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2005 DEC 28 P 4: 31

AZ CORP COMMISSION  
DOCUMENT CONTROL

8 Attorneys for Coronado Utilities, Inc.

**BEFORE THE ARIZONA CORPORATION COMMISSION**

9 IN THE MATTER OF THE  
 10 APPLICATION OF CORNADO  
 11 UTILITIES, INC. FOR A CERTIFICATE  
 12 OF CONVENIENCE AND NECESSITY  
 13 TO PROVIDE WASTEWATER SERVICE  
 14 IN PINAL COUNTY, ARIZONA.

DOCKET NO: SW-04305A-05-0086

15 IN THE MATTER OF THE  
 16 APPLICATION OF CORONADO  
 17 UTILITIES, INC., AN ARIZONA  
 18 CORPORATION, FOR AUTHORITY TO  
 19 ISSUE SHORT AND LONG-TERM  
 20 DEBT INSTRUMENTS IN  
 21 CONNECTION WITH FINANCING  
 22 THE ACQUISITION OF THE  
 23 WASTEWATER UTILITY PLANT OF  
 24 BHP COPPER, INC. AND  
 25 CONSTRUCTING IMPROVEMENTS  
 26 THERETO.

DOCKET NO. SW-04305A-05-0087

**(Consolidated)**

**NOTICE OF FILING DIRECT  
TESTIMONY OF JOHN W.  
CLINGMAN**

19 Pursuant to the December 20, 2005 Procedural Order, Coronado Utilities, Inc.,  
 20 ("Applicant"), an Arizona corporation, hereby files this Notice of Filing the Direct  
 21 Testimony of John W. Clingman in the above-captioned matter. Attached hereto as  
 22 Exhibit A is the Direct Testimony of John W. Clingman, President of Santec Corporation  
 23 ("Santec"), which responds to concerns expressed by the Commission during its  
 24 December 6, 2005 Open Meeting. Mr. Clingman provides testimony regarding events  
 25 surrounding the death of a Santec employee on October 24, 2001. In addition, Mr.  
 26 Clingman provides testimony concerning actions by the Arizona Division of Occupational

1 Safety and Health, as well as the Arizona Attorney General, and how Santec has  
2 responded in a manner to improve its safety procedures and policies with respect to  
3 permit-required confined space working environments. Finally, Mr. Clingman addresses  
4 why this isolated incident should not prevent the Applicant from obtaining a Certificate of  
5 Convenience and Necessity to provide wastewater treatment services to residents in San  
6 Manuel, Arizona.

7 RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of December, 2005.

8 FENNEMORE CRAIG, P.C.

9  
10 By   
11 Jay L. Shapiro  
12 Patrick J. Black  
13 Attorneys for Coronado Utilities, Inc.

14 ORIGINAL and 15 copies of the foregoing filed  
15 this 28<sup>th</sup> day of December, 2005 with:

16 Arizona Corporation Commission  
17 Docket Control  
18 1200 West Washington Street  
19 Phoenix, Arizona 85007

20 COPIES of the foregoing hand-delivered  
21 this 28<sup>th</sup> day of December, 2005 to:

22 Jeff Hatch-Miller, Chairman  
23 Arizona Corporation Commission  
24 1200 West Washington Street  
25 Phoenix, AZ 85007

26 William A. Mundell, Commissioner  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Marc Spitzer, Commissioner  
Arizona Corporation Commission  
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1 Mike Gleason, Commissioner  
2 Arizona Corporation Commission  
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5 Kristin Mayes, Commissioner  
6 Arizona Corporation Commission  
7 1200 West Washington Street  
8 Phoenix, AZ 85007

9 Christopher Kempley, Chief Counsel  
10 Arizona Corporation Commission  
11 Legal Division  
12 1200 West Washington Street  
13 Phoenix, AZ 85007

14 Ernest Johnson, Director  
15 Utilities Division  
16 Arizona Corporation Commission  
17 1200 West Washington Street  
18 Phoenix, AZ 85007

19 COPIES of the foregoing mailed  
20 this 28<sup>th</sup> day of December, 2005 to:

21 Kim Eggleston  
22 Park Management & Investments  
23 7373 N. Scottsdale Road, Suite A-280  
24 Scottsdale, AZ 85253

25 Gayle Carnes, Editor  
26 San Manuel Miner  
27 P.O. Box 60  
28 San Manuel, AZ 85631

29 Betty Thomas, Chairman  
30 San Manuel Library  
31 108 Fifth Avenue  
32 San Manuel, AZ 85631

33  
34 By Michelle M. E.

35

36

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# EXHIBIT

A

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DOCKET NO. SW-04305A-05-0087

**(Consolidated)**

18  
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21 **TESTIMONY OF JOHN W. CLINGMAN**  
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1 **I. INTRODUCTION.**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. John W. Clingman, 220 Malibu Street, Castle Rock, CO 80109.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by Santec Corporation (“Santec”) as President. I am also a 50%  
6 owner of Santec along with Dwight L. Zemp. Santec is in the business of  
7 designing and installing wastewater treatment facilities to utility customers.  
8 Typically, we design the necessary capacity, then purchase manufactured treatment  
9 modules for connection to a wastewater collection system.

10 **Q. HOW DID YOU GET STARTED IN THE UTILITY INDUSTRY?**

11 A. After graduating from college in Iowa, I moved to Colorado and took a job with  
12 Sanilogical Corporation, a company that built wastewater treatment equipment. I  
13 worked there for 13 years until 1987, when Mr. Zemp and I formed Santec.

14 **Q. WHAT ABOUT PIVOTAL UTILITY MANAGEMENT. WHEN WAS IT  
15 FORMED AND WHAT IS YOUR INTEREST?**

16 A. In 1999, Pivotal Utility Management (“Pivotal”) was formed together by me, Mr.  
17 Zemp and Jason Williamson. Through Pivotal I am a part owner of Pine Meadows  
18 Utility; Verde Santa Fe Wastewater Utility; Bensch Ranch Utility, Sweetwater  
19 Utility and Coronado Utilities, Inc. (“Coronado”), the applicant in this matter.

