

**CONSENT ORDER AND AGREEMENT**

*between*

**PG ENERGY (A DIVISION OF SOUTHERN UNION COMPANY)**

*and*

**THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

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## MULTI-SITE REMEDIATION CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement (“Agreement”) is entered into this 31st date of March, 2004 (the “Effective Date”), by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (“DEP” or the “Department”) and PG Energy, a Division of Southern Union Company (“PG Energy”).

The Department has found and determined the following:

**A.** The Department is the agency with the duty and authority to administer and enforce the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, No. 97, as amended, 35 P.S. §6018.101 et seq. (“SWMA”); The Clean Streams Law, Act of June 22, 1937, P.L. 1987, as amended, 35 P.S. §691.1 et seq. (“Clean Streams Law”); the Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995, P.L. 4, No. 1995 – 2, 35 P.S. §6026.101 et seq. (“Act 2”); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. §510-17 (“Administrative Code”); and the rules and regulations promulgated thereunder.

**B.** PG Energy is headquartered at One PEI Center in Wilkes-Barre, Pennsylvania, and is a division of Southern Union Company, a Delaware corporation. PG Energy is currently a local distribution company that primarily distributes natural gas to residential and commercial customers in northeastern Pennsylvania.

**C.** PG Energy owns or has owned and/or operated properties in the Commonwealth of Pennsylvania on which manufactured gas production and/or gas storage and distribution facilities were operated. Among these properties are those that PG Energy is seeking to address through this Agreement. The properties that are being addressed are referred to as “Properties” and are listed in Exhibit A. In the late 1800s and early 1900s, manufactured gas plants (“MGPs”) were used to generate gas used for residential, commercial and industrial lighting, heating and other consumptive uses. As natural gas became widely available throughout the Commonwealth, the MGP operations ceased. No MGP operations are being conducted at any of the Properties.

**D.** In the process of manufacturing gas, one or more industrial wastes and solid wastes, including but not limited to, coal tar, coal tar sludge, oils, wood chips and ashes, were generated and may be present at these Properties. Such wastes may contain volatile and semi-volatile organic compounds, metals, cyanide and other regulated substances.

**E.** MGP-waste, if present at the Properties, may cause discharges or releases into surface water, groundwater or soils requiring abatement under The Clean Streams Law, and the Solid Waste Management Act; MGP-impacted media, such as contaminated soils and groundwater, that may be present on or emanating from the Properties are a source of potential liability for PG Energy as the owner or former owner or operator of these Properties, pursuant to Sections 301, 316, 601, and 610 of the Clean Streams Law, inter alia; Sections 301, 302, 303, 401, 403, 601, 602, 603, 610, and 613 of the Solid Waste Management Act, inter alia; Section

1917- A of the Administrative Code; the rules and regulations promulgated thereunder; and other laws and regulations administered by the Department of Environmental Protection; may render such property less marketable; may adversely impact the ability of PG Energy or other parties to reuse the land for other purposes; and may present a threat to human health or the environment.

**F.** The Department has recently requested that PG Energy investigate and, if necessary, remediate MGP-impacted media arising from past operations at the Properties.

**G.** To promote the investigation, characterization, and remediation of the Properties identified in Exhibit A or otherwise added to Exhibit A, PG Energy wishes to undertake their voluntary cleanup pursuant to Act 2.

### **Purpose**

**H.** By this Agreement, PG Energy and the Department seek to:

1. Prioritize and effectively manage the resources of PG Energy and the Department by developing and implementing a comprehensive environmental assessment and remediation program at the Properties that addresses risk to human health or the environment at an optimum number of Properties in a reasonable amount of time;
2. Protect human health and the environment;
3. Assure compliance with applicable environmental requirements; and
4. Address environmental conditions at the Properties to facilitate their current and future use.

**I.** PG Energy and the Department are entering into this Agreement in order to accomplish the above goals and to implement a process, as described in detail herein, which shall:

1. Conduct Initial Investigations of the Properties to determine whether releases of regulated substances may have occurred;
2. Rank the Properties based on, among other things, the Initial Investigations, using the criteria set forth in Exhibit B;
3. Establish a master schedule for proceeding from ranking through interim and final resolution of the Properties;
4. Allocate resources to remediate and/or otherwise address the Properties and monitor PG Energy's overall progress;
5. Schedule and implement Site Characterizations and perform appropriate remediation of the Properties;

6. Conduct and oversee long-term operation and maintenance at the Properties, as required; and

7. Provide for open communication between the Department, PG Energy, and the public in order to expedite efficient assessment and appropriate remedial action at the Properties.

### **Order and Agreement**

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by PG Energy as follows:

**1. Authority:** This Agreement is an Order of the Department authorized and issued pursuant to Section 5, 316, 402 and 610, et al. of the Clean Streams Law, 35 P.S. §§ 691.5, 691.316, 691.402, 691.610; Section 602 of SWMA, 35 P.S. §6018.602 et al; and Section 1917-A of the Administrative Code, supra.

**2. Findings:**

a. PG Energy agrees that the findings in Paragraphs A through I are true and correct and, in any matter or proceeding involving PG Energy and the Department, PG Energy shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this Agreement in any matter or proceeding.

**3. Definitions**

Unless otherwise expressly defined below, terms used in the Agreement shall have the meanings assigned to them by Act 2, and the regulations promulgated pursuant thereto. Whenever terms listed below are used in this Agreement, the following definitions shall apply:

The following terms shall have the meanings stated below:

a. “Annual Plan” – The Plan required pursuant to Paragraph 5.

b. “Environmental Costs” – All expenditures by PG Energy for costs incurred at Properties listed in Exhibit A under this Agreement as follows:

i) Expenditures related to the investigation, characterization and remediation of Properties listed in Exhibit A and the Sunbury property, formerly owned by PG Energy, and located in Northumberland County;

ii) Amounts paid in full or partial settlement of, or to fully or partially satisfy a judgment on, any environmental claims to a Government entity related to Properties in Exhibit A;

iii) Salaries and benefits of any personnel, including PG Energy and Southern Union Company personnel, involved in conducting investigation, characterization, remediation or providing on-properties project management services at Properties listed in Exhibit A.

