STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:	)	Docket SRPD 04/05 SCC-4330
	)	
San Diego Gas & Electric, Inc.	)	
101 Ash Street	)	CORRECTIVE ACTION
San Diego, California 92101	)	CONSENT AGREEMENT
	)	
	)	Health and Safety Code
	)	Sections 25187 and 25200.14
_____ Respondent._____	)	

INTRODUCTION

1. The Department of Toxic Substances Control (DTSC) and San Diego Gas & Electric, Inc. (Respondent) enter into this Corrective Action Consent Agreement (Consent Agreement) and agree as follows:

1.1. Jurisdiction exists pursuant to Health and Safety Code section 25187 and 25200.14, which authorize DTSC to issue an order to require corrective action when DTSC determines that there is or may be a release of hazardous waste or hazardous waste constituents into the environment from a hazardous waste facility.

1.2. The parties enter into this Consent Agreement to avoid the expense of litigation and to carry out promptly the corrective action described below.

1.3. Respondent, a California Corporation, is the former owner and operator of a steam-electric power generation plant, a hazardous waste facility, South Bay Power Plant located at 990 Bay Boulevard, Chula Vista, California 91911(Facility). Respondent's authorization to operate the Facility ended on December 11, 1998 when ownership of the Facility was transferred to San Diego Unified Port District (Facility Owner). The Facility is presently operated by Dynegy Inc. (Facility Operator)

1.3.1. The Facility comprises 158 acres, and has four (4) power generation units.

1.4. Respondent engaged in the management of hazardous waste pursuant to a Conditional Authorization (CA) issued by DTSC on December 13, 1993.

1.5. The terms used in this Consent Agreement are as defined in California Code of Regulations, title 22, section 66260.10, except as otherwise provided.

1.6. Respondent agrees to implement all DTSC-approved workplans and to undertake all actions required by the terms and conditions of this Consent Agreement, including any portions of this Consent Agreement incorporated by reference.

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1.7. Respondent waives any right to request a hearing on this Consent Agreement pursuant to Health and Safety Code section 25187.

1.8. It is the intent of DTSC and Respondent that this Consent Agreement constitutes an administrative settlement within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 113 (f)(3)(B), 42 U.S.C. section 9613(f)(3)(B), and is intended to resolve the liability of the Respondent to DTSC at this facility only for those costs actually paid by Respondent to DTSC and only for the Work actually performed by Respondent that has been approved by DTSC and implemented in accordance with the terms of this Consent Agreement.

FINDINGS OF FACT

2.1. On December 27, 1996, Respondent submitted a Phase I Environmental Assessment pursuant to Health and Safety Code section 25200.14. The Phase I Environmental Assessment identified 10 solid waste management units (SWMUs) and/or areas of concern (AOCs) that either have released or may release hazardous waste or hazardous waste constituents into the environment.

2.1.1. In May, 1998, Respondent conducted a Phase I and Phase II due diligence environmental assessment at the Facility.

2.1.2. In December 2001, Respondent submitted to DTSC a copy of the following workplans and reports:

- Facility's Remedial Action Workplan (Workplan) for the Fuel Hydrocarbons and Metal Impacted Areas at the South Bay Power Plant dated August 2001
- Investigation and Proposed Remediation of Dissolved VOCs in Groundwater Report (Report) for the Eastern Portion of South Bay Power Plant, dated November 2001
- Final Report for Phase II, Environmental Investigation Services, San Diego Gas & Electric Facilities, dated April 29, 1997
- Final Report for the North Tank Farm Soil Characterization Activities, South Bay Power Plant, dated March 20, 2001
- Final Workplan for the North Tank Farm Soil Excavation and Temporary Storage Activities, South Bay Power Plant dated April 7, 2001
- Appendix C to Workplan, Health & Safety Plan for Investigation, Characterization, Excavation and Disposal Activities at the North Tank Farm dated July 2001
- Report of Transportation and Disposal Activities for the Stockpiled Soils from the North Tank Farm at the South Bay Power Plant, dated December 12, 2001.

2.1.3. On January 7, 2002, DTSC received from Respondent the following additional Workplans and Reports for DTSC review :

- Assessment Workplan San Diego Gas and Electric, South Bay Power Plant dated January 2001
- Environmental Due Diligence Program, South Bay Power Plant, Phase I Environmental Site Assessment. Volume 1, Book 1, Text, Figures and Tables dated June, 1998
- Environmental Due Diligence Program, South Bay Power Plant, Phase I Environmental Site Assessment. Volume 1, Book 2 dated June 1998
- Environmental Due Diligence Program, South Bay Power Plant, Phase I Environmental Site Assessment. Volume 1, Book 3 dated June 1998
- Environmental Due Diligence Program, South bay Power Plant, field Sampling Plan and Quality Assurance Project Plan dated June 1998
- Environmental Due Diligence Program, South Bay Power Plant, Phase II Environmental Site Assessment. Volume 1, Book 1 dated July 1998
- Environmental Due Diligence Program, South Bay Power Plant, Phase II Environmental Site Assessment. Volume 1, Book 3 dated July 1998.