20 **Q. PLEASE SUMMARIZE YOUR RESPONSIBILITIES AS THEY RELATE  
21 TO PIVOTAL.**

22 A. I have a membership interest but do not provide day-to-day management or  
23 operational services to Pivotal or any of its affiliates, including Coronado. Mr.  
24 Williamson is solely responsible for managing Pivotal’s day-to-day operations.

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1 **Q. HAVE YOU PREVIOUSLY PROVIDED TESTIMONY IN THIS**  
2 **PROCEEDING?**

3 A. No, although I was present at the second hearing in September, 2005, and available  
4 to answer questions concerning the death of Gary Lanser, a Santec employee, on  
5 October 24, 2001, at the Far West Water and Sewer Company, Inc. ("Far West")  
6 wastewater treatment plant in Yuma, Arizona. Prior to that, after the issue was  
7 raised by Staff in June, 2005, I consulted with Staff to discuss the circumstances  
8 surrounding the event, the impacts on Santec and of course, to answer questions  
9 about ongoing safety procedures employed by Santec. After Staff made its  
10 recommendations for additional safety conditions applicable to Coronado, and did  
11 not question me at the second hearing, I concluded that we had sufficiently  
12 addressed any possible connection between the terrible tragedy in Yuma that took  
13 two lives, including Mr. Lanser's, and Coronado's application for a new Certificate  
14 of Convenience & Necessity ("CC&N") to provide wastewater service in San  
15 Manuel, Arizona.

16 **Q. WHY ARE YOU SUBMITTING THIS TESTIMONY AT THIS TIME?**

17 A. Because at the December 6, 2005, Open Meeting, the Commission expressed  
18 concern that the incident involving Santec might negatively impact Coronado's  
19 ownership and operation of a sewer utility system in San Manuel, Arizona.

20 **Q. IS THERE A CONNECTION BETWEEN THE DEATH OF A SANTEC**  
21 **EMPLOYEE IN OCTOBER 24, 2001, AND THE PROVISION OF SEWER**  
22 **SERVICE BY CORONADO?**

23 A. In my opinion, no, and by providing additional information to the Commission at  
24 this time, I hope to convince the Commissioners of this as well.

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1 **II. FATAL ACCIDENT INVOLVING SANTEC EMPLOYEE GARY LANSER.**

2 **Q. PLEASE EXPLAIN THE EVENTS THAT RESULTED IN MR. LANSER'S**  
3 **DEATH ON OCTOBER 24, 2001.**

4 A. Santec had contracted with Far West to rehabilitate and repair three separate  
5 wastewater treatment plants located in the Mesa Del Sol subdivision in Yuma,  
6 Arizona. Santec employees had successfully completed rehabilitation of two of the  
7 treatment plants when work on the third system began the morning of October 24,  
8 2001.

9 Three Santec employees were on site working the entire day with several  
10 Far West employees. At about 5:00 pm, our employees had completed installation  
11 of a new pumping system in the lift station and were working outside the fenced  
12 perimeter on another phase of the project. At that same time, Far West employees  
13 were attempting to put the lift station back into service.

14 Our employees heard excited screams from a Far West employee and ran  
15 back to the lift station to see what had happened. At the lift station, they  
16 discovered that one of the Far West employees had entered the lift station to  
17 remove a sewer plug and was overcome by fumes. Shortly thereafter, another Far  
18 West employee attempted to rescue the first person and was also overcome by  
19 fumes. It was Gary Lanser, our field supervisor, who elected to try to rescue the  
20 two Far West employees. I can only assume Mr. Lanser made this decision on the  
21 spur of the moment, under unimaginable pressure, and elected not to contact Mr.  
22 Zemp or myself, and ignored the other Santec employees who pleaded with him  
23 not to enter the lift station.

24 After entering the lift station, Mr. Lanser was also overcome by the fumes.  
25 Mr. Lanser and one of the Far West employees died as a result of exposure to the  
26

1 sewer gases in the lift station, even though one of the Far West employees who had  
2 entered the lift station was safely rescued.

3 **Q. WHAT WAS MR. LANSER'S ROLE WITH THE COMPANY?**

4 A. Mr. Lanser was a Professional Engineer responsible for overseeing the setup and  
5 startup of wastewater treatment facilities designed and manufactured by Santec.  
6 Prior to his employment with Santec, Mr. Lanser worked in the hazardous  
7 materials handling and disposal industry.

8 **Q. DOES FACILITY REHABILITATION CONSTITUTE A SIGNIFICANT**  
9 **PORTION OF SANTEC'S BUSINESS ACTIVITIES?**

10 A. No. Santec's primary business is the design, manufacture and installation of  
11 modular wastewater treatment plants. Rehabilitation and repair of operating  
12 facilities is a small part of our total business activity. For that reason, we are  
13 infrequently working on site where permit-required confined space entries are  
14 required.

15 **Q. DOES SANTEC PROVIDE ANY OPERATIONAL SUPPORT FOR**  
16 **WASTEWATER TREATMENT FACILITIES?**

17 A. Generally, no – our employees do not operate wastewater treatment facilities.  
18 Santec employees may be required to be on-site to observe a wastewater treatment  
19 facility in operation in order to identify and determine reasons a plant is not  
20 functioning properly. Furthermore, it was and is Santec's policy not to allow  
21 employees to enter permit-required confined areas at these facilities, which are  
22 areas where hazardous substances are present and safety equipment is required.

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1 Q. IF SANTEC'S POLICIES AND PROCEDURES PROHIBITED ENTRY  
2 INTO CONFINED SPACES WHEN HAZARDOUS GASES WERE  
3 PRESENT, HOW WAS MR. LANSER KILLED?

4 A. Because Mr. Lanser made a decision to ignore the policy and attempt a heroic  
5 rescue.

6 Q. MR. CLINGMAN, AREN'T YOU JUST BLAMING THE VICTIM?

7 A. No, I am just stating the facts. Mr. Zemp and I lost more than our employee that  
8 day, we lost a close personal friend and I would never attempt to trivialize that loss.  
9 Unfortunately, the inescapable truth is that Gary Lanser made a split second  
10 decision – contrary to Santec's policy – to enter a hazardous confined area in a  
11 rescue attempt. While I can hardly imagine the pressure Mr. Lanser felt he was  
12 under, I can say that under no circumstance would either Mr. Zemp or I have  
13 authorized such action, since working in hazardous confined areas is not permitted  
14 for our employees.

