



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
**DEPARTMENT OF TOXIC SUBSTANCES CONTROL**  
Policy and Procedure  
for  
Managing Voluntary Site Mitigation Projects  
**THE VOLUNTARY CLEANUP PROGRAM**  
EO-95-006-PP (Supersedes OPP #87-9)

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**California Environmental Protection Agency**  
**DEPARTMENT OF TOXIC SUBSTANCES CONTROL**  
**Policy and Procedure**  
**for**  
**Managing Voluntary Site Mitigation Projects**  
  
**THE VOLUNTARY CLEANUP PROGRAM**

**1. PURPOSE**

The purpose of this document is to set forth the Department of Toxic Substances Control (DTSC) administrative policy and procedure for managing voluntary site mitigation projects. It also discusses statutory authority and identifies DTSC organizational roles and responsibilities. Designated as the Voluntary Cleanup Program, this has previously been referred to as the "Walk-In Program". This program provides regulatory oversight services by DTSC to project proponents desiring to address mitigation activities at sites which have a lower health and/or environmental risk than sites which are currently being addressed by DTSC. This document supersedes OPP #87-9, "Policy on Mitigating Unscheduled Waste Sites and Managing Walk-In Business" dated, October 3, 1988.

**2. BACKGROUND**

DTSC is responsible for the identification, prioritization, cleanup and management of hazardous substance release sites in the State of California. Sites are prioritized by DTSC based on their threat to public health and/or the environment. Each fiscal year DTSC prepares a comprehensive planning document, the Annual Workplan (AWP), which lists those sites currently undergoing mitigation activities by DTSC or by Responsible Parties (RPs) with DTSC's oversight. These are also known as State Superfund sites. Sites are included in the AWP based upon their prioritized health and environmental risk and on available staff resources and funding. DTSC addresses those sites posing the highest risk first. DTSC maintains a database, CalSites, which includes "listed" (confirmed release sites, primarily those on the AWP) and unconfirmed release sites. The CalSites listings are reviewed periodically and are considered for possible inclusion in the AWP.

When identified sites are not on the AWP, cleanup and reuse of the sites is delayed or remediation may be attempted by property owners without DTSC oversight. The Voluntary Cleanup Program has been established to address these lower priority sites without adversely affecting the high priority AWP program. Staff positions have been established to handle Voluntary Cleanup Program sites which are funded through the Program. It does this by requiring that all DTSC services to be provided under the cleanup agreements must be paid for by the project proponent.

**3. STATUTORY AUTHORITY**

Pursuant to Health and Safety Code section 25355.5, DTSC may enter into agreements to provide oversight services. Section 25355.5 allows DTSC to enter into agreements with parties which may allow for remediation to remove the threat of a release, or to characterize a site, preparation of a remedial action plan (or removal action workplan) and completion of the necessary response actions. DTSC is not precluded from taking enforcement actions under other statutory provisions if certain violations or deficiencies are discovered. For sites where land use restrictions are anticipated, agreements must include section 25355.5 or 25222.1 authority to ensure that deed restrictions will remain in perpetuity.

#### 4. POLICY STATEMENT

The Voluntary Cleanup Program allows the project proponent to enter an agreement with DTSC for DTSC's oversight services on a variety of specified site mitigation activities. By funding these agreements, project proponents may obtain oversight of the investigation, documentation and remediation of sites not included in DTSC's AWP.

A "project proponent" admits to no legal liability for the remediation of a site by entering into a voluntary agreement with DTSC. In fact, DTSC may or may not consider the project proponent a "responsible party" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) or Chapter 6.8 of the Health and Safety Code. A project proponent provides advance funding for DTSC's services that are provided for in the voluntary agreement.

Project proponents may include, but are not limited to owners of property with hazardous substance contamination, other state or local agencies, real estate developers or others involved with proposed changes in land use or ownership.

The professional services provided under the Voluntary Cleanup Program may include simple document review, oversight of a complete investigation, assessment, planning and implementation of site remediation, and certification upon completion. When effective remediation has been achieved or all planned activities necessary to address the contamination have been implemented and the site is in the Operation and Maintenance phase, a certification may be issued. Services to be provided by DTSC and an attendant cost estimate shall be set forth in the agreement. Oversight services may include, but are not limited to review and comment on:

- Site Investigation & Characterization
- Sampling Plans and Workplans
- Health & Safety Plans
- Risk Assessment
- Preliminary Endangerment Assessment(PEA)
- Remedial Technology Selection & Implementation Strategy
- Remediation Goals Establishment
- Public Participation Documents

Sites that may become the subject of a voluntary agreement are those which are not in the AWP for the current fiscal year or under a current enforcement action by DTSC. Federal and State Superfund sites, military facilities, or those that fall outside of DTSC's jurisdiction are excluded from the Program. Sites under the oversight of other state or local regulatory agencies may enter the program for specific services only with the oversight agency's consent.

All voluntary agreements must require that the project proponent pay all DTSC's direct and indirect costs that are related to the project. In general, past DTSC costs incurred for a site should be determined and recovered as part of the VCP. All voluntary agreements will specify the scope of work to be undertaken by the project proponent, a project schedule, the amount of the advance payment and the services to be provided by DTSC. Once prepayment has been made in accordance with the agreement, DTSC will provide the staff resources needed to perform the specified service. DTSC will not provide any services until the agreement is executed by both parties, and the advance funding payment is received by DTSC. Dedication of staff to the Voluntary Cleanup Program shall not result in the redirection of staff from work necessary to remediate the high priority, high-risk AWP sites.

The voluntary agreement must indicate the project proponent's commitment to pay all costs of DTSC, including the cost of negotiations. An agreed-upon advance payment of DTSC's estimated costs shall be included in the agreement and paid by the project proponent upon execution of the agreement. The advance payment shall, at a minimum, amount

to 50% of the estimated project cost (EPC). If the EPC exceeds \$50,000, the Regional Branch Chief may determine the amount the advance payment is to exceed \$50,000, based on project specific needs, independent of the 50% EPC criterion.