2.1.4. On January 14, 2003, DTSC and Respondent entered into a Letter Agreement, Docket Number SRPD 01/02 SCC-4263 (Letter Agreement) for the oversight costs incurred to review all the above-listed documents submitted to DTSC.

2.1.5. On February 11, 2003 DTSC identified over 20 AOCs requiring further investigation and or additional information.

2.1.5.1. Respondent has informed the DTSC that it has performed further investigation at the following AOCs/SWMUs:

AOC/SWMU#1, North Tank Farm
1a. ASTs Pipelines, Pump Deck/Pump Pit, Bermed Pond
1a. Displacement Oil AST and heat Exchanger Areas
1c. Former Fuel Tanks, #4, #5, and #6
1d, Groundwater well SB1-060
1e, Local Soil Staining Area
AOC/SWMU #3, Jet Fuel Area
AOC/SWMU # 4, UST Area
AOC/SWMU #6, Former First Generation Surface Impoundments
AOC/SWMU #11, Former Drum Storage Area/Pole Wrap Yard
AOC/SWMU #16, East Central Area, Dissolved VOCs in Groundwater
AOC/SWMU #19, Former Automobile Junk Yard boundary

AOC/SWMU #25, Former Agricultural Site
AOC/SWMU #26, Storm Water Drainage Channel located on the southern edge of Jet Fuel Area
AOC/SWMU #28
a. Metals, VOCs, petroleum hydrocarbon contamination in Groundwater at the entire site
b, Arsenic Hot Spots in soil Open Area 5

c, Guard House – Hg in Soil

2.1.5.2. Respondent agrees to perform interim measures at the following AOCs/SWMUS:

AOC/SWMU #1, Local Staining located in North Tank Farm
AOC/SWMU # 4, UST Area
AOC/SWMU #3, Jet Fuel Area
AOC/SWMU #6, Former First Generation Surface Impoundment
AOC/SWMU # 28, Arsenic Hotspots in Open Area 5
AOC/SWMU #28
b, Arsenic Hot Spots in soil Open Area 5
c, Guard House – Hg in Soil

2.1.6 Further investigation is also required at the following AOCs/SMWUs, which are subject to Section 15.2 of this Consent Agreement.:

AOC/SMWU #2, South Tank Farm
a. Tank #1
b. Tank #2
c. Tank #3
d. Tank #7 at Loading and Unloading station
AOC/SWMU #5a, Process Water Treatment Area, ASTs and Pipelines
AOC/SWMU #8, Power Plant Units Area
a. Combustion Catalyst Area
b. Pipelines Between and Above ASTs
d. Sump located northwest of the plant (HR 23)
AOC/SWMU #9, Maintenance and Stores Areas,
AOC/SMU #10, Gas Turbine Area
AOC/SWMU#14, Hazardous Materials Storage Area
AOC/SWMU #17, Switch Yard Border and Plant Transformer Banks
AOC/SWMU # 21 East Loop Pipeline

2.2. Based on the information available to DTSC, DTSC concludes that further investigation is needed to determine the nature and extent of any release of hazardous waste or hazardous waste constituents at the Facility.

2.3. The hazardous waste and hazardous waste constituents of concern at the Facility are metals, volatile organics, semi-volatile organics, petroleum hydrocarbons, PAHs, BTEX, corrosives, and Polychlorinated biphenyls (PCBs).

2.4. Hazardous wastes or hazardous waste constituents have migrated or may migrate from the Facility into the environment through the following pathways: groundwater, airborne dusts, and rain surface runoff water.

2.5. The Facility lies within 1,000 feet of San Diego Bay and is located within the Telegraph Hydrologic Sub area of the Sweetwater Hydrologic Area. The Telegraph Hydrologic Sub area is designated as having existing beneficial agricultural and potential municipal and industrial uses for groundwater. The Telegraph Canyon area is designated as having existing beneficial surface water uses for industrial, recreation, warm water habitat, and wildlife. Depth to the groundwater at the site is approximately 6-12 ft below ground surface. Surface waters at the Facility include the San Diego Bay and Telegraph Creek. San Diego Bay is the source and end point for cooling water used by the Dynegy power plant. Treated water is discharged by the Facility Operator into the San Diego Bay.

