

50-295/1323

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6 Attorneys for Debtor and Debtor in Possession
7 PACIFIC GAS and ELECTRIC COMPANY

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9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 In re
13 PACIFIC GAS and ELECTRIC
COMPANY, a California corporation,
14 Debtor.

Case No. 01-30923 DM
Chapter 11 Case
[No Hearing Scheduled]

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20 Federal I.D. No. 94-0742640

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23 DECLARATION OF JAMES BECKER IN SUPPORT OF EX PARTE APPLICATION
24 FOR ORDER AUTHORIZING COMPROMISE OF CLAIMS OF CALIFORNIA
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

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BECKER DECL. RE EX PARTE APP. FOR ORDER AUTH. COMP. CLAIMS WITH DTSC

A001 Add: Kids Oge Mail Center

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

1 I, James Becker, declare as follows:

2 1. I am the Vice President-Diablo Canyon Operations and Station Director for
3 Pacific Gas and Electric Company, the debtor and debtor in possession in the above-
4 captioned Chapter 11 case (the "Debtor" or "PG&E"). I have been the Station Director of
5 the Diablo Canyon Power Plant (the "Plant") for over two years. The Declaration is based
6 on my personal knowledge of the Debtor's operations at the Plant. If called as a witness, I
7 could and would testify competently to the facts stated herein.

8 2. I make the declaration in support of Debtor's Ex Parte Application For Order
9 Authorizing Compromise Of Claims Of California Department of Toxic Substances Control
10 (the "Application") submitted by PG&E. The Application seeks authority to enter into a
11 Consent Order with the California Department of Toxic Substances Control ("DTSC") in the
12 form attached hereto as Exhibit A ("Consent Order").

13 3. PG&E owns and operates the Plant which is located in Avila Beach, California.
14 As part of its operations of the Plant, PG&E generates, handles, treats and stores hazardous
15 wastes.

16 4. On April 16, 2001, the DTSC conducted a physical inspection of the Plant. On or
17 about this time, DTSC also conducted a review of the Plant's records relating to financial
18 assurance. Thereafter, the DTSC notified PG&E that it was in violation of Section 25202(a)
19 of the California Health and Safety Code, and various regulations promulgated thereunder,
20 with respect to certain financial assurance and operating issues. The alleged violations
21 included (i) the failure to establish and maintain financial assurance for the closure of the
22 Plant and for sudden accidental occurrences, and the failure of PG&E to provide notices
23 with respect to the same; (ii) the improper treatment of certain hazardous wastewater;
24 (iii) the failure to keep adequate operating records relating to the location, shipment,
25 treatment and storage of hazardous wastes; (iv) the failure to properly maintain and inspect
26 portions of the secondary containment systems; (v) the failure to provide adequate aisle
27 space in certain areas of the Plant; and (vi) the failure to keep containers of hazardous wastes
28

1 closed.

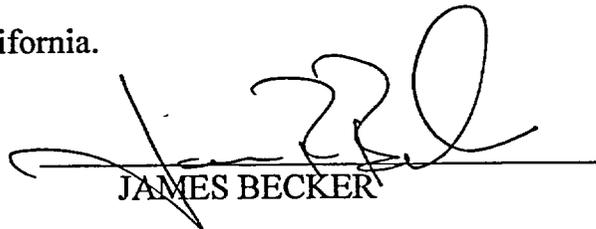
2 5. While some of the alleged violations would have occurred prior to the petition
3 date in this bankruptcy case, other violations would have continued or occurred after such
4 date. The DTSC claims that some of the alleged violations had been in effect since January
5 of 2001 and had continued into November, 2001.

6 6. Subject to the approval of this Court, PG&E and the DTSC have agreed to a
7 tentative settlement of DTSC's claims as described in detail in the Consent Order. Under
8 this settlement, PG&E would agree to pay \$193,715 in penalties and costs and would agree
9 to a schedule for complying with various regulatory provisions. The Consent Order would
10 constitute full settlement of the alleged violations.