iv) Environmental costs also shall include the payment of natural resources damages (“NRD”), to the extent set forth below:

a) In order to be counted towards the cost cap, the NRD is the amount paid by PG Energy to the governments of either the United States or Pennsylvania, for payment of natural resources damages for a Property listed on Exhibit A of this Agreement;

b) There is no “carryover”; i.e., the amount of the NRD payment is allowed as an environmental cost, for purposes of the cost cap, only for the year in which the payment of NRD for a particular Property is initially paid;

c) To the best of the parties’ knowledge and belief, none of the Properties listed in Exhibit A is presently listed or has been listed on the National Priorities List maintained under CERCLA, or Pennsylvania Priorities List under HSCA, as of the signing of this Agreement;

d) NRD payments in excess of \$550,000 shall not count towards the cost cap.

v) Environmental costs shall not include, inter alia:

a.) Payment of penalties or fines;

b.) PG Energy’s overhead or personnel salaries or benefits, except as stated above.

c. “Generic Work Plan – Former Manufactured Gas Plant Properties”(a.k.a. Generic Work Plan) – Standardized procedures, set forth in Exhibit D, developed by PG Energy and approved by the Department for the Initial Investigation and Characterization of Properties, based upon those procedures contained in the Act 2 Technical Guidance Manual (TGM), and subject to revisions of the plan by agreement of PG Energy and the Department. The parties shall finalize the Generic Work Plan within ninety (90) days following the effective date of this Agreement, which shall be incorporated as Exhibit D of this Agreement.

d. “Initial Investigation” – An assessment to provide baseline information to establish priorities under this Agreement and to determine whether a release of a regulated substance has occurred at the Properties, conducted in accordance with the Generic Work Plan and Paragraph 8 below.

e. “Significant Intermediate Action” – Removal, containment or remediation taken in accordance with Paragraph 10 below.

- f. “TGM” – The Land Recycling Program Technical Guidance Manual.
- g. “Master Plan” – A plan as described in Paragraph 5 below.
- h. “Properties” – The Properties included in Exhibit A, as revised from time to time by agreement of PG Energy and the Department, which are currently owned or operated, or were previously owned or operated by PG Energy or its predecessors in title, that were used for a local gas manufacturing process, gas storage, or metering. Inclusion in Exhibit A does not mean that the parties have already determined that a Property is actually contaminated or that contaminants are present above levels that could pose a risk to human health or the environment or at levels that would require remediation or other response actions.
- i. “Notice of Intent to Remediate” or “NIR” – A notice of intent to remediate under Act 2, submitted by PG Energy to the Department which provides, to the extent known, a brief description of the location of the property, a listing of the contaminant or contaminants involved, a description of the intended future use of the property for employment opportunities, housing, open space, recreation or other uses and the proposed remediation measures, and which is submitted in accordance with the substantive and procedural requirements of Act 2 and the regulations promulgated thereunder.
- j. “QAPP” – The quality assurance project plan approved pursuant to this Agreement and periodically revised by agreement of PG Energy and the Department. The parties shall finalize the QAPP within ninety (90) days following the effective date of this Agreement, which shall be incorporated as Exhibit E of this Agreement.
- k. “Remedial Action Plan” – The plan developed for remediation to the Act 2 Statewide health cleanup standard or Background standard, and submitted to the Department for approval in accordance with Paragraph 11 of this Agreement. The Remedial Action Plan may also be considered to be part of an Act 2 §250.410 Cleanup Plan under the Site Specific Standard in accordance with Paragraph 9(b)(2).
- l. “Site Characterization” – An investigation at a Property that is conducted in accordance with Act 2 and the regulations, including requirements set forth at 25 Pa. Code §§ 250.204(a) – (f), 250.312, or 250.408(a) – (f), and 250.409, as appropriate, to assess the environmental conditions at and emanating from the Property. The Site Characterization Plan may also be considered to be part of an Act 2 §250.408 Remedial Investigation Report under the Site Specific Standard in accordance with Paragraph 9(b).
- m. “Superfund Sites” – Sites listed or proposed for listing on the federal National Priorities List under The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. (“CERCLA”) or the Pennsylvania Priorities List under The Hazardous Sites Cleanup Act, 35 P.S. § 6020.101 et seq. (“HSCA”) or sites at which a removal action is taken or proposed under CERCLA or HSCA.

#### **4. Scope of the Agreement**

a. This Agreement applies to Properties listed in Exhibit A.

b. PG Energy intends to evaluate the addition of other Properties Exhibit A. By mutual written agreement, the parties may add additional Properties for which PG Energy has the right to conduct or contribute to the remediation of conditions that were created by MGP operations. Any addition of Properties to Exhibit A must be made in writing and by mutual agreement of the parties, as evidenced by signatures of the DEP Chief of the Division of Remediation Services and the Vice President of Operations for PG Energy.

c. This Agreement does not apply to the following unless PG Energy and the Department specifically agree in writing to the contrary:

1. Superfund Sites; and

2. Properties that PG Energy and the Department agree to address under a separate agreement or Properties that the U.S. Environmental Protection Agency addresses under a separate agreement or order.

d. Notwithstanding the foregoing, environmental costs incurred in connection with Properties covered by Subparagraph 3.b may be included in calculating PG Energy's Environmental Costs if, by mutual agreement, they are included in Exhibit A: List of Properties.

#### **5. Planning and Additional Meetings.**

a. An Annual Planning Meeting shall be held within 120 days of the effective date of this Agreement and then annually during the same month in which the initial meeting was held, or as otherwise agreed by PG Energy and the Department. At the annual Meeting the Department and PG Energy shall review the Annual Plan and Master Plan for the succeeding calendar year, in an effort to agree on prioritizing and scheduling of work at the Properties and address other issues.

b. PG Energy shall submit to DEP an initial 5-year Master Plan and a proposed Annual Plan within ninety (90) days of the effective date of this Agreement.

c. PG Energy shall submit to DEP a revised 5-year Master Plan and a proposed Annual Plan sixty (60) days prior to each Annual Planning Meeting, with the exception of the first Annual Planning Meeting.

d. The Master Plan shall contain the listing and priority of all Properties as well as a proposed schedule for initial investigation, site characterization, and remediation activities for the following five (5) years or until the anticipated termination date of this Agreement, whichever is earlier. The Master Plan shall contain the status of all activities PG Energy has undertaken under this Agreement and a listing of Exhibit A Properties, including

those completed and those remaining to be addressed. The Master Plan shall be updated periodically as new information is developed.

e. In each Annual Plan, PG Energy shall summarize the work accomplished during the past year and identify when and at which Properties PG Energy shall (1) perform Initial Investigations, and Site Characterization; (2) submit Site Characterization/Remedial Investigation Reports; (3) submit Risk Assessment Reports; (4) submit Remedial Action Plans and Cleanup Plans; (5) conduct Significant Intermediate Actions; (6) conduct remediation to attain an Act 2 cleanup standard; and (7) prepare and submit Final Reports.

