

1 JASON R. FLANDERS (SBN 238007)  
 2 AQUA TERRA AERIS LAW GROUP, LLP  
 3 490 43<sup>rd</sup> Street, Suite 108  
 4 Oakland, CA 94609  
 5 Tel: (916) 202-3018  
 6 Email: jrf@atalawgroup.com

7 FREDRIC EVENSON (SBN. 198059)  
 8 ECOLOGY LAW CENTER  
 9 P.O. Box 1000  
 10 Santa Cruz, CA 95061  
 11 Tel: (831) 454-8216  
 12 Email: evenson@ecologylaw.com

13 CHRISTOPHER ALAN SPROUL (SBN  
 14 126398)  
 15 ENVIRONMENTAL ADVOCATES  
 16 5135 Anza Street  
 17 San Francisco, CA 94121  
 18 Tel: (415) 533-3376  
 19 Email: csproul@enviroadvocates.com

20 Attorneys for Plaintiff  
 21 *Ecological Rights Foundation*

J. TOM BOER (SBN 199563)  
 JTBoer@hunton.com  
 HUNTON ANDREWS KURTH LLP  
 50 California Street  
 Suite 1700  
 San Francisco, CA 94111  
 Telephone: (415) 975-3700  
 Facsimile: (415) 975-3701

DIANA P. MARTIN (SBN 149755)  
 MartinDP@hunton.com  
 HUNTON ANDREWS KURTH LLP  
 550 South Hope Street  
 Suite 2000  
 Los Angeles, CA 90071  
 Telephone: (213) 532-2162  
 Facsimile: (213) 312-4759

Attorneys for Defendant  
*Pacific Gas and Electric Company*

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

ECOLOGICAL RIGHTS FOUNDATION, a  
 California non-profit incorporation,

Plaintiff,

vs.

PACIFIC GAS AND ELECTRIC  
 COMPANY,

Defendant.

Case No. 3:10-cv-00121-RS

**STIPULATION TO ENTER CONSENT  
 DECREE AND DISMISS PLAINTIFF'S  
 CLAIMS WITH PREJUDICE;  
 [PROPOSED] ORDER ENTERING  
 CONSENT DECREE, GRANTING  
 DISMISSAL OF CLAIMS WITH  
 PREJUDICE**

**(Resource Conservation and Recovery  
 Act 42 U.S.C. §§ 6901 et seq.)**

STIPULATION

1  
2           WHEREAS, on November 8, 2009 and April 9, 2010, Plaintiff Ecological Rights  
3 Foundation (“ERF” or “Plaintiff”) served Pacific Gas and Electric Company (“PG&E” or  
4 “Defendant”) with Notices of Violations and Intent to File Suit (“Notices”).

5           WHEREAS, ERF represents that it has notified the State of California and U.S.  
6 Environmental Protection Agency of this Action pursuant to 42 U.S.C. § 6972(b), on February 9,  
7 2010 (“Notice Letter”).

8  
9           WHEREAS, on February 9, 2011, ERF filed a Fourth Amended Complaint against  
10 Defendant in this Court (“Complaint”) (Dkt. 107). Said Complaint incorporates by reference all  
11 of the allegations contained in ERF’s Notices.

12           WHEREAS, on February 18, 2015, this Court entered a final judgment against ERF,  
13 dismissing all claims in the Fourth Amended Complaint against PG&E with prejudice (Dkt. No.  
14 235) and, on March 7, 2015, ERF filed a Notice of Appeal to the Ninth Circuit Court of Appeals  
15 (Dkt. No. 236).

16  
17           WHEREAS, on November 2, 2017, the United States Court of Appeals for the Ninth  
18 Circuit filed its Opinion in the matter (Dkt. No. 239), affirming in part, reversing in part, and  
19 remanding to this Court for further adjudication, and its Mandate issued on November 24, 2017  
20 (Dkt. No. 241).

21           WHEREAS, following remand to this Court, ERF and PG&E have engaged in vigorous  
22 and extensive settlement negotiations in an effort to resolve the claims remaining in this matter  
23 without further adjudication. The settlement effort has been overseen by Chief Magistrate Judge  
24 Joseph C. Spero, consistent with this Court’s Notice of Settlement Conference and Settlement  
25 Conference Order (Dkt. 259).  
26  
27  
28

1           WHEREAS, ERF and PG&E (the “settling parties”), through their authorized  
2 representatives and without either adjudication of ERF’s claims remaining on remand, or  
3 admission by PG&E of any alleged violation or other wrongdoing, have chosen to resolve in full  
4 by way of Consent Decree the allegations of ERF remaining in this matter following remand  
5 from the Ninth Circuit and as set forth in the Notices and/or the Complaint. The settling parties  
6 recognize that resolution of this matter via Consent Decree will conserve judicial resources and  
7 avoid the costs and uncertainties of further litigation. A copy of the Consent Decree entered into  
8 by and between ERF and PG&E is attached hereto as Exhibit 1.  
9

10           WHEREAS, the settling parties jointly represent that the Consent Decree is fair,  
11 reasonable, and equitable, and does not violate the law or public policy.

12           NOW THEREFORE, IT IS HEREBY STIPULATED and agreed to that the settling  
13 parties request an order from this Court (1) dismissing with prejudice ERF’s claims as to PG&E,  
14 as set forth in the Notice and Complaint, and (2) concurrently entering the Consent Decree and  
15 retaining jurisdiction over this matter for purposes of dispute resolution and enforcement of the  
16 Consent Decree.  
17

18 Respectfully submitted,  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: September 7, 2018

Aqua Terra Aeris Law Group

By: /s/ Jason R. Flanders  
Jason R. Flanders  
Attorney for Plaintiff  
ECOLOGICAL RIGHTS FOUNDATION

Dated: September 7, 2018

Hunton Andrews Kurth LLP

By: /s/ J. Tom Boer  
J. Tom Boer  
Attorney for Defendant  
PACIFIC GAS AND ELECTRIC  
COMPANY

///

~~PROPOSED~~ ORDER

Good cause appearing, and the parties having stipulated and agreed, IT IS HEREBY ORDERED that pursuant to Federal Rule of Civil Procedure 41(a)(2), ECOLOGICAL RIGHTS FOUNDATION's claims as to PACIFIC GAS AND ELECTRIC COMPANY, as set forth in the Notices and/or Complaint, are dismissed with prejudice; and, concurrently, the parties' Consent Decree, attached hereto as Exhibit 1, is entered and the Court shall retain jurisdiction over this matter for purposes of dispute resolution and enforcement of the Consent Decree until termination of the Consent Decree as set forth therein.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 9/7, 2018

  
\_\_\_\_\_  
Hon. Richard Seeborg  
United States District Judge

# **Exhibit 1**

1 Christopher Alan Sproul (SBN 126398)  
2 csproul@enviroadvocates.com  
3 **Environmental Advocates**  
4 5135 Anza Street  
5 San Francisco, CA 94121  
6 Telephone: (415) 533-3376  
7 Facsimile: (415) 358-5695

8 Fredric Evenson (SBN 198059)  
9 evenson@ecologylaw.com  
10 **Ecology Law Center**  
11 P.O. Box 1000  
12 Santa Cruz, CA 95061  
13 Telephone: (831) 454-8216

14 Jason R. Flanders (SBN 238007)  
15 jrf@atalawgroup.com  
16 **Aqua Terra Aeris Law Group**  
17 490 43rd Street, Suite 108  
18 Oakland, CA 94609  
19 Telephone: (916) 202-3018

20 Attorneys for Plaintiff  
21 Ecological Rights Foundation

J. Tom Boer (SBN 199563)  
JTBoer@hunton.com  
**Hunton Andrews Kurth LLP**  
50 California Street  
Suite 1700  
San Francisco, CA 94111  
Telephone: (415) 975-3700  
Facsimile: (415) 975-3701

Diana P. Martin (SBN 149755)  
MartinDP@hunton.com  
**Hunton Andrews Kurth LLP**  
550 South Hope Street  
Suite 2000  
Los Angeles, CA 90071  
Telephone: (213) 532-2162  
Facsimile: (213) 312-4759

Attorneys for Defendant  
Pacific Gas and Electric Company

22 **UNITED STATES DISTRICT COURT**  
23 **NORTHERN DISTRICT OF CALIFORNIA**

24 ECOLOGICAL RIGHTS FOUNDATION,  
25 a California non-profit association,

26 Plaintiff,

27 v.