2.6. Releases from the Facility have migrated to soil and groundwater. The contaminated soil at the Facility has a potential to become airborne and affect nearby residents, transients, and wildlife. Workers at the Facility may become exposed to the contaminated soil on site during work related activities, including development and construction activities. Groundwater contamination has a potential to migrate and contaminate the nearby drinking water wells.

PROJECT COORDINATOR

3. Within 14 days of the effective date of this Consent Agreement, DTSC and Respondent shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Agreement and for designating a person to act in his/her absence. All communications between Respondent and DTSC, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to this Consent Agreement shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven days prior written notice.

WORK TO BE PERFORMED

4.1. Within 60 days from the effective date of this Consent Agreement, Respondent shall submit to DTSC the following documents:

Facility Investigation Report Addendum_Jet Fuel Area (draft)
60 Day Report – To Well Permit Clerk, County of San Diego Department of Environmental Health, March 2007 by Haley & Aldrich
2nd and 3rd quarter Ground Water Reports – (draft)
Technical Memorandum Facility Investigation Activities North Tank Farm South Bay Power Plant..March 2007. Prepared for LS Power Generation, LLC by Haley & Aldrich
Facility Investigation Report (draft) January 2007. Prepared for SDG&E by Haley and Aldrich

4.2 DTSC will review the documents described in paragraph 4.1 including the Facility Investigation Workplan that was submitted by Respondent to DTSC in June

2005, and notify Respondent of its concurrence or if additional work is required as described in paragraph 6.1.

4.3 Respondent agrees to perform the work required by this Consent Agreement in accordance with the applicable state and federal laws, their implementing regulations, and the applicable DTSC and the United States Environmental Protection Agency guidance documents.

INTERIM MEASURES (IM)

5.0 Within 60 days of the effective date of this Consent Agreement, Respondent shall submit to DTSC an Interim Measures Workplan for the AOCs/SWMUs described in paragraph 2.1.5.2.

5.1. Respondent shall evaluate available data and assess the need for interim measures in addition to those specifically required by this Consent Agreement. Interim measures shall be used whenever possible to control or abate immediate threats to human health and/or the environment, and to prevent and/or minimize the spread of contaminants while long-term corrective action alternatives are being evaluated.

5.2. If at any time Respondent identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, Respondent shall notify DTSC Project Coordinator orally within 48 hours of discovery and notify DTSC in writing within 10 days of discovery summarizing the findings, including the immediacy and magnitude of the potential threat to human health and/or the environment. Within 60 days of receiving DTSC's written request, Respondent shall submit to DTSC an IM Workplan for approval. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan, IM Operation and Maintenance Plan, and IM Plans and Specifications shall be developed in a manner consistent with the Scope of Work for Interim Measures Implementation contained in as Attachment 1. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize the Respondent to act prior to DTSC's receipt of the IM Workplan.

5.3. If DTSC identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, DTSC will notify Respondent and/or the Facility Owner or Operator in writing. Within 30 days of receiving DTSC's written notification, Respondent shall submit to DTSC for approval an IM Workplan that identifies Interim Measures that will mitigate the threat. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan, IM Operation and Maintenance Plan, and IM Plans and Specifications shall be

developed in a manner consistent with the Scope of Work for Interim Measures Implementation contained in as Attachment 1. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize Respondent to act prior to receipt of the IM Workplan.

5.4. All IM Workplans shall ensure that the Interim Measures are designed to mitigate current or potential threats to human health and/or the environment, and should, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any remedy which may be required at the Facility.

5.6. Concurrent with the submission of an IM Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with the Scope of Work for a Health and Safety Plan contained in Attachment 2.

5.7. Concurrent with the submission of an IM Workplan, Respondent shall submit to DTSC for approval a Community Profile in accordance with Attachment 3. Based on the information provided in the Community Profile, if DTSC determines that there is a high level of community concern about the Facility, DTSC may require Respondent to prepare a Public Participation Plan.

5.8. Respondent shall submit a Interim Measures Report (IM Report) after implementation of the approved IM Workplan.

FACILITY INVESTIGATION AND GROUNDWATER INVESTIGATION

6.1 If, after the review of the documents described in paragraph 4.1, DTSC determines that additional work is necessary for the AOCs/SWMUS described in paragraph 2.1.5.1, Respondent shall submit to DTSC a Facility Investigation Workplan (FI Workplan) and/or Groundwater Investigation Workplan, such workplan(s) to be determined by DTSC. The FI Workplan and/or Groundwater Investigation Workplan is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a Facility Investigation contained in Attachment 4. DTSC will review the FI Workplan and/or Groundwater Investigation Workplan and notify Respondent in writing of DTSC's approval or disapproval.