f. The Annual Plan shall generally contain a mix of different categories of Properties in different DEP regions. PG Energy and the Department agree that PG Energy may propose to include in the Annual Plan certain Properties, even if not highly ranked, if doing so optimizes PG Energy's efforts. Properties may be expedited, deferred, or deleted from the Master Plan or Annual Plan, as appropriate, upon written agreement of both PG Energy and the Department.

g. The Department can require PG Energy to include in the Annual Plan the performance of activities at one or more Properties, chosen at the Department's discretion, and having an aggregate point value of up to 500 points.

h. PG Energy and the Department shall review the revised Master Plan and the proposed Annual Plan at the Annual Planning Meeting and shall strive to resolve disagreements, clarify issues, and, as appropriate, modify or revise the Master Plan and/or Annual Plan for the following year. PG Energy and the Department shall also discuss any other issue concerning this Agreement or its implementation. Within forty-five (45) days after the Annual Planning Meeting, PG Energy shall submit to the Department the updated draft of the final Annual Plan incorporating all clarifications, modifications, and revisions agreed upon by PG Energy and the Department.

i. Between Annual Planning Meetings, PG Energy and the Department shall share information concerning any issue that might be raised at an Annual Planning Meeting. Any alteration to or modification of any plan or schedule must be by mutual agreement.

j. PG Energy and the Department shall meet whenever necessary to discuss implementation of the Master Plan or an Annual Plan or any other issue that arises during the course of this Agreement. Any party may request this kind of additional meeting.

k. Within forty-five (45) days of submission of the final Annual Plan, the Department shall, in writing, approve the Annual Plan or state its reasons for disapproving the draft of the final Annual Plan. If deficiencies are identified, PG Energy shall submit a revised plan that addresses the deficiencies within forty-five (45) days. This process shall continue until the Department approves the final Annual Plan.

**6. Prioritization of Properties.**

PG Energy shall prioritize the Properties in the Master Plan using the criteria in the Property Profile Ranking Sheet contained in Exhibit B and information obtained from the Initial Investigation in accordance with Paragraph 8. PG Energy shall periodically revise such prioritization as appropriate based on the results of additional characterization, Significant Intermediate Actions in accordance with Paragraph 10, or remediation. The prioritization shall be included in the Master Plan and any reprioritization shall be described in the next Annual Plan submitted following completion of an assessment.

**7. Supplemental Samples.**

A supplemental sample is a field sample collected and analyzed by request of the Department's representative by PG Energy in addition to samples proposed by PG Energy in accordance with a work plan submitted to the Department. Each work plan that proposes the collection of samples shall provide for supplemental samples to be collected by PG Energy at the Department's request. The number of supplemental samples shall not exceed two (2) samples or five percent (5%) of the total number of samples on a per-property basis, whichever is greater.

**8. Initial Investigation.**

a. The first Annual and Master Plan submitted in accordance with this Agreement shall contain a schedule for conducting Initial Investigations at all Properties in Exhibit A where such Initial Investigations have not been previously conducted. The schedule shall provide that all Initial Investigations shall be conducted within two (2) years of the effective date of this Agreement. Within (2) two years of the effective date of this Agreement, PG Energy shall submit an Initial Investigation Report at all Properties. The reports shall be submitted as the investigations are completed at each property. The Initial Investigation for each Property shall be conducted in accordance with the Generic Work Plan for Former Manufactured Gas Plant Properties contained in Exhibit D, and the QAPP in Exhibit E of the Agreement.

b. PG Energy shall submit work plans for Initial Investigations to the Department, in accordance with the Generic Work Plan and QAPP, for approval according to the schedule in the Annual Plan. A provision for Supplemental Samples as described in Paragraph 7 shall be included in each Work Plan. Within sixty (60) days of receipt of an Initial Investigation Work Plan for a Property, the Department shall, in writing, provide comments on the Initial Investigation Work Plan. PG Energy shall revise the plan to address the Department's comments and submit the revised plan to the Department prior to initiating on-site Initial Investigation activities.

c. Within ninety (90) days of PG Energy's completion of field work for each Initial Investigation, PG Energy shall submit for approval an Initial Investigation Report. Within sixty (60) days of receipt of an Initial Investigation Report, the Department shall, in writing, approve or disapprove the Report. If the Department disapproves the report, the Department shall provide the basis for its disapproval. PG Energy shall revise the report to address the Department's concerns or, if PG Energy disagrees with the Department's reasons for

disapproval, PG Energy may invoke the dispute resolution process set forth in Paragraph 26, although there is no right of appeal of this decision to the Environmental Hearing Board. If PG Energy resubmits the report, the above process shall be repeated. The Report shall include the following, as appropriate:

1. If PG Energy demonstrates in the Initial Investigation Report that there was no release, then PG Energy will recommend that no additional work be required under this Agreement. If the Department concurs with the conclusion that information known at the time of the Report indicates that no additional work is required under this Agreement, the Department shall provide a letter to PG Energy stating that the property shall be marked on the list of Properties in Exhibit A as being complete under this Agreement. If the Department does not concur with the report conclusions that no further work is required under this Agreement, the Department shall provide a letter to PG Energy. PG Energy shall complete additional work and submit a revised report or, if PG Energy disagrees with the Department's determination, PG Energy may invoke the dispute resolution process set forth in Paragraph 26, although there is no right of appeal of this determination to the Environmental Hearing Board. If PG Energy submits a revised report, the above process shall be repeated.

2. If the Initial Investigation Report demonstrates that there was, or may have been, a release as defined by Act 2, PG Energy shall submit a Site Characterization Work Plan in accordance with paragraph 9 and the Annual Plan. PG Energy shall submit a Notice of Intent to Remediate in accordance with the requirements of Act 2. The work plan shall include a provision for Supplemental Samples, as described in Paragraph 7. PG Energy and the Department shall proceed in accordance with Paragraph 9.

