

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:) Docket HWCA: P4-06/07-007
)
Turco Products, Inc.)
24700 South Main Street)
Carson, California)
EPA ID NO. CAD096004742) CORRECTIVE ACTION
Former Operator)
) CONSENT AGREEMENT
)
Pedro First LLC)
433 N. Camden Dr., Suite 1070)
Beverly Hills, CA 90210)
Owner)
Respondent) Health and Safety Code
) Section 25187
_____)

INTRODUCTION

1. The Department of Toxic Substances Control (DTSC) and Pedro First LLC, Owner (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, which authorizes 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 Former Operator's operations were located at 24700 South Main Street in Carson, California. From 1960 through 1989, the facility manufactured chemicals for industrial, institutional, and commercial floor finishers, metal cleaners, and paint strippers. Former Operator engaged in the management of hazardous waste at the facility pursuant to a Hazardous Waste Facility Interim Status Document issued on April 6, 1981 and a Hazardous Waste Facility Permit issued on February 24, 1984 (Permit), by the Department of Health Services, which was DTSC's predecessor agency, for the storage and treatment of hazardous waste. The Permit giving Former Operator authorization to operate a hazardous waste facility expired on February 24, 1989.

- 1.4 Former Operator's operations ceased in 1989 and a closure plan was approved by DTSC on March 23, 1992. A closure certification report documenting soil sampling for closure of the wastewater treatment system and a container storage area was submitted by Former Operator to DTSC in November 1992, and DTSC accepted the closure certification on December 30, 1992.
- 1.5 Respondent Pedro First LLC is the current owner of the property located at 24700 South Main Street, Carson, California (Facility). The property was purchased by Owner in 2000.
- 1.6 The terms used in this Consent Agreement are as defined in California Code of Regulations, title 22, section 66260.10, except as otherwise provided.
- 1.7 Subject to its rights under this Consent Agreement, Respondent agrees to undertake all actions required by the terms and conditions of this Consent Agreement, including any portions of this Consent Agreement incorporated by reference.
- 1.8 Respondent waives any right to request a hearing on this Consent Agreement pursuant to Health and Safety Code section 25187.

FINDINGS OF FACT

- 2.1 On June 30, 2006, DTSC completed a Resource Conservation and Recovery Act (RCRA) Facility Assessment (RFA) of the Facility. The RFA identified nine (9) Solid Waste Management Units (SWMUs) that either have released or may release hazardous waste or hazardous waste constituents into the environment.
- 2.2 Multiple site investigation reports have been prepared on behalf of the Facility which document releases to soil and/or groundwater. These include:
 - a. ERT Inc., 1987. A site assessment conducted for Former Operator revealed tetrachloroethene (PCE) at a level of 9200 ug/L in monitoring well MW-2. Additional soil sampling efforts were also completed in 1992.
 - b. Centec Engineering, 1998. Soil samples at a depth of four feet below ground surface (bgs) were taken at eleven locations in 1998 by Centec Engineering on behalf of a prospective purchaser (Hill, Farrer & Burrill, LLP) of the Facility. PCE was detected at seven of the soil boring locations. Borings CB1 and CB11 measured the highest concentrations of PCE at 5730 and 96.5 µg/kg.
 - c. Another site assessment, including an assessment of groundwater, was conducted in February 2000 by PIC Environmental for the Owner. Quarterly

groundwater monitoring has continued from 2000 through 2005. Sampling done in 2005 had detections of trichloroethene (TCE) as high as 840 µg/l at MW-2, dichloroethene (DCE) at 650 µg/l at MW-8, and benzene at 1500 µg/l for MW-9 and 1700 µg/l for MW-8.

- d. Former Operator's operations ceased in 1989 and a closure plan was approved by DTSC on March 23, 1992. A closure certification report documenting soil sampling for closure of the wastewater treatment system and a container storage area was submitted by Former Operator in November 1992 to DTSC and DTSC accepted the clean closure certification on December 30, 1992.

2.3 Based on the RFA and review of the documents mentioned above, DTSC concludes that further investigation of the Facility is needed to determine the nature and extent of any release of hazardous waste or hazardous waste constituents for the nine SWMUs identified in the RFA, including the previously closed hazardous waste management units at the Facility. The SWMUs are as follows and shown on Figures 4 and 5 from the June 30, 2006 RFA.

2.3.1 SWMU #1 The Container Storage Area. Former Hazardous Waste Container Storage Area 1 in the Permit. Closure certified by DTSC December 30, 1992

2.3.2 SWMU #2 Wastewater Treatment System. Former Hazardous Waste Management Unit 2 in the Permit. Closure certified by DTSC December 30, 1992.