The project proponent will receive a quarterly statement detailing charges by DTSC to the project account. The statement will indicate the balance remaining from the advance payment or include an invoice if additional payment is required. For Preliminary Endangerment Assessment sites the advance payment is \$8,175.

Sites that are the subject of a voluntary agreement will be subject to the same standards and requirements, including final remediation goals, as the AWP sites. The work conducted must be consistent with the National Oil and Hazardous Substances Contingency Plan (the National Contingency Plan or NCP) and Chapter 6.8 of the Health and Safety Code. Procedures, standards and documentation regarding public participation, risk assessment, remedial investigation/feasibility study, requirements necessary for California Environmental Quality Act (CEQA) compliance, etc. must be consistent with those for comparable AWP sites. Likewise, procedures and standards for deed restrictions and operation and maintenance (O&M) will be consistent with AWP sites.

Under the Voluntary Cleanup Program DTSC is committed to a cooperative team approach with the project proponent. The common goal is to achieve an efficient remediation which is protective of public health and the environment. A Remedial Action Certification will be issued for sites remediated under DTSC's oversight and established standards. (Refer to OPP #86-22, AProcedures for Certifying Completion of Hazardous Waste Site Remedial Action," October 5, 1987.) The Regional Branch Chief will determine the appropriateness of issuing a "No Further Action" (NFA) letter in lieu of a Remedial Action Certification. Generally, NFA letters are issued based upon the findings of a PEA.

The project proponent or DTSC may terminate the agreement for any reason by giving written notice to the other party. Termination provisions should include 30-day advance written notice of the election to terminate. A refund to the project proponent will be made if payment(s) made exceed all costs incurred by DTSC through the effective date of termination.

If at any time a significant public health or environmental risk becomes apparent, DTSC may list the site on the AWP pursuant to section 25356 of the Health and Safety Code and/or take any further appropriate action.

## **5. PROCEDURE**

The typical Voluntary Cleanup Program project can be divided into the following procedural steps: a) Application, b) Screening/Scoping/Negotiation, and c) Implementation/Tracking. Each step involves specific roles and responsibilities for various DTSC staff and units. These steps are delineated below and in section 6.

### **5.1. Application**

The project proponents shall apply for DTSC oversight services relative to their sites by, (1) completion of the Voluntary Cleanup Program Application (copy attached as Appendix A), and (2) meeting with Regional Site Mitigation staff to discuss details of the site, the scope of services desired, and other terms of the agreement. Upon review of the application, the Regional Site Mitigation Branch Chief may determine that a site does not fall within DTSC's jurisdiction or would more appropriately be remediated under the oversight of some other agency. The project proponent would then be referred to the appropriate state or local agency.

### **5.2. Screening/Scoping/Negotiation**

The service(s) requested of DTSC may consist of document review, general oversight, and/or removal/remedial oversight. If the project involves investigative or remedial work previously undertaken without DTSC's direction or

oversight, review by the project manager will be required to determine the acceptability of the existing data. DTSC will employ its standard screening process and DTSC's determination may form the basis for negotiation of the scope of work.

The screening evaluation and scope of work discussion should generally be limited to approximately twenty (20) hours of DTSC staff time over a period not to exceed sixty (60) days, but is subject to the Regional Branch Chief's discretion. After the initial meeting between the project proponent and DTSC staff, the Regional Site Mitigation Branch Chief shall designate a project manager.

The designated project manager will be responsible for conducting a site visit, obtaining a Docket Number, obtaining a Site Code, and for preparing an estimate of the DTSC's costs under the agreement. Both the scope of work and the project schedule shall be clearly defined in the agreement.

The initial estimate of the extent of public participation that a particular project may require is necessarily a rough estimate until the extent of community interest is determined. DTSC will utilize the information provided in the application form for the establishment of a community profile. The nature and extent of public participation

warranted in a project involving field activities (or the planning thereof) will be addressed in the initial phases of the project. Consequently, the scope and cost of adequately addressing community concerns must necessarily be refined by the project manager, public participation specialist and project proponent during the project's implementation.

### **5.3. Implementation/Tracking**

If the project requires a Preliminary Endangerment Assessment (PEA), DTSC's "Preliminary Endangerment Assessment Guidance Manual," January 1994, will be used as the standard to ensure that an effective review of all information pertinent to determining the nature and extent of contamination is performed. Readily available DTSC and United States Environmental Protection Agency (EPA) guidance documents will be used for projects which require work other than a PEA. The agreement will specify the scope of the work to be completed by the project proponent and describe the services to be rendered by the DTSC.

The advance payment is a "condition precedent" to any DTSC obligation to provide oversight services. The payment shall be by cashier's or certified check payable to the Department of Toxic Substances Control and sent to:

Accounting/Cashier  
Department of Toxic Substances Control  
400 P Street, 4th Floor  
P.O. Box 806  
Sacramento, California 95812-0806

A photocopy of the check will also be sent to the Regional Branch Chief/Agreement Manager.

Upon execution of the agreement, the site is to be officially designated in CalSites as a Voluntary Cleanup Program (VCP) project. Sites with the VCP designation are not included on the AWP, the "State Superfund List" Within ten (10) business days of the execution of the agreement, the project manager shall, with his or her Unit Chief's approval, complete and forward a copy of the agreement and a request for billing and control log establishment to the Headquarter's Accounting Cost Recovery Unit (CRU). The project manager should be certain that work phase "11" and the "12000" PCA series of codes are utilized in the recording of project charges. Costing should be coded "C" for cost recovery.

The project manager/Unit Chief are responsible for tracking of project activities through maintenance of CalSites records and for tracking DTSC costs through the CALSTARS Information Retrieval System (CIRS).

#### **5.4. Routing Procedures**

All VCP agreements must be routed for sign-off in accordance with the Voluntary Cleanup Program Agreement Sign-Off Sheet (Appendix B).