3. If either PG Energy or the Department believes that the information contained in the Initial Investigation Report demonstrates that it is appropriate to conduct interim groundwater and/or surface water monitoring, or a Significant Intermediate Action in addition to Site Characterization, PG Energy shall propose an interim groundwater and/or surface water monitoring schedule and/or a Significant Intermediate Action Work Plan in accordance with Paragraph 10. Interim groundwater and/or surface water monitoring shall be implemented following approval by the Department of the proposed action and schedule. If PG Energy does not propose to implement groundwater or surface water monitoring or a Significant Intermediate Action, the Department may order such monitoring or action, and PG Energy reserves its right to appeal the order of such monitoring or action to the Environmental Hearing Board.

d. The Scranton Property has been identified by PG Energy and the Department as the highest priority property listed in Exhibit A of this Agreement due to the presence of surficial waste material on, and potentially emanating from the Scranton Property. These surficial wastes are characteristic of having been generated as part of historic manufactured gas plant site operations. In 2002, PG Energy completed an Significant Intermediate Action in order to restrict public access to the wastes, and to help prevent erosion of the wastes. An Initial Investigation, Site Characterization and, if necessary, remediation of the Scranton property shall proceed under this Agreement in accordance with applicable law. Points shall be awarded in accordance with Paragraph 17 for all eligible work conducted after July 20,

2002 at the Scranton Property. Furthermore, points earned for eligible activities at the Scranton Bridge Street property in each of the first two (2) years may be carried forward to subsequent years.

## **9. Site Characterization**

a. If the Initial Investigation Report indicates that there was, or may have been a release at a property, PG Energy shall submit a Site Characterization Work Plan in accordance with Paragraph 8(c)(2) to the Department and conduct a Site Characterization. Each Plan shall include a provision for Supplemental Samples, as described in Paragraph 7. Within sixty (60) days of receipt of a Site Characterization Work Plan for a Property, the Department shall, in writing, approve the Work Plan or, if there are deficiencies, provide comments. PG Energy shall revise the plan to address the Department's comments and submit the revised plan to the Department for approval prior to initiating on-site characterization activities. The Site Characterization shall be conducted consistent with the requirements of Act 2, the regulations promulgated thereunder, including 25 Pa. Code §§ 250.204(a)-(e), 250.312(a), or 250.408(a)-(f) inter alia, Exhibit E (QAPP), and the TGM, as appropriate.

b. PG Energy shall begin implementing each Site Characterization Work Plan, as approved by the Department, in accordance with the Annual Plan. Within ninety (90) days following the completion of the fieldwork for each Site Characterization, or as otherwise agreed upon by the Department and PG Energy, PG Energy shall submit for the Department's approval a Site Characterization Report.

Site characterization, and if necessary, remediation of the Properties in Exhibit A shall continue under this Agreement in accordance with the substantive and procedural requirements of Act 2 and its implementing regulations. PG Energy shall indicate, at the time when the Site Characterization Report is submitted, whether it intends to pursue liability relief under an Act 2 Site Specific Standard, and intends for the information in the Site Characterization Report to serve as part of an Act 2 § 250.408 Remedial Investigation Report (RIR). If so, PG Energy shall include any additional information required by Subchapter D, and the Department shall then review the complete Remedial Investigation Report in accordance with the time frames and approval requirements afforded by Act 2. Otherwise, the Department shall notify PG Energy by letter within ninety (90) days of the Department's receipt of the Site Characterization Report whether it approves or disapproves the report. If the Department disapproves the report, the Department shall provide the basis for its disapproval. PG Energy shall submit a revised report or submit revisions to the report to address the Department's concerns or, if PG Energy disagrees with the Department's reasons for disapproval, PG Energy may invoke the dispute resolution process set forth in Paragraph 26. If PG Energy resubmits the report, the above process shall be repeated. The Report shall include the following, as appropriate:

1. If PG Energy demonstrates in the approved Site Characterization Report that a release occurred but the characterization data indicate that existing contamination concentrations are below the Act 2 Statewide health and/or Background standards, PG Energy will proceed to comply with the substantive and procedural requirements of Act 2. Ultimately,

PG Energy will prepare and submit for approval a Final Report in accordance with the substantive and procedural requirements of Act 2.

2. If the approved Site Characterization Report indicates that remediation will be required to achieve an Act 2 standard, PG Energy shall submit a Remedial Action Work Plan in accordance with Paragraph 11 and the Annual and Master Plan. PG Energy shall indicate, at the time when the Remedial Action Work Plan is submitted whether it intends to pursue liability relief under an Act 2 Site Specific Standard, and intends for the information in the Remedial Action Work Plan to serve as part of an Act 2 § 250.410 Cleanup Plan. If so, PG Energy shall include any additional information required by Subchapter D and the Department shall then review the complete Cleanup Plan in accordance with the time frames and approval requirements afforded by Act 2. The § 250.410 Cleanup Plan shall comply with the applicable substantive and procedural requirements set forth in Act 2 and its implementing regulations. In addition, PG Energy, to the extent practicable, shall remove and/or treat contaminant sources. The Department and PG Energy shall proceed in accordance with Paragraph 11, “Remediation of Properties”.

**10. Significant Intermediate Actions.**

a. Where PG Energy and the Department determine that prompt action, including, for example, an action to address a threat to human health or the environment, is required at a Property, PG Energy may undertake a Significant Intermediate Action at any time, including prior to submitting an Initial Investigation or Site Characterization Work Plan. If PG Energy intends to undertake a Significant Intermediate Action, it shall submit to the Department a Significant Interim Action Work Plan for the action and a description of the circumstances warranting interim response and a schedule of activities to be conducted. In the case of a release requiring an immediate response action, PG Energy may obtain the Department’s approval by telephone from the designated contact person. PG Energy may proceed without the Department’s approval, but shall not be entitled to points under Paragraph 17 for actions not pre-approved by the Department, unless agreed to by the Department.

b. After completing a Significant Intermediate Action, PG Energy shall provide a Significant Intermediate Action Report describing the completed action and proposing to update, re-prioritize, or propose to maintain the existing ranking for the Property in the next revised Master Plan and proposed Annual Plan.

**11. Remediation of Properties.**

a. The Department shall review the Remedial Action Plans and provide written approval or notice of deficiencies within ninety (90) days, or, if an Act 2 Site Specific Standard has been selected, the Department shall review § 250.410 Cleanup Plans, and any other information required by Act 2 submitted for Properties requiring remediation and provide written approval, or notice of deficiency in accordance with the time frames and approval requirements specified in the Act. Documents other than the Remedial Action Plan, that do not require Department review under Act 2, may be reviewed upon request by PG Energy. PG Energy shall

revise the plans to address the Department's comments and provide revised plans to the Department prior to commencing on-site remediation.

b. Each Remedial Action Plan designed to achieve a Background or Statewide health standard shall, as appropriate, conform with Act 2, applicable law, the TGM, and the regulations thereunder, and also shall at a minimum, include the following components:

1. Narrative description of the remediation approach;
2. Description of attainment sampling to be performed;
3. Remediation schedule;
4. Certification of the remediation design in accordance with Paragraph 14d. of the Agreement;
5. Narrative explanations, maps, plans and drawings of how the implementation of the remedy shall attain the standard selected in the Remedial Acton Plan. All property plans or drawings are to be tied to a permanent benchmark, in order to determine precisely the location and/or elevations of the contaminated areas;
6. A Sampling and Analysis Plan designed to ensure that PG Energy shall attain the cleanup standards. The Sampling and Analysis Plan shall expressly acknowledge the Department's option of requesting Supplemental Samples and shall be consistent with the QAPP in Exhibit E;
7. Such other information as is appropriate based on conditions unique to the property;

c. PG Energy shall begin implementing the Remedial Action Plan in accordance with the schedule in the Annual Plan, or as otherwise agreed to by PG Energy and the Department.

d. Upon completion of the remediation, PG Energy shall submit a Final Report in accordance with the substantive and procedural requirements of Act 2 and its implementing regulations. The Department shall review the Final Report within the time required by Act 2 and notify PG Energy of any deficiencies. If the Department identifies deficiencies with the Final Report, PG Energy shall address the Department's comments and resubmit a revised report to the Department. If PG Energy disputes the deficiencies identified by the Department, PG Energy may invoke the dispute resolution process set forth in Paragraph 26. If PG Energy resubmits the report, the process described above shall be repeated until the report is approved or dispute resolution is invoked.

e. In order to attain credit under Paragraph 17 for the completion of remedial activities at a Property, PG Energy shall notify the Department in writing stating that the remedial activity was completed in accordance with Exhibit C.

**12. Final Reports at Properties.**

PG Energy shall submit a Final Report in accordance with Act 2 and 25 Pa. Code 250 for each Property on the list where a release has occurred within 15 years of the Agreement effective date. Upon approval of the Final Report, the property shall be marked as being complete under this Agreement on the Exhibit A Property List.

**13. Liability Relief**

When PG Energy demonstrates compliance with the substantive and procedural environmental remediation standards established in Chapter 3 of Act 2, it shall be relieved of further liability for remediation of the property as set forth in Chapter 5 of Act 2, 35 P.S. 6026.501 – 6026.506, for any contamination identified in reports submitted to and approved by the Department to demonstrate compliance with these standards.

**14. Submissions.**

a. General Requirements. All work plans, reports, notices, inquiries, correspondence, and other documents (“Submissions”) relating to this Agreement and the implementation of its terms shall be sent in writing to the individuals serving as Designated Contacts for PG Energy and the Department, as identified in Paragraph 31 below. Submissions that are specifically required by Act 2 shall be clearly identified as such on the document title page and accompanying transmittal correspondence.

b. Method of Transmittal. All submissions relating to this Agreement shall be transmitted in their entirety by first class mail, overnight delivery, facsimile, certified mail or hand delivery or with prior approval of the Department for specific documents, electronically. Any Submission under this Agreement shall be deemed to have been submitted on the date that the party sends the submission, or as otherwise provided by the Uniform Electronic Transactions Act of December 16, 1999; P.L. 971, No. 69, 73 P.S. §2260.101 et seq.

c. Effect of Receipt. Any time period specified in this Agreement within which a specific requirement is to be met shall begin to run on the date that PG Energy or the Department, as appropriate, receives a Submission requiring the next action.

d. Certifications. All certifications that are subject to 25 Pa Code §§ 250.204, 250.312, and 250.408, or that are subject to The Engineering, Land Surveyor and Geologist Registration Law (Act 367 of May 23, 1945, amended December 16, 1992), P.L. 913, which are required as part of a Submission under this Agreement or Act 2, shall be done by a licensed professional engineer or professional geologist licensed in the Commonwealth of Pennsylvania. Required submissions not subject to Act 367 or 25 Pa. Code §§ 250.204, 250.312, or 250.408 shall be completed by a qualified PG Energy employee, consultant, or representative accompanied by an affidavit setting forth the qualifications of the person making the affidavit and describing the review process used. All affidavits shall include a certification under penalty of law as provided by 18 Pa. C.S. § 4904.

**15. Review of Submissions under this Agreement.**

Either the Department or PG Energy may request additional time to respond to any submission other than those response deadlines specified under Act 2, and neither shall unreasonably withhold assent to such a request.

**16. Re-prioritization Following Incomplete Remediation.**

If a remedy is not fully implemented at a Property or does not otherwise attain an Act 2 cleanup standard, PG Energy shall re-prioritize the Property based on the level of cleanup that has been achieved and identify the risks to human health and the environment that remain. The re-prioritization shall be described in the next Annual Plan.

**17. Accounting System; Stipulated Penalties**

a. General. In order to determine the progress of PG Energy with respect to the investigation, characterization, and remediation of the Properties, the Department and PG Energy agree to the accounting system described in this paragraph.

b. Points. The points for particular activities conducted at Properties pursuant to the Master Plan are included in Exhibit C. The points for actions that shall span more than one (1) year shall be prorated as agreed upon following review by the Department of the proposed Annual Plan describing such action.

c. Minimum Required Points. Except as provided in Paragraph 32 (i.e., Force Majeure), for each calendar year, PG Energy shall prepare and/or implement a sufficient number of the Plans and activities described in Paragraphs 8 through 12 above, to achieve a minimum of 3,000 points per year (“Minimum Required Points”), except that in the first 2 years of implementation of this Agreement, there shall be no requirement to achieve the Minimum Required Points.

Except for the Scranton Bridge Street Property, points shall not be awarded for Initial Investigation activities conducted in accordance with Paragraph 8 for Properties listed in Exhibit A as of the effective date of this Agreement. However, points shall be awarded for Initial Investigation activities at Properties added to Exhibit A after the effective date of the Agreement. Furthermore, points earned for eligible activities (i.e. work performed at the Scranton Bridge Street property) in each of the first two (2) years may be carried forward to subsequent years when the Minimum Required Points requirement applies.