The wastewater treatment system consisted of the following components:

- a. Three 8200 gallon storage tanks
- b. 3000 gallon wastewater Separator Tank Collection Basins
- c. Clarifier Tank and associated equipment
- d. Alum Mixing Tank (500 gallons)
- e. Skimmer Collection Tank (100 gallons)
- f. Two Collection basins
- g. Alum Storage Tank (product storage, 5000 gallons)
- h. Polymer Storage Tank (product storage, 5000 gallons)
- i. Two Caustic Storage Tanks (100 gallons)
- j. Neutralization Tank (600 gallons)
- k. Associated pipelines and pumps

The components of the wastewater treatment system shared a secondary containment unit. The wastes treated were mainly acids and caustics.

- 2.3.3 SWMU # 3 Underground gasoline storage tank
- 2.3.4 SWMU # 4 Underground styrene storage
- 2.3.5 SWMU # 5 Bulk Storage Tanks
- 2.3.6 SWMU # 6 Chemical storage tanks inside main building
- 2.3.7 SWMU # 7 Clarifiers South of Wastewater Treatment System
- 2.3.8 SWMU # 8 Flammable Materials Storage Room
- 2.3.9 SWMU # 9 Bulk storage and unloading

- 2.4 Based on DTSC's review of the Facility report, DTSC has identified the hazardous waste and hazardous waste constituents of concern at the Facility to be aromatic and chlorinated volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs), phenols, cyanide, acids, caustics, and the 17 metals in the California Assessment Manual.

- 2.5 Soil, groundwater, surface water, and air are pathways through which hazardous wastes or hazardous waste constituents could migrate from the Facility into the environment.

- 2.6 The Beneficial Uses of the groundwater underlying the Facility are designated in the Basin Plan (RWQCB, 1994) as municipal and domestic supply, agricultural supply, industrial process supply, and industrial service supply. There is a production water well at the corner of Main and Lomita Street, approximately 1600 feet southwest, and upgradient of the Facility.

PROJECT COORDINATOR

- 3. Within 14 days of the effective date of this Consent Agreement, DTSC and Respondent shall 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. 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.
- 4.1 Respondent agrees to prepare a comprehensive workplan (henceforth referred to as "overall site workplan") for all potential field activities and studies at the Facility. The overall site workplan would cover tasks anticipated to be required and provide a conceptual outline for tasks that may be needed pending completion of the required tasks. Potential components of the overall site workplan include:
 - Current Conditions Report;
 - Interim measures workplan (IM Workplan), consistent with Attachment 2;
 - RCRA facility investigation workplan;
 - Risk assessment workplan;
 - Corrective measures study workplan; and
 - Site-specific health and safety plan consistent with the Scope of Work contained in Attachment 3.
- 4.2 Respondent agrees to develop a "Master Schedule" (attached) for the project with the DTSC. This schedule will list key milestones and identify review cycles for significant project deliverables. This schedule may be updated, revised, or amended from time-to-time, as needed.

INTERIM MEASURES (IM)

- 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 Within 60 days of the effective date of this Consent Agreement (see Master Schedule); Respondent shall submit a Current Conditions Report to DTSC. The Current Conditions Report becomes part of the overall site workplan. The Current Conditions Report is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a RCRA Facility Investigation contained in Attachment 1. The Current Conditions Report shall contain an assessment of interim measures. The assessment must include both previously implemented interim measures and other interim measures that could be implemented at the Facility. The assessment must also identify any additional data needed for making decisions on interim measures. This new data or information shall be collected during the early stages of the RCRA Facility Investigation. DTSC will review Respondent's assessment and determine with Respondent which interim

measures, if any, Respondent will implement at the Facility. If deemed appropriate by DTSC and Respondent, such determination may be deferred until additional data are collected.

- 5.3 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 the 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. If DTSC identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous wastes and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, DTSC will notify Respondent in writing. In either case, DTSC and Respondent shall agree on the substance of the IM Workplan and an associated schedule.
- 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 and shall incorporate the health and safety plan presented in the overall site workplan.
- 5.5 Concurrent with the submission of an IM Workplan, Respondent shall submit to DTSC for approval a Community Profile in accordance with Attachment 4. 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, as described in Attachment 8. DTSC and Respondent will collaborate during preparation and implementation of the Public Participation Plan.

RCRA FACILITY INVESTIGATION (RFI)

- 6.1 Within 60 days (see Master Schedule) of the effective date of this Consent Agreement, Respondent shall submit to DTSC a Current Conditions Report and a Workplan for a RCRA Facility Investigation (RFI Workplan), also as part of the overall site workplan. The Current Conditions Report and RFI Workplan are subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a RCRA Facility Investigation contained in Attachment 1. DTSC will review the Current Conditions Report and RFI Workplan and notify Respondent in writing of DTSC's approval or disapproval.