### **6. ROLES AND RESPONSIBILITIES**

#### **6.1. Regional Operations**

The project manager is responsible for the preparation of an estimate of the time required for DTSC staff to perform the requested service(s). This estimate typically includes the projected hours of a project manager, public participation specialist, industrial hygienist, toxicologist, geologist, and attorney. The project manager should consult with the Public Participation Unit (PPU), the Office of Scientific Affairs (OSA), and other appropriate support services staff and provide sufficient project background information to allow each level of staff to estimate hours that each will need to devote to the project. The cost estimate for projected staff time will be based on current hourly and overhead rates. This estimate must be completed before the agreement can be executed by DTSC. The project manager is responsible for consulting with appropriate support staff and submitting the estimate for review and approval by the Unit Chief and the Regional Branch Chief. The cost estimate should be attached to and incorporated as part of the agreement. Each agreement must include language indicating that the project proponent shall be responsible for all DTSC costs of the project.

Specific Site Mitigation Regional Branch Chiefs have been delegated signature authority for all voluntary cleanup agreements. Regional Offices are responsible for concurrently routing copies of the signed agreement to Site Mitigation Program's Planning and Policy Unit and the Cost Recovery Unit.

Because these site remediation projects and schedules are voluntary, adjustments to schedules may occur; however, project managers and Unit Chiefs are jointly responsible for tracking project activities and expenditures, keeping records current, the project on schedule, and within the established budget.

#### **6.2. Office of Legal Counsel (OLC)**

Standard language approved by OLC is to be used in VCP agreements (Appendix C). If the Regional Branch Chief determines that the language in a specific agreement differs significantly from the approved standard, review and approval shall be obtained from OLC.

#### **6.3. Cost Recovery Unit (CRU)**

The CRU is responsible for the preparation of the billing package, and shall confirm billing package preparation to the project manager. In accordance with standard billing procedures, the CRU will compile DTSC's costs, prepare a Summary By Activity (SBA) report and invoice the project proponent on a quarterly basis.

As payments are received, the CRU will post and credit the account. When the project manager notifies CRU that DTSC has fulfilled its obligations under the agreement, CRU will prepare a final invoice and bill (or refund) the project proponent for any outstanding balance due under the terms of the agreement.

# **APPENDIX A**

## **Voluntary Cleanup Program Application**



(Please attach a copy of an appropriate map page)

**SECTION 2 SITE INFORMATION (continued)**

**Current Owner**

Name

Address

Phone ( )

**Background: Previous Business Operations**

Name

Type

Years of Operation

If known, list all previous businesses operating on this property.

**INFORMATION ONLY**

What hazardous substances/wastes have been associated with the site?

What environmental media is/was/may be contaminated?

Soil

Air

Groundwater

Surface water

Has sampling or other investigation been conducted?  Yes  No

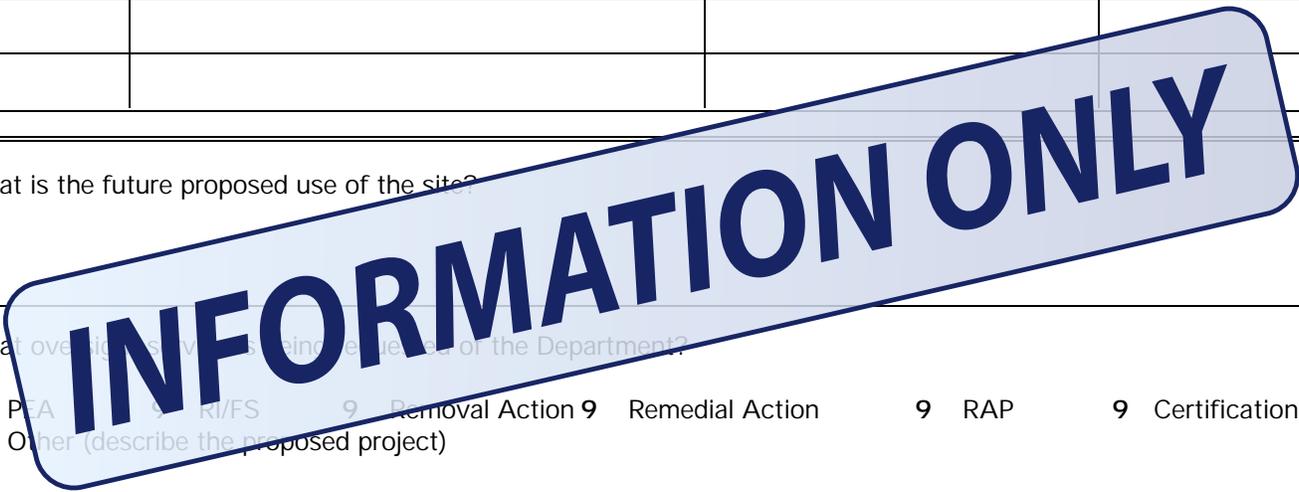
Specify

If Yes, what hazardous substances have been detected and what were their maximum concentrations?

**SECTION 2 SITE INFORMATION (continued)**

Are any Federal, State or Local regulatory agencies currently involved with the site?  Yes  No  
 If Yes, state the involvement, and give contact names and telephone numbers

Agency	Involvement	Contact Name	Phone



What is the future proposed use of the site?

What oversight activities are being requested of the Department?  
 P/A  RI/FS  Removal Action  Remedial Action  RAP  Certification  
 Other (describe the proposed project)

Is there currently a potential of exposure of the community or workers to hazardous substances at the site?  
 Yes  No If Yes, explain

**SECTION 3 COMMUNITY PROFILE INFORMATION**

Describe the site property (include approximate size)

Describe the surrounding land use (including proximity to residential housing, schools, churches, etc.)

Describe the visibility of activities on the site to neighbors

**SECTION 3 COMMUNITY PROFILE INFORMATION (continued)**

What are the demographics of the community (e.g., socioeconomic level, ethnic composition, specific language considerations, etc.)?

**Local Interest**

Has there been any media coverage?

**Past Public Involvement**

Has there been any past public interest in the site as reflected by community meetings or ad hoc committees, workshops, fact sheets, newsletters, etc.?

**INFORMATION ONLY**

**Key Issues and Concerns**

Have any specific concerns/issues been raised by the community regarding past operations or present activities at the site?