PG Energy shall not be required to achieve the Minimum Required Points in any year in which Environmental Costs exceed \$1.1 million (“Environmental Cost Cap”) but shall perform an amount of work equal to 500 points. If achieving the Minimum Required Points would cause the combined expenses of PG Energy to exceed the Environmental Cost Cap in any year, and PG Energy elects not to exceed the Cost Cap, then PG Energy shall perform, at a minimum, as many activities under this Agreement for the year as they can without exceeding the Environmental Cost Cap. Work counting toward the cost cap or points totals must be performed at Properties listed in Exhibit A.

d. Make-up Requirements. Should PG Energy fail to earn the Minimum Required Points in any year for any reason other than an approved Force Majeure event or reaching the Environmental Cost Cap, the number of points representing the difference between the points earned and the Minimum Required Points shall be added to the Minimum Required Points required for the following two (2) years. These points shall be divided evenly between the two (2) years, unless PG Energy and the Department agree otherwise. Any surplus points carried over pursuant to Subparagraph (f) below may offset the additional make-up point requirement.

e. Accrual of Points. PG Energy shall be deemed to have earned points in the amount set forth in Exhibit C for any work plan or report submitted to the Department as follows: eighty percent (80%) of available points upon submittal, twenty percent (20%) of available points upon completion of required Department approval or as otherwise indicated in Exhibit C.

f. Carryover of Excess Points. In the event that PG Energy achieves in excess of 3,000 points during a particular year, PG Energy shall be entitled to apply the excess points achieved that year in excess of 3,000 (the Minimum Required Points, ) toward Minimum Required Points during any subsequent year.

g. Failure to Earn Minimum Required Points: (1) In any year in which PG Energy fails to achieve the Minimum Required Points, or (2) fails to complete a resolved action under Paragraph 26(h) (Dispute Resolution) and such failure was not the result of an approved Force Majeure event or the exceeding of the Environmental Cost Cap, PG Energy shall be liable to pay a stipulated penalty of \$25 per point for the difference between the number of points achieved and the Minimum Required Points, or pay a stipulated penalty of \$25 per day for failure to complete the resolved action under the Dispute Resolution process [26(b)(c)(d) and (h)].

h. Payment of Penalty. Any stipulated penalty due under this Section shall be due automatically and without notice and shall be payable monthly on or before the fifteenth day of each succeeding month. Any payment under this paragraph shall neither waive PG Energy's duty to meet its obligations under this Agreement nor preclude the Department from commencing an action to compel PG Energy's compliance with the terms, conditions, and schedules of this Agreement. The payment resolves only PG Energy's liability for civil penalties arising from the failure to earn minimum points under this Agreement or civil penalties arising from failure to implement a resolved action under Paragraph 26(b)(c)(d) and (h) for which the payment is made.

**18. Public Involvement at Properties.**

a. In addition to the public notices required by Act 2, PG Energy and the Department shall work together to share information with and solicit input from the public in order to:

1. Promote public understanding of the prioritization, assessment, characterization, and remediation process;
2. Promote public confidence and trust in the process; and
3. Involve the public in a manner that provides PG Energy with constructive input regarding priorities and goals of the process.

b. PG Energy shall incorporate appropriate steps to achieve these goals in work plans for specific Properties, provided, however, that if upon the request of the Department, PG Energy undertakes public involvement activities not required by Act 2 that result in delays in achieving deadlines established by this Agreement, the Department shall modify any deadlines as necessary to accommodate these additional public involvement activities.

**19. Notices.**

a. By telephone or email, PG Energy shall notify the Department's Regional PG Energy Coordinator, identified in Paragraph 31 below, of the Property's location a minimum of fourteen (14) days prior to the commencement of any fieldwork at that Property.

b. If PG Energy or the Department discovers the existence of or the potential for off-site contamination, it shall notify the other party promptly and in no more than ten (10) days. PG Energy shall notify all affected or potentially affected property owners and/or users adjacent to the Property in compliance with applicable laws.

c. The Department shall make reasonable efforts to inform PG Energy in writing of any change to the TGM or pertinent policies to the extent that any such change is relevant to the activities of PG Energy under this Agreement.

**20. Permits and Other Applicable Requirements at Properties.**

a. The requirement for State or local permits or permit revisions for remediation activities undertaken entirely onsite and undertaken in accordance with Act 2, shall be governed by the requirements of Act 2. 35 P.S. § 6026.902.

b. To the extent that a State or local permit or permit revision is not required pursuant to Section 902 of Act 2, PG Energy shall satisfy the substantive requirements of the applicable permit, including any performance standards.

**21. Access to Property Not Owned by PG Energy.**

a. PG Energy shall use its best efforts, including payment of reasonable compensation to the landowner for the landowner's costs, inconvenience, and any risk of damage, to obtain access for PG Energy, its contractors, and/or representatives and the Department, its contractors, and/or representatives to property not owned by PG Energy where work under this Agreement at Properties listed in Exhibit A is required. Costs incurred by PG Energy for its efforts in this regard shall count toward the Environmental Cost Cap in Paragraph 17(c).

b. In the event that PG Energy has not obtained the necessary access pursuant to Subparagraph (a) above, PG Energy will notify the Department regarding both its inability to obtain access and its use of best efforts to obtain such access.

c. If PG Energy demonstrates to the Department's satisfaction that it has used its best efforts to obtain access, including, if appropriate, an offer of payment of reasonable compensation to the landowner, but PG Energy has been unsuccessful, then the Department may take all appropriate action to obtain necessary access. If the Department obtains access for PG Energy, pursuant to this paragraph, PG Energy shall reimburse the Department for its costs associated with the Department's efforts to obtain access, including reasonable attorney fees, in accordance with Paragraph 25.

**22. Liability of Operator.**

PG Energy shall be liable for any violations of the Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors. Except as provided in Paragraph 23 (c), PG Energy also shall be liable for any violation of this Agreement caused by, contributed to, or allowed by its successors and assigns.

**23. Transfer of Properties.**

a. The duties and obligations under this Agreement shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in any Property or any part thereof.

b. If PG Energy intends to transfer any legal or equitable interest in all or a portion of any Property covered by this Agreement, PG Energy shall serve a copy of this Agreement upon the prospective transferee of the legal and equitable interest at least thirty (30) days prior to the contemplated transfer and shall simultaneously inform the applicable Regional Office and the designated contact of the Department under this Agreement of such intent.

c. The Department in its sole discretion may agree to modify or terminate PG Energy's duties and obligations under this Agreement upon transfer of a Property. PG Energy waives any right that it may have to challenge the Department's decision in this regard.

**24. Department Oversight.**

a. The Department's Central Office shall coordinate the overall implementation of Department oversight under this Agreement. It shall be responsible for reviewing the Master Plan and the Annual Plan, monitoring PG Energy's attainment of scheduled goals, and reviewing the overall program to maximize the benefits to human health and the environment. The goal of Central Office's oversight is to minimize the impact of Regional staffing limitations, maintain consistency throughout the program, utilize Departmental resources in an effective and efficient manner, and to avoid unnecessary delays in the implementation of this Agreement.

b. The Department Regional Office in which a Property addressed under this Agreement is located shall be responsible for monitoring and oversight of the Property. PG Energy shall submit all correspondence regarding work plans, reports, notices, and other documents related to particular Properties in a certain DEP Region to the designated contact for the appropriate Regional Office.

c. The Department may contract with a qualified consultant to provide oversight of any activities at a Property.