15 Q. DID MR. LANSER HAVE ANY SAFETY TRAINING?

16 A. Yes, Mr. Lanser was trained in confined space entry, having completed the 40 hour  
17 Occupational Safety and Health Administration ("OSHA") course, as well as a  
18 number of 8 hour "refresher" courses. Mr. Lanser received his initial training  
19 during his previous employment with a hazardous materials company specializing  
20 in dealing with confined space entry.

21 Q. WAS SAFETY EQUIPMENT AVAILABLE TO MR. LANSER ON THE  
22 DATE OF THE ACCIDENT?

23 A. Because our employees were not supposed to enter permit required confined space  
24 areas, we did not provide the type of safety equipment that would have allowed Mr.  
25 Lanser to enter the confined space area safely. Of course, such  
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1 equipment is designed to allow planned entry into hazardous areas. It is doubtful  
2 such equipment would have aided Mr. Lanser in his emergency rescue attempt.

3 **Q. SO SANTEC RELIED ON ITS SAFETY POLICY TO PROTECT ITS**  
4 **EMPLOYEES?**

5 A. Because Santec has directed employees not to enter into any permit-required  
6 confined areas. A copy of Santec's written safety policies and procedures in place  
7 at that time of the accident are attached hereto as Clingman Exh. 1. Again, if a  
8 Santec employee encountered dangerous conditions during the course of his or her  
9 work, he or she was instructed to contact either myself or Dwight Zemp to  
10 determine what procedures might be employed to alleviate the dangerous  
11 conditions. However, if these procedures proved unsuccessful and the dangerous  
12 conditions were still present, employees would be directed to discontinue work  
13 until such time that the conditions were improved.

14 **III. EVENTS FOLLOWING MR. LANSER'S DEATH**

15 **Q. WHAT ROLE DID YOU PLAY IN RESPONDING AFTER THE**  
16 **ACCIDENT OCCURRED?**

17 A. While Mr. Zemp returned to Colorado to assist Mr. Lanser's family and oversee  
18 the response activity in Santec's home office, I immediately flew to Yuma,  
19 Arizona. Inspectors from the Arizona Division of Occupational Safety and Health  
20 ("ADOSH") inspectors visited the site the next day to investigate the accident. I  
21 was there to assist in the investigation, and represent Santec to answer any  
22 questions that the ADOSH inspector had.

23 **Q. WHAT WERE THE RESULTS OF ADOSH'S INVESTIGATION?**

24 A. Santec was cited for alleged violations related to permit-required confined areas.  
25 Because it was against Santec's policy to even allow its employees to enter such  
26 areas, Mr. Zemp and I did not believe the cited OSHA regulations applied.

1           However, due to the circumstances of the accident, various business-related  
2           concerns and the realization that compliance with such regulations would improve  
3           the overall safety of its employees, we elected to settle the administrative case and  
4           move forward. On October 23, 2002, the Industrial Commission of Arizona issued  
5           an order, based on Santec's settlement with ADOSH, concluding that Santec had  
6           violated OSHA regulations. Santec was fined \$26,250, which was promptly paid.  
7           A copy of the order is attached hereto as Clingman Exh. 2.

8           **Q. DID SANTEC CHANGE ITS SAFETY POLICY AND PROCEDURES AS A**  
9           **RESULT OF THE ADOSH REPORT?**

10          A. After reviewing the circumstances of the accident, speaking with ADOSH  
11          representatives, and reviewing numerous documents and guidelines related to  
12          safety issues in permit-required confined spaces, we concluded that additional  
13          safety measures were warranted. These additional safety measures are formalized  
14          in Santec's current written safety policy, attached hereto as Clingman Exh. 3.

15                 Santec has gone to great lengths to make sure every employee or contractor  
16          places the highest possible priority on workplace safety. Before they are in a  
17          position to face hazardous circumstances, all employees are required to attend  
18          safety training classes to better understand the safety issues they are likely to  
19          encounter in their work and to learn how to respond, safely, when they encounter  
20          such a situation. We have also purchased safety equipment, trained our employees  
21          in its use and require that it be available on site at all times. However, despite our  
22          acknowledging and complying with the recommendations of ADOSH and OSHA,  
23          mandating that this safety equipment is always available to and for our employees'  
24          safety, it remains our policy that hazardous permit-required confined space is  
25          strictly prohibited.

26

1 **Q. WHAT HAPPENED FOLLOWING YOUR SETTLEMENT WITH THE**  
2 **INDUSTRIAL COMMISSION?**

3 A. Criminal proceedings against Santec, Mr. Zemp and me were brought by the  
4 Arizona Attorney General's office. Mr. Zemp and I were initially indicted by the  
5 Grand Jury, however, the Judge ruled that the Attorney General had not properly  
6 disclosed to the Grand Jury all the facts surrounding our involvement in the matter  
7 and remanded the indictment back to the Grand Jury. The Grand Jury was  
8 unwilling to support an indictment the second time, after full disclosure of the facts  
9 concerning our involvement and, as individuals, the charges against us were  
10 dismissed.

11 **Q. DID THE CRIMINAL PROCEEDING AGAINST SANTEC PROCEED?**

12 A. Yes, for roughly three years. Ultimately, under the weight of tremendous legal  
13 expense – and considerable deliberation between myself, Mr. Zemp and our  
14 attorney – we decided to enter a plea agreement on behalf of Santec. In August  
15 2005, Santec entered a plea of guilty/no contest to “Violating Safety Standard and  
16 Causing The Death of an Employee” and was sentenced to two (2) years probation  
17 and to pay restitution of \$30,000 to the victims, which was promptly paid. The  
18 sentencing order and proof of payment are attached hereto as Clingman Exh. 4.

19 **Q. WHY DID SANTEC PLEAD GUILTY RATHER THAN GO TO TRIAL?**

20 A. Santec is a small business with limited resources. By August 2005, Santec had  
21 spent more than \$250,000 on legal fees, plus the tremendous amount of manpower  
22 required of Mr. Zemp and myself. We were also extremely sensitive to the impact  
23 of a trial on Mrs. Lanser, which would have further prolonged her grief. We made  
24 a decision to plead in an attempt to put this horribly unfortunate accident behind us.  
25 I remain convinced that this decision was in the best interests of everyone involved.

