

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:)	Docket HWCA: P3-04/05-003
)	
Evergreen Oil, Inc.)	
6880 Smith Avenue)	
Newark, California 94560)	
EPA ID CAD 980887418)	
)	CORRECTIVE ACTION
)	CONSENT AGREEMENT
)	
)	Health and Safety Code
)	Section 25187
Respondent.)	
_____)	

INTRODUCTION

1. The Department of Toxic Substances Control (DTSC) and **Evergreen Oil, Inc.** (also referred to as Respondent or EOI) voluntarily enter into this Corrective Action Consent Agreement (Consent Agreement) and agree as follows:

1.1. Jurisdiction exists pursuant to Health and Safety Code (HSC) section 25187, which authorizes DTSC to issue an order to require corrective action when DTSC determines that there is or has been a release of hazardous waste or constituents into the environment from a hazardous waste facility.

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

1.3. Respondent is the owner and operator of Evergreen Oil, Inc., 6880 Smith Avenue, Newark, California 94560 (Facility).

1.4. Respondent engages in the management of hazardous waste pursuant to a Hazardous Waste Facility Permit issued by the Department of Health Services, predecessor agency to DTSC, on October 15, 1985. Operations authorized under this permit and permit modifications issued by DTSC include receiving, storing and treating used oil and storage and transfer of antifreeze. The facility has applied for permit renewal with major modifications seeking authorization to store, treat and transfer RCRA and non-RCRA hazardous waste.

1.5. The terms used in this Consent Agreement have the same meaning for these terms as is specified in section 66260.10 of Title 22 of the California Code of Regulations (Cal. Code Regs.), except as otherwise provided.

1.6. Respondent agrees to implement all approved Workplans and to undertake all actions required by the terms and conditions of this Consent Agreement, including any portions of this Consent Agreement incorporated by reference. Respondent waives any right to request a hearing regarding the matters set out in this Consent Agreement pursuant to HSC section 25187.

FINDINGS OF FACT

2.1. Evergreen Oil Facility is located on a 7-acre site zoned MG (General Industrial) and is located within an urbanized area surrounded by industrial sites. Land use immediately surrounding the project site is not zoned for residential use; it is chiefly industrial and commercial. The site is surrounded to the west and south primarily by open land, salt ponds, wetlands and the San Francisco Bay, but most of the project area to the north and east is suburban and zoned low-density residential.

The closest human receptors, other than EOI employees, would be the employees of the truck terminal located approximately 125 feet north of the EOI northern boundary. The closest residential receptor is located approximately northeast of Cherry Street, approximately 1,400 feet north of the EOI facility.

According to information available from the Alameda County Water District (ACWD), the depth to the Newark aquifer at the facility site is approximately 12.5 feet. The facility is located at an elevation of approximately 21 feet above Mean Sea Level. Therefore groundwater is located approximately eight and half feet above Mean Sea Level. Due to the proximity of the San Francisco Bay, to the south, the Newark aquifer has a chloride content of approximately 10,000 mg/l and is unfit for domestic uses.

2.2. The Evergreen Oil, Inc., facility was built in 1985 on a previously undeveloped parcel, and has been operating under a State hazardous waste facility Permit issued in October 1985. Evergreen Oil, Inc., is a wholly owned subsidiary of Evergreen Holdings, Inc.

2.3. According to the Initial Study prepared for the City of Newark, in 1986 shortly after the start up of the Evergreen plant, there was a fire in one of the asphalt flux storage tanks. This was caused by filling the asphalt flux tank from the top with hot material. The static electricity generated by this filling method resulted in an electrical discharge. Because the asphalt flux fed into the tank was hot, it generated enough vapors for the electrical discharge to start a fire. This was corrected immediately by changing the piping to fill the tank from the bottom and adding a cooler to the pipeline to lower the temperature of the material entering the tank. The current tank has been in

operation for 15 years without further incidents. The new asphalt system and tanks are designed to current industry standards.

In 1988, a storm line containing oily water overflowed during a large storm event. This resulted in a discharge of oil into the flood control channel. Evergreen cleaned up the oil with oversight by the Newark Fire Department using on site emergency response equipment. An inflatable plug was installed in the main plant storm water outfall to the flood control channel to prevent accidental discharge of storm water.