28 PACIFIC GAS AND ELECTRIC COMPANY,

Defendant.

Civil Case No.: 3:10-cv-00121-RS

**CONSENT DECREE**

**(Resource Conservation and Recovery  
Act 42 U.S.C. §§ 6901 *et seq.*)**

1 **RECITALS**

2 1. This Consent Decree is entered into by and between Plaintiff Ecological Rights  
3 Foundation (“ERF”) and Defendant Pacific Gas and Electric Company (“PG&E”).

4 2. On or about February 9, 2011, ERF filed a fourth amended complaint (“Complaint”)  
5 against PG&E in the United States District Court for the Northern District of California (“District  
6 Court”) (referred to as “the Action”).

7 3. ERF’s Complaint alleges that PG&E has contributed or is contributing to the past or  
8 present handling, storage, treatment, transportation or disposal of pentachlorophenol and dioxins, that  
9 may present an imminent and substantial endangerment to health or the environment, at service center  
10 facilities located throughout northern California (“Facilities,” and individually referred to as a “Facility”  
11 in this Consent Decree). The Facilities covered by this Consent Decree are identified in Exhibit A.

12 4. ERF represents that it has notified the State of California and U.S. Environmental  
13 Protection Agency of this Action pursuant to 42 U.S.C. § 6972(b), on February 9, 2010 (“Notice  
14 Letter”).

15 5. PG&E denies the occurrence of the violations alleged in the Notice Letter and the  
16 Complaint (that are subject to the Action), and denies that its Facilities (or operations thereon) are  
17 causing or otherwise contributing to an imminent and substantial endangerment. PG&E does not admit  
18 any liability arising out of the allegations or occurrences alleged in the Notice Letter or the Complaint  
19 and maintains that it has complied at all times with all applicable provisions of RCRA.

20 6. The Parties enter into this Consent Decree in an effort to efficiently and cost-effectively  
21 resolve the Action. The terms in this Consent Decree are negotiated solely for the purpose of this  
22 settlement and are not an admission by either Party as to: (i) the applicability of any law or regulation,  
23 (ii) the basis for and/or applicability of any Stormwater Evaluation Level (as defined below) for any  
24 purpose other than for use within the scope of this negotiated settlement, and/or (iii) any independent  
25 legal requirement for the use of any best management practice, sampling technique or frequency, and/or  
26 the installation of any infrastructure or deployment of any treatment technologies.





1 beginning of the second wet season (defined as the period between October 1 to May 31 of each year) ("Wet  
2 Season"). For each of the Facilities, the Pole Areas Stormwater Maps shall identify the anticipated sampling  
3 point(s) for storm water runoff from Pole Areas to be used in connection with sampling pursuant to this  
4 settlement (subject to revision following implementation of BMPs at any particular Facility as may be  
5 reported in each annual report) and, as additional BMPs are rolled out at each relevant Facility, the Pole  
6 Areas Stormwater Map shall be updated, prior to October 1 of any year, to include identified sampling  
7 point(s) for storm water runoff from Pole Areas to be used in connection with this settlement. The Pole  
8 Areas Stormwater Map for each Facility shall also identify if stormwater from the Pole Areas drains offsite  
9 to a municipal separate storm sewer system ("MS4").

### 10 **Facility Management, Housekeeping BMPs, and Training**

11 11. In furtherance of the goal of meeting the Stormwater Evaluation Levels identified in Table 1,  
12 PG&E shall implement the following stormwater source control measures and best management practices  
13 ("Housekeeping BMPs") at each Facility's Pole Areas:

14 12. Site Sweeping and Cleaning Plan for the Facilities. The Site Sweeping and Cleaning Plans  
15 shall specify that: (i) sweeping and cleaning will be performed on a reasonable, as needed basis to minimize  
16 tracking and dispersal of pollutants within the paved portion of the Pole Areas to address visual accumulation  
17 of dust or debris; (ii) on an annual basis before the start of the wet season, PG&E shall conduct an inspection  
18 of the Pole Areas at each Facility and, to the extent warranted by the inspection, perform additional site  
19 cleaning as needed; (iii) PG&E shall not discharge any waste fluids or solid wastes generated by sweeping or  
20 other site cleaning in Pole Areas to storm drain inlets or waterways; and (iv) PG&E shall collect and dispose  
21 of all wastes generated during cleaning and sweeping in Pole Areas in a manner that complies with all local,  
22 state, and federal laws. To the extent that alternative BMPs, including but not limited to structural  
23 improvements and/or installation of treatment technologies, are demonstrated to be effective in reducing  
24 concentrations below Stormwater Evaluation Levels identified in Table 1, PG&E may discontinue some, or  
25 all, of the sweeping BMPs specified in this Paragraph.

26 13. TWW Sawdust Collection & Management Policy. When cutting treated wood poles, treated  
27 pole segments, or TWW at a Facility, PG&E will attempt to capture the sawdust and debris. PG&E will  
28 make reasonable efforts to place plastic tarps underneath TWW to be sawed up in any outdoor location at a

1 Facility to collect sawdust from sawing operations. PG&E will sweep, vacuum and/or otherwise clean the  
2 plastic tarps after sawing operations to remove any sawdust or debris that falls on the plastic tarps and ensure  
3 that sawdust or debris collected from the tarps is placed within containers for proper off-site disposal.  
4 Following cleaning, PG&E will make reasonable efforts to reuse plastic tarps to minimize waste generation.  
5 PG&E will store TWW sawdust in covered TWW bins.

6 14. Storm Drain Inlet Inspection and Cleaning. Annually, prior to October 1, PG&E shall inspect  
7 the storm drain inlets receiving drainage from the Pole Areas at each Facility. During this inspection, PG&E  
8 shall clean as needed each drain inlet using a vacuum or other effective cleaning device/method in order to  
9 remove dusts and solids that have entered the storm drain inlets receiving drainage from the Pole Areas. As  
10 necessary, PG&E shall clean out sediments collected in the drain inlet at the Facilities following significant  
11 storm events and shall properly dispose of any dust, sediment, or other pollutants removed from storm drain  
12 inlets or catch basins. PG&E shall inspect the drain inlets receiving drainage from the Pole Areas at each  
13 Facility during the Wet Season at least monthly and properly remove and dispose of any dust, sediment, or  
14 other pollutants identified in the storm drain that could materially affect their functioning.

15 15. Inspection of Paved Areas. PG&E shall inspect the paved portion of the Pole Areas at each  
16 Facility on an annual basis and implement repairs or replacement of pavement on an as-needed basis to  
17 eliminate material cracks that could trap pollutants and/or to maintain storm water drainage from Pole Areas  
18 within designed or designated flow paths. PG&E shall prepare and maintain a log of the Storm Drain  
19 Inlet/Catch Basin Inspections, and Maintenance and Cleaning at the Facilities.