Are there any concerns/issues anticipated regarding site activities?

Are there any general environmental concerns/issues in the community relative to neighboring sites?

**Key Contacts**

Please attach a list of key contacts for this site, including: city manager; city planning department; county



# **APPENDIX B**

## **Voluntary Cleanup Program Agreement Sign-Off Sheet**

Appendix B

**VOLUNTARY CLEANUP PROGRAM  
AGREEMENT SIGN-OFF SHEET**

\_\_\_\_\_  
Site Name

\_\_\_\_\_  
Project Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Unit Chief

\_\_\_\_\_  
Date

\_\_\_\_\_  
Office of Legal Counsel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Site Mitigation Branch Chief

\_\_\_\_\_  
Date

\_\_\_\_\_  
Statewide Cleanup Operations Division Chief

\_\_\_\_\_  
Date

*(Signature authority has been delegated to specific Branch Chiefs; however on a site-specific basis the Division Chief may elect to sign)*

# **APPENDIX C**

## **Voluntary Cleanup Program Standard Agreement**

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of: ) Docket No. \_\_\_\_\_  
)  
[SITE NAME] ) Voluntary Cleanup  
) Agreement  
)  
Project Proponent ) Health and Safety Code  
[NAME] ) Section 25355.5(a)(1)(C)  
[ADDRESS] )  
)  
\_\_\_\_\_ )

I.  
INTRODUCTION.

1.1 Parties. The California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) enters into this Voluntary Cleanup Agreement (Agreement) with **[NAME OF PROPONENT]** (Proponent).

1.2 Site. The property which is the subject of this Agreement (Site) is located at **[SITE ADDRESS, CITY, COUNTY]**, California **[ZIP CODE]**. **[Alternate language for use when the property address information does not adequately describe the Site (e.g., if the Site is a portion of the property covered by the address or if the property does not have an address and is identified by intersections or other descriptive phrases): "The Site consists of (narrative description of Site).]** The Site property consists of \_\_\_\_\_ acres and is identified by Assessor's Parcel Number(s) \_\_\_\_\_. A diagram of the Site and a location map are attached as Exhibit A and Exhibit B.

1.3 Jurisdiction. This Agreement is entered into by DTSC and Proponent pursuant to Health and Safety Code (H&SC) section 25355.5(a)(1)(C). This section authorize DTSC to enter into an enforceable agreement with Proponents to oversee the characterization and cleanup of a Site.

1.4 Purpose. The purpose of this Agreement is for the Proponent to **[ADD IN OBJECTIVES e.g., conduct a removal action, determine the extent of a release of a hazardous substance, or complete a Remedial Action Plan]** under the oversight of DTSC. The purpose of this Agreement is also for DTSC to obtain reimbursement from the Proponent for DTSC's oversight costs.

## II. BACKGROUND

2.1 Ownership. The Site is owned by **[PROPERTY OWNER]**. **[If site consists of more than one parcel, identify the owners of each parcel.]**

2.2 Substances Found at the Site. **[INCLUDE, IF KNOWN]** Reports, containing the results of environmental media sampling conducted at the Site, indicate that the **[LIST MEDIA]** is contaminated with hazardous substances, including **[LIST CONTAMINANTS]**.

2.3 Physical Description.  
**[BRIEFLY DESCRIBE SITE, SITE SIZE, AND THE GENERAL AREA, NOTING ANY DISTINGUISHING PHYSICAL FEATURES, SUCH AS SURFACE WATER BODIES, BUILDINGS, VACANT LOT, ETC.]**

2.4 Site History.  
**[BRIEFLY DESCRIBE THE HISTORICAL USES OF THE SITE, INCLUDING ANY HAZARDOUS MATERIALS/WASTE HANDLING, STORAGE OR DISPOSAL AREAS, IF KNOWN.]**

## III. AGREEMENT

3.0 IT IS HEREBY AGREED THAT DTSC will provide review and oversight of the response activities conducted by the Proponent in accordance with the Scope of Work contained in Exhibit C. The Proponent shall conduct the activities in the manner specified herein and in accordance with the schedule specified in Exhibit E. All work shall be performed consistent with H&SC section 25300 et seq., as amended; the National Contingency Plan (40 Code of Federal Regulations (CFR) Part 300), as amended; U.S. EPA and DTSC Superfund guidance documents regarding site investigation and remediation.

3.1 Scope of Work and DTSC Oversight. DTSC shall review and provide Proponent with written comments on all Proponent deliverables as described in Exhibit C (Scope of Work) and other documents applicable to the scope of the project. DTSC shall provide oversight of field activities, including sampling and remedial activities, as appropriate. DTSC's completion of activities described above shall constitute DTSC's complete performance under this Agreement.

3.2 Additional Activities. Additional activities may be conducted and DTSC oversight provided by amendment to this Agreement or Exhibits hereto in accordance with Paragraph 3.17. If DTSC expects additional oversight costs to be incurred related to these additional activities, it will provide an estimate of the additional oversight cost to the Proponent.

3.3 Agreement Managers. **[BRANCH CHIEF NAME, TITLE]** is designated by DTSC as its Manager for this Agreement. **[PROPONENT'S PROJECT MANAGER]** is assigned by the Proponent as Manager for this Agreement. Each Party to this Agreement shall provide at least ten (10) days advance written notice to the other of any change in its designated manager.

3.4 Notices and Submittals. All notices, documents and communications required to be given under this Agreement, unless otherwise specified herein, shall be sent to the respective parties at the following addresses in a manner that produces a record of the sending of the notice, document or communication such as certified mail, overnight delivery service, facsimile transmission or courier hand

delivery service:

3.4.1 To DTSC:  
**[REGIONAL BRANCH CHIEF NAME]**  
Attn: **[PROJECT MANAGER]**  
Department of Toxic Substances Control  
Site Mitigation Program  
**[REGIONAL OFFICE ADDRESS]**

3.4.2 To the Proponent:  
**[NAME, TITLE]**  
**[COMPANY]**  
**[ADDRESS]**

3.4.3 To the Property Owner: **[OPTIONAL]**  
**[INCLUDE IF DIFFERENT FROM PROPONENT]**

3.5 DTSC Review and Approval. If DTSC determines that any report, plan, schedule or other document submitted for approval pursuant to this Agreement fails to comply with this Agreement or fails to protect public health or safety or the environment, DTSC may (a) Return comments to the Proponent with recommended changes; or (b) Modify the document as deemed necessary and approve the document as modified.