Another release that occurred at the facility occurred on March 30, 1996. The incident involved a spill of oily water into the flood control channel that runs adjacent to the Evergreen facility. It is estimated that 224 gallons of oily water was spilled in the storm drain during a material transfer, but that only 45 gallons of oily water made its way to the flood control channel and of that, approximately six gallons was oil. The remaining spilled material was trapped behind an inflatable plug that was installed in the outfall line to the flood control channel. The spill was cleaned up under the supervision of the California Department of Fish and Game. Booms were placed across the flood control channel and pockets of oil that had accumulated in the flood control channel were removed using an Evergreen vacuum truck. The shoreline was rinsed with water and absorbent pads were used to clean up oil along the shoreline. The storm drain leading to the flood control channel was thoroughly rinsed and the rinseate was removed using an Evergreen vacuum truck.

On April 2, 1996, a slight sheen was detected on water discharged to the flood control channel which consisted of traces of the oily water accidentally discharged on March 30. To mitigate further incidents such as this, inspection of the inflatable plug was increased from once a week to daily.

2.4. This Consent Agreement incorporates by reference all environmental studies for the Facility.

2.5. Respondent submitted a completed RCRA Facility Assessment (RFA) Questionnaire for the Facility on November 7, 2003. The RFA Questionnaire identified Seven (7) areas that hazardous wastes or hazardous materials were handled and may require further investigation as solid waste management units or areas of concern.

2.6. On May 20, 2004, DTSC completed an RFA report. The RFA report identified 15 solid waste management units (SWMUs) and 5 areas of concern (AOCs) that either have released or may release hazardous waste or hazardous waste constituents into the environment. Based on the results of the RFA, DTSC concludes that further investigation is needed to determine the nature and extent of contamination (if any) in the SWMUs and AOCs summarized below.

2.6.1 Summary of Solid Waste Management Units with their Subunits Identified in May 20, 2004 RFA Report

SWMU NUMBER	NAME
1	Tank Farm Area
1.1	Tank Farm
1.2	Sump Tank X-508
2	Process Area
2.1	Re-refinery
2.2	Mohawk Area
3	Wastewater Treatment Area- DAF Area
3.1	DAF Unit
3.2	Tanks T-704A and T-704B
4	West Loading /Unloading Area
4.1	Bobtail Truck Loading/Unloading Area
4.2	Transporting Truck Loading/Unloading Area
5	Filter Wash Area
6	Sump Tank X-510
7	Detention Sump 2
8	Pumping and Valve Station West Tank Farm
9	Pumping and Valve Station South Tank Farm
10	Pumping and Valve Station East Tank Farm

SWMU NUMBER	NAME
11	Sump Tanks X-453 and X-454 Area
11.1	Sump Tank X-453
11.2	Sump Tank X-454
12	Detention Sump 1
13	Ten day transfer Area
14	Railcar loading area 1
15	Underground Pipes, ditches and trenches

2.6.2 Summary of Areas of Concern Identified in May 20, 2004 RFA Report

AOC NUMBER	NAME
1	Raw Material Product tanks
2	Main Plant Storm Water-Outfall
3	Discharges to Union Sanitation District connections –Lift Station
4	Maintenance Shop
5	Laboratory

2.7. Routes of Exposure. Hazardous wastes and/or hazardous waste constituents have migrated or may migrate from the Facility into the environment through the following pathways: air, soil, surface and groundwater.

2.7.1 General Human and Environmental Receptors

Media of concern for this site include groundwater, soil, air, and surface water. Air is one of the primary pathways for potential human exposure to contaminant releases from the Evergreen facility. The RFA report also indicated that there may be a potential for releases to air because of equipment break-up, operator's mistakes, fugitive emissions,

airborne contaminated soil/dust that has been stirred up by winds or human activity, or from volatile constituents that are released from the equipments, tanks, or spills.

There are numerous networks of cracks on the concrete or asphalt surfaces, so the potential for contamination to reach the groundwater is moderate. Depth to groundwater on-facility is approximately 8 1/2 to 10 feet. Surface concrete in a few areas is heavily contaminated with oil, and the surface contamination has a potential to become airborne and affect nearby populations. Several areas of surface contamination are accessible to facility personnel, and may pose a threat in the event of direct contact.