20 16. Training. At least annually, and prior to the wet season following the hiring of new  
21 employees directly involved in storm water management, inspection or cleaning in Pole Areas at the  
22 Facilities, PG&E shall conduct training to explain the requirements of the settlement agreement to the extent  
23 applicable to such employee. Training shall focus on the employee's role in implementing various settlement  
24 agreement measures including, for example, implementation of BMPs, sweeping, or facility inspections. If  
25 necessary, training shall be conducted bilingually (i.e., Spanish/English or other pertinent language) to the  
26 extent that an employee is not reasonably able to comprehend training in English.

**BMP Pilot Test Program**

17. PG&E shall implement a pilot test program (“Pilot Program”) to identify one or more treatment and/or structural BMPs that can be deployed to multiple Facilities and are reasonably expected to attain the Stormwater Evaluation Levels from stormwater discharged from Pole Areas. As described in the following paragraphs, PG&E anticipates that the Pilot Program will take two or three years from the Effective Date to reach completion.

18. In the first year of the Pilot Program, beginning on the Effective Date, PG&E shall construct and initiate testing of the following BMPs in the Pole Areas of the three facilities identified below: (i) geogrid filled with engineered media mixture placed directly under the pole storage racks. The media blend may consist of a mix of fine filter sand, zeolite, and granulated activated carbon or some mix materially similar to these materials; (ii) a reactive core mat, manufactured by CETCO or other similar product by an alternative manufacturer, placed below poles in a manner anticipated to intercept potential drippings; (iii) a drop inlet filter, incorporating a treatment media, intercepting stormwater from the Pole Area. PG&E shall deploy at least one of these technologies to each of the following three facilities no later than ninety (90) days after the Court Approval Date: (i) Oakport; (ii) Hayward; and (iii) San Carlos. In addition, during the first year of the Pilot Program, PG&E shall monitor the stormwater discharged from the recently engineered Pole Area at the Auburn Facility. Collectively, the four facilities referenced in this paragraph shall be identified as the “Year 1 Pilot Program Facilities.”

19. In the second year of the Pilot Program, beginning on the first anniversary of the Effective Date, PG&E shall continue pilot testing at the Year 1 Pilot Program Facilities and shall deploy further treatment and/or structural BMPs to four additional Facilities chosen at PG&E’s sole discretion and not included in the Year 1 Pilot Program Facilities. Collectively, these four additional facilities, combined with the Year 1 Pilot Program Facilities, shall be identified as the “Year 2 Pilot Program Facilities.” PG&E shall identify the Year 2 Pilot Program Facilities in the Year 1 Pilot Program Report, as defined in Paragraph 35.A. PG&E shall deploy a combination of treatment and structural BMPs in the Pole Areas at the Year 2 Pilot Program Facilities including those technologies described in

1 Paragraph 18 as may be supplemented, or replaced, by any additional treatment or structural BMPs  
2 identified in the Year 1 Pilot Program Report.

3 20. If, in the Year 2 Pilot Program Report, as defined in Paragraph 35.B, PG&E reasonably  
4 concludes that one or more treatment and/or structural BMPs tested during the Year 2 Pilot Program are  
5 reasonably expected to obtain Stormwater Evaluation Levels from stormwater discharged from Pole  
6 Areas at the Facilities, or make material progress in obtaining Stormwater Evaluation Levels from  
7 stormwater discharged from Pole Areas at the Facilities, PG&E shall proceed to implement the BMP  
8 roll-out process described in Paragraph 21. If, alternatively, in the Year 2 Pilot Program Report PG&E  
9 concludes, at its sole discretion, that an additional year of pilot testing is required to further evaluate  
10 treatment and/or structural BMPs, PG&E shall conduct a third year of the Pilot Program at the eight  
11 Year 2 Pilot Program Facilities to test those BMPs identified by PG&E in the Year 2 Pilot Program  
12 Report. If conducted by PG&E, the third year of the Pilot Program shall commence on the second  
13 anniversary of the Effective Date.

14 21. BMP Roll-Out Process following two-year Pilot Program. If PG&E ends the Pilot  
15 Program after completion of the Year 2 Pilot Program Report, PG&E shall roll-out one or more of the  
16 demonstrated treatment and/or structural BMPs, as shall be described in the Year 2 Pilot Program Report  
17 and consistent with PG&E's review and evaluation of the Pilot Program BMPs in that report (the "Roll-  
18 Out BMPs") to the remaining Facilities on the schedule provided in this Paragraph, except as otherwise  
19 stated in this Paragraph. PG&E shall implement the Roll-Out BMPs at four additional Facilities each  
20 year until all of the subject Facilities have either received the Roll-Out BMPs, are individually  
21 terminated from this Consent Decree pursuant to Paragraph 47, or have alternative treatment, structural,  
22 and/or housekeeping BMPs implemented consistent with a description provided by PG&E in the Year 2  
23 Pilot Program Report or a future annual report specific to such Facility (the "Alternative BMPs").

24 22. BMP Roll-Out Process following three-year Pilot Program. If PG&E proceeds with a  
25 third year of the Pilot Program, PG&E shall roll-out one or more of the demonstrated treatment and/or  
26 structural BMPs as described in the Year 3 Pilot Program Report consistent with PG&E's review and  
27 evaluation of the Pilot Program BMPs (the "Roll-Out BMPs"), to the remaining Facilities except as  
28 otherwise stated in this Paragraph. PG&E shall implement the Roll-Out BMPs at five additional

1 Facilities a year until all of the subject Facilities have either received the Roll-Out BMPs, are  
2 individually terminated from this Consent Decree pursuant to Paragraph 47, or have alternative  
3 treatment, structural, and/or housekeeping BMPs implemented consistent with a description provided by  
4 PG&E in the Year 3 Pilot Program Report or a future annual report specific to such Facility (the  
5 “Alternative BMPs”).

6 **Stormwater Evaluation Levels**

7 23. Stormwater Evaluation Levels.

8 A. The Pilot Program, along with all BMPs, capital improvements, and the deployment of  
9 treatment technologies, shall be designed with the goal of attaining the following evaluation levels (“the  
10 Stormwater Evaluation Levels”) prior to the release of stormwater from the Pole Area at each Facility:

11 **TABLE 1 – Stormwater Evaluation Levels**

12

Parameter	Evaluation Level
Pentachlorophenol	7.9 ug/L
2,3,7,8 TCDD (Dioxin & Furans) TEQ	2.8 x 10 <sup>-8</sup> ug/L

13

14

15

16

17

18 B. BMPs shall be designed and implemented in an effort to achieve Stormwater Evaluation  
19 Levels in runoff from the Pole Areas during an 85<sup>th</sup> percentile, 24-hour storm event, as determined from  
20 local, historical rainfall records or such other calculation or practice routinely used by industry in  
21 California.

22 C. The Parties recognize that the effort to achieve Stormwater Evaluation Levels via the  
23 Pilot Program and at each Facility subject to this Decree may be an iterative process and an exceedance  
24 above an applicable Stormwater Evaluation Level shall not be a *per se* violation of this Consent Decree.

25 24. Calculation and Application of Dilution Factors for MS4 Stormwater Discharges.

26 A. A dilution factor shall be calculated, pursuant to Paragraph 24.B and applied for those  
27 Facilities that discharge stormwater from Pole Areas to an MS4. The applicable Stormwater Evaluation  
28

1 Levels for Pole Area discharge to an MS4 shall be calculated by multiplying the applicable, Facility-  
2 specific dilution factor times the Stormwater Evaluation Levels identified in Paragraph 23.A.