11 7. In initial discussions between the parties, the DTSC sought substantially more
12 penalties than that provided for in the Consent Order. In addition, the DTSC has stated
13 verbally that it believed it was entitled to recover significantly more in penalties than the
14 amount requested in such initial discussions.

15 8. For the reasons specified in the Application, I believe that the settlement of this
16 matter pursuant to the Consent Judgment is fair and equitable and in the best interest of
17 PG&E and the estate.

18 I declare under penalty of perjury under the laws of the United States of America and
19 the State of California that the foregoing is true and correct. Executed this 4 day of
20 March, 2003, at Avila Beach, California.

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22 
23 JAMES BECKER

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:)	Docket	HWCA 01/02-2003
)		
Pacific Gas and Electric Company)		
)		
Diablo Canyon Power Plant)	CONSENT ORDER	
3890 Avila Beach)		
Avila Beach, California 93424)		
)		
ID No. CAD077966349)		
)		
Respondent)	Health and Safety Code	
)	Section 25187	
)		

The California Department of Toxic Substances Control (DTSC) and Pacific Gas & Electric Company, a California Corporation, (Respondent) enter into this Consent Order and agree as follows:

1. Respondent generates, handles, treats, and/or stores hazardous waste at Diablo Canyon Power Plant located at 3890 Avila Beach, Avila Beach, California 93424 (Facility).

2.1. Respondent was issued a Hazardous Waste Facility Permit on June 12, 1996, (Permit) authorizing the operation of a hazardous waste treatment and storage facility at the Diablo Canyon Power Plant as provided in the Permit. As a nuclear-powered steam electric generating station, Respondent generates the following major waste streams: oil/water separator sludge, oil contaminated solids, waste oil, laboratory wastewater, and steam cleaning wastes. Respondent also manages small quantities of waste hydrocarbon products; solvents; paint waste; asbestos containing

materials; batteries and miscellaneous chemicals. DTSC conducted a Compliance Evaluation Inspection (CEI) of the Facility on April 16, 2001. On May 9, 2001 and August 27, 2001, DTSC notified Respondent that it was in violation of various financial assurance requirements for closure and third party liability specified in chapter 14, article 8 of title 22 California Code of Regulations.

2.2. On April 6, 2001, Respondent filed its voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. 101-1330, as amended, (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of California (the "Bankruptcy Court"). Respondent continues to operate its business and manage its property as debtor-in-possession.

3. DTSC alleges the following violations:

3.1. Respondent violated Health and Safety Code, section 25202, subdivision (a), and California Code of Regulations, title 22, sections 66264.143; 66264.143, subdivision (f)(6); and, 66264.143, subdivision(f)(7), in that, Respondent:

(a) Failed to establish and demonstrate current and valid financial assurance for closure of the Facility during the period beginning on or about January 16, 2001, through and ending November 19, 2001 (Cal. Code Regs., tit. 22, § 66264.143);

(b) Failed to submit notice to DTSC of Respondent's inability to qualify for the financial test within ninety (90) days of such inability (Cal. Code Regs., tit. 22, § 66264.143(f)(6));

(c) Failed to establish and demonstrate alternate financial assurance

within one hundred and twenty (120) days after the end of its then latest completed fiscal year (Cal. Code Regs., tit. 22, § 66264.143(f)(6));

(d) Failed to provide reports of its financial condition as required by DTSC's letter dated January 18, 2001 to Respondent (Cal. Code Regs., tit. 22, § 66264.143(f)(7)); and,

(e) Failed to establish and demonstrate alternate financial assurance within thirty (30) days of notice that DTSC had made a finding that Respondent no longer qualified for the financial test (Cal. Code Regs., tit. 22, § 66264.143(f)(7)).