Off-land use and activities include salt ponds; off-land recreational activities such as boating could potentially expose humans to any contaminants, which may have migrated into the bay area.

The closest human receptors are employees of EOI and the surrounding businesses. The closest human receptors, other than EOI employees, would be the employees of the truck terminal located approximately 125 feet north of the EOI northern boundary. The closest residential receptor is located approximately northeast of Cherry Street, approximately 1,400 feet north of the EOI facility.

2.7.2 Surface and Ground Water Migration Pathways and Receptors

There are numerous networks of cracks on the concrete or asphalt surfaces, so the potential for contamination to reach the groundwater is moderate. Depth to groundwater on-facility is approximately 8 1/2 to 10 feet. Surface concrete in few areas is heavily contaminated with oil. Releases from the facility may have impacted the groundwater. Surface drainage occurs primarily by storm drainage to the flood control channel and the San Francisco Bay. Surface water flows in response to seasonal and intermittent rainfall. Surface drainage outside the facility boundaries does not enter the facility. Releases from the facility may have migrated to surface water and impacted local ecology. The flood control channel that runs adjacent to the Evergreen facility may have received releases in the past because the storm water runoff and any other drainage from the immediate area, via local storm drain connections. This water is ultimately discharged to the San Francisco Bay. Some ecological habitats which do exist along the Bay may have been impacted. There is a known record of an uncontrolled release from the facility impacting surface waters and currently, any surface releases and all storm water runoff is contained on site and treated at the facility. Other potential pathways for the migration of contaminants are trenches, sewer lines and buried pipelines.

2.7.3 Soil Migration Pathways and Receptors

Soil or subsurface soil contamination may also be an intermediate pathway to other media, such as to groundwater via leaching or air via volatilization or wind erosion.

Human receptors may be exposed to site contaminants in soil through dermal contact, inhalation and ingestion. Primary receptors would be facility workers in the area. Persons in vehicles and pedestrian traffic would likely be exposed to a lesser degree. Construction and maintenance may also increase risks of human exposure to contaminants by uncovering contaminated soil areas.

Environmental receptors may come into direct contact with the soil and animals feeding off the ground. Animal exposure can be through ingestion, dermal contact, and inhalation. During the Visual Site Inspection (VSI), no species were observed at the facility.

2.7.4 Air Migration Pathways and Receptors

Contaminants in the air result from equipment break-up, operator's mistakes, fugitive emissions, airborne contaminated soil/dust that has been stirred up by winds or human activity, or from volatile constituents that are released from the soil, open containers, or spills. The migration for air is primarily downwind from a contaminant source.

SWMUs with the greatest potential for air release include waste storage and treatment units, re-refined oil spills, used oil and various volatile organic compounds. Many units at the facility generate wastes or products which have the potential to be released to the air either in vapor form or as particulate matter. Among others, vapor releases could come from re-refining, fuel blending, or waste water treatment units.

The primary potential human receptors are on-site workers and personnel, especially those engaged in activities near the containment source. Potential receptors also include those live near or downwind from the SWMUs. Although many may be indoors, they can be exposed if air contaminants are brought in through air ventilating systems, and are not being filtered adequately. An expansion to the facility may pose a threat for exposure of particulate contaminants, since the soils at these SWMUs maybe contaminated.

Potential environmental receptors include most of the known species in the area that live or feed near or downwind from the SWMUs at Evergreen.

PROJECT COORDINATOR

3. Within fourteen (14) days of the effective date of this Consent Agreement, DTSC and Respondent shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Agreement and for designating a person to act in his/her absence. All communications between Respondent and DTSC, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to this Consent

Agreement shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven (7) days prior written notice; however, DTSC shall not seek reimbursement from Respondent for costs incurred for the transition among DTSC Project Coordinators and/or other DTSC staff.