3 B. Dilution factors shall be calculated consistent with industry standard and practice and  
4 shall incorporate the following steps: (i) estimate runoff volume from the Pole Area at the specific  
5 Facility; (ii) estimate runoff volume for the stormwater drainage basin or sub-basin for the MS4 outfall  
6 that includes the Facility; (iii) calculate the ratio of total runoff volume for the surrounding stormwater  
7 drainage basin relative to the total runoff volume from Pole Area at the relevant Facility. Stated via  
8 equation, the dilution factor shall be calculated as follows:

$$9 \quad \text{Dilution factor} = \frac{\text{Stormwater Drainage Basin Area Runoff Volume}}{\text{Pole Area Runoff Volume}}$$

10  
11 Calculation of the runoff volumes, used in determining a dilution factor, shall account for the  
12 imperviousness and soil infiltration characteristics of the relevant Pole Area and the associated  
13 stormwater drainage basin surrounding the relevant Facility. The size of the stormwater drainage basin  
14 surrounding the Facility may be estimated via the use of publicly available information, including maps,  
15 topography, and visual information.

16 25. Optional Report(s) Regarding Background Concentrations of Dioxin. If 2,3,7,8 TCDD  
17 (Dioxin & Furans) toxic equivalency (“TEQ”) remains elevated above the Stormwater Evaluation Level  
18 at a specific Facility (i) after implementation of Housekeeping BMPs, and (ii) for two wet seasons  
19 following implementation of Roll-Out BMPs and/or Alternative BMPs, PG&E, at its sole discretion,  
20 may opt to direct a third-party consultant to provide a technical report to ERF evaluating whether, and to  
21 what extent, off-site background concentrations of dioxin and furans may be influencing on-site  
22 concentrations used for the calculation of the 2,3,7,8 TCDD (Dioxin & Furans) TEQ required by this  
23 Consent Decree. Such technical report shall consider the impact of any dioxin and/or furans present in  
24 pentachlorophenol discharged from the Pole Area during the relevant sampling periods, shall evaluate  
25 off-site sources and concentrations of dioxin and furans in the vicinity of the Facility and, based upon  
26 the data analysis in the report, may propose whether an alternative Stormwater Evaluation Level for the  
27 2,3,7,8 TCDD (Dioxin & Furans) TEQ is appropriate due to impacts from off-site sources on  
28

1 contaminant levels present at the Facility and, if so, shall identify the appropriate alternative Stormwater  
2 Evaluation Level for 2,3,7,8 TCDD (Dioxin & Furans) TEQ for the specific Facility subject to the  
3 report. Upon receipt of the technical report, ERF shall have twenty-one (21) days to provide a notice of  
4 disagreement with the alternative Stormwater Evaluation Level for 2,3,7,8 TCDD (Dioxin & Furans)  
5 TEQ. If ERF objects to the alternative Stormwater Evaluation Level, the Parties shall resolve their  
6 differences as follows:

7       A.     Unless the Parties mutually agree otherwise, the Parties shall schedule an informal meet-  
8 and-confer to occur within fourteen (14) days of ERF's notice of disagreement (or such other date as  
9 mutually agreed upon) to discuss the proposed alternative Stormwater Evaluation Level and seek to  
10 reach an acceptable resolution of any disagreement.

11       B.     If the informal process does not result in a resolution, either Party may trigger a  
12 Technical Peer Review Process by providing written notice to the other Party within seven (7) days of  
13 the conclusion of the informal meet-and-confer process or an agreement not to meet-and-confer. The  
14 Technical Peer Review Process shall be performed by three consultants, at PG&E's expense, selected as  
15 follows: (i) a consultant selected by ERF; (ii) a consultant selected by PG&E; and (iii) a consultant  
16 mutually selected by the two other consultants (the "Panel"). PG&E's agreement to pay each consultant  
17 is conditioned upon the consultant charging a reasonable market rate for California for the type and  
18 scope of work being performed pursuant to this Decree. Each consultant on the Panel shall have  
19 relevant experience in dioxin issues and shall have an advanced degree reasonably related to the relevant  
20 issues, such as engineering, chemistry, geology, hydrogeology, or other similar field. The Panel shall  
21 review the technical report and proposed alternative Stormwater Evaluation Level and shall, by majority  
22 vote, either approve the alternative Stormwater Evaluation Level or recommend a new alternative  
23 Stormwater Evaluation Level. Unless an alternative schedule is mutually agreed by the Parties, the  
24 Panel shall provide the Parties with a written report supporting their decision within sixty (60) days of  
25 the selection of all three consultants. During the technical review process, the Panel shall be able to  
26 request reasonable information from the Parties (provided that it is in the reasonable possession or  
27 control of the Party and does not require additional sampling or other field work, or seek privileged  
28 information) relevant to its analysis. If the Panel requests any such information, the request shall be

1 provided to both Parties and both Parties shall have the opportunity to provide responsive information.  
2 The Panel (and the individual panelists) shall not, however, have any *ex parte* communications with the  
3 Parties prior to completing its written report.

### 4 **III. SAMPLING, ACCESS, AND DATA**

5 26. Sampling Location and Frequency During the Wet Season. At Facilities subject to  
6 sampling pursuant to Paragraph 27, PG&E shall undertake best efforts to collect and analyze samples  
7 from Qualifying Storm Events<sup>1</sup> (“QSEs”) during each Wet Season prior to the Termination Date, as  
8 provided below. PG&E shall take samples at the discharge point(s) from the Pole Area as identified in  
9 the Pole Areas Stormwater Maps for each relevant Facility subject to sampling. For each sample  
10 obtained, PG&E shall adhere to preservation methods and holding time limits for the subject  
11 constituents that are consistent with industry standards.

12 27. Sampling Schedule. PG&E shall conduct sampling at the following Facilities on the  
13 following schedule:

14 A. Year 1 Pilot Program. PG&E shall collect and analyze samples from at least four (4)  
15 QSEs at each of the four Year 1 Pilot Program Facilities during the first Wet Season  
16 following the Effective Date after BMPs provided by this Consent Decree have been  
17 implemented.

18 B. Year 2 Pilot Program. PG&E shall collect and analyze samples from at least four (4)  
19 QSEs at each of the eight Year 2 Pilot Program Facilities during the second Wet Season  
20 following the Effective Date.

21 C. Year 3 Pilot Test, if applicable. PG&E shall collect and analyze samples from at least  
22 four (4) QSEs at each of the eight Year 3 Pilot Program Facilities, if PG&E elects to  
23 proceed with a third year of the pilot program, during the third Wet Season following the  
24 Effective Date.

25 D. Sampling After Pilot Test Complete. After completion of the two or three year Pilot  
26 Program, PG&E shall identify, in each subsequent annual report, four representative

27  
28 <sup>1</sup> A Qualifying Storm Event (QSE) is a precipitation event that produces a discharge from the Pole Area  
at a Facility during regular business hours. The Parties recognize that some Facilities in the arid regions  
of Northern California may not have the requisite number of QSEs in a Wet Season.



1 Facilities for sampling in each remaining Wet Season. In identifying the Representative  
2 Facilities, PG&E will take into account various criteria to ensure the selected facilities  
3 reasonably reflect the diversity of Facilities subject to this Consent Decree, including for  
4 example: (i) number of poles stored; (ii) size of relevant Pole Area; (iii) weather,  
5 including annual rainfall; (iv) whether TWW is present at the Facility; (v) the  
6 characteristics of prior Representative Facilities where data has been collected under the  
7 terms of the Consent Decree; and/or (vi) such other factors as may reasonably support the  
8 effort to sample at a diverse collection of Facilities or under a diverse set of conditions.  
9 PG&E shall collect and analyze samples from at least three (3) QSEs from each of the  
10 Representative Facilities. PG&E shall also conduct such sampling at any Facility that has  
11 Alternative BMPs unless coverage of the Facility under the Consent Decree is terminated  
12 pursuant to Section VIII.

13 28. Sampling Parameters. All samples shall be analyzed for pentachlorophenol,  
14 polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans, by a laboratory accredited by the  
15 State of California. Samples must be unfiltered and analyzed by EPA Method 1613 for tetra through  
16 octa chlorinated dibenzo dioxins and furans.