6.2. The FI Workplan shall detail the methodology to: (1) gather data needed to make decisions on interim measures/ stabilization during the early phases of the RCRA Facility Investigation; (2) identify and characterize all sources of contamination; (3) define the nature, degree and extent of contamination; (4) define the rate of movement and direction of contamination flow; (5) characterize the potential pathways of contaminant migration; (6) identify actual or potential human and/or ecological receptors; and (7) support development of alternatives from which a corrective measure will be selected by DTSC. A specific schedule for implementation of all activities shall be included in the FI Workplan.

6.3. Respondent shall submit a FI Report, and/or a Groundwater Investigation Report to DTSC for approval in accordance with DTSC-approved FI

Workplan schedule. The FI Report shall be developed in a manner consistent with the Scope of Work for a Facility Investigation contained in Attachment 4. If there is a phased investigation, separate FI Reports and a report that summarizes the findings from all phases of the FI must be submitted to DTSC. DTSC will review the FI Report(s) and notify Respondent in writing of DTSC's approval or disapproval.

6.4. Concurrent with the submission of a FI Workplan and/or Groundwater Investigation Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with Attachment 2. If Workplans for IM,FI and Groundwater Investigation are required by this Consent Agreement, Respondent may submit a single Health and Safety Plan that addresses the combined IM and FI activities.

6.5. DTSC may require Respondent to prepare a FI Summary Fact Sheet. If required, Respondent shall submit a FI Summary Fact Sheet to DTSC that summarizes the findings from all phases of the FI. The FI Summary Fact Sheet shall be submitted to DTSC in accordance with the schedule contained in the approved FI Workplan. DTSC will review the FI Summary Fact Sheet and notify Respondent in writing of DTSC's approval or disapproval, including any comments and/or modifications. When DTSC approves the FI Summary Fact Sheet, Respondent shall mail the approved FI Summary Fact Sheet to all individuals on a mailing list established pursuant to California Code Regulations, title 22, section 66271.9(c)(1)(D), within 15 calendar days of receipt of written approval.

6.6. Concurrent with the submission of a FI Workplan, Respondent shall submit to DTSC for approval a Community Profile in accordance with Attachment 3. Based on the information provided in the Community Profile and any Supplement to the Community Profile, if DTSC determines that there is a high level of community concern about the Facility, Respondent shall prepare a Public Participation Plan.

RISK ASSESSMENT

7. Within 90 days after completion of the investigations and interim measures required in this Consent Agreement, Respondent shall submit a Risk Assessment Workplan to evaluate potential human health risk and ecological risk and to establish site-specific action levels and cleanup standards for the AOCs/SWMUs identified in Sections 2.1.5.1 and 2.1.5.2.. Respondent shall submit to DTSC for approval a Risk Assessment Report in accordance with DTSC-approved Risk Assessment Workplan schedule.

CORRECTIVE MEASURES STUDY (CMS)

8.1. Respondent shall prepare a Corrective Measures Study, if contaminant concentrations exceed human health-based or ecologically-based action levels established by the DTSC-approved Risk Assessment Report if one is required under this Consent Agreement, or if DTSC otherwise determines that the contaminant releases pose a potential threat to human health or the environment for the AOCs/SWMUs identified in Sections 2.1.5.1 and 2.1.5.2..

8.1. Within 60 days of Respondent's receipt of a written request from DTSC, Respondent shall submit a CMS Workplan to DTSC. The CMS Workplan is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a Corrective Measures Study contained in Attachment 5.

8.2. The CMS Workplan shall detail the methodology for developing and evaluating potential corrective measures to remedy any contamination at the Facility. The CMS Workplan shall identify the potential corrective measures, including any innovative technologies, that may be used for the containment, treatment, remediation, and/or disposal of contamination.

8.3. Respondent shall prepare treatability studies for all potential corrective measures that involve treatment except where Respondent can demonstrate to DTSC's satisfaction that they are not needed. The CMS Workplan shall include, at a minimum, a summary of the proposed treatability study including a conceptual design, a schedule for submitting a treatability study workplan, or Respondent's justification for not proposing a treatability study.

8.4. Respondent shall submit a CMS Report to DTSC for approval in accordance with DTSC-approved CMS Workplan schedule. The CMS Report shall be developed in a manner consistent with the Scope of Work for a Corrective Measures Study contained in Attachment 5. DTSC will review the CMS Report and notify Respondent in writing of DTSC's approval or disapproval.