3.6 Communications. All DTSC approvals and decisions made regarding submittals and notifications will be communicated to the Proponent in writing by DTSC's Agreement Manager or his/her designee. No informal advice, guidance, or suggestions or comments by DTSC regarding reports, plans, specifications, schedules or any other writings by the Proponent shall be construed to relieve the Proponent of the obligation to obtain such written approvals.

3.7 Endangerment During Implementation. In the event DTSC determines that any activity (whether or not pursued in compliance with this Agreement) may pose an imminent or substantial endangerment to the health and safety of people on the Site or in the surrounding area or to the environment, DTSC may order the Proponent to stop further implementation of this Agreement for such period of time as may be needed to abate the endangerment.

3.8 Payment. The Proponent agrees to pay (1) all costs incurred by DTSC in association with preparation of this Agreement and for review of documents submitted prior to the effective date of the Agreement, and (2) all costs incurred by DTSC in providing oversight pursuant to this Agreement, including review of the documents described in Exhibit C and associated documents, and in providing oversight of field activities. An estimate of DTSC's oversight costs is attached as Exhibit D. It is understood by the parties that Exhibit D is an estimate and cannot be relied upon as the final cost figure. DTSC will bill the Proponent quarterly. Proponent agrees to make payment within sixty (60) days of receipt of DTSC's billing. Such billings will reflect any amounts that have been advanced to DTSC by the Proponent.

3.8.1 In anticipation of services to be rendered, Proponent shall make an advance payment of \$ \_\_\_\_\_ **[INSERT AMOUNT OF ADVANCE, REFER TO THE POLICY AND PROCEDURE FOR GUIDANCE]** to DTSC. That payment shall be made no later than ten (10)

days after this Agreement is fully executed. If the Proponent's advance payment does not cover all costs payable to DTSC under this paragraph, Proponent agrees to pay the additional costs within sixty (60) days of receipt of a bill from DTSC.

3.8.2. If any bill is not paid by the Proponent within sixty (60) days after it is sent by DTSC, the Proponent may be deemed to be in material default of this Agreement.

3.8.3 All payments made by the Proponent pursuant to this Agreement shall be by a cashier's or certified check made payable to the "Department of Toxic Substances Control", and bearing on its face the project code for the site (site # **[Calstars Site Code]**) and the docket number of this Agreement. Payments shall be sent to:

Department of Toxic Substances Control  
Accounting/Cashier  
400 P Street, 4th Floor  
P.O. Box 806  
Sacramento, California 95812-0806

A photocopy of the check shall be sent concurrently to DTSC's Agreement Manager.

3.8.4 If the advance payment exceeds DTSC's actual oversight costs, DTSC will provide an accounting for expenses and refund the difference within one hundred-twenty (120) days after termination of this Agreement in accordance with Paragraph 3.18. In no other case shall the Proponent be entitled to a refund from DTSC or to assert a claim against DTSC for any amount paid or expended under this Agreement.

3.9 Condition Precedent. It is expressly understood and agreed that DTSC's receipt of the advance payment described in Paragraph 3.8.1. is a condition precedent to DTSC's obligation to provide oversight, review and/or comment on documents.

3.10 Record Retention. DTSC shall retain all cost records associated with the work performed under this Agreement for such time periods as may be required by applicable state law. The Proponent may request to inspect all documents which support DTSC's cost determination in accordance with the Public Records Act, Government Code section 6250 et seq.

3.11 Project Coordinator. The work performed pursuant to this Agreement shall be under the direction and supervision of a qualified project coordinator, with expertise in hazardous substance site cleanup. The Proponent shall submit: a) the name and address of the project coordinator; and b) in order to demonstrate expertise in hazardous substance site cleanup, the resume of the coordinator. The Proponent shall promptly notify DTSC of any change in the identity of the Project Coordinator. All engineering and geological work shall be conducted in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

3.12 Access. Proponent shall provide, and/or obtain access to the Site and offsite areas to which access is necessary to implement this Agreement. Such access shall be provided to DTSC's employees, contractors, and consultants at all reasonable times. Nothing in this paragraph is intended or shall be construed to limit in any way the right of entry or inspection that DTSC or any other agency may otherwise have by operation of any law. DTSC and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes

including, but not limited to: inspecting records, operating logs, sampling and analytic data, and contracts relating to this Site; reviewing the progress of the Proponent in carrying out the terms of this Agreement; conducting such tests as DTSC may deem necessary; and verifying the data submitted to DTSC by the Proponent.

3.13 Sampling, Data and Document Availability. When requested by DTSC, the Proponent shall make available to DTSC, and shall provide copies of, all data and information concerning contamination at the Site, including technical records and contractual documents, sampling and monitoring information and photographs and maps, whether or not such data and information was developed pursuant to this Agreement.

3.14 Notification of Field Activities. The Proponent shall inform DTSC at least seven (7) days in advance of all field activities pursuant to this Agreement and shall allow DTSC and its authorized representatives to take duplicates of any samples collected by the Proponent pursuant to this Agreement.

3.15 Notification of Environmental Condition. The Proponent shall notify DTSC's Agreement Manager immediately upon learning of any condition posing an immediate threat to public health or safety or the environment. Within seven (7) days of the onset of such a condition, the Proponent shall furnish a report to DTSC, signed by the Proponent's Agreement Manager, setting forth the events which occurred and the measures taken in the response thereto.