3.2. Respondent violated Health and Safety Code, section 25202, subdivision (a), and California Code of Regulations, title 22, sections 66264.147, subdivision (a); 66264.147, subdivision (g)(6); and, 66264.147, subdivision (g)(7), in that Respondent:

(a) Failed to establish and demonstrate current and valid financial assurance for sudden accidental occurrence liability during the period beginning on or about January 16, 2001, through and ending November 19, 2001 (Cal. Code Regs., tit. 22, § 66264.147(a));

(b) Failed to submit notice to DTSC of Respondent's inability to qualify for the financial test within ninety (90) days of such inability (Cal. Code Regs., tit. 22, § 66264.147(g)(6));

(c) Failed to establish and demonstrate alternate financial assurance within one hundred and twenty (120) days after the end of its then latest completed fiscal year (Cal. Code Regs., tit. 22, § 66264.147(g)(6));

(d) Failed to provide reports of its financial condition as required by DTSC's letter of January 18, 2001 (Cal. Code Regs., tit. 22, § 66264.147(g)(7)); and

(e) Failed to establish and demonstrate alternate financial assurance within thirty (30) days of notice that DTSC had made a finding that Respondent no longer qualified for the financial test (Cal. Code Regs., tit. 22, § 66264.147(g)(7)).

3.3. Respondent violated Health and Safety Code, section 25202, subdivision (a), California Code of Regulations, title 22, section 66270.30, subdivision (a), and Hazardous Waste Facility Permit, section II.4., in that on or about February 20, 2001, the Respondent attempted to treat 500 gallons of hazardous wastewater contaminated with copper by adding resins to the hazardous wastewater in an unauthorized unit (a carboy) outside of the permitted treatment area ("the Central Hazardous Waste Management Area in the bermed area where the storage tanks are located").

3.4. Respondent violated Health and Safety Code, section 25202, subdivision (a), and California Code of Regulations, title 22, section 66264.73, subdivision (b) in that the Respondent failed to keep all the required information in the operating record as follows: a description and the quantity of each hazardous waste received, the method(s) and date(s) of its transfer, treatment, storage or disposal at the Facility as required in Appendix I of the California Code of Regulations, title 22, chapter 14; and, the location of each hazardous waste within the Facility and the quantity at each location including cross-references to specific manifest document numbers, if the waste was accompanied by a manifest, to wit:

(a) Daily inspection log (February 20, 2001) for Cold Machine Shop Underground Storage Tank (CMS UST) noted the removal of 500 gallons of wastewater that was sent to an on-site hazardous waste storage facility, the Central Hazardous Waste Management Area (CHWMA). The receiving log at the CHWMA did not show the receipt of the 500 gallons of hazardous waste.

(b) In reviewing CHWMA's Receiving Log from July, 2000, to January, 2001, the Waste Shipment Record¹ for 2000 and early 2001, and the Waste Inventory, the location and/or status of the following containers received at the CHWMA, but no longer present there, could not be determined: 00-0132; 00-0037; 00-00128; 00-00129; 00-0144; 00-0150; 00-0149; 00-0148; 00-0139; 00-0066; lab pack containers 00-0061; 00-0060; 00-0053; and, 00-0059.

(c) An inventory of the wastes currently stored in the CHWMA was not maintained at the time of the inspection. Respondent provided a list of wastes currently stored by conducting a drum inventory during the inspection.

(d) Mixed and hazardous wastes shipped off-site were not all tracked in the Facility's operating records. Neither the manifests nor the Waste Shipment Record identify the wastes shipped using manifest numbers: 98380749; 98380745; 98380732; 98380729; 98380725; 98380724; 98380722.

(e) The operating record did not have any information on the amount

¹ Respondent contends that this record is not a part of the Operating Record of the Facility. It was provided at this inspection only to supplement the Operating Record.

and date carminic acid was received in the Mixed Waste Management Area, Bay 6.

(f) There was no record on the method and date of treatment of 500 gallons of hazardous wastewater contaminated with copper removed from the CMS UST on February 20, 2001. Respondent indicated that the treatment of the hazardous wastewater was not recorded since the event failed and the hazard characteristic of the waste did not change. The treatment of hazardous wastewater contaminated with copper is a violation of Respondent's permit as cited in violation 3.3.

(g) Wastes designated for Tank 02, Waste Oil Tank, on November 9, 2000, January 3, 2001, January 5, 2001, were not recorded in the Tank Log.