REMEDY SELECTION

9.1. DTSC will provide the public with an opportunity to review and comment on the final draft of the CMS Report, DTSC's proposed corrective measures for the Facility, and DTSC's justification for selection of such corrective measures. Depending on the level of community concern, DTSC may conduct a public hearing to obtain comments.

9.2. Following the public comment period, DTSC may select final corrective measures or require Respondent to revise the CMS Report and/or perform additional corrective measures studies.

9.3. DTSC will notify Respondent of the final corrective measures selected by DTSC in the Final Decision and Response to Comments. The notification will include DTSC's reasons for selecting the corrective measures.

CORRECTIVE MEASURES IMPLEMENTATION (CMI)

10.1. Within 60 days of Respondent's receipt of notification of DTSC's selection of the corrective measures, Respondent shall submit to DTSC a Corrective Measures Implementation (CMI) Workplan. The CMI Workplan is subject to approval by

DTSC and shall be developed in a manner consistent with the Scope of Work for Corrective Measures Implementation contained in Attachment 6.

10.2. Concurrent with the submission of a CMI Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with Attachment 2.

10.3. The CMI program shall be designed to facilitate the design, construction, operation, maintenance, and monitoring of corrective measures at the Facility. In accordance with the schedule contained in the approved CMI Workplan, Respondent shall submit to DTSC the documents listed below, to the extent applicable. These documents shall be developed in a manner consistent with the Scope of Work for Corrective Measures Implementation contained in Attachment 6.

- Operation and Maintenance Plan
- Draft Plans and Specifications
- Final Plans and Specifications
- Construction Workplan
- Construction Completion Report
- Corrective Measures Completion Report

10.4. DTSC will review all required CMI documents and notify Respondent in writing of DTSC's approval or disapproval.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

11. DTSC must comply with the California Environmental Quality Act (CEQA) insofar as activities required by this Consent Agreement are projects subject to CEQA. Respondent shall provide all information necessary to facilitate any CEQA analysis. DTSC will make an initial determination regarding the applicability of CEQA. If the activities are not exempt from CEQA, DTSC will conduct an Initial Study. Based on the results of the Initial Study, DTSC will determine if a Negative Declaration or an Environmental Impact Report (EIR) should be prepared. DTSC will prepare and process any such Negative Declaration. However, should DTSC determine that an EIR is necessary, such an EIR would be prepared under a separate agreement between DTSC and Respondent.

DTSC APPROVAL

12.1. Respondent shall revise any workplan, report, specification, or schedule in accordance with DTSC's written comments. Respondent shall submit to DTSC any revised documents by the due date specified by DTSC. Revised submittals are subject to DTSC's approval or disapproval.

12.2. Upon receipt of DTSC's written approval, Respondent shall commence work and implement any approved workplan in accordance with the schedule and provisions contained therein.

12.3. Any DTSC-approved workplan, report, specification, or schedule required under this Consent Agreement shall be deemed incorporated into this Consent Agreement.

12.4. Verbal advice, suggestions, or comments given by DTSC representatives will not constitute an official approval or decision.

SUBMITTALS

13.1. Beginning with the first full month following the effective date of this Consent Agreement, Respondent shall provide DTSC with quarterly progress reports of corrective action activities conducted pursuant to this Consent Agreement. Progress reports are due on the tenth day of the first month following the close of each reporting period. The progress reports shall conform to the Scope of Work for Progress Reports contained in Attachment 7. DTSC may adjust the frequency of progress reporting to be consistent with site-specific activities.

13.2. Any report or other document submitted by Respondent pursuant to this Consent Agreement shall be signed and certified by the project coordinator, a responsible corporate officer, or a duly authorized representative.

13.3. The certification required by paragraph 11.2 above, shall be in the following form:

> I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared at my direction in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted.
>
> Signature: _____
>
> Name: _____
>
> Title: _____
>
> Date: _____

13.4. Respondent shall provide three copies of all documents, including but not limited to, workplans, reports, and correspondence. Submittals specifically exempted from this copy requirement are all progress reports and correspondence of less than 15 pages, of which one copy is required.

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13.5. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to this Consent Agreement shall be in writing and shall be sent to the current Project Coordinators.

PROPOSED CONTRACTOR/CONSULTANT

14. All work performed pursuant to this Consent Agreement shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in hazardous waste site cleanup. Respondent's contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days of the effective date of this Consent Agreement, Respondent shall notify DTSC Project Coordinator in writing of the name, title, and qualifications of the professional engineer or registered geologist and of any contractors or consultants and their personnel to be used in carrying out the terms of this Consent Agreement.