3.16 Preservation of Documentation. The Proponent shall maintain a central repository of the data, reports, and other documents prepared pursuant to this Agreement. All such data, reports and other documents shall be preserved by the Proponent for a minimum of six (6) years after the conclusion of all activities carried out under this Agreement. If DTSC requests that some or all of these documents be preserved for a longer period of time, the Proponent shall either comply with that request, deliver the documents to DTSC, or permit DTSC to copy the documents prior to destruction. The Proponent shall notify DTSC in writing at least ninety (90) days prior to the expiration of the six-year minimum retention period before destroying any documents prepared pursuant to this Agreement. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the six year period, the related records shall be retained until the completion and resolution of all issues arising therefrom or until the end of the six-year period, which ever is later.

3.17 Amendments. This Agreement may be amended or modified solely upon written consent of all parties. Such amendments or modifications may be proposed by any party and shall be effective the third business day following the day the last party signing the amendment or modification sends its notification of signing to the other party. The parties may agree to a different effective date.

3.18 Termination for Convenience. Except as otherwise provided in this Paragraph, each party to this Agreement reserves the right unilaterally to terminate this Agreement for any reason. Termination may be accomplished by giving a thirty (30) day advance written notice of the election to terminate this Agreement to the other Party. In the event that this Agreement is terminated under this Paragraph, the Proponent shall be responsible for DTSC costs through the effective date of termination.

3.19 Exhibits. All exhibits attached to this Agreement are incorporated herein by this reference.

3.20 Time Periods. Unless otherwise specified, time periods begin from the date this Agreement is fully executed, and "days" means calendar days. "Business days" means all calendar days that are not weekends or official State holidays.

3.21 Proponent Liabilities. Nothing in this Agreement shall constitute or be considered a satisfaction or release from liability for any condition or claim arising as a result of Proponent's past, current, or future operations. Nothing in this Agreement is intended or shall be construed to limit the rights of any of the parties with respect to claims arising out of or relating to the deposit or disposal at any other location of substances removed from the Site.

3.22 Government Liabilities. The State of California (State) shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by the Proponent or by related parties in carrying out activities pursuant to this Agreement, nor shall the State of California be held as a party to any contract entered into by the Proponent or its agents in carrying out the activities pursuant to this Agreement.

3.23 Third Party Actions. In the event that the Proponent is a party to any suit or claim for damages or contribution relating to the Site to which DTSC is not a party, the Proponent shall notify DTSC in writing within ten (10) days after service of the complaint in the third-party action. Proponent shall pay all costs incurred by DTSC relating to such third-party actions, including but not limited to responding to subpoenas.

3.24 Reservation of Rights. DTSC and the Proponent reserve the following rights.

3.24.1 DTSC reserves its right to pursue cost recovery under the Comprehensive Environmental Response, Compensation and Liability act of 1980 (CERCLA), as amended, the California Health and Safety Code section 25360, and any other applicable section of the law.

3.24.2 Nothing in this Agreement is intended or shall be construed to limit or preclude DTSC from taking any action authorized by law or equity to protect public health and safety or the environment and recovering the costs thereof.

3.24.3 Nothing in this Agreement shall constitute or be construed as a waiver of the Proponent's rights, (including any covenant not to sue or release) with respect to any claim, cause of action, or demand in law or equity that the Proponent may have against any "person", as defined in Section 101(21) of CERCLA, or Health and Safety Code section 25319, that is not a signatory to this Agreement.

3.24.4 By entering into this Agreement, Proponent does not admit to any fact, fault or liability under any statute or regulation.

3.25 Compliance with Applicable Laws. Nothing in this Agreement shall relieve the Proponent from complying with all applicable laws and regulations, and the Proponent shall conform all actions required by this Agreement with all applicable federal, state and local laws and regulations.

3.26 California Law. This Agreement shall be governed, performed and interpreted under the laws of the State of California.

3.27 Severability. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining terms of the Agreement.

3.28 Parties Bound. This Agreement applies to and is binding, jointly and severally, upon each signatory and its officers, directors, agents, receivers, trustees, heirs, executors, administrators, successors, and assigns, and upon any successor agency of the State of California that may have responsibility for and jurisdiction over the subject matter of this Agreement. No change in the ownership or corporate or business status of any signatory, or of the facility or Site shall alter any signatory's responsibilities under this Agreement.

3.29 Effective Date. The effective date of this Agreement is the date when this Agreement is fully executed.

3.30 Representative Authority. Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the parties to this Agreement.

3.31 Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

\_\_\_\_\_  
**[Agreement Manager]**  
Statewide Cleanup Operations Division  
Site Mitigation Program  
Department of Toxic Substances Control

Date: \_\_\_\_\_

\_\_\_\_\_  
**[PROPONENT NAME, TITLE]**

Date: \_\_\_\_\_

**EXHIBITS**

A - SITE DIAGRAM

B - SITE LOCATION MAP

C - SCOPE OF WORK

D - COST ESTIMATE

E - SCHEDULE

## EXHIBIT C SCOPE OF WORK

The following Tasks will be completed as part of this Agreement:

**[INCLUDE ONLY THOSE TASKS OR PORTIONS OF THE TASKS WHICH ARE RELEVANT AND RENUMBER THE TASKS ACCORDINGLY]**

For example, if you are conducting:

- 1) A Preliminary Endangerment Assessment, you would use tasks 1, 3, 13.1, 13.2, 13.3, 17 and 18.
- 2) A remedial investigation/feasibility study, you would use tasks 1, 5, 6 and 13.1, 13.2 and 13.3.
- 3) A Removal Action, you would use tasks 1, possibly 2 (if not deleted), possibly 4 (if site characterization is inadequate and additional characterization is necessary), 6, 8, 10, 12, 13.1 through 13.7, possibly 14 and 15, 16, 17 and 18.
- 4) A Remedial Action Plan, you would use tasks 1, possibly 2 (if not deleted), 5, 7, 8, 9, 11, 12, 13.1 through 13.7, possibly 14 and 15, 16, 17 and 18.

If you are reviewing a specific document, you could use task 19 or specifically name the document in Section 3.1 of the Agreement and delete the Scope of Work, Exhibit C discussion.