WORK TO BE PERFORMED

4. Based on the foregoing FINDINGS OF FACT, IT IS HEREBY ORDERED THAT:

4.1 Respondent agrees to perform the work undertaken pursuant to this Consent Agreement in a manner consistent with: the attached Scopes of Work; DTSC-approved RFI Workplan, Corrective Measures Study Workplan, Corrective Measures Implementation Workplan, and any other DTSC-approved Workplans; Public Participation Policy and Procedures Manual published by DTSC, as periodically amended; the Health and Safety Code and other applicable state and federal statutes and their implementing regulations; and applicable DTSC and United States Environmental Protection Agency (U.S. EPA) guidance documents. Applicable guidance documents include, but are not limited to, the "RCRA Facility Investigation (RFI) Guidance" (Interim Final, May 1989, EPA 530/SW-89-031), Corrective Action Orientation Manual, "RCRA Groundwater Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950-1, September 1986), "Test Methods For Evaluating Solid Waste" (SW-846, Update III), "Construction Quality Assurance for Hazardous Waste Land Disposal Facilities" (EPA 530/SW-85-031, July 1986), "Supplemental Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway" (Draft for Comment 10/23/2001), and "RCRA Corrective Action Plan (Final)" (OSWER Directive 9902.3-2A May 1994, EPA). All work undertaken pursuant to this Consent Agreement to address a threat or potential threat to human health shall also be in accordance with the site-specific, calculated risk-based assessment of such (potential) threat.

4.2. This agreement incorporates any applicable waste discharge requirements issued by the State Water Resources Control Board or a California Regional Water Quality Control Board. Actions taken pursuant to this agreement shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of chapter 4 of Division 7 of the Water Code and state policies for water quality control adopted pursuant to Article 3 (commencing with section 13140) of Chapter 3 of Division 7 of the Water Code to the extent these plans and policies are not less stringent than Chapter 6.5, Division 20 of the Health and Safety Code and regulations adopted pursuant thereto.

INTERIM MEASURES (IM)

5. If necessary, as determined by DTSC or EOI, Respondent shall conduct interim measures (IM) 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. Respondent shall submit to DTSC an IM Plan in accordance with Attachment A.

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

5.2. If at any time Respondent identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, Respondent shall notify DTSC Project Manager orally within 48 hours of discovery and notify DTSC in writing within 15 days of discovery summarizing the findings, including the immediacy and magnitude of the potential threat to human health and/or the environment. Within 60 days of receiving DTSC's written request, Respondent shall submit to DTSC an Interim Measures (IM) Workplan for approval. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications and shall be developed in a manner consistent with the Scope of Work for Interim Measures Implementation appended as Attachment A. The IM Workplan is subject to approval by DTSC and shall provide for the performance of all Interim Measures necessary to achieve stabilization at the Facility. If DTSC determines that immediate action is required, DTSC Project Manager may orally authorize the Respondent to act prior to DTSC's receipt of the IM Workplan.

5.3. If DTSC identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, DTSC will notify Respondent in writing. Within 60 days of receiving DTSC's written notification, Respondent shall submit to DTSC for approval an IM Workplan that identifies Interim Measures that will mitigate the threat. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan is subject to approval by DTSC and shall provide for the performance of all Interim Measures necessary to achieve stabilization at the Facility. If DTSC determines that immediate action is required, DTSC Project Manager may orally authorize Respondent to act prior to receipt of the IM Workplan.

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

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

5.6. Concurrent with the submission of an IM Workplan, Respondent shall submit for DTSC approval a Community Profile in accordance with Attachment C. 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.

RCRA FACILITY INVESTIGATION (RFI)

6.1. Within 120 days of the effective date of this Consent Agreement, Respondent shall submit to DTSC a Current Conditions Report. The Current Conditions Report shall assess the need for any IMs for the Facility.

6.2. Respondent may divide the RCRA Facility Investigation (RFI) into phases. If Respondent chooses to do so, Respondent shall, within 120 days of the effective date of this Consent Agreement, submit to DTSC a proposed plan, rationale and schedule for conducting the phased RFI and for submitting the various phases of the RFI Workplans, together with the Phase I RFI Workplan. If Respondent chooses to conduct the RFI without the phased approach, Respondent shall, within 150 days of the effective date of this Consent Agreement, submit to DTSC a complete RFI Workplan. The RFI Workplan(s) shall address various environmental media including but not limited to soil, pore-gas, indoor air and groundwater.

6.3. The Current Conditions Report and RFI Workplan(s) 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 D. DTSC will review the Current Conditions Report and RFI Workplan(s) and notify Respondent in writing of DTSC's approval, approval with conditions or disapproval.

