition for writ of mandate in Goulds Pumps, Inc., v.  
13 Superior Court, First Appellate District, Division Four,  
14 No. A067951, is pending pursuant to the alternative writ issued  
15 by that court on February 28, 1995. Dismissal of the writ is a  
16 material element of the Parties' agreement to resolve this action  
17 by the Consent Judgment. All Parties enter into this Agreement  
18 with the understanding and agreement that immediately upon  
19 execution of this Consent Judgment by the Parties, Goulds Pumps  
20 shall file with the Court of Appeal, First District, Division  
21 Four, the appropriate motion seeking to dismiss its petition. If  
22 this motion is not granted, this Consent Judgment shall be  
23 vacated upon the request of EDF and NRDC, as to EDF and NRDC.

24 14. Provision of Notice

25 14.1 When any party is entitled to receive any notice under  
26 this Consent Judgment, the notice shall be sent to the person and  
27 address set forth in this paragraph. Any party may change the  
28 person and address to whom notice is to be sent by sending each

1 other party notice by certified mail, return receipt requested.  
2 Said change shall take effect for any notice mailed at least five  
3 days after the date the return receipt is signed by the party  
4 receiving the change.

5 14.2 Notices shall be sent to the following:

6 For the Attorney General:

7 Edward G. Weil  
8 Deputy Attorney General  
9 2101 Webster Street, 12th Floor  
10 Oakland, California 94612

11 For Aermotor:

12 Michael A. Campos, Esq.  
13 GRAHAM & JAMES  
14 400 Capitol Mall, 24th Floor  
15 Sacramento, CA 95814

16 For EDF and NRDC:

17 David Roe, Esq.  
18 Environmental Defense Fund, Inc.  
19 5655 College Avenue, Suite 304  
20 Oakland, CA 94618

21 Albert H. Meyerhoff, Esq.  
22 Natural Resources Defense Council  
23 71 Stevenson Street, Suite 1825  
24 San Francisco, CA 94105

25 15. Approval by Court

26 If this Consent Judgment is not approved by the Court, then  
27 no part of this document shall be of any force or effect.

28 16. Execution in Counterparts

The stipulations to this Consent Judgment may be executed in counterparts, which taken together shall be deemed to constitute one document.

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IT IS SO STIPULATED:

Dated: \_\_\_\_\_

AERMOTOR PUMPS, INC.

By: \_\_\_\_\_  
Mike O. Hickman, Vice President

Dated: July 21, 1995

DANIEL E. LUNGREN  
Attorney General  
RODERICK E. WALSTON  
Chief Assistant Attorney General  
THEODORA BERGER  
Assistant Attorney General  
EDWARD G. WEIL  
SUSAN S. FIERING  
Deputy Attorneys General

By: Edward G. Weil  
EDWARD G. WEIL  
Deputy Attorney General  
Attorneys for the People of the  
State of California ex rel.  
Daniel E. Lungren

Dated: \_\_\_\_\_

ENVIRONMENTAL DEFENSE FUND

By: \_\_\_\_\_  
Frederic Krupp, Executive Director

Dated: 7/18/95

NATURAL RESOURCES DEFENSE COUNCIL

By: John Adams  
John Adams, Executive Director

Approved as to form:

Dated: July 21, 1995

ROGERS, JOSEPH, O'DONNELL & QUINN

By: Margot Wenger  
~~Margot Wenger~~ NEIL H. WEINSTEIN  
Attorneys for Environmental Defense  
Fund and Natural Resources Defense  
Council, Plaintiffs in Case  
No. 733842-9

GRAHAM & JAMES

By: Michael A. Campos (ESCO)  
Michael A. Campos  
Attorneys for Aermotor Pumps, Inc.

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IT IS SO STIPULATED:

Dated: \_\_\_\_\_

AERMOTOR PUMPS, INC.

By: \_\_\_\_\_  
Mike O. Hickman, Vice President

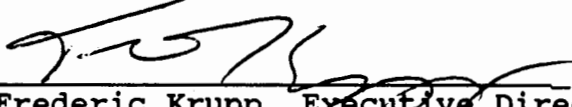
Dated: \_\_\_\_\_

DANIEL E. LUNGREN  
Attorney General  
RODERICK E. WALSTON  
Chief Assistant Attorney General  
THEODORA BERGER  
Assistant Attorney General  
EDWARD G. WEIL  
SUSAN S. FIERING  
Deputy Attorneys General

By: \_\_\_\_\_  
EDWARD G. WEIL  
Deputy Attorney General  
Attorneys for the People of the  
State of California ex rel.  
Daniel E. Lungren

Dated: \_\_\_\_\_

ENVIRONMENTAL DEFENSE FUND

By:   
Frederic Krupp, Executive Director

Dated: \_\_\_\_\_

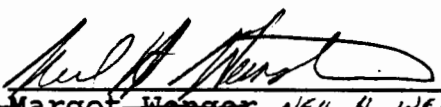
NATURAL RESOURCES DEFENSE COUNCIL

By: \_\_\_\_\_  
John Adams, Executive Director

Approved as to form:

Dated: \_\_\_\_\_

ROGERS, JOSEPH, O'DONNELL & QUINN

By:   
~~Margot Wenger~~ NEIL H. WEINSTEIN  
Attorneys for Environmental Defense  
Fund and Natural Resources Defense  
Council, Plaintiffs in Case  
No. 733842-9

GRAHAM & JAMES

By: \_\_\_\_\_  
Michael A. Campos  
Attorneys for Aermotor Pumps, Inc.

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IT IS SO STIPULATED:

Dated: July 18 1995

AERMOTOR PUMPS, INC.

By: Mike O. Hickman  
Mike O. Hickman, Vice President

Dated: \_\_\_\_\_

DANIEL E. LUNGREN  
Attorney General  
RODERICK E. WALSTON  
Chief Assistant Attorney General  
THEODORA BERGER  
Assistant Attorney General  
EDWARD G. WEIL  
SUSAN S. FIERING  
Deputy Attorneys General

By: \_\_\_\_\_  
EDWARD G. WEIL  
Deputy Attorney General  
Attorneys for the People of the  
State of California ex rel.  
Daniel E. Lungren

Dated: \_\_\_\_\_

ENVIRONMENTAL DEFENSE FUND

By: \_\_\_\_\_  
Frederic Krupp  
Executive Director

Dated: \_\_\_\_\_

NATURAL RESOURCES DEFENSE COUNCIL

By: \_\_\_\_\_  
John Adams, Executive Director

Approved as to form:

Dated: \_\_\_\_\_

ROGERS, JOSEPH, O'DONNELL & QUINN

By: Margot Wenger *Nen H. Weinstep*  
Margot Wenger *Nen H. Weinstep*  
Attorneys for Environmental Defense  
Fund and Natural Resources Defense  
Council, Plaintiffs in Case  
No. 733842-9

GRAHAM & JAMES

By: \_\_\_\_\_  
Michael A. Campos  
Attorneys for Aermotor Pumps, Inc.

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IT IS SO ORDERED, ADJUDGED AND DECREED.

JUL 21 1995

Dated: \_\_\_\_\_

**KEN KAWAUCHI**

\_\_\_\_\_  
Judge of the Superior Court