### TASK 1.

#### Submittal of Existing Data

The Proponent will submit to DTSC all background information, sample analysis results, environmental assessment reports, and any other information pertinent to the hazardous substance management and/or release, characterization and cleanup of the Site. DTSC will review the information, identify areas and media of concern, and determine the additional work, if any, required to complete the investigation/remediation of the Site.

### TASK 2.

Review of Site Remediation. DTSC shall review data and reports submitted by Proponent to determine if remediation conducted without DTSC oversight was protective of human health and the environment. The information submitted by Proponent shall be reviewed for conformance with DTSC standards for quality assurance/quality control, site investigations, and site remediation. Subsequent to its review, DTSC will either issue comments to Proponent describing deficiencies of the remediation or make a determination that No Further Action is required at the Site.

### TASK 3.

Preliminary Endangerment Assessment (PEA). Proponent shall conduct a PEA to determine whether a release or threatened release of hazardous substances exists at the Site which poses a threat to human health or the environment. The PEA shall be conducted in accordance with the DTSC guidance manual for evaluating hazardous substance release sites, titled: "Preliminary Endangerment Assessment Guidance Manual," State of California, Environmental Protection Agency, Department of Toxic Substances Control (January 1994). Documents which may be required as part of the PEA are:

- (a) PEA Workplan. This workplan shall include a sampling plan designed to determine the type and general extent of contamination at the Site; a health and safety plan addressing health and safety issues and safe work practices; and a quality assurance/quality control plan to produce data of known quality.
- (b) PEA Report. This report will document whether a release has occurred or threatened release exists, the threat the Site poses to human health and the environment, and whether further action is necessary.

### TASK 4

#### Sampling and Analysis

4.1 Sampling and Analysis Workplan. The Proponent will submit a workplan that describes the activities proposed to characterize soil and groundwater contamination associated with the Site. The workplan should also include a Site health and safety plan, quality assurance/quality control plan, sampling plan, and implementation schedule.

4.2 The Proponent will begin implementation of the approved workplan in accordance with the approved implementation schedule. DTSC may provide oversight of workplan implementation.

#### 4.3 Site Characterization Report.

The Proponent will submit a Site Characterization Report that at a minimum presents the data, summarizes the findings of the investigation, validates all data, and includes recommendations and conclusions.

### TASK 5 REMEDIAL INVESTIGATION/FEASIBILITY STUDY (RI/FS)

The RI/FS shall be conducted consistent with the U.S. Environmental Protection Agency's Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," October 1988, (EPA/540-G-89/004).

#### 5.1 Remedial Investigation/Feasibility Study Objectives

The objectives of the RI/FS are to:

- (a) Characterize the extent of hazardous substance contamination at the Site;
- (b) Identify existing and potential migration pathways, including the direction, rate and dispersion of

- contaminant migration;
- (c) Analyze the baseline risks to help determine the need for action at the Site;
  - (d) Determine levels of chemicals that can remain onsite and still be adequately protective of human health; and
  - (e) Evaluate feasible remedial alternatives.

#### 5.2 Remedial Investigation/Feasibility Study Workplan

Proponent shall prepare an RI/FS Workplan which will include: **[CHOOSE AND LIST THOSE PLANS DESCRIBED IN TASKS 4.1, 17 AND 18 WHICH ARE APPROPRIATE]** and an implementation schedule.

#### 5.3 Remedial Investigation Report.

Proponent shall prepare a Remedial Investigation (RI) report in which summarizes the results of the remedial investigation, including reduction, presentation and interpretation of all data and information generated and/or compiled during the remedial investigation. The RI report will contain:

- (a) Site Background Information, including Physical Characteristics and Site History
- (b) Sources of Contamination
- (c) Summary of Investigation, discuss all media investigated (i.e., Soil, Geology, Groundwater, Surface Water, Air, Biota)
- (d) Nature and Extent of Contamination

#### 5.4 Health-Based Risk Assessment.

A scoping meeting shall be held to discuss how the risk assessment will be conducted for this Site. Proponent will then submit a Health-based Risk Assessment (HRA) report. The report will be prepared consistent with U. S. EPA Risk Assessment Guidance for Superfund (EPA/540/1-89/002) and DTSC Supplemental Guidance for Human Health Multimedia Risk Assessments of Hazardous Waste Sites and Permitted Facilities. The HRA report must include the following components:

- (a) Contaminant Identification
- (b) Exposure Assessment
- (c) Toxicity Assessment
- (d) Risk Characterization
- (e) Environmental Evaluation
- (f) Soil and Groundwater Remediation Goals

#### 5.5 Feasibility Study Report.

Proponent shall prepare a Feasibility Study (FS) report for the Site which summarizes the results of the feasibility study, including the following:

- (a) Description of the Current Situation
- (b) Description of Remedial Action Technologies
- (c) Screening of Remedial Action Technologies
- (d) Analysis of Remedial Action Alternatives
- (e) Recommended Remedial Action

TASK 6.

Removal Action Workplan. If DTSC determines a removal action is appropriate, the Proponent will prepare a Removal Action Workplan (RAW) in accordance with Health and Safety Code sections 25323.1 and 25356.1. The Removal Action Workplan will include:

- (a) a description of the onsite contamination;
- (b) the goals to be achieved by the removal action;
- (c) an analysis of the alternative options considered and rejected and the basis for that rejection. This should include a discussion for each alternative which covers its effectiveness, implementability and cost;
- (d) administrative record list; and
- (e) a statement that the RAW serves as an equivalent document to the Engineering Evaluation/Cost Analysis document required by the National Contingency Plan.

If the proposed removal action does not meet the requirements of Health and Safety Code section 25356.1(h), the Proponent will prepare a Remedial Action Plan (RAP) in accordance with Health and Safety Code section 25356.1(c) for DTSC review and approval. **[Optional Language: The preparation, review and approval of a RAP may be addressed under a separate Agreement.]**

TASK 7.