ADDITIONAL WORK

15.1. DTSC may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in any part of DTSC-approved workplans. DTSC shall request in writing that Respondent perform the additional work and shall specify the basis and reasons for DTSC's determination that the additional work is necessary. Within 14 days after the receipt of such determination, Respondent may confer with DTSC to discuss the additional work DTSC has requested. If required by DTSC, Respondent shall submit to DTSC a workplan for the additional work. Such workplan shall be submitted to DTSC within 30 days of receipt of DTSC's determination or according to an alternate schedule established by DTSC. Upon approval of a workplan, Respondent shall implement it in accordance with the provisions and schedule contained therein. The need for, and disputes concerning, additional work are subject to the dispute resolution procedures specified in this Consent Agreement.

15.2. If it becomes necessary to perform subsequent phase(s) of work for those AOCs/SWMUs listed in Section 2.1.6. of this Consent Agreement, DTSC and Respondent and/or other responsible parties, as determined by DTSC, will negotiate another consent agreement or amend this Consent Agreement to address the additional work. If another consent agreement or an amendment is not reached within 60 days, DTSC reserves its right to issue an order or take any other action provided for by law.

QUALITY ASSURANCE

16.1. All sampling and analyses performed by Respondent under this Consent Agreement shall follow applicable DTSC and USEPA guidance for sampling and analysis. Workplans shall contain quality assurance/quality control and chain of

custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved workplans must be approved by DTSC prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report.

16.2. The names, addresses, and telephone numbers of the California State certified analytical laboratories Respondent proposes to use must be specified in the applicable workplans.

SAMPLING AND DATA/DOCUMENT AVAILABILITY

17.1. Respondent shall submit to DTSC upon request the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to this Consent Agreement.

17.2. Respondent shall notify DTSC in writing at least seven days prior to beginning each separate phase of field work approved under any workplan required by this Consent Agreement. If Respondent believes it must commence emergency field activities without delay, Respondent may seek emergency telephone authorization from DTSC Project Coordinator or, if the Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately.

17.3. At the request of DTSC, Respondent shall provide or allow DTSC or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Agreement. Similarly, at the request of Respondent, DTSC shall allow Respondent or its authorized representative to take split or duplicate samples of all samples collected by DTSC under this Consent Agreement.

ACCESS

18.1. Subject to the Facility's security and safety procedures, Respondent, agrees to provide DTSC and its representatives access at all reasonable times to the Facility and any off-site property to which access is required for implementation of this Consent Agreement and shall permit such persons to inspect and copy all records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Agreement and that are within the possession or under the control of Respondent or its contractors or consultants.

18.2. Respondent shall use its best efforts to obtain access agreements necessary to complete work required by this Consent Agreement from the present owners of such property within 30 days of approval of any workplan for which access is required. Best efforts as used in this paragraph shall include, at a minimum, a letter by certified mail from the Respondent to the present owners of such property requesting an agreement to permit Respondent and DTSC and its authorized representatives access to such property and offering the payment by Respondent of reasonable sums of money in consideration of granting access. Any such access agreement shall provide DTSC's Project Coordinator with a copy of any access agreements. In the event that an

agreement for access is not obtained within 30 days of approval of any workplan for which access is required, or of the date that the need for access becomes known to Respondent, Respondent shall notify DTSC in writing within 14 days thereafter regarding both the efforts undertaken to obtain access and its failure to obtain such agreements. After Respondent demonstrates it used best efforts, DTSC may, at its discretion, assist Respondent in obtaining access.

18.3. Nothing in this section limits or otherwise affects DTSC's right of access and entry pursuant to any applicable state or federal law or regulation.

18.4. Nothing in this Consent Agreement shall be construed to limit or otherwise affect Respondent's liability and obligation to perform corrective action.

RECORD PRESERVATION

19.1. Respondent shall retain, during the pendency of this Consent Agreement and for a minimum of six years after its termination, all data, records, and documents that relate in any way to the performance of this Consent Agreement or to hazardous waste management and/or disposal at the Facility. Respondent shall notify DTSC in writing 90 days prior to the destruction of any such records, and shall provide DTSC with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Consent Agreement and shall be addressed to:

Stephen W. Lavinger, Branch Chief
Tiered Permitting and Corrective Action Branch
Hazardous Waste Management Program
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

19.2. If Respondent retains or employs any agent, consultant, or contractor for the purpose of carrying out the terms of this Consent Agreement, Respondent will require any such agents, consultants, or contractors to provide Respondent a copy of all documents produced pursuant to this Consent Agreement.