17 29. Calculation of 2,3,7,8 TCDD (Dioxin & Furans) TEQ for Comparison to Stormwater  
18 Evaluation Levels. Using sampling data for stormwater from the Pole Areas, PG&E shall calculate a  
19 2,3,7,8 TCDD (Dioxin & Furans) TEQ using the equation and the toxicity equivalency factors and  
20 bioaccumulation equivalency factors provided in Exhibit B to this Consent Decree. In calculating the  
21 TEQ sum, constituents reported as ND (not detected) or DNQ (detected, not quantifiable) by the  
22 laboratory will have concentrations set equal to zero. The calculated TEQ shall be used for comparisons  
23 to the Stormwater Evaluation Level.

24 30. Inspections During The Term Of This Consent Decree. PG&E shall permit  
25 representatives of ERF to perform two physical inspections of a Facility subject to this Consent Decree  
26 during each calendar year between the Effective Date and the Termination Date. This inspection shall be  
27 performed by ERF's counsel and consultants and may include sampling, photographing, and/or  
28 videotaping. ERF shall allow PG&E to collect split samples of any sampling and shall provide PG&E

1 with a copy of all sampling reports, photographs, and/or video no later than seven (7) calendar days after  
2 the inspection, except for sampling reports, which shall be provided to PG&E no later than seven (7)  
3 days after receipt of such reports by ERF from a laboratory. ERF shall provide at least three (3) business  
4 days advance notice of such physical inspection, except that PG&E shall have the right to deny access if  
5 circumstances would make the inspection unduly burdensome and pose significant interference with  
6 business operations or the safety of individuals. In such case, PG&E shall specify at least three (3) dates  
7 within the two (2) weeks thereafter upon which a physical inspection by ERF may proceed. With the  
8 exception of actions required to comply with any applicable laws and regulations, or due to any work  
9 planned by PG&E prior to receipt of notice from ERF requesting an inspection and subject to written  
10 notification of such work provided by PG&E to ERF prior to the beginning of the requested inspection,  
11 PG&E shall not make any material alterations to Facility conditions within the Pole Areas during the  
12 period between receiving ERF's advance notice requesting an inspection and the start of ERF's  
13 inspection. Nothing herein shall be construed to prevent PG&E from continuing to implement any  
14 BMPs consistent with the terms of this Consent Decree during the period prior to an inspection by ERF  
15 or at any other time.

16 31. Neither Party shall withhold, from the other Party, any data that is collected for the  
17 purpose of implementing, complying with, or overseeing compliance with this Consent Decree, that  
18 consists of sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering raw  
19 data, or any data incorporated into any report required or allowed by this Consent Decree. This  
20 Paragraph, however, in no way waives the attorney-client privilege or the attorney work product  
21 doctrine as to advice and communication about such information provided to either Party or as may  
22 otherwise be applicable.

23 32. The Parties shall preserve all documents and information (including raw data and  
24 laboratory reports) relating to the work performed under this Consent Decree, or oversight of  
25 compliance with this Consent Decree, until the Termination Date.

26 33. Confidential Information.

27 A. Each Party recognizes that this Decree requires the Parties to exchange certain  
28 information pertaining to the implementation, compliance with, or oversight of the terms in the Consent

1 Decree including, but not limited to reports, maps, figures, photographs/video, data, and  
2 communications related to or generated in connection with the following provisions and that identifies  
3 PG&E and/or could be reasonably attributed to PG&E or this Consent Decree: (i) Paragraph 10 (Pole  
4 Area Stormwater Maps); (ii) information and documentation related to PG&E’s specific implementation  
5 of any Housekeeping BMPs, Roll-Out BMPs, and/or Alternative BMPs; (iii) Paragraph 24 (dilution  
6 factors); (iv) Paragraph 25 (dioxin background reports); (v) Section III (sampling); (vi) Paragraph 30  
7 (inspections); (vii) Section IV (annual reports); (viii) Paragraph 40 (dispute resolution); and/or (ix)  
8 Paragraph 47 (termination) (collectively, “Confidential Information”).

9         B.       ERF may provide anonymized information to third parties, provided that use of such data  
10 is independent of any claims (or potential claims) against PG&E, and the scope of information disclosed  
11 is limited to information about the level of reduction of parameters listed in Table 1 achieved by  
12 individual BMPs or collections of BMPs. In the event ERF provides such data to any third party, it shall  
13 provide a copy of the anonymized information to PG&E contemporaneously with delivering the  
14 information to any third party.

15         C.       The Parties agree that, subject to the exceptions in this Paragraph, Confidential  
16 Information shall only be used by a Party for the purpose of implementing, complying with, or  
17 overseeing the terms of this Consent Decree (which shall include sharing such Confidential Information  
18 with counsel, consultants, experts, laboratories, and contractors, or similar entities, provided that they  
19 are acting on behalf of a Party for the purpose of implementing, complying with, or overseeing this  
20 Consent Decree). The Parties shall (i) keep all Confidential Information, and all information and  
21 evaluations derived from such Confidential Information, in confidence using a reasonable degree of care  
22 to prevent disclosure to unauthorized third-parties; (ii) limit use of Confidential Information as specified  
23 in this Paragraph; (iii) only reproduce or disseminate Confidential Information of the other Party to the  
24 extent necessary and as permitted by this Consent Decree; and (iv) promptly inform the other Party, in  
25 writing, of any unpermitted release or sharing of Confidential Information.

26         D.       The obligations of confidentiality with respect to Confidential Information shall not apply  
27 to any such Confidential Information which (i) is publicly known or later made public through no  
28 wrongful or negligent act of the receiving and/or disclosing Party; (ii) is received free of restriction on

1 disclosure from another source having the right to so furnish the Confidential Information; (iii) is used  
2 or disclosed in connection with enforcement of this Consent Decree; (iv) is approved for release in  
3 writing by the Parties; or (v) is required to be disclosed by operation of law.

#### 4 IV. ANNUAL REPORTING

5 34. Timing for Annual Reports. Annual reports required by this Section shall be provided to  
6 ERF not later than July 15 of each year following the Effective Date.

7 35. Contents and Schedule for Submission of Annual Reports. PG&E shall prepare the  
8 following annual reports pursuant to this Consent Decree:

9 A. *Year 1 Pilot Program Report.* This report shall be prepared by July 15 of the year  
10 following the Effective Date of this Consent Decree. Consistent with Section II, this report will  
11 summarize the efficacy of the housekeeping, treatment, and structural BMPs implemented during the  
12 Year 1 Pilot Program, associated sampling collected pursuant to Section III, and PG&E's plans for what  
13 housekeeping, treatment, and structural BMPs will be implemented in the Year 2 Pilot Program.

14 B. *Year 2 Pilot Program Report.* This report shall be prepared by July 15 of the second  
15 year following the Effective Date of this Consent Decree. Consistent with Section II, this report will  
16 summarize the efficacy of housekeeping, treatment and structural BMPs implemented during the Year 2  
17 Pilot Program, associated sampling collected pursuant to Section III. Depending upon whether PG&E  
18 elects to conduct a third year of the Pilot Program, the report will either (i) provide a summary of  
19 PG&E's plans for what housekeeping, treatment, and structural BMPs will be implemented in the Year  
20 3 Pilot Program, or alternatively (ii) identify the selection, location, and schedule for the Roll-Out BMPs  
21 that will be implemented the following year and, if applicable, any Alternative BMPs.