3.5. Respondent violated Health and Safety Code section 25202, subdivision (a), California Code of Regulations, title 22, sections 66270.30, subdivision (a) and 66264.15, subdivision (d), Hazardous Waste Facility Permit, sections I.4., and II.19, and Operation Plan, section 5.1.2., in that on or about April 17, 2001, inspection of the Maintenance Shop Laboratory Wastewater Tank did not indicate the presence of liquid (precipitation) in the secondary containment sump. Respondent also failed to inspect the precipitation for oil sheen and to analyze it for pH as indicated in its Operation Plan.

3.6. Respondent violated Health and Safety Code, section 25202, subdivision (a), and California Code of Regulations, title 22, section 66264.193, subdivision (c)(4), in that on or about April 17, 2001, the Respondent failed to drain and remove the accumulated precipitation from the secondary containment system of the Maintenance Shop Laboratory Wastewater tank within 24 hours as required.

3.7. Respondent violated Health and Safety Code 25202, subdivision (a), California Code of Regulations, title 22, section 66270.30, subdivision (a), Hazardous Waste Facility Permit, section I.4, and Operation Plan, section 8.3.1.h. in that on or about April 17, 2001, the Respondent failed to include in the weekly inspection, the secondary containment system of the CHWMA and the Mixed Waste Management container storage areas. A review of Respondent's Waste Facility Weekly Inspection Log showed that the secondary containment was not being inspected as specified in the DTSC approved Operation Plan. The only items being inspected based on the inspection log were: accumulation dates, container conditions, and Emergency Response Kit.

3.8. Respondent violated Health and Safety Code section 25202, subdivision (a), California Code of Regulations, title 22, sections 66270.30, subdivision (a) and 66264.35, Hazardous Waste Facility Permit, section I.4., and Operation Plan, section 8.2.1 in that, on or about April 17, 2001, the Respondent failed to provide adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment, to wit:

(a) In the Mixed Waste Management Area, Bay 5, the aisle space ranged from 22-24 inches. Based on the approved Operation Plan, "a minimum of 3 feet of aisle space is provided to allow unobstructed movement of emergency equipment and personnel in the Hazardous Waste Accumulation and storage areas".

(b) In the last two rows of waste containers stored near the south wall at CHWMA, inspectors observed that drums near the east wall were not readily

accessible. On top of one of the drums were lab packs labeled waste mercury compounds, phosphoric acid, waste solid organic hydrazine dihydrochloride, sulfuric acid, and waste mercury. The lab packs were marked "DCPP lab pack 01, 02, . . . etc." The aisle space between the two rows of drums was approximately 24 inches (one drum width), less than the 3 foot minimum specified in the approved Operation Plan.

3.9. Respondent violated Health and Safety Code, section 25202, subdivision (a), and California Code of Regulations, title 22, section 66264.173, subdivision (a), in that on or about April 17, 2001, the Respondent failed to keep containers of hazardous wastes closed as required, to wit: three (3) cubic yard cardboard boxes containing wastes labeled, "burn/burial" were not closed and there was a noticeable solvent smell in the vicinity of the boxes.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit DTSC from taking enforcement action concerning other violations.

9. Respondent does not admit the violations alleged above.

SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:

10.1.1. On November 19, 2001, Respondent submitted amended endorsements to an existing insurance policy thereby bringing said insurance policy into full compliance with the requirements of California Code of Regulations, title 22, section 66264.143 for financial assurance to cover the cost of closure at the Facility.

(a) Respondent shall maintain, without interruption and in full compliance with the requirements of California Code of Regulations, title 22, chapter 14, article 8, a financial assurance mechanism to cover the cost of closure at the Facility until released from such requirement by DTSC, in writing.

(b) Until released in writing by DTSC from the requirement to maintain financial assurance for closure, Respondent shall file, with DTSC, an original of the appropriate DTSC Form (1154 through 1174) not less than thirty (30) days prior to the effective date of:

- i. any new or reissued mechanism maintained for the purpose of compliance with the requirements of California Code of Regulations, title 22, chapter 14, article 8, concerning financial assurance for closure or postclosure; or,
- ii. any extension of the period of any mechanism maintained for the purpose of compliance with the requirements of California Code of Regulations, title 22, chapter 14, article 8, concerning financial assurance for closure or postclosure.