19.3. All documents pertaining to this Consent Agreement shall be stored in a central location at the Facility, or at a location otherwise agreed to by the parties, to afford easy access by DTSC and its representatives.

DISPUTE RESOLUTION

20.1. The parties agree to use their best efforts to resolve all disputes informally. The parties agree that the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Consent Agreement.

If Respondent fails to follow the procedures contained in this section, it shall have waived its right to further consideration of the disputed issue.

20.2. If Respondent disagrees with any written decision by DTSC pursuant to this Consent Agreement, Respondent's Project Coordinator shall orally notify DTSC's Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

20.3. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objection in writing. Respondent's written objection must be forwarded to Stephen W. Lavinger, Branch Chief, Tiered Permitting and Corrective Action Branch, Hazardous Waste Management Program, Department of Toxic Substances Control, with a copy to DTSC's Project Coordinator. The written objection must be mailed to the Branch Chief within 14 days of Respondent's receipt of DTSC's written decision. Respondent's written objection must set forth the specific points of the dispute and the basis for Respondent's position.

20.4. DTSC and Respondent shall have 14 days from DTSC's receipt of Respondent's written objection to resolve the dispute through formal discussions. This period may be extended by DTSC for good cause. During such period, Respondent may meet or confer with DTSC to discuss the dispute.

20.5. After the formal discussion period, DTSC will provide Respondent with its written decision on the dispute. DTSC's written decision will reflect any agreements reached during the formal discussion period and be signed by the Branch Chief or his/her designee.

20.6. During the pendency of all dispute resolution procedures set forth above, the time periods for completion of work required under this Consent Agreement that are affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve the dispute. The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Consent Agreement.

RESERVATION OF RIGHTS

21.1. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Agreement. Respondent reserve all of its statutory and regulatory rights, defenses and remedies, as they may arise under this Consent Agreement. This Consent Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation on any powers, authorities, rights, or remedies, civil or criminal, that DTSC or Respondent may have under any laws, regulations or common law.

21.2. DTSC reserves the right to disapprove of work performed by Respondent pursuant to this Consent Agreement and to request that Respondent perform additional tasks.

21.3. DTSC reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the environment. DTSC may exercise its authority under any applicable state or federal law or regulation to undertake response actions at any time. DTSC reserves its right to seek reimbursement from Respondent for costs incurred by the State of California with respect to such actions. DTSC will notify Respondent in writing as soon as practicable regarding the decision to perform any work described in this section.

21.4. If DTSC determines that activities in compliance or noncompliance with this Consent Agreement have caused or may cause a release of hazardous waste and/or hazardous waste constituents, or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work required, DTSC may order Respondent to stop further implementation of this Consent Agreement for such period of time as DTSC determines may be needed to abate any such release or threat and/or to undertake any action which DTSC determines is necessary to abate such release or threat. The deadlines for any actions required of Respondent under this Consent Agreement affected by the order to stop work shall be extended to take into account DTSC's actions.

21.5. This Consent Agreement is not intended to be nor shall it be construed to be a permit. This Consent Agreement is not a substitute for, and does not preclude DTSC from requiring, any hazardous waste facility permit, post closure permit, closure plan or post closure plan. The parties acknowledge and agree that DTSC's approval of any workplan, plan, and/or specification does not constitute a warranty or representation that the workplans, plans, and/or specifications will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Consent Agreement shall not relieve Respondent of its obligations to comply with the Health and Safety Code or any other applicable local, state, or federal law or regulation.

OTHER CLAIMS

22.1. Except as provided in this Consent Agreement, nothing in this Consent Agreement shall constitute or be construed as a release by DTSC or Respondent from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Facility.

22.2. Any rights that Respondent may have to obtain contribution or otherwise recover costs or damages from person not a party to this Agreement are preserved, including, without limitation, the right to seek contribution from any person

who is not a party to this administrative settlement under CERCLA Section 113(f)(3)(B), 42 U.S.C. 9613(f)(3)(B), based upon this administrative settlement.

COMPLIANCE WITH WASTE DISCHARGE REQUIREMENTS

23. Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

OTHER APPLICABLE LAWS

24. All actions required by this Consent Agreement shall be conducted in accordance with the requirements of all local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

REIMBURSEMENT OF DTSC'S COSTS

25.1. Respondent shall pay DTSC's costs incurred in the implementation of this Consent Agreement.

25.2. An estimate of DTSC's costs is attached as Exhibit A showing the amount of $53,203.00. It is understood by the parties that this amount is only a cost estimate for the activities shown on Exhibit A and it may differ from the actual costs incurred by DTSC in overseeing these activities or in implementing this Consent Agreement. DTSC will provide additional cost estimates to Respondent as the work progresses under the Consent Agreement.