22 C. *If applicable, Year 3 Pilot Program Report.* If PG&E elected to proceed with a third  
23 year of the Pilot Test, this report shall be prepared by July 15 of the third year following the Effective  
24 Date of this Consent Decree. Consistent with Section II, this report will summarize the efficacy of  
25 housekeeping, treatment, and structural BMPs implemented during the Year 3 Pilot Program, associated  
26 sampling collected pursuant to Section III, and will identify the selection, location, and schedule for the  
27 Roll-Out BMPs that will be implemented the following year and, if applicable, any Alternative BMPs.  
28

1 D. *Annual Reports following Pilot Test.* Following completion of the Pilot Program,  
2 PG&E shall prepare an annual report for each year remaining in the Consent Decree term prior to the  
3 Termination Date. The annual report shall include:

- 4 (i) the status of implementation of Roll-Out BMPs and/or Alternative BMPs  
5 during the past year;
- 6 (ii) an explanation for the basis for the use or installation of any Alternative  
7 BMPs, including the basis for the expectation that the Alternative BMPs will be  
8 effective for achieving Stormwater Evaluation Levels;
- 9 (iii) identification of those Facilities where PG&E will implement Roll-Out BMPs  
10 and/or Alternative BMPs during the coming year, description of the schedule and  
11 the specific BMPs to be implemented, and identification of those Facilities that  
12 will change BMPs in place from the prior year and an explanation for the basis for  
13 the change;
- 14 (iv) a list of the four Representative Facilities selected by PG&E for sampling  
15 during the next Wet Season along with the criteria used to identify the  
16 Representative Facilities; and
- 17 (v) a summary of all of the sampling conducted during the prior year and copies  
18 of laboratory reports for such sampling.

19 E. Laboratory Reports. Laboratory results, for samples collected pursuant to the  
20 requirements of this Consent Decree, shall be provided to ERF in the annual reports required by this  
21 Section.

22 F. Analysis of Sampling Data and Response Actions. If any samples taken pursuant to  
23 this Consent Decree exceed a Stormwater Evaluation Level, or if PG&E fails to collect and analyze  
24 samples from the minimum requisite QSEs (provided the requisite QSEs occur at the Facility), then  
25 PG&E shall include a written statement in the applicable annual report discussing the exceedance(s)  
26 and/or inability or failure to collect and analyze samples from requisite QSEs, the likely cause and/or  
27 source of the exceedance(s), additional measures that will be taken to address and eliminate future  
28 exceedances and/or failures to collect required samples, and a schedule for the implementation of

1 additional measures which, to the extent reasonably feasible, shall be implemented prior to the following  
2 Wet Season.

3 36. Certification. Annual reports submitted by PG&E pursuant to this Consent Decree shall  
4 be certified by substantially as follows:

5 I certify under penalty of law that this document and all attachments were prepared under my  
6 direction or supervision in accordance with a system designed to assure that qualified  
7 personnel properly gather and evaluate the information submitted. Based on my inquiry of the  
8 person or persons who manage the system, or those persons directly responsible for gathering  
9 the information, the information submitted is, to be the best of my knowledge and belief, true,  
10 accurate, and complete.

11 37. Informal Meet and Confer Regarding Annual Reports. Upon request by either Party,  
12 ERF and PG&E agree to informally meet and confer, separate from the dispute resolution process  
13 described elsewhere in this Consent Decree, regarding the information in any annual report.

#### 14 **V. REIMBURSEMENT OF LITIGATION AND OVERSIGHT COSTS**

15 38. Reimbursement of Litigation Costs. To effectuate settlement, and without any admission  
16 of fact or law, PG&E agrees to reimburse ERF the amount of \$1,950,000 to defray ERF's claimed  
17 investigative, expert, consultant, and attorneys' fees and costs incurred through the Court Approval  
18 Date, including all costs incurred as a result of investigating the activities at the Facilities, preparing the  
19 Notice Letter and Complaint, litigating this matter before the trial court and court of appeal, and  
20 negotiating a resolution of this action. Such payment shall be made payable to "Environmental  
21 Advocates" and remitted to the firm within sixty (60) calendar days after the Court Approval Date. ERF  
22 shall provide a W-9 tax form for Environmental Advocates to PG&E no later than fourteen (14) days  
23 after the Effective Date.

24 39. Oversight Costs. Within sixty (60) calendar days of the Court Approval Date, PG&E  
25 shall pay ERF the sum of one-hundred thousand dollars (\$100,000). Payment by PG&E shall be made  
26 by check or wire transfer consistent with payment instructions to be provided by ERF no later than  
27 fourteen (14) calendar days after the Effective Date. ERF shall provide PG&E with a W-9 tax form at  
28 the time it provides payment instructions. The amounts paid to ERF pursuant to this paragraph shall be  
the sole payment made by PG&E to ERF for oversight of this Consent Decree between the Effective  
Date and the Termination Date, excepting any fees and cost incurred in any judicial dispute resolution as

1 provided for in this Decree. ERF otherwise releases any and all additional claims for oversight costs  
2 prior to the Termination Date and covenants not to sue or otherwise pursue any judicial action to recover  
3 or seek additional oversight costs.

#### 4 **VI. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT DECREE**

5 40. If a dispute under this Consent Decree arises, or either Party believes that a breach of this  
6 Consent Decree has occurred, prior to the Termination Date, the Parties shall make best efforts to meet  
7 and confer within fourteen (14) calendar days, or as soon as reasonably achievable thereafter, of  
8 receiving written notification from the other Party of a request for a meeting to determine whether a  
9 breach has occurred and to develop a mutually agreed upon plan, including implementation dates, to  
10 resolve the dispute. Each Party shall be responsible for its own attorneys' fees and costs during the  
11 meet and confer dispute resolution process. If the Parties fail to meet and confer, or the meet-and-  
12 confer does not resolve the issue, after (i) at least seven (7) calendar days have passed after the meet-  
13 and-confer occurred or (ii) fourteen (14) calendar days after either Party received written notification of  
14 a request for dispute resolution, whichever is earlier, either Party shall be entitled to file a motion with  
15 the District Court for the limited purposes of enforcement of the terms of this Consent Decree or  
16 resolution of any dispute otherwise arising under the terms of this Consent Decree. In any judicial  
17 dispute resolution proceeding between the Parties in connection with this Consent Decree and  
18 consistent with this Paragraph, the prevailing party shall be entitled to recover its reasonable attorneys'  
19 fees and costs in such proceeding from the other Party pursuant to the standards set forth by 42 U.S.C.  
20 § 6972(e) and associated applicable case law.

#### 21 **VII. WAIVER, RELEASE, AND COVENANT**

22 41. ERF's Waiver and Release. Upon the Effective Date of this Consent Decree, ERF, on its  
23 own behalf and on behalf of its members, subsidiaries, successors, assigns, directors, officers, agents,  
24 attorneys, representatives, and employees, releases PG&E and its officers, directors, employees,  
25 shareholders, parents, subsidiaries, predecessors, successors, and assigns, and affiliates, and each of  
26 their agents, attorneys, consultants, and other representatives, including those named in the Notice  
27 Letter and/or Complaint, (each a "Released Defendant Party") from, and waives all claims which arise  
28 from the Notice Letter and/or Complaint, including, without limitation, all claims for injunctive relief,

1 damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others),  
2 costs, expenses or any other sum incurred or claimed or which could have been claimed, for the alleged  
3 failure of PG&E to comply with the federal Resource Conservation and Recovery Act, at the Facilities,  
4 up to the Termination Date.

5 42. PG&E's Waiver and Release. PG&E, on its own behalf and on behalf of any Released  
6 Defendant Party under its control, releases ERF (and its officers, directors, employees, members,  
7 parents, subsidiaries, and affiliates, and each of its successors and assigns, and its agents, attorneys, and  
8 other representative) from, and waives all claims which arise from the Notice Letter and/or Complaint,  
9 including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any  
10 other sum incurred or claimed or which could have been claimed for matters associated with the Notice  
11 Letter and/or Complaint up to the Termination Date.