6.4. The RFI Workplan(s) shall detail the methodology to: (1) gather data needed to make decisions on interim measures/ stabilization during the early phases of the RCRA Facility Investigation; (2) identify and characterize all sources of contamination, if any; (3) define the nature 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 corrective measures will be selected by DTSC. A specific schedule for implementation of all activities shall be included in the RFI Workplan(s).

6.5. Respondent shall submit an 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 D. If there is a phased investigation, separate RFI Reports and a report that summarizes the findings from all phases of the RFI must be submitted to DTSC. DTSC will review the RFI Report(s) and notify Respondent in writing of DTSC's approval, approval with conditions or disapproval.

6.6. Concurrent with the submission of an RFI Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with Attachment B. 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.

6.7. Respondent shall submit an 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. DTSC will review the RFI Summary Fact Sheet and notify Respondent in writing of DTSC's approval, approval with conditions or disapproval, including any comments and/or modifications. When DTSC approves in writing the RFI Summary Fact Sheet, Respondent shall within 15 days of such written approval 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).

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

RISK ASSESSMENT

7. 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 Workplan within 60 days of receipt of DTSC's determination. If a Risk Assessment is required, Respondent shall submit to DTSC for approval a Risk Assessment Report in accordance with DTSC-approved Risk Assessment Workplan schedule.

CORRECTIVE MEASURES STUDY (CMS)

8.1. If necessary, Respondent shall prepare a Corrective Measures Study for any affected environmental medium where contaminant concentrations exceed human health-based or ecologically-based action levels established by the DTSC-approved Risk Assessment Report if one is required under this Consent Agreement, or where DTSC otherwise determines that the contaminant releases pose a potential threat to

human health or the environment through an environmental medium such as soil, pore-gas, indoor air or groundwater.

8.2. If a CMS is required, within 90 days of DTSC's approval of the RFI Report, or within 90 days of DTSC's approval of the Risk Assessment Report if one is required under this Consent Agreement, Respondent shall submit a CMS Workplan to DTSC. The CMS Workplan, if required, 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 E.

8.3. The CMS Workplan, if required, 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.

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

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

REMEDY SELECTION

9.1. DTSC shall provide the public with an opportunity to review and comment on the final version of the CMS Report, DTSC's proposed corrective measures, if any, for the Facility, and DTSC's justification for selection of such corrective measures or an alternative of no further action. Depending on the level of community concern, DTSC may conduct a public hearing to obtain comments.

9.2. Remedy selection shall be based on site-specific, risk-based corrective action and shall be guided by an evaluation of the effectiveness, implementability (both technical and administrative feasibility), and cost of the proposed corrective measures or alternative of no further action.

9.3. 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. Any additional work required pursuant to this provision

shall be consistent with the site-specific, calculated risk-based assessment of the threat or potential threat to human health from the Facility.

9.4. DTSC shall notify Respondent of the final corrective measures, if any, selected by DTSC in the Final Decision and Response to Comments. The notification shall include DTSC's reasons for selecting the corrective measures or an alternative of no further action.

CORRECTIVE MEASURES IMPLEMENTATION (CMI)

10.1. Within one hundred and twenty (120) days of Respondent's receipt of written notification of DTSC's selection of corrective measures, if any, 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 F.

10.2. Concurrent with the submission of a CMI Workplan, if applicable, Respondent shall submit to DTSC a Health and Safety Plan in accordance with Attachment B. Respondent shall have the option of updating the most recent Health and Safety Plan for previous work conducted at the Facility.

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

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

10.4. DTSC shall review all required CMI documents and notify Respondent in writing of DTSC's approval, approval with conditions or disapproval within a reasonable time.

10.5. As directed by DTSC, within one hundred twenty (120) days of DTSC's approval of all required CMI documents, if applicable, Respondent shall establish a financial assurance mechanism for Corrective Measures Implementation. The financial assurance mechanism may include a performance or surety bond, liability insurance, an escrow performance guarantee account, a trust fund, financial test, or corporate guarantee as specified in Title 22, Cal. Code Regs. section 66265.143 or any other mechanism acceptable to DTSC. The mechanism shall be established to allow DTSC

access to the funds to undertake Corrective Measures Implementation tasks, if applicable, if Respondent is unable or unwilling to undertake the required actions.