25.3. Respondent shall make an advance payment to DTSC in the amount of $26,601.50 within 30 days of the effective date of this Consent Agreement. If the advance payment exceeds DTSC's costs, DTSC will refund the balance within 120 days after the execution of the Acknowledgment of Satisfaction pursuant to Section 27 of this Consent Agreement.

25.4. DTSC will provide Respondent with a billing statement at least quarterly, which will include the name(s) of the employee(s), identification of the activities, the amount of time spent on each activity, and the hourly rate charged. If Respondent does not pay an invoice within 60 days of the date of the billing statement, the amount is subject to interest as provided by Health and Safety Code section 25360.1.

25.5. DTSC will retain all costs records associated with the work performed under this Consent Agreement as required by state law. DTSC will make all documents that support the DTSC's cost determination available for inspection upon request, as provided by the Public Records Act.

25.6. Any dispute concerning DTSC's costs incurred pursuant to this Consent Agreement is subject to the Dispute Resolution provision of this Consent

Agreement and the dispute resolution procedures as established pursuant to Health and Safety Code section 25269.2. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

25.7. All payments shall be made within 30 days of the date of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit
Department of Toxic Substances Control
P. O. Box 806
Sacramento, California 95812-0806

All checks shall reference the name of the Facility, the Respondent's name and address, and the docket number of this Consent Agreement. Copies of all checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

MODIFICATION

26.1. This Consent Agreement may be modified by mutual agreement of the parties. Any agreed modification shall be in writing, shall be signed by both parties, shall have as its effective date the date on which it is signed by all the parties, and shall be deemed incorporated into this Consent Agreement.

26.2. Any requests for revision of an approved workplan requirement must be in writing. Such requests must be timely and provide justification for any proposed workplan revision. DTSC has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by the Chief, Tiered Permitting Corrective Action Branch, Hazardous Waste Management Program, Department of Toxic Substances Control, or his or her designee. Any approved workplan revision shall be incorporated by reference into this Consent Agreement.

TERMINATION AND SATISFACTION

27. The provisions of this Consent Agreement shall be deemed satisfied upon the execution by both parties of an Acknowledgment of Satisfaction (Acknowledgment). DTSC will prepare the Acknowledgment for Respondent's signature. The Acknowledgment will specify that Respondent has demonstrated to the satisfaction of DTSC that the terms of this Consent Agreement including payment of DTSC's costs have been satisfactorily completed. The Acknowledgment will affirm Respondent's continuing obligation to preserve all records after the rest of the Consent Agreement is satisfactorily completed.

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EFFECTIVE DATE

28. The effective date of this Consent Agreement shall be the date on which this Consent Agreement is signed by all the parties. Except as otherwise specified, "days" means calendar days.

SIGNATORIES

29. Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Agreement.

DATE: 11/13/07 BY: _____
Signature of SDG&E Representative

TODD SOSTEK
Printed Name and Title, SDG&E Representative
Manager, Site Assessment + Remediation

DATE: 11/20/07 BY: _____
Stephen W. Lavinger, Branch Chief
Tiered Permitting Corrective Action Branch
Department of Toxic Substances Control

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Exhibit A
DTSC's Cost Estimate
San Diego Gas and Electric
South Bay Power Plant
EPA ID CAT000619056

	Review of Reports	Interim Measures (IM) Workplan	IM Imp.	Risk Assessment	Review of Health & Safety Plan	Legal Review	Public Participation	CEQA	Total Hours	Rate/Hour	Estimate Cost
Project Manager	50	36	10	32	8		24	24	184	$110.00	$20,240.00
Supervisor	4	4	10	4	4		4	2	32	$157.00	$5,024.00
Legal Counsel						8			8	$156.00	$1,248.00
Geologist	36	24	10	16					86	$137.00	$11,782.00
Toxicologist				40					40	$123.00	$4,920.00
Industrial Hygienist					15				15	$115.00	$1,725.00
Public Participation							36		36	$99.00	$3,564.00
Clerical	4	4		4			4		16	$62.00	$992.00
CEQA Staff								36	36	$103.00	$3,708.00
Total	94	68	30	96	27	8	68	62	453		**$53,203.00**

Note: The estimate shown above may differ from the actual costs incurred by DTSC in implementing the above activities and does not represent the total costs in overseeing all activities required at the facility under the Corrective Action Consent Agreement. DTSC will provide additional cost estimates for the subsequent phases of work as the work progressess.

IM - Interim Measures

IM Imp - Interim Measures Implementation

CEQA California Environmental Quality Act

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