26

1 Q. ARE SANTEC'S EMPLOYEES SAFER TODAY THAN THEY WERE  
2 BEFORE THE ACCIDENT THAT COST MR. LANSER HIS LIFE?

3 A. Yes, to the greatest extent possible. We have reiterated and strengthened our  
4 prohibition against hazardous permit-required confined space entry. We have  
5 provided safety equipment and training. We all have a greater sense of the dangers  
6 of entering such areas without taking adequate safety procedures. Beyond that, we  
7 must rely on our employees to adhere to the applicable policies and procedures, as  
8 does any business where employees can be exposed to hazardous materials.

9 **IV. RELATIONSHIP OF SANTEC INCIDENT TO THIS DOCKET.**

10 Q. DO YOU BELIEVE THAT MR. LANSER'S DEATH OR SANTEC'S PLEA  
11 AGREEMENT ADVERSELY IMPACT CORONADO'S ABILITY TO  
12 PROVIDE WASTEWATER TREATMENT SERVICES TO RESIDENTS IN  
13 SAN MANUEL, ARIZONA?

14 A. Absolutely not. I accept the Commission's desire to know more about the accident  
15 that occurred on October 24, 2001. For this reason, I was entirely cooperative  
16 when Staff sought information, and I made myself available as a witness at the  
17 hearing. But gathering information and making sure that Coronado has adequate  
18 safety measures in place to minimize the possibility of a similar incident should be  
19 the extent of that inquiry. I do not believe that the commonality of ownership  
20 between Santec and Pivotal, and thereby Coronado, through Mr. Zemp and myself,  
21 leads to a concern that similar events will occur at a Coronado facility.

22 Q. WHY IS THAT MR. CLINGMAN?

23 A. Pivotal has ownership interests in and operates several Arizona water and  
24 wastewater utilities. These facilities have an excellent track record of compliance  
25 with the Commission's rules and orders and health and safety regulations at the  
26 federal, state and local level. Mr. Lanser's death was a horrible tragedy for which

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Mr. Zemp and I have paid both financially and personally. However, it is not evidence of how Pivotal will operate a sewer utility in San Manuel, Arizona. I would also like to point out that Santec has successfully designed and manufactured over two hundred (200) wastewater treatment facilities in the United States and abroad. The unfortunate and tragic events of October 24, 2001, was an isolated incident – one that Santec has worked hard to ensure will not happen again.

**Q. DO YOU BELIEVE THAT THE COMMISSION SHOULD GRANT CORONADO A CC&N?**

A. Yes. Coronado has demonstrated at every stage of this proceeding that it is a fit and proper entity to provide sewer utility service under the requested CC&N, and the evidence clearly shows that the requested CC&N is in the public interest.

**Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

A. Yes.

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# **EXHIBIT**

**1**

## **WORKER SAFETY**

### **CONFINED SPACE WORKING ENVIRONMENT POLICY**

In order to provide information necessary for Santec employees to enjoy a productive and safe working environment each employee working in the field with customers of Santec Corporation is required to read and become familiar with chapter 14, Plant Safety and Good Housekeeping in the manual titled "Operation of Wastewater Treatment Plants, a field study training program, fourth edition, Volume 2.

Field service personnel working with the setup, calibration and start up of equipment at new facilities will need to work in areas where there is a possible risk associated with the area where they are required to work. Each employee should be familiar with potential safety issues typically found in wastewater treatment facilities and to conduct their activities in a safe and prudent manner.

An employee encountering a situation that may constitute an unsafe working environment should immediately contact the Project Manager and if not available John W. Clingman, President at 303-660-9211 at ext. 12 or Dwight L. Zemp Vice President at 303-660-9211 ext. 11 to report the situation and obtain further instructions.

#### **Prohibited Activities**

Entry into any confined space that is or has been in service without approval of the Project Manager, Vice President or President is prohibited.

Each facility Owner / Operator is required by law to have in place and comply with an approved 'Confined Space Entry Program'.

#### **Confined Space Acceptable Activities**

Entry into a confined space associated with a new facility that has not been in service and where there is no possibility of a hazardous atmosphere is permitted.

**CONFINED SPACE GUIDELINES (PRE-ENTRY CHECKLIST)**

**Do not enter a confined space until you have considered every question and have determined the space to be safe to be entered.**

1. Is entry necessary? (yes) (no)
2. Has the space been cleaned before entry? (yes) (no)
3. Has the space been ventilated before entry? (yes) (no)
4. Will ventilation be continued during entry? (yes) (no)
5. Is the air intake for the ventilated system located in an area that is free of combustible dusts, vapors and toxic substances? (yes) (no)
6. Has space been isolated from other systems? (yes) (no)

If the answer to these questions is yes proceed with the work. If the answer to any of these questions is no, no *work in the confined space is allowed until prior clearance is given* from the onsite Project Manager, or John W. Clingman, President, or Dwight L. Zemp, Vice President.

# **EXHIBIT**

**2**

BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA

DIVISION OF OCCUPATIONAL SAFETY )	
AND HEALTH OF THE INDUSTRIAL )	Inspection No. K0234-0004/
COMMISSION OF ARIZONA, )	304944523
Complainant, )	
vs. )	<b>FINDINGS AND ORDER</b>
	<b>CONFIRMING</b>
	<b>SETTLEMENT AGREEMENT</b>
SANTEC CORPORATION, )	
Respondent. )	

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On January 7, 2002, the Division of Occupational Safety and Health of the Industrial Commission of Arizona ("ADOSH") issued six Serious Citations, (one being a grouped citation) to the Respondent Employer. The citations are:

Citation 1, Item 1, alleged a "serious" violation of 29 CFR 1910.146(C)(1) with a corresponding proposed penalty of \$7,000.00. ADOSH alleged in this citation that the employer did not evaluate the workplace to determine if any spaces were permit-required confined spaces.

Citation 1, Item 2, alleged a "serious" violation of 29 CFR 1910.146(C)(4) with a corresponding proposed penalty of \$7,000.00. ADOSH alleged in this citation that when the employer decided that its employees would enter permit spaces, the employer did not develop and implement a written

permit space entry program that complied with 29 CFR 1910.146.