**25. Reimbursement of Oversight Costs.**

a. PG Energy shall reimburse the Department quarterly for reasonable costs that the Department incurs in providing oversight for Properties covered under this Agreement, including oversight provided by any contractor, up to a maximum of \$65,000 annually. Reimbursement shall be made by PG Energy for work performed until the earlier of either (1) the date both PG Energy and the Department concur that the Properties are investigated and, if required, remediated in accordance with Agreement or (2) the date this Agreement terminates. These costs shall be included in the Environmental Cost Cap calculation as an eligible cost as described in Paragraph 17(c).

b. Reimbursable oversight costs are the following costs that specifically relate to the Department's technical oversight of activities at Properties covered under this Agreement: overhead; department personnel salary and benefit costs; laboratory costs; travel expenses, planning meetings, including mileage, food and lodging; and equipment. Act 2 report submittal fees paid by PG Energy for Properties addressed under this Agreement shall be itemized in each Annual Plan. The Department, prior to submitting an oversight reimbursement bill to PG Energy, shall deduct the amount of these fees from the oversight reimbursement bill. PG Energy shall not be obligated pursuant to this Agreement to reimburse the Department for its oversight costs related to long-term monitoring and maintenance of Properties beyond the year 2018.

c. Overhead and benefit costs shall be billed at standard Commonwealth rates using then current benefit and overhead rates.

d. Beginning with year 2005, the Department shall submit its quarterly bill for reimbursement of oversight costs for the preceding quarter to PG Energy on or before (30) days following the end of the quarter during which the costs were incurred. The quarterly bill shall be accompanied by standard documentation of costs. Upon request, DEP shall send PG Energy the Department's supporting cost documentation. Such requests shall be submitted in writing within fifteen (15) business days of PG Energy's receipt of the bill and supporting cost documentation. If PG Energy disputes any costs, PG Energy shall pay those costs determined to be due and owing within forty-five (45) days following resolution of the dispute. The Department's oversight bill for 2004 shall be submitted in January 2005.

e. While PG Energy's agreement to reimburse the Department for overhead cost applies to costs incurred by both the Central and Regional Offices, the Central Office shall prepare and send the quarterly bill for reimbursement.

## **26. Dispute Resolution and Appeals.**

In the event of any dispute arising under this Agreement, PG Energy and the Department agree to attempt to resolve the dispute as follows:

a. For any decision involving a disapproval of a Final Report or other reports and evaluations required under Chapter 3 of Act 2, the Department's decision shall be considered an appealable action that PG Energy may appeal to the Environmental Hearing Board, under the Act of July 13, 1988 (P.L. 530, No. 94), known as the Environmental Hearing Board Act, and Section 308 of Act 2, provided that PG Energy appeals the Department's decision within (30) days of its receipt of the Department's decision or initiates dispute resolution in the manner set forth in this paragraph and in all events before the expiration of the 30 day appeal period. If dispute resolution is initiated before the expiration of the appeal period, the initial decision shall be suspended until the Department makes a final decision under Subparagraph (d).

b. PG Energy may invoke the dispute resolution process under this paragraph in response to any decision of the Department required pursuant to this Agreement, including a decision regarding oversight costs pursuant to paragraph 25(d).

c. To initiate dispute resolution, PG Energy shall send written notice to the Department within twenty (20) days of the decision in dispute. PG Energy shall have an additional ten days to provide the Department with a written list of objections to the decision in dispute, the relevant facts, analysis and opinions and other supporting data ("Statement of Position"). The Department shall have twenty (20) days to provide its Statement of Position.

d. Within the thirty (30) day period following the receipt of the Department's Statement of Position, PG Energy's officer designated for environmental affairs and the Department's Chief of Remediation Services shall confer in an attempt to resolve the dispute. In the event the parties are unable to resolve the dispute within this period, the Statements of Position shall be provided to the Department's Regional Director to issue a final decision resolving the dispute.

e. PG Energy and the Department may, by mutual agreement, extend any deadlines specified in this paragraph subsections (c) – (d) of this Paragraph 26.

f. PG Energy and the Department may, by mutual agreement, arrange for the participation of a neutral mediator in an attempt to resolve a dispute under the provisions of this paragraph.

g. (i) For any decision involving a disapproval of a Final Report or other reports and evaluations required under Chapter 3 of Act 2, if PG Energy and the Department are unable to reach agreement following utilization of the procedure set forth above, or upon mutual written agreement that further use of the procedure is waived, PG Energy may appeal the Department's decision to the Environmental Hearing Board as provided in Section 308 of Act 2 within thirty (30) days of the final decision or written agreement.

ii) For decisions involving reports and evaluations not required by Chapter 3 of Act 2, if PG Energy and the Department are unable to reach agreement through the dispute resolution process herein, PG Energy's submission shall be considered withdrawn and DEP's decision on it shall not be considered a final or appealable action. PG Energy may then follow the Act 2 process for the property, without the benefit of obtaining DEP approval or disapproval under this Agreement of documents that are not required by Act 2.

h. During the pendency of any dispute, PG Energy may choose not to perform the action(s) in dispute and PG Energy shall be entitled to relief from any stipulated penalty applicable to the Property(s) and action(s) that are the subject of the dispute for a period of time not to exceed the actual time taken to resolve the dispute pursuant to Subparagraphs (b) (c) and (d) or as otherwise agreed by the parties. Following resolution of any such dispute, the stipulated penalty provision of Paragraph 17 (g) shall apply if PG Energy fails to implement the activity under dispute (as resolved) following resolution of the dispute. If PG Energy does not implement an activity under dispute, it shall not receive any points for that activity, and the Dispute Resolution process does not excuse PG Energy from the requirement to achieve the annual minimum number of points. The foregoing shall not limit the Department's right to terminate this Agreement under Paragraph 41 for PG Energy's failure to meet the minimum point requirement set forth in that paragraph.

i. In the event that PG Energy is judicially determined to have invoked the dispute resolution process under this paragraph frivolously or solely for the purpose of delay, PG Energy shall not be entitled to relief from stipulated penalties.

**27. Department's Right to Take or Require Emergency Action.**

Nothing in this Agreement shall prevent the Department from taking or requiring PG Energy to take such remedial action at any Property where any condition on, at, or from a Property poses an imminent threat to human health or the environment. Nothing in this Agreement shall prevent the Department from seeking to recover its costs for such actions under applicable laws. Nothing in this Agreement precludes the Department's actions to enforce

compliance with statutes and regulations where any condition on, at, or from the Property poses immediate harm or threat of harm to public health or the environment. Nothing in this Agreement shall prevent PG Energy from defending any such action by the Department.