- 6.2 The RFI Workplan shall detail the methodology to: (1) gather data needed to make decisions on interim measures 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 and Respondent. A specific schedule for implementation of all activities shall be included in the RFI Workplan (see Master Schedule).
- 6.3 Respondent shall submit a RFI Report to DTSC for approval in accordance with DTSC-approved RFI Workplan schedule. The RFI Report shall be developed in a manner consistent with the Scope of Work for a RCRA Facility Investigation contained in Attachment 1. If there is a phased investigation, technical memorandums will be submitted, as needed, to document progress and to identify subsequent phase(s) of work. Once all investigation phases are complete, a comprehensive, final RFI Report compiling the technical memoranda will be submitted to the DTSC. DTSC will review the RFI Report and notify Respondent in writing of DTSC's approval or disapproval.
- 6.4 Concurrent with the submission of a RFI Workplan, Respondent shall submit to DTSC a Health and Safety Plan prepared pursuant to the overall site workplan. If Workplans for both an IM and RFI are required by this Consent Agreement, Respondent may submit a single Health and Safety Plan that addresses the combined IM and RFI activities.
- 6.5 If a Public Participation Plan (Section 5.5 and Attachment 8) is determined appropriate, then Respondent shall submit a RFI Summary Fact Sheet to DTSC that summarizes the findings from all phases of the RFI. The RFI Summary Fact Sheet shall be submitted to DTSC in accordance with the schedule contained in the approved RFI Workplan (see Master Schedule). DTSC will review the RFI Summary Fact Sheet and notify Respondent in writing of DTSC's approval or disapproval, including any comments and/or modifications. When DTSC approves the RFI Summary Fact Sheet, Respondent shall mail the approved RFI Summary Fact Sheet to all individuals on the Facility 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.

RISK ASSESSMENT

7. Based on the information available to DTSC, Respondent may be required to conduct a Risk Assessment to evaluate potential human health risk and ecological risk and to establish site-specific action levels and cleanup standards. If DTSC determines that a Risk Assessment is required, Respondent shall submit to DTSC for approval a Risk Assessment Report consistent with the workplan outlined in the overall site workplan in accordance with DTSC-approved Risk Assessment Workplan schedule (see Master Schedule).

ADDITIONAL WORK

- 8.0 If it becomes necessary to perform subsequent phase(s) of work, DTSC and Respondent will amend this Consent Agreement to address the additional work (i.e., CMS or CMI). If 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. DTSC's costs incurred in negotiating the amendment are considered costs incurred pursuant to this Consent Agreement and are payable under this Consent Agreement. Respondent retains all its right and defenses regarding any such potential DTSC action.
- 8.1 If deemed necessary by DTSC and Respondent within 45 days of DTSC's approval of the Risk Assessment Report, Respondent shall submit a CMS Workplan to DTSC consistent with the overall site workplan. 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 If deemed necessary by DTSC and Respondent, 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 as appropriate for potential corrective measures that involve treatment except where Respondent can demonstrate to DTSC's satisfaction that they are not needed. If the CMS Workplan is deemed necessary, it 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 If deemed necessary by DTSC and Respondent, Respondent shall submit a CMS Report to DTSC for approval in accordance with a DTSC-approved CMS Workplan schedule (see Master 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 If additional work pursuant to Section 8.0 becomes part of this Consent Agreement, 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 If deemed necessary by DTSC and Respondent, within 60 days (see Master Schedule) 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 prepared pursuant to the overall site workplan.
- 10.3 Concurrent with the submission of a CMI Workplan, Respondent shall submit to DTSC for approval a Community Profile in accordance with Attachment 4. If a Community Profile was submitted earlier in the Corrective Action Process, DTSC may require that a supplement be added. 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, DTSC may require Respondent to prepare a Public Participation Plan, as described in Attachment 8. The DTSC and Respondent will collaborate during preparation and implementation of the Public Participation Plan.