12 43. ERF's Covenant Not to Sue. Except for the enforcement of this Consent Decree,  
13 beginning on the Effective Date and terminating on the Termination Date, ERF agrees that neither  
14 ERF, its officers, executive staff, members of its governing board nor any organization under the  
15 control of ERF, its officers, executive staff, or members of its governing board, will serve any 60-day  
16 Notice Letter or file any lawsuit against PG&E under any federal, State or local environmental laws in  
17 connection with the subject matter of this Consent Decree, and the Action, for the Facilities, including,  
18 without limitation, all claims for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees  
19 (including fees of attorneys, experts, and others), costs, expenses or any other sum, incurred or claimed  
20 or which could have been claimed related thereto. Any such 60-day Notice Letter or lawsuit filed by  
21 ERF after the Termination Date shall not include any such claims for such actions up to and including  
22 the Termination Date.

23 44. The Parties acknowledge that they are familiar with section 1542 of the California Civil  
24 Code, which provides:

25 A general release does not extend to claims which the creditor does not know or suspect to exist  
26 in his favor at the time of executing the release, which if known by him must have materially  
27 affected his settlement with the debtor.

28 While ERF asserts that California Civil Code section 1542 applies to general releases only, and that the



1 release in Paragraph 41 above is a limited release, the Parties hereby waive and relinquish any rights or  
2 benefits they may have under California Civil Code section 1542 with respect to any other claims  
3 against each other arising from, or related to, the allegations and claims as set forth in the Notice Letter  
4 and/or the Complaint, up to and including the Effective Date of this Consent Decree.

#### 5 **VIII. EFFECTIVE DATE AND PARTIAL OR FULL TERMINATION**

6 45. This Consent Decree shall be effective upon mutual execution by all Parties (the  
7 “Effective Date”).

8 46. Notwithstanding any requirement or term of this Consent Decree, the Consent Decree  
9 shall terminate August 1, 2026 (the “Termination Date”).

10 47. Prior to the Termination Date, the requirements of this Consent Decree shall terminate as  
11 to any Facility if one or more of the following is documented in an annual report prepared by PG&E  
12 consistent with Section IV, unless and until any dispute resolution pursuant to Section VI of the  
13 Consent Decree, regarding such early termination, is resolved:

14 A. PG&E implements structural improvements at a Facility that result in no exposure of  
15 poles or TWW to rainwater, e.g., placing roofing over the relevant portions of the Pole Area or  
16 construction of equivalent or more comprehensive facilities.

17 B. PG&E implements improvements at a Facility consisting of infiltration basins and/or  
18 drainage swales that result in the complete on-site storage and infiltration of stormwater runoff from  
19 Pole Areas during at least a 85th percentile, 24 hour storm event for the geographic area of the Facility.

20 C. PG&E ceases all pole and TWW storage, cutting, and maintenance at a Facility and,  
21 as appropriate, sweeps, cleans, and power-washes the former Pole Area. In such a case, the  
22 requirements of the Consent Decree shall terminate for that Facility during the period that there is no  
23 pole or TWW storage, cutting, or maintenance at the Facility. In the event that pole storage or TWW  
24 storage is restarted at the Facility by PG&E prior to the Termination Date, the terms of this Consent  
25 Decree shall once again apply to the Facility.

26 D. PG&E closes the Facility and, as appropriate, sweeps, cleans, and power-washes the  
27 former Pole Area. In the event that the Facility is reopened prior to the Termination Date, the terms of  
28 this Consent Decree shall once again apply to the Facility.

1 E. If (i) one full Wet Season including at least four (4) stormwater samples from the Pole  
2 Area of a Facility, consistent with the requirements of Section III, show that all sampled concentrations  
3 of pentachlorophenol and dioxins are equal to or below the Stormwater Evaluation Levels; or (ii) in the  
4 event that there are not four (4) QSEs measured in a single wet season, that at least four (4) consecutive  
5 stormwater samples from the Pole Area of a Facility, taken over two Wet Seasons, show that all sampled  
6 concentrations of pentachlorophenol and dioxins are equal to or below the Stormwater Evaluation  
7 Levels.

## 8 IX. MISCELLANEOUS PROVISIONS

9 48. The Parties enter into this Consent Decree for the purpose of avoiding prolonged and  
10 costly litigation. Nothing in this Consent Decree shall be construed as, and PG&E expressly does not  
11 intend to imply, an admission as to any fact, finding, issue of law, or violation of law, nor shall  
12 compliance with this Consent Decree constitute or be construed as an admission by PG&E of any fact,  
13 finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or  
14 otherwise affect the obligation, responsibilities, and duties of the Parties under this Consent Decree.

15 49. *Force Majeure.* No Party shall be considered to be in default in the performance of any  
16 of its obligations when a failure to perform is due to a “Force Majeure.” A Force Majeure event is any  
17 circumstances beyond the Party’s control, including, without limitation, any act of God, war, fire,  
18 earthquake, flood, and restraint by court order or public authority. A Force Majeure event does not  
19 include normal inclement weather or inability to pay. Any Party seeking to rely upon this paragraph  
20 shall have the burden of establishing that it could not reasonably have been expected to avoid, and  
21 which by exercise of due diligence has been unable to overcome, the Force Majeure.

22 50. The terms of this Consent Decree shall be binding on all parties and their employees,  
23 officers, agents, divisions, subsidiaries, parent corporations, affiliates, successors in interest including  
24 subsequent purchasers, and assignees.

25 51. The Consent Decree may be executed in one or more counterparts which, taken together,  
26 shall be deemed to constitute one and the same document. An executed copy of this Consent Decree  
27 shall be valid as an original.

28 52. In the event that any one of the provisions of this Consent Decree is held by a court to be

1 unenforceable, the validity of the enforceable provisions shall not be adversely affected.

2 53. The language in all parts of this Consent Decree, unless otherwise stated, shall be  
3 construed according to its plain and ordinary meaning. This Consent Decree shall be construed  
4 pursuant to California law, without regard to conflict of law principles.

5 54. The undersigned are authorized to execute this Consent Decree on behalf of their  
6 respective Parties and have read, understood and agreed to be bound by all of the terms and conditions  
7 of this Consent Decree.

8 55. All Consent Decrees, covenants, representations and warranties, express or implied, oral  
9 or written, of the Parties concerning the subject matter of this Consent Decree are contained herein.  
10 This Consent Decree and its attachments are made for the sole benefit of the Parties, and no other  
11 person or entity shall have any rights or remedies under or by reason of this Consent Decree, unless  
12 otherwise expressly provided for therein.

13 56. Notices. Any notices or documents required or provided for by this Consent Decree or  
14 related thereto that are to be provided to ERF pursuant to this Consent Decree shall be hand-delivered  
15 or sent by U.S. Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by  
16 electronic mail transmission to the email addresses listed below:

17 Fredric Evenson  
18 Ecology Law Center  
19 PO Box 1000  
20 Santa Cruz, CA 95061-1000  
evenson@ecologylaw.com

21 With copies sent to:

22 Jason R. Flanders  
23 Aqua Terra Aeris Law Group  
24 490 43<sup>rd</sup> St.  
Oakland, CA 94609  
jrf@atalawgroup.com

25 Any notices or documents required or provided for by this Consent Decree or related thereto that  
26 are to be provided to PG&E pursuant to this Consent Decree shall be sent by U.S. Mail, postage prepaid,  
27 and addressed as follows or, in the alternative, shall be sent by electronic mail transmission to the email  
28 addresses listed below:

1 PG&E Law Department  
2 Attn: Director of Litigation  
3 P.O. Box 7442  
4 San Francisco, CA 94120

5 With copies sent to:

6 J. Tom Boer  
7 Hunton Andrews Kurth LLP  
8 50 California Street, Suite 1700  
9 San Francisco, CA 94111  
10 jtboer@hunton.com

11 Each Party shall promptly notify the other of any change in the above-listed contact information.

12 57. Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

13 58. If for any reason the District Court should decline to approve this Consent Decree in the  
14 form presented, the Parties shall use their best efforts to work together to modify the Consent Decree  
15 within thirty (30) calendar days so that it is acceptable to the District Court. If the Parties are unable to  
16 modify this Consent Decree in a mutually acceptable manner, this Consent Decree shall become null  
17 and void.