Citation 1, Items 3a and 3b, a grouped citation, alleged a "serious" violations of 29 CFR 1910 (c)(9)(1) for Item 3a and violation of 29 CFR 1910.146(c)(9)(ii) for Item 3b with a corresponding, proposed group penalty of \$7,000.00. ADOSH alleged in this citation item 3a that the employer as a subcontractor did not obtain information regarding permit space hazards from the owner. ADOSH alleged in this citation Item 3b that the employer did not coordinate entry operations in a confined space.

Citation 1, Item 4, alleged a "serious" violation of 29 CFR 1910.146(c)(e)(1) with a corresponding proposed penalty of \$7,000.00. ADOSH alleged in this citation that before entry was authorized, the employer did not document the completion of measures required by 29 CFR 1910.146(d)(3) by preparing an entry permit.

Citation 1, Item 5, alleged a "serious" violation of 29 CFR 1910.146(g)(1) with a corresponding proposed penalty of \$7,000.00. ADOSH alleged in this citation that the employer did not provide training so that all employees whose work was regulated by 29 CFR 1910.146, permit-required confined spaces, acquired the understanding, knowledge and skills necessary for the safe performance of the duties.

The Respondent Employer filed a timely Request for Hearing and formal hearing was scheduled to be convened in Phoenix, Arizona on September 5, 2002 at 10:00 a.m. On <sup>October</sup> ~~September~~ 18, 2002, the parties filed a Settlement Agreement resolving the issues to be determined at hearing.

The undersigned, having fully considered the file, records and all other relevant matters, now enters Findings and Conclusions and Order as follows:

#### FINDINGS AND CONCLUSIONS

1. On <sup>October</sup> ~~September~~ 18, 2002, the parties filed a Settlement Agreement resolving all issues and disputes involved in this matter. The Settlement Agreement appears to be consistent with the provisions and objectives of the Arizona Occupational Safety and Health Act. Accordingly, pursuant to A.A.C. R20-5-827 of the Occupational Safety and Health Rules of Procedure Before The Industrial Commission of Arizona, said Settlement Agreement is by this reference adopted herein and made a part hereof.

2. By the terms of said Settlement Agreement (attached hereto as Exhibit "A" and incorporated herein by this reference), without admitting liability for the

citation, Respondent agrees to pay a reduced penalty in the sum of \$26,250.00.

3. The Respondent represents as a material fact leading to the Settlement Agreement that the violations cited in all Citations, whether admitted or not, have been abated and the company is in compliance as of the date of the Settlement Agreement.

4. The parties acknowledge that the Settlement Agreement entered into and which is approved herewith does not preclude the Division from issuing repeat and/or willful citations for conduct involving violations of the same or a substantially similar condition as that involved in this matter.

ORDER

IT IS HEREBY ORDERED that the Respondent without admission, has accepted a reduced penalty of twenty-five percent for all citations. Further, Citation 1, Items 1, 4 and 5 are "unclassified" rather than serious classifications. The reduced penalty in the total sum of twenty-six thousand two hundred fifty dollars (\$26,250.00) is hereby assessed.

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NOTICE:

Any party dissatisfied with this Decision may request review to the Review Board by filing a written request with the Administrative Law Judge Division of the Industrial Commission within Fifteen (15) Days after service of this Decision as provided by Arizona Revised Statutes, §§ 23-421 C and 23-423 A and B. If no such request is made within the time provided, this Decision becomes final.

By: Harriet T. Turney  
Honorable Harriet Turney  
Presiding Administrative  
Law Judge

DATED AND MAILED IN PHOENIX/TUCSON, ARIZONA, THIS 22nd DAY  
OF OCTOBER, 2002.

LEGAL DIVISION  
THE INDUSTRIAL COMMISSION OF ARIZONA  
POST OFFICE BOX 19070  
800 W. WASHINGTON - SUITE 303  
PHOENIX, ARIZONA 85007-9070  
(602) 542-5781

1 Ronald M. Andersen  
Attorney No. 007165

2  
3 **BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA**

4 DIVISION OF OCCUPATIONAL SAFETY )  
5 AND HEALTH OF THE INDUSTRIAL )  
6 COMMISSION OF ARIZONA, )

7 Complainant, )

Inspection No. K0234-0004/  
304944523

8 vs. )

9 SANTEC CORPORATION, )

10 Respondent. )

**SETTLEMENT AGREEMENT**

11  
12 WHEREAS, the DIVISION OF OCCUPATIONAL SAFETY AND HEALTH of  
13 the Industrial Commission of Arizona (ADOSH) issued six serious  
14 citations (one being a grouped citation), to-wit:

15 Citation 1, Item 1, alleged a "serious" violation of 29 CFR  
16 1910.146(C)(1) with a corresponding proposed penalty of  
17 \$7,000.00. ADOSH alleged in this citation that the employer did  
18 not evaluate the workplace to determine if any spaces were  
19 permit-required confined spaces.  
20

21 Citation 1, Item 2, alleged a "serious" violation of 29 CFR  
22 1910.146(C)(4) with a corresponding proposed penalty of  
23 \$7,000.00. ADOSH alleged in this citation that when the  
24 employer decided that its employees would enter permit spaces,  
25 the employer did not develop and implement a written permit  
26 space entry program that complied with 29 CFR 1910.146.  
27

1 Citation 1, Items 3a and 3b, a grouped citation, alleged a  
2 "serious" violations of 29 CFR 1910 (c)(9)(1) for Item 3a and  
3 violation of 29 CFR 1910.146(c)(9)(ii) for Item 3b with a  
4 corresponding, proposed group penalty of \$7,000.00. ADOSH  
5 alleged in this citation item 3a that the employer as a  
6 subcontractor did not obtain information regarding permit space  
7 hazards from the owner. ADOSH alleged in this citation Item 3b  
8 that the employer did not coordinate entry operations in a  
9 confined space.

10 Citation 1, Item 4, alleged a "serious" violation of 29 CFR  
11 1910.146(e)(1) with a corresponding proposed penalty of  
12 \$7,000.00. ADOSH alleged in this citation that before entry was  
13 authorized, the employer did not document the completion of  
14 measures required by 29 CFR 1910.146(d)(3) by preparing an entry  
15 permit.