- 10.4 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.
- o Operation and Maintenance Plan
 - o Construction Workplan
 - o Construction Completion Report
 - o Corrective Measures Completion Report
- 10.5 DTSC will review all required CMI documents and notify Respondent in writing of DTSC's approval or disapproval.
- 10.6 As directed by DTSC, within 90 days (see Master Schedule) of DTSC's approval of all required CMI documents, Respondent shall establish a financial assurance mechanism for Corrective Measures Implementation. The financial assurance mechanisms may include any mechanism described in California Code of Regulations, title 22, sections 66264.143 or 66265.143 as applicable

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 a CEQA checklist or an Environmental Impact Report (EIR) should be prepared. DTSC will prepare and process any such Negative Declaration or CEQA checklist. 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 and in accordance with the agreed upon Master Schedule. 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 Master 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 approval, suggestions, or comments, followed by an electronic-mail or another form of written documentation given by DTSC representatives will 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 fifth working 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 13.2 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 hard copies and one electronic copy on compact disc in searchable portable document format (PDF) 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 hard copy and one electronic copy is required.
- 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.

QUALITY ASSURANCE

- 15.1 All sampling and analyses performed by Respondent under this Consent Agreement shall follow applicable DTSC and U.S. EPA guidance for sampling and analysis. The overall site workplan 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.

- 15.2 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

- 16.1 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.
- 16.2 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 emergency field activities must be commenced 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.
- 16.3 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

17. 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 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. Respondent will maintain the project file at its consultant's office (ERM office in Santa Ana). Additionally, Respondent will make good-faith, reasonable effort to provide DTSC with access to off-site properties, if warranted; however, no guarantees are provided or implied that Respondent will be successful at gaining access to off-site properties. Lastly, DTSC will notify Respondent in advance of any visits to the Facility to allow Respondent adequate time to coordinate with Facility tenants.

RECORD PRESERVATION

- 18.1 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:

Chief
Geology, Permitting, and Corrective Action Branch
Hazardous Waste Management Program
Department of Toxic Substances Control
5796 Corporate Ave.
Cypress, CA 90630

- 18.2 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.
- 18.3 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

- 19.1 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.
- 19.2 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, within thirty (30) days.
- 19.3 If the Project Coordinators cannot resolve the dispute informally within thirty (30) days, Respondent may pursue the matter formally by placing its objection in writing. Respondent's written objection must be forwarded to Chief, Geology, 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.

- 19.4 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.
- 19.5 After the formal discussion period, DTSC will provide Respondent with its written decision on the dispute within 30 days. 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. The decision of the Branch Chief or his/her designee shall constitute DTSC's administrative decision on the disputed matter(s). Respondent reserves its legal rights to contest or defend against any final decision rendered by DTSC under this dispute resolution provision.
- 19.6 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, except to the extent that such other compliance obligation or deadline is dependent upon the resolution of the matter which is the subject to dispute resolution under this Consent Agreement, in which case the time periods for completion of such other compliance obligations or deadlines required pursuant to this Consent Agreement that are affected by such dispute resolution shall be extended for a period of time not to exceed the actual time taken to resolve the dispute.

RESERVATION OF RIGHTS

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

- 20.3 DTSC may exercise its authority under any applicable state or federal law or regulation to undertake response actions, if the dispute resolution process described above has been exhausted. 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.
- 20.4 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.
- 20.5 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.
- 20.6 Respondent reserves its rights to dispute any demands, claims, or disapprovals by DTSC under this Consent Agreement and to follow the appropriate dispute resolution provisions of this Consent Agreement where applicable. Further, by entering into this Consent Agreement, Respondent does not admit that they are responsible for any release of any hazardous wastes or hazardous waste constituents from the Facility, and this Consent Agreement shall not constitute a release, waiver, covenant not to sue, or limitation on any rights, remedies, powers, or authorities that Respondent has under any statutory, regulatory, or common law authority.

OTHER CLAIMS

21. Except to the extent specifically 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.

COMPLIANCE WITH WASTE DISCHARGE REQUIREMENTS

22. 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

23. 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

- 24.1 Respondent shall pay DTSC's costs incurred in the implementation of this Consent Agreement.
- 24.2 An estimate of DTSC's costs is attached as Exhibit A showing the amount of \$19,399. 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.
- 24.3 Respondent shall make an advance payment to DTSC in the amount of \$4,850 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.
- 24.4 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.

- 24.5 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.
- 24.6 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.
- 24.7 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

- 25.1 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 both parties, and shall be deemed incorporated into this Consent Agreement.

TERMINATION AND SATISFACTION

26. 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.

EFFECTIVE DATE

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

SIGNATORIES

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

DATE: February 21, 2007 BY: Original signed by Richard E. Lucy
Representing Respondent

Name and title of Respondent's Representative:

Mr. Richard E. Lucy, Managing Member, Pedro First LLC

DATE: February 23, 2007 BY: Original signed by Karen Baker
Karen Baker, Chief
Geology, Permitting, and Corrective Action Branch
Hazardous Waste Management Program
Department of Toxic Substances Control