18 59. This Consent Decree shall be deemed to have been drafted equally by the Parties, and  
19 shall not be interpreted for or against any Party on the ground that any such Party drafted it. Each of  
20 the Parties agrees that it has been represented by independent counsel of its choice during the  
21 negotiation of this Consent Decree and has had the opportunity to review the provisions of the Decree  
22 with its independent counsel in advance of execution.

23 60. The headings and captions used in the Consent Decree are for reference purposes only  
24 and shall not have any effect on the interpretation of the Decree

25 61. This Consent Decree and the attachments contain all of the terms and conditions agreed  
26 upon by the Parties relating to the matters covered by the Consent Decree, and supersede any and all  
27 prior and contemporaneous Consent Decrees, negotiations, correspondence, understandings and  
28 communications of the Parties, whether oral or written, respecting the matters covered by this Consent  
Decree. This Consent Decree may be amended or modified only by a writing signed by the Parties or  
their authorized representatives.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Ecological Rights Foundation  
*Ecological Rights Foundation*  
*by James Lamport, EXEC. DIR.*  
By: James Lamport, Executive Director

Date: AUGUST 30, 2018

Pacific Gas and Electric Company

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


\_\_\_\_\_

By:

Approved as to Form

Date: Aug. 30, 2018

AQUA TERRA AERIS LAW GROUP

  
\_\_\_\_\_

By: Jason R. Flanders  
Attorney for Plaintiff ERF

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

HUNTON ANDREWS KURTH

\_\_\_\_\_

By: J. Tom Boer  
Attorney for Defendant PG&E

1 Ecological Rights Foundation

2  
3 Date: \_\_\_\_\_

4 By: James Lamport, Executive Director

5  
6 Pacific Gas and Electric Company

7  
8 Date: 8/30/18

9  \_\_\_\_\_

10 By: Andrew Williams  
11 Vice President

12 Approved as to Form

13  
14 Date: \_\_\_\_\_

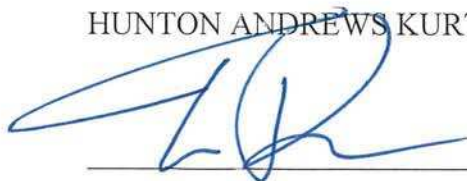
15 AQUA TERRA AERIS LAW GROUP

16  
17 \_\_\_\_\_  
18 By: Jason R. Flanders

19 Attorney for Plaintiff ERF

20  
21 Date: 8/30/18

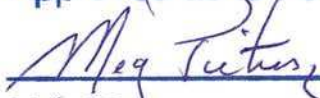
22 HUNTON ANDREWS KURTH

23  \_\_\_\_\_

24 By: J. Tom Boer

25 Attorney for Defendant PG&E

26 Approved as to Form

27  \_\_\_\_\_  
28 Meg Pietrasz  
PG&E Law Dept.

**EXHIBIT A**  
**Facilities List**

	Facility Name	Facility Address
1	Auburn SC	341 Sacramento St., Auburn, CA
2	Bakersfield SC	4201 Arrow St., Bakersfield, CA
3	Concord SC	1030 Detroit Ave., Concord, CA
4	Cupertino SC	10900 N. Blaney Ave., Cupertino, CA
5	Colma SC	450 Eastmoor Ave., Daly City, CA
6	Davis SC	316 L Street, Davis, CA
7	Del Mar Sub Maint. HQ	3930 Sierra College Blvd., Loomis, CA
8	Dinuba SC	8058 Union Drive, Dinuba, CA
9	Emeryville	4525 Hollis St., Oakland, CA
10	Eureka SC	2555 Myrtle Ave., Eureka, CA
11	Eureka Propane Plant	1099 W. 14th Street, Eureka, CA
12	Hayward SC	24300 Clawiter Rd., Hayward, CA
13	Livermore SC	3797 1st St., Livermore, CA
14	Marysville SC	18 7th St., Marysville, CA
15	Merced SC	560 W 15th St., Merced, CA
16	Milpitas Gas Terminal	66 Ranch Drive, Milpitas, CA
17	Modesto SC	1524 N. Carpenter Rd., Modesto, CA
18	Monterey SC	2311 Garden Rd. Monterey, CA

	Facility Name	Facility Address
19	Newman SC	309 Merced St., Newman, CA
20	Oakdale SC	811 West J St., Oakdale, CA
21	Oakland SC	4801 Oakport Street, Oakland, CA
22	O'Neil GC Yard	25051 O'Neil Ave., Hayward, CA
23	Placerville SC	4636 Missouri Flat Rd., Placerville, CA
24	Redding SC	3600 Meadow View Dr., Redding, CA
25	Sacramento SC	5555 Florin Perkins Rd., Sacramento, CA
26	San Carlos SC	275 Industrial Rd., San Carlos, CA
27	Metcalf GC Yard	100 Metcalf Rd., San Jose, CA
28	Cinnabar SC	308 Stockton Ave., San Jose, CA
29	Stockton SC	4040 West Lane, Stockton, CA
30	Vacaville SC	158 Peabody Rd., Vacaville, CA
31	Willows SC	310 East Wood St., Willows, CA



## EXHIBIT B

### Algorithm and Calculation of 2,3,7,8 TCDD (Dioxin & Furans) TEQ for Comparison to Stormwater Evaluation Levels

Pursuant to Consent Decree Paragraph 29, TEQs for the 2,3,7,8-TCDD (Dioxin & Furans) in stormwater shall be calculated using the following equation:

$$\text{Dioxin-TEQ} = \sum(C_x \times \text{TEF}_x \times \text{BEF}_x)$$

where:

$C_x$  = concentration of dioxin or furan congener x  
 $\text{TEF}_x$  = TEF for congener x  
 $\text{BEF}_x$  = BEF for congener x

For the purposes of this calculation, the following toxicity equivalency factors (TEFs) and Bioaccumulation Equivalency Factors (BEFs) shall be used:

**Table: Toxicity Equivalency Factors and Bioaccumulation Equivalency Factors**

Dioxin or Furan Congener	Toxicity Equivalency Factor (TEF)	Bioaccumulation Equivalency Factor (BEF)
2,3,7,8-tetra CDD	1.0	1.0
1,2,3,7,8-penta CDD	1.0	0.9
1,2,3,4,7,8-hexa CDD	0.1	0.3
1,2,3,6,7,8-hexa CDD	0.1	0.1
1,2,3,7,8,9-hexa CDD	0.1	0.1
1,2,3,4,6,7,8-hepta CDD	0.01	0.05
Octa CDD	0.0001	0.01
2,3,7,8-tetra CDF	0.1	0.8
1,2,3,7,8-penta CDF	0.05	0.2
2,3,4,7,8-penta CDF	0.5	1.6
1,2,3,4,7,8-hexa CDF	0.1	0.08
1,2,3,6,7,8-hexa CDF	0.1	0.2
1,2,3,7,8,9-hexa CDF	0.1	0.6
2,3,4,6,7,8-hexa CDF	0.1	0.7
1,2,3,4,6,7,8-hepta CDF	0.01	0.01
1,2,3,4,7,8,9-hepta CDF	0.01	0.4
Octa CDF	0.0001	0.02