Remedial Action Plan. If DTSC determines the final remedy cannot be implemented under a Removal Action Workplan, Proponent will prepare a Remedial Action Plan (RAP) in accordance with the standards and requirements set forth in Health and Safety Code section 25356.1. The RAP is based on the approved RI and FS Reports and sets forth in detail appropriate steps to remedy soil, surface water and groundwater contamination at the Site and adjacent areas. In addition, the RAP shall contain a schedule for implementation of all proposed removal and remedial actions.

TASK 8.

California Environmental Quality Act (CEQA). Based on the results of the draft Initial Study, DTSC will prepare the necessary CEQA documents. If required, the Proponent shall submit the information necessary for DTSC to prepare these documents.

TASK 9.

Remedial Design and Implementation Plan. Proponent will prepare and submit a Remedial Design and Implementation Plan (RDIP) in accordance with the agreed upon schedule contained in the approved RAP. The RDIP shall contain:

- (a) technical and operational plans and engineering designs for implementation of the approved remedial or removal action alternative(s);
- (b) a schedule for implementing the construction phase;
- (c) a description of the construction equipment to be employed;
- (d) a site specific hazardous waste transportation plan (if necessary);
- (e) the identity of any contractors, transporters and other persons conducting the removal and remedial activities for the Site;
- (f) post-remedial sampling and monitoring procedures for air, soil, surface water and groundwater;
- (g) operation and maintenance procedures and schedules; and
- (h) a health and safety plan.

TASK 10.

Implementation of Final Removal Action Workplan. Upon DTSC approval of the final Removal Action Workplan (RAW), the Proponent shall implement the removal action, as approved. Within thirty (30) days of completion of field activities, Proponent shall submit an Implementation Report documenting the implementation of the final RAW.

TASK 11.

Implementation of Final RAP. Upon DTSC approval of the RDIP and schedule, Proponent shall implement the final RAP as approved in accordance with the approved RDIP and schedule.

TASK 12.

Changes During Implementation of the Final RAP/RAW. During implementation of the final RAW or RAP and RDIP, DTSC may specify such additions, modifications and revisions to the RAW or RDIP as deemed necessary to protect human health and safety or the environment or to implement the RAW or RAP.

TASK 13.

Public Participation.

13.1 Proponent shall conduct appropriate public participation activities given the nature of the community surrounding the Site and the level of community interest. Proponent shall work cooperatively with DTSC to ensure that the affected and interested public and community are involved in DTSC's decision-making process. Any such public participation activities shall be conducted in accordance with Health and Safety Code sections 25358.7, [**"and 25356.1(e)" include this section if conducting a RAP**] the DTSC Public Participation Policy and Procedures Manual, and

with DTSC's review and approval.

13.2 The Proponent shall prepare a community profile to examine the level of the community's knowledge of the Site; the types of community concerns; the proximity of the Site to homes and/or schools, day care facilities, churches, etc.; the current and proposed use of the Site; media interest; and involvement of community groups and elected officials.

13.3 The Proponent shall develop and submit fact sheets to DTSC for review and approval when specifically requested by DTSC. Proponent shall be responsible for printing and distribution of fact sheets upon DTSC approval using the approved community mailing list.

**[INCLUDE THE FOLLOWING TASKS ONLY IF CONDUCTING A RAP/RAW].**

13.4 The Proponent shall publish, in a major local newspaper(s), a public notice announcing the availability of the RAW/RAP for public review and comment. The public comment period shall last a minimum of thirty (30) days.

13.5 DTSC may require that the Proponent hold at least one public meeting to inform the public of the proposed activities and to receive public comments on the RAW/RAP.

13.6 Within two (2) weeks of the close of the public comment period, the Proponent shall prepare and submit to DTSC a draft response to the public comments received.

13.7 If appropriate, the Proponent will revise the RAW/RAP on the basis of comments received from the public, and submit the revised RAW/RAP to DTSC for review and approval. The Proponent will also notify the public of any significant changes from the action proposed in the RAW/RAP.

**TASK 14.**

Deed Restrictions. The parties agree that deed restrictions or land use restrictions may be necessary to insure full protection of the environment and human health. DTSC may require such deed restriction or land use restriction in the Final RAW/RAP. Proponent agrees to sign and record the deed or land use restrictions approved by DTSC.

**TASK 15.**

Operation and Maintenance (O&M). The Proponent shall comply with all operation and maintenance requirements in accordance with the final RAW, final RAP and/or RDIP. Proponent shall enter into an O&M Agreement, which includes financial assurance, with DTSC prior to certification of the Site.

**TASK 16.**

Discontinuation of Remedial Technology. Any remedial technology employed in implementation of the final RAP/RAW shall be left in place and operated by the Proponent until and except to the extent that DTSC authorized the Proponent in writing to discontinue, move or modify some or all of the remedial technology because the Proponent has met the criteria specified in the final RAW/RAP for its discontinuance, or because the modifications would better achieve the goals of the final RAW/RAP.

TASK 17.

Quality Assurance/Quality Control (QA/QC) Plan. All sampling and analysis conducted by the Proponent under this Agreement shall be performed in accordance with a QA/QC Plan submitted by the Proponent and approved by DTSC. The QA/QC Plan will describe:

- (a) the procedures for the collection, identification, preservation and transport of samples;
- (b) the calibration and maintenance of instruments;
- (c) the processing, verification, storage and reporting of data, including chain of custody procedures and identification of qualified person(s) conducting the sampling and of a laboratory certified or approved by DTSC pursuant to Health and Safety Code section 25198; and
- (d) how the data obtained pursuant to this Agreement will be managed and preserved in accordance with the Preservation of Documentation section of this Agreement.

TASK 18.

Health and Safety Plan. The Proponent will submit a Site Health and Safety Plan in accordance with California Code of Regulations, Title 8, section 5192 and DTSC guidance, which covers all measures, including contingency plans, which will be taken during field activities to protect the health and safety of the workers at the Site and the general public from exposure to hazardous waste, substances or materials. The Health and Safety Plan should describe the specific personnel, procedures and equipment to be utilized.

TASK 19.

Document Review. DTSC will review [INSERT DOCUMENT NAME] and provide written comments to the Proponent.