10.1.2. On November 19, 2001, Respondent submitted amended endorsements to an existing insurance policy thereby bringing said insurance policy into

full compliance with the requirements of California Code of Regulations, title 22, section 66264.147 for financial assurance for third party liability at the Facility.

(a) Respondent shall maintain, without interruption and in full compliance with the requirements of California Code of Regulations, title 22, chapter 14, article 8, a financial assurance mechanism to cover the cost of third party liability at the Facility until released from such requirement by DTSC, in writing.

(b) Until released in writing by DTSC from the requirement to maintain financial assurance for liability, Respondent shall file, with DTSC, an original of the appropriate DTSC Form (1154 through 1174) not less than thirty (30) days prior to the effective date of:

- i. any new or reissued mechanism maintained for the purpose of compliance with the requirements of California Code of Regulations, title 22, chapter 14, article 8, concerning financial assurance for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the Facility or group of facilities; or,
- ii. any extension of the period of any mechanism maintained for the purpose of compliance with the requirements of California Code of Regulations, title 22, chapter 14, article 8, concerning financial assurance for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the Facility or group of facilities.

10.1.3. Notwithstanding, and in addition to, any other notification or reporting requirements to which Respondent is subject by virtue of statute, regulation, or otherwise, Respondent shall report any violation or lapse in compliance with any element of this Schedule for Compliance. Such report shall cite the docket number of this order and shall be made to the person identified in paragraph 10.2 below, not later than thirty (30) days after the commencement of the violation or lapse in compliance.

10.1.4. Effective immediately, Respondent shall not engage in any treatment of hazardous waste and/or radioactive contaminated hazardous wastes not specifically described in the Operation Plan, Revision 10 and Part III of the approved Hazardous Waste Facility Permit.

10.1.5. Based on information in Respondent's March 26, 2002 letter, Respondent returned to compliance regarding violation 3.4, the operating record requirements, by creating, maintaining and keeping current the following documents at the Facility:

(a) a CHWMA Storage Facility Inventory that summarizes the containers present in the Facility to include container identification, container receipt date, type of container and waste description;

(b) Waste shipment records, cross-referencing specific manifests with container identification numbers; and,

(c) Receiving Log for tracking all transportable carboys placed in storage.

10.1.6. Respondent shall maintain and make available to DTSC for

review all required operating record documents specified in California Code of Regulations, title 22, section 66264.73, subdivision (b). In addition, Respondent shall refer and follow the additional operating record instructions in Appendix I, of California Code of Regulations, title 22, Chapter 14.

10.1.7. On March 26, 2002, Respondent stated in its letter to DTSC that the use of a modified "DCPP HWF Daily Inspection Log" that includes specific observations (i.e. presence of liquid in the storage tanks' secondary containment, and containment dewatering information), has been implemented bringing Respondent into compliance regarding violation 3.5, the inspection requirements of California Code of Regulations, title 22, section 66264.15, subdivision (d), by recording observations noted during an inspection. Respondent shall also include in its inspection records evidence that the inspection for oil sheen and analysis for pH of liquids resulting from precipitation has been completed prior to release of accumulated precipitation from the hazardous waste storage tanks' secondary containment. Inspection for oil sheen and pH, as defined in the Operations Plan, shall be recorded on a "Secondary Containment Dewatering Log." Respondent shall maintain and make available to DTSC for review, the daily inspection logs, and relevant associated secondary containment dewatering logs, as required.

10.1.8. Effective immediately, Respondent shall remove spilled, leaked and accumulated precipitation from hazardous waste storage tanks' secondary containment systems. Such removal shall be accomplished in as timely a manner as is necessary to prevent overflow of the containment system and as necessary to prevent

harm to human health and the environment, but under no circumstances shall spilled, leaked, and accumulated precipitation be allowed to remain in secondary containment system for longer than 24 hours.