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 DTSC all information necessary to facilitate any CEQA analysis. DTSC shall make an initial determination regarding the applicability of CEQA. If the activities are not exempt from CEQA, DTSC shall conduct an Initial Study. Based on the results of the Initial Study, DTSC shall determine if a Negative Declaration or Environmental Impact Report (EIR) should be prepared. DTSC shall prepare and process any such Negative Declaration. However, should DTSC determine that an EIR is necessary, such an EIR should be prepared under a separate agreement between DTSC and Respondent.

DTSC APPROVAL

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

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

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

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

SUBMITTALS

13.1. Beginning with the completion of the first phase of the RFI, or every quarter, whichever comes first, Respondent shall prepare and submit a letter report summarizing the activities conducted during the given phase or quarter and report all findings in a manner consistent with the Scope of Work for Progress Reports contained in Attachment G. Each such letter report shall be due no later than 30 days from completion of each phase of the required activities and receipt of validated data, or no later than 10 days from the end of each quarter, whichever comes first. 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 two hard copies of all documents, including but not limited to, workplans, reports, and correspondence, and in electronic pdf format. Submittals specifically exempted from this hard copy requirement are all progress reports and correspondence of less than 15 pages, of which one 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(s) or consultant(s) shall have the technical expertise sufficient to fulfill his or her responsibilities. Within 14 days of the effective date of this Consent Agreement, Respondent shall notify DTSC Project Coordinator in writing of the name, title, and qualifications of the professional engineer or registered geologist and of any contractors or consultants and their personnel to be used in carrying out the terms of this Consent Agreement.

ADDITIONAL WORK

15. DTSC may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology

modifications are necessary in addition to, or in lieu of, the tasks and deliverables associated with the RFI, or CMS or IM if necessary. DTSC shall request in writing that Respondent perform the additional work and shall specify the basis and reasons for DTSC's determination that the additional work is necessary. Within 14 days after the receipt of such determination, Respondent may confer with DTSC to discuss the additional work DTSC has requested. If required by DTSC, Respondent shall submit to DTSC a workplan for the additional work. Such workplan shall be submitted to DTSC within 30 days of receipt of DTSC's determination or according to an alternate schedule agreed to by the parties to this Consent Agreement. Upon approval of a workplan, Respondent shall implement it in accordance with the provisions and schedule contained therein. The need for, and disputes concerning, additional work are subject to the dispute resolution procedures specified in this Consent Agreement.

QUALITY ASSURANCE

16.1. All sampling and analyses performed by Respondent under this Consent Agreement shall follow applicable DTSC and U.S. EPA regulations and guidance for sampling and analysis. Workplans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved workplans must be approved by DTSC prior to implementation, must be documented, including reasons for the deviations, and must be recorded in the applicable report.

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

SAMPLING AND DATA/DOCUMENT AVAILABILITY

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

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

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

ACCESS

18.1. Pursuant to any purchase and sales agreement of the facility, the current property owners have agreed to provide access to the site for all necessary cleanup efforts. The work required pursuant to this Consent Agreement shall be performed, to the extent reasonably practicable, in a manner that is consistent with, and does not interfere with, property redevelopment activities.

18.2. Respondent agrees to permit DTSC and its representatives to inspect and copy all records, files, photographs, and 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. Nothing in this Consent Agreement shall be construed to require disclosure of any document protected by the attorney-client privilege or by the attorney work-product doctrine. Notwithstanding this provision, there shall be no such attorney work-product privilege or attorney-client privilege for data generated with respect to the Facility pursuant to the terms of this Consent Agreement. In the event Respondent asserts that any information is privileged, Respondent shall describe the information and the nature of the privilege asserted with sufficient clarity and particularity to place DTSC on notice as to the basis of the claim.

RECORD PRESERVATION

19.1. Respondent shall retain, during the pendency of this Consent Agreement and for a minimum of six years after its termination, all data, records, and documents now in its possession or control or that come into its possession or control that relate in any way to the performance of this Consent Agreement or to hazardous waste management and/or disposal at the Facility.