16  
17 Citation 1, Item 5, alleged a "serious" violation of 29 CFR  
18 1910.146(g)(1) with a corresponding proposed penalty of  
19 \$7,000.00. ADOSH alleged in this citation that the employer did  
20 not provide training so that all employees whose work was  
21 regulated by 29 CFR 1910.146, permit-required confined spaces,  
22 acquired the understanding, knowledge and skills necessary for  
23 the safe performance of the duties.

24 WHEREAS, Santec Corporation, the Respondent, filed a timely  
25 notice of contest and petition for hearing with respect to the  
26 citation; and  
27

1           WHEREAS, the Respondent and ADOSH now desire to settle this  
2 matter without the necessity of a formal hearing;

3           NOW, THEREFORE, the parties agree as follows:

4           1.   Respondent does not admit the citations above recited  
5 and enters into this Agreement to resolve the dispute.

6           2.   ADOSH will reduce the penalties in all citations  
7 twenty-five percent from an aggregate of \$35,000.00 to  
8 \$26,250.00 (or individually from \$7,000.00 to \$5,250.00).

9           3.   ADOSH will reclassify Citation 1, Items 1, 4, and 5  
10 from a "serious" classification to an "unclassified" status.  
11 The parties acknowledge that the payment is made without  
12 prejudice to the Respondent and, also, that this Settlement  
13 Agreement does not preclude ADOSH from issuing repeat and/or  
14 willful citations for conduct involving violations of the same  
15 or a substantially similar condition as that involved in this  
16 matter.  
17

18           4.   That the Respondent by this Settlement Agreement moves  
19 to withdraw its protest for hearing with regard to the  
20 referenced citation. This withdrawal is conditioned upon the  
21 presiding administrative law judge, pursuant to A.A.C. R20-5-828  
22 of the Occupational Safety and Health Rules of Procedure Before  
23 The Industrial Commission of Arizona waiving the legal effect of  
24 A.A.C. R20-5-817 with regard to this matter and specifically  
25 finding that by entering into this Settlement Agreement  
26 Respondent does not admit the liability for any involved  
27

LEGAL DIVISION  
THE INDUSTRIAL COMMISSION OF ARIZONA  
POST OFFICE BOX 1977  
800 W. WASHINGTON - SUITE 303  
PHOENIX, ARIZONA 85007-9070  
(602) 542-5781

1 citation or penalty and has entered into this Agreement to  
2 resolve the conflict.

3 5. The Respondent represents as a material fact leading  
4 to this Settlement Agreement that the violations cited in all  
5 citations whether admitted or not, have been abated and the  
6 company is in compliance as of the date of this Settlement  
7 Agreement.

8 6. This Settlement Agreement is in furtherance of the  
9 purpose of industrial safety and the Arizona Occupational Safety  
10 and Health Act of 1972.

11 7. This Settlement Agreement is a full and final  
12 determination of this matter and obviates any need for and  
13 constitutes a waiver of the right to hearing or any alternate  
14 determination on the merits of the citation or the stated  
15 penalties.  
16

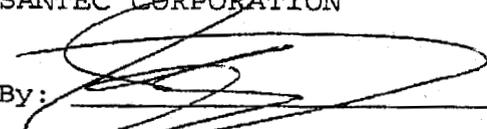
17 8. Payment of the above stated penalty is to be made at  
18 the time of the signing of this agreement.

19 INDUSTRIAL COMMISSION OF ARIZONA  
20 DIVISION OF OCCUPATIONAL SAFETY  
AND HEALTH

21 By:   
22 Ronald M. Andersen, Attorney

23 DATED: \_\_\_\_\_

24 SANTEC CORPORATION

25 By:   
26

27 DATED: 10-11-02

LEGAL DIVISION  
THE INDUSTRIAL COMMISSION OF ARIZONA  
POST OFFICE BOX 19078  
800 W. WASHINGTON • SUITE 303  
PHOENIX, ARIZONA 85007-9070  
(602) 542-5781

1 ORIGINAL hand delivered this  
\_\_\_\_\_ day of September, 2002, to:

2  
3 Honorable Harriet Turney  
4 Presiding Administrative Law Judge  
5 Industrial Commission of Arizona  
6 800 West Washington Street  
7 Phoenix, Arizona 85007

8 Copies mailed/hand delivered this  
\_\_\_\_\_ day of \_\_\_\_\_, 2002, to:

9  
10 Stephen Hoffman, Esq.  
11 Worker, Sitko & Hoffman, L.L.C.  
12 101 North 1<sup>st</sup> Avenue, Ste. 2075  
13 Phoenix, Arizona 85003  
14 Attorney for Respondent

15  
16 Darin Perkins, Director  
17 Division of Occupational Safety and Health  
18 Industrial Commission of Arizona  
19 800 West Washington  
20 Phoenix, AZ 85007

21  
22  
23  
24  
25  
26  
27  
F:\RonA\Santec Corp\OSHA settlement agreement 2001.doc

# **EXHIBIT**

**3**

# ***EMPLOYEE HANDBOOK***

replacement income, temporary disability, permanent partial disability, permanent total disability, and medical expenses.

## **SECTION V - SAFETY**

### **SAFETY REGULATIONS**

#### **GENERAL SAFETY REGULATIONS**

Your safety, on and off the job, is vitally important to your family and to your Company. The following rules are written and enforced to help protect everyone in the building, on Company property, and at customer sites. These may not cover every situation, but they outline most of the precautions you should follow.

- A. Practical jokes, horseplay, running and fighting are forbidden.
- B. All personnel shall wear protective equipment when required to work in designated areas that require such equipment.
- C. Report any known dangerous practice, faulty equipment, machines, etc. to your immediate supervisor.
- D. Observe speed and traffic regulations.
- E. Never distract, interrupt or annoy another worker unnecessarily as it may cause an accident.
- F. No person shall get on, or off, any truck, or other mobile equipment, while it is in motion.
- G. Only authorized personnel shall operate mobile equipment.
- H. No one shall ride trucks of the type not normally rider operated.
- I. Personnel handling chemical or caustic materials shall wear proper protective equipment.
- J. All product and material shall be stacked safely, using proper procedures and never to exceed a safe height.
- K. All employees must read and acknowledge the safety procedures as outline in the Santec Corporation safety program. All employees must attend all safety programs offered by the company and apply the appropriate procedures to their work environment.