10.1.9. Based on the information in Respondent's March 26, 2002 letter, Respondent returned to compliance regarding violation 3.7., by the implementation and use of a modified Weekly Inspection Log for the CHWMA and the Mixed Waste Storage Areas; the inspection of the "containment system" for containers of the two container storage areas is now reflected in the modified log. For clarification, "containment system" for containers refers to the sufficiently impervious base underlying the containers designed and operated to contain leaks, spills and accumulated precipitation as described in the California Code of Regulations, title 22, section 66264.175, subdivisions (a) and (b). Respondent shall maintain and make available to DTSC for review upon demand, the inspection logs for the two permitted hazardous waste storage areas, CHWMA and the Mixed Waste Management Area.

10.1.10. Based on information in Respondent's March 26, 2002 letter, Respondent returned to compliance regarding violation 3.8. In the Bay 5 Mixed Waste Storage Area, Respondent implemented a floor plan for equipment and drums to insure maintenance of the minimum 3 feet aisle space as well as to enhance the efficiency of the waste management activities within the Facility. In addition, Respondent conducted an employee training session for applicable Facility workers that included a review of the Operating Plan's requirement of a minimum 3 foot aisle space, the floor plan in the Bay 5 Mixed waste Storage Area, and the use of yard stick or tape measure to

accurately gauge, implement and maintain the 3 feet minimal aisle space in the CHWMA.

10.1.11. Respondent shall keep containers holding hazardous wastes closed except when waste is being added or removed. DTSC considers containers holding hazardous closed when: the lid and gasket are in place, tightly closing the opening with the ring properly latched and/or bolted and the nut tightened, thereby keeping the container airtight; the bungs, lid, and gaskets are screwed in properly in such a way that the waste liquid or vapor is retained within the confined space of the container and the vapors of the waste should not be detected by smell, sight, or any monitoring equipment in the possession of the inspector. Respondent shall refer to the Closed Container Management Memo # EO-93-020-MM for additional guidance on closed containers.

10.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent to:

Charlene Williams, Branch Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710

10.3. Communications: All approvals and decisions of DTSC made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by DTSC regarding

reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.4. DTSC Review and Approval: If DTSC determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, DTSC may return the document to Respondent with recommended changes and a date by which Respondent must submit to DTSC a revised document incorporating the recommended changes.

10.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to, requirements to obtain permits and to assure worker safety.

10.6. Endangerment during Implementation: In the event that DTSC determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the Facility or in the surrounding area or to the environment, DTSC may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.7. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising

as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.8. Facility Access: Access to the Facility shall be provided at all reasonable times to employees, contractors, and consultants of DTSC, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. DTSC and its authorized representatives may enter and move freely about all property at the Facility at all reasonable times for purposes including but not limited to: inspecting records, operating logs; and contracts relating to the Facility; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as DTSC may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.9. Sampling, Data, and Document Availability: Respondent shall permit DTSC and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow DTSC and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent

shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If DTSC requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to DTSC, or permit DTSC to copy the documents prior to destruction. Respondent shall notify DTSC in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.10. Government Liabilities: DTSC shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall DTSC be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require DTSC approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by DTSC.

10.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.13. Extension Approvals: If DTSC determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance

schedule.

PENALTY ASSESSMENT

11.1. DTSC and Respondent agree to a penalty assessment in the amount of \$193,715.00 for the violations alleged in this Consent Order. Accordingly, penalties are hereby assessed by DTSC against Respondent in the amount of \$193,715.00 for the violations alleged above of which \$32,654.89 represents costs and \$161,060.11 represents penalty.

11.2. The violations alleged herein occurred prior to and after the filing of Respondent's bankruptcy petition.

11.3. Payment of this penalty assessment of \$193,715.00 shall be made within 30 days of the Effective Date of the Consent Order. Respondent's check shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent:

To: Charlene Williams, Branch Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710

To: James J. Grace

Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by DTSC in pursuing collection including attorney's fees.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, DTSC does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by DTSC or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon DTSC and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date

it is signed by DTSC following the bankruptcy court's approval of Respondent's motion under rule 9019 for authorization to enter into this Consent Order.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: _____

Signature of Respondent's Representative

Typed or Printed Name and Title of Respondent's Representative

Dated: _____

Charlene Williams, Branch Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control

WD 021903/1-1419925/1057152/v1