19.2. The records that are subject to paragraph 19.1 may be maintained on any electronic or film media as long as Respondent can demonstrate to DTSC that the manner of preservation and retention does not compromise the evidentiary value or the admissibility of the records in any judicial proceeding. Respondent agrees to provide DTSC with copies of such records promptly upon request. Nothing in this paragraph shall constitute a waiver by Respondent of any privilege, including but not limited to the right to withhold from producing or otherwise disseminating any and all privileged information. Respondent hereby expressly reserves its rights with respect to all privileges available to it under the law.

19.3. Respondent shall notify DTSC in writing 90 days prior to the destruction of any records that are subject to paragraph 19.1, and shall provide DTSC with the opportunity to take possession of any such non-privileged records. Written notification shall reference the effective date, caption, and docket number of this Consent Agreement and shall be addressed to:

Chief
Southern California Permitting and Corrective Action Branch
Hazardous Waste Management Program
Department of Toxic Substances Control
1011 N. Grandview Avenue
Glendale, California 91201

19.4. 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 with a copy of all documents produced pursuant to this Consent Agreement.

DISPUTE RESOLUTION

20.1. The parties agree to use their best efforts to resolve all disputes informally. The parties further agree that the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Consent Agreement. If Respondent fails to follow the procedures contained in this section, it shall have waived its right to further consideration of the disputed issue.

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

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

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

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

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

RESERVATION OF RIGHTS

21.1. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Agreement. Respondent 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.

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

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

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

21.5. This Consent Agreement is not intended to be nor shall it be construed to be a permit. This Consent Agreement is not a substitute for, and does not preclude DTSC from requiring, any hazardous waste facility permit, post closure permit, closure plan or post closure plan. The parties acknowledge and agree that DTSC's approval of any workplan, plan, and/or specification does not constitute a warranty or representation

that the workplans, plans, and/or specifications will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Consent Agreement shall not relieve Respondent of its obligations to comply with the Health and Safety Code or any other applicable local, state, or federal law or regulation.

OTHER CLAIMS

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

COMPLIANCE WITH WASTE DISCHARGE REQUIREMENTS

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

OTHER APPLICABLE LAWS

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

REIMBURSEMENT OF DTSC'S COSTS

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

25.2. An estimate of DTSC's costs is attached as Exhibit A showing the amount of \$463,313.00. It is understood by the parties that this amount is only a cost estimate for the activities shown on Exhibit A and it may differ from the actual costs incurred by DTSC in overseeing these activities or in implementing this Consent Agreement. DTSC will provide additional cost estimates to Respondent as the work progresses under the Consent Agreement.

25.3. Respondent shall make an advance payment to DTSC in the amount of \$25,000.00 within 30 days of the effective date of this Consent Agreement. DTSC will apply the advance payment to its oversight costs. 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 28 of this Consent Agreement.

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

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

25.6. Any dispute concerning DTSC's costs incurred pursuant to this Consent Agreement is subject to the Billing Dispute Resolution Process provision of this Consent Agreement and the dispute resolution procedures as established pursuant to Health and Safety Code section 25269.2. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

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

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

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

BILLING DISPUTE RESOLUTION PROCESS

26. Respondent shall be billed on a quarterly basis by DTSC for services provided under this Agreement. If Respondent objects to any of the charges or related services appearing on a DTSC billing invoice, Respondent may file a formal dispute by notifying DTSC in writing within forty-five (45) days of the date of the billing invoice. The dispute notice must state with particularity the reasons for the dispute and should be addressed to:

Special Assistant for Cost Recovery and Reimbursement Policy
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806

To the extent Respondent disagrees with the decision of DTSC, it may pursue its challenges as set forth in paragraph 20.6 of this Consent Agreement.

MODIFICATION

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

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

TERMINATION AND SATISFACTION

28. 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 according to the terms set forth in paragraph 19 of this Consent Agreement.

EFFECTIVE DATE

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

SIGNATORIES

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

DATE: November 19, 2004 BY: //Original Signed by Gary B. Colber,
Vice President, Evergreen, Oil, Inc.//
Representing Respondent
Name and title of Respondent's
Representative

November 22, 2004
DATE: _____

//Original Signed by//
BY: _____
Jose Kou, Chief
Southern California Permitting
and Corrective Action Branch
Hazardous Waste Management Program
Department of Toxic Substances Control