### **Worker Safety Confined Space Working Environment Policy**

In order to provide information necessary for Santec employees to enjoy a productive and safe working environment each employee working in the field with customers of Santec Corporation are required to read and become familiar with chapter 14, Plant Safety and Good Housekeeping taken from the Operation of Wastewater Treatment Plants, Field Study Training Manual. A copy of which is attached to this policy sheet. The complete set of Operator training manuals are available in Santec Corporation main office located at 220 Malibu St., Castle Rock, CO 80104.

Field service personnel will typically be working with the setup, calibration and start up of new facilities and therefore many of the risk associated with wastewater treatment facilities will not be encountered, however, each employee should be familiar with safety issues and procedures typically found at wastewater treatment facilities and to conduct their activities in a safe and prudent manner.

Any employee encountering a situation that in the mind of the employee may constitute an unsafe working environment where their safety and health may be at risk should immediately contact either John W. Clingman at 303-660-9211 at ext. 12 or Dwight L. Zemp 303-660-9211 ext 11 to report the situation and obtain further instructions.

#### **Prohibited Activities**

Entry into any confined space associated with a facility that is or has been in service without following and complying with the procedures set forth in chapter 14, "Plant Safety and Good Housekeeping" contained in the manual of Operation of Wastewater Treatment Plants, Field Study Training Program is strictly forbidden. Each facility Owner / Operator is required by law to have a 'Confined Space Entry Program' that must be followed before entering or performing work in a confined space area. The facility Owner / Operator is responsible for cleaning and preparing a confined space for entry and the performance of work.

Entry into a confined space associated with a facility that has been in service and certified as safe for entry and the conductance of work without the use of ventilation equipment is prohibited.

#### **Confined Space Acceptable Activities**

Entry into a confined space associated with a new facility that has not been in service and where there is no possibility of a hazardous atmosphere is permitted when done in accordance with confined space entry guidelines set

forth in chapter 14, "Plant Safety and Good Housekeeping" in the Operations of Wastewater Treatment Plants, Field Study Training Program manual.

**Confined Space Guidelines (Pre-entry Checklist)**

**Do not enter a confined space until you have considered every question and have determined the space to be safe to be entered.**

**Job Name:** \_\_\_\_\_

**Tank and Purpose of Entry:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Yes No**

- Is entry necessary?
- Was the atmosphere in the confined space tested?
- Was oxygen at least 19.5%-and not more than 23.5%?
- Were toxic, flammable, or oxygen-displacement gases/vapors present?

**Multi-Gas Detector readings:**

LEL \_\_\_\_\_ O<sub>2</sub> \_\_\_\_\_ CO \_\_\_\_\_ H<sub>2</sub>S \_\_\_\_\_

If the answer to questions above is yes, do not enter the confined space without notification and approval of either John W. Clingman or Dwight L. Zemp at the numbers listed above.

Approved confined space entry should be checked for the following.

**Yes No**

- Will the atmosphere in the space be monitored while work is going on? Continuously or Periodically
- Has the space been cleaned before entry?
- Has the space been ventilated before entry?
- Will ventilation be continued during entry?

- Is the air intake for the ventilated system located in an area that is free of combustible dusts, vapors and toxic substances?
- Has space been isolated from other systems?

If the answer to these questions is yes proceed with the following questions. If the answer to any of these questions is no, no *work in the confined space* is allowed without prior clearance from either John W. Clingman or Dwight L. Zemp.

**Yes No**

- Has electrical equipment been locked out?
- Has mechanical equipment been blocked, chocked and disengaged where necessary?
- Have lines under pressure been blanked and bled?
- Is special clothing required?
- Is rescue equipment and/or communications equipment required?
- Are spark-proof tools required?
- Will there be a standby person on the outside in constant visual or auditory communication with the person on the inside?
- Has a confined space entry permit been issued? If yes, has entry been approved by the Qualified Person onsite?
- Have emergency telephone numbers been provided?
- Do you know the facility address or have directions to the facility in the event of an emergency?

**Complaint Procedure**

An employee who feels that they may be entering an environment that is unsafe or may constitute a situation dangerous to their health should immediately contact either John W. Clingman or Dwight L. Zemp at the telephone numbers listed above. In the event they can't reach either John W. Clingman or Dwight L. Zemp they are not to enter the work area.

Inquiries and/or complaints will be investigated as quickly as possible. Any investigation will be conducted in as confidential manner as is compatible with a thorough investigation of the complaint.

### **Discipline**

Any employee found to have violated these guidelines will be subject to appropriate disciplinary procedure action, including reprimands, suspension or termination of employment.

### **Responsibility**

Each manager is responsible for implementing and enforcing this policy within his or her area of supervision.

## **SECTION VI - EMERGENCIES**

In most emergencies, common sense usually dictates the course of action to be taken in accident situations (especially those involving personal injury). In any emergency, it is your duty to stick with the problem until it is solved or until you are relieved by competent personnel.

### **FOR MEDICAL EMERGENCIES**

- A. Summon necessary medical assistance immediately.
- B. Locate someone qualified to administer first aid, if needed.
- C. Wait for help to arrive.
- D. Report injuries to management, even though medical attention may not be required.

### **ON-THE-JOB INJURIES**

An employee who is injured on the job must report the injury immediately. Failure to report an injury, whether medical attention is required at the time or not, may result in the loss of any Workman's Compensation Insurance Benefits.

If an injured employee is unable to return to work the same day, (in the opinion of a doctor) he or she will be paid through the day of the injury. Other compensation will be directed through Workman's Compensation Insurance.

# **EXHIBIT**

**4**

AUG 25 2005

FILED

2005 AUG 23 PM 3:01

BEVERLY FRAME  
CLERK OF SUPERIOR COURT  
YUMA, ARIZONA 85504

**SUPERIOR COURT OF ARIZONA**

**YUMA COUNTY  
YUMA, AZ**

Four  
Div

August 23, 2005  
Date

Andrew W. Gould  
Judge

Laura Palmer  
Deputy Clerk(s)

No. S1400CR200201238 (Def. #4)

**STATE OF ARIZONA**

vs.

County Attorney

By: Steve Kiholm/Thomas Varela

**SANTEC CORPORATION**  
A Colorado Corporation

Attorney for Defendant  
By: Marc Budoff

**SENTENCE OF PROBATION**

*12:00* a.m./p.m. The State is represented by the above named Deputy County Attorney; the defendant is present with counsel named above.

Court Reporter Kimberly McAndrews is present.

Pursuant to A.R.S. §13-607, the court finds as follows:

**WAIVER OF TRIAL** The defendant knowingly, intelligently, and voluntarily waived his right to a trial with or without a jury, his right to confront and cross examine witnesses, his right to testify or remain silent and his right to present evidence and call his own witnesses after having been advised of these rights. The determination of guilt was based upon a plea of guilty/no contest.

**IT IS THE JUDGMENT OF THE COURT** that the defendant is guilty of the crime of Count XII:

Violating Safety Standard and Causing Death of an Employee, a class six felony, and a nondangerous and nonrepetitive offense, in violation of A.R.S. §§23-418(e), 13-303, 13-305, 13-701, 13-707, 13-702, 13-801 13-802, 13-803 and 13-901 committed on October 24, 2001.

Upon consideration of the offense, and the facts, law and circumstances involved in this case,

**NO. S1400CR200201238 (Def. #4). STATE VS. SANTEC CORPORATION**  
**aka a Colorado Corporation**

the court finds that probation is appropriate in this case.

As punishment for this/these crime(s).

**IT IS ORDERED** suspending imposition of sentence and placing the defendant on supervised probation for a period of 24 months commencing August 23, 2005 under the supervision of the Adult Probation Department of this court, in accordance with the formal Judgment and Order suspending and imposing terms of probation signed by the court.

As a condition of probation:

Santec Corporation is required to implement a safety program that complies with the safety regulations concerning confined spaces outlined in OSHA. In order to insure that the safety program is adequate, the Inspection and Training Section of ADOSH is directed to inspect Santec's operations in Arizona at least once a year and file a report with the Adult Probation Department re: the same.

**RESTITUTION**

It is **ORDERED** the defendant pay restitution totaling \$30,000.00 to the victim(s) of this crime as follows:

- (1) \$28,895.74 to the State; and
- (2) \$1,104.26 to Maxine Lanser.

Said restitution shall be paid at the rate of \$1,500.00 per month commencing October 1, 2005, and shall be paid in full by the completion of defendant's probation.

**FEES, FINES AND ASSESSMENTS**

It is **ORDERED** the defendant shall pay the following fines, fees and/or assessments commencing on October 1, 2005 and are due and payable on the first of the month thereafter until paid in full:

**NO. S1400CR200201238 (Def. #4), STATE VS. SANTEC CORPORATION**  
**aka a Colorado Corporation**

- [x] **SUPERIOR COURT ENHANCEMENT FEE** in the amount of \$10.00 to be paid in one payment.
- [x] **TIME PAYMENT FEE** of \$20.00 to be paid in full by October 1, 2005 if the defendant pays restitution on a time payment basis. If the defendant pays that amount today, the time payment fee shall be waived.

It is further **ORDERED** all payments are to be made through the office of the Yuma County Clerk of the Superior Court.

The written terms and conditions of probation are handed to the defendant for explanation, acceptance, and signature. Defendant agrees to the stated waiver of right of extradition. The defendant is advised concerning the consequences of failure to abide by the conditions of probation.

The defendant is advised concerning right of review after conviction and written notice of those rights is provided.

It is **ORDERED** granting the State's Motion to Dismiss all remaining charges as to this defendant only.

It is **ORDERED** defendant will be released from custody as to this cause only.

It is **ORDERED** exonerating any bond.

Let the record reflect that the defendant's fingerprint is permanently affixed to this sentencing order in open court.

12:25 a.m. (p.m) Hearing Concludes

  
Judge of the Superior Court

63985 11-24  
Office AU # 1210(8)

**CASHIER'S CHECK**

SERIAL #: 6358501053  
ACCOUNT#: 4961-505758

Purchaser: **SANTEC CORPORATION**  
Purchaser Account: 1440098434  
Operator I.D.: udeh4247

September 28, 2005

PAY TO THE ORDER OF  
\*\*\*CLERK OF SUPERIOR COURT YUMA COUNTY \*\*\*  
\*\*\*RE: SANTEC CORPORATION\*\*\*  
\*\*\*Thirty thousand thirty dollars and no cents\*\*\*

\*\*\*\$30,030.00\*\*\*

WELLS FARGO BANK, N.A.  
445 S PERRY ST  
CASTLE ROCK, CO 80104  
FOR INQUIRIES CALL (480) 394-3122

NOTICE TO PURCHASER - IF THIS INSTRUMENT IS LOST,  
STOLEN OR DESTROYED, YOU MAY REQUEST CANCELLATION  
AND REISSUANCE AS A CONDITION TO CANCELLATION AND  
REISSUANCE, WELLS FARGO BANK MAY IMPOSE A FEE AND  
REQUIRE AN INDEMNITY AGREEMENT AND BOND.

VOID IF OVER US \$ 30,030.00  
**NON-NEGOTIABLE**

**Purchaser Copy**

FB004 M493

63985 11-24  
Office AU # 1210(8)

**CASHIER'S CHECK**

6358501053

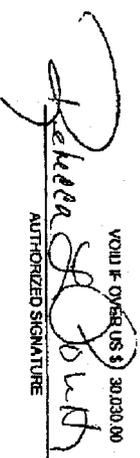
Operator I.D.: udeh4247

September 28, 2005

PAY TO THE ORDER OF  
\*\*\*CLERK OF SUPERIOR COURT YUMA COUNTY \*\*\*  
\*\*\*RE: SANTEC CORPORATION\*\*\*  
\*\*\*Thirty thousand thirty dollars and no cents\*\*\*

\*\*\*\$30,030.00\*\*\*

WELLS FARGO BANK, N.A.  
445 S PERRY ST  
CASTLE ROCK, CO 80104  
FOR INQUIRIES CALL (480) 394-3122

VOID IF OVER US \$ 30,030.00  
AUTHORIZED SIGNATURE  


⑆6358501053⑆ ⑆121000248⑆4861 505758⑆