**28. Effect on Existing Obligations.**

Except to the extent inconsistent with this Agreement, this Agreement is not intended nor may it be construed to relieve or limit the obligations of PG Energy to comply with any existing or subsequent statute, regulation, permit, or order. In addition, nothing set forth in this Agreement is intended or shall be construed, to authorize any violation of any statute, regulation, order, or permit issued or administered by the Department.

**29. Additional Remedies.**

a. The Department reserves the right to require additional measures to achieve compliance with applicable law. PG Energy reserves the right to challenge any action which the Department may take to require those measures. In the event that PG Energy commits a material breach of this Agreement, as defined in Paragraph 30 herein, the Department may terminate this Agreement pursuant to paragraph 30 and 41(c).

b. The remedies provided by this paragraph and Paragraph 17 are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated penalty is paid.

**30. Material Breach.**

a. Any one or more of the following constitutes a Material Breach by PG Energy:

1. Beginning upon the anniversary of the effective date in 2006, unless excused under Paragraph 32 and 17(c), or unless the provisions of the Environmental Cost Cap apply, PG Energy fails to achieve 71% of the minimum points in each of two (2) consecutive years, considering any make-up points required under Paragraph 17(d);

2. PG Energy has provided or ever provides under this Agreement any information that has been falsified;

3. PG Energy fails to submit any Annual Plan on a timely basis.

4. PG Energy fails to notify or submit reports on time of a significant release.

b. In the event of any such breach, the Department may, at its option, terminate this Agreement. PG Energy shall be liable for any stipulated penalties accrued up to

the termination date. Following termination, the Department may commence any action authorized by law to enforce compliance with any applicable statute, rules, regulation, or order of the Department.

c. Nothing in this paragraph shall prevent the Department from bringing an action to enforce this Agreement.

**31. Designated Contacts and Correspondence.**

a. The Department designates the Chief of Remediation Services, as its contact person under this Agreement. PG Energy designates Dale Ann Buchanan, Administrator/Environmental Engineer, as its contact person under this Agreement.

b. All correspondence with the DEP Central Office concerning this Agreement shall be addressed to:

Bureau of Land Recycling and Waste Management  
Department of Environmental Protection  
P. O. Box 8471  
RCSOB, 14<sup>th</sup> Floor  
Harrisburg, PA 17105-8471

ATTN: Chief of Remediation Services

c. All correspondence with PG Energy concerning this Agreement shall be addressed to:

PG Energy  
One PEI Center  
Wilkes-Barre, Pa 18711

ATTN: Dale Ann Buchanan  
Administrator/Environmental Engineer

And;  
Southern Union Company  
221 West Sixth Street  
Suite 1900  
Austin, TX 78701

ATTN: Alan E. Fish,  
Director of Environmental Services

d. All correspondence regarding work plans, reports, notices, and other documents related to specific Properties in a certain DEP Region as indicated in this Agreement

shall be addressed to the required PG Energy contact in the appropriate Regional Office of the Department as follows:

Department of Environmental Protection,  
Environmental Cleanup Program  
(Carbon, Lackawanna, Lehigh, Luzerne, Monroe, Northampton,  
Pike, Schuylkill, Susquehanna, Wayne, Wyoming)  
Attn.: Robert Gadinski, Chief, Special Projects Unit  
Northeast Regional Office  
2 Public Square  
Wilkes-Barre, PA 18711-0790

Department of Environmental Protection  
Environmental Cleanup Program  
(Bradford, Cameron, Centre, Clearfield, Clinton, Columbia,  
Lycoming, Montour, Northumberland, Potter, Snyder,  
Sullivan, Tioga, Union)  
Attn.: Larry Newcomer, Chief, Hazardous Sites Cleanup Program  
Northcentral Regional Office  
208 West Third Street, Suite 100  
Williamsport, PA 17701-6448

with copies to:

Kenneth Beard  
Chief, Technical Investigations Section  
Division of Remediation Services  
P. O. Box 8471  
RCSOB, 14<sup>th</sup> Floor  
Harrisburg, PA 17105-8471

e. All correspondence with PG Energy concerning all work plans, reports, notices, and other documents related to a specific Property covered by this Agreement shall be addressed to:

Dale Ann Buchanan  
Administrator/Environmental Engineer  
PG Energy  
One PEI Center  
Wilkes-Barre, PA 18711

And;  
Southern Union Company  
221 West Sixth Street  
Suite 1900  
Austin, TX 78701

ATTN: Alan E. Fish,  
Director of Environmental Services

f. PG Energy agrees that service of any notice or any legal process for any purpose under this Agreement, including its enforcement, may be made by mailing a copy by first class mail to PG Energy's attorney or to the above address.

g. Either party may change the designated contact person or address by giving written notice to the other.

**32. Force Majeure.**

a. In the event that PG Energy is prevented from complying in a timely manner with any time limit imposed in this Agreement solely because of a strike, fire, flood, act of God, or other circumstances beyond PG Energy's control and which PG Energy, by the exercise of all reasonable diligence, is unable to prevent, then PG Energy may request an extension of time from the Department. An increase in the cost of performing the obligations set forth in this Agreement shall not constitute circumstances beyond PG Energy's control. PG Energy's economic inability to comply with any of the obligations of this Agreement shall not be grounds for any extension of time.

b. PG Energy shall only be entitled to the benefits of this paragraph only if PG Energy notifies the Department within five (5) working days by telephone and within ten (10) working days in writing of the date it becomes aware or reasonably should have become aware of the event impeding performance. The written submission shall include all necessary documentation, as well as notarized affidavit from an authorized corporate official specifying the reasons for the delay, the expected duration of the delay, and the efforts which have been made and are being made by PG Energy to mitigate the effects of the event and to minimize the length of the delay. The initial written submission may be supplemented within ten (10) working days of its submission. The failure of PG Energy to comply with the requirements of this paragraph specifically and in a timely fashion shall render this paragraph null and of no effect as to the particular incident involved.

c. The Department shall decide whether to grant all or part of the extension requested on the basis of all documentation submitted by PG Energy and other information available to the Department. Only a letter that has been signed by the Department shall constitute an extension under this paragraph. In any subsequent litigation, PG Energy shall have the burden of proving that the Department's refusal to grant the requested extension was an abuse of discretion based upon the information then available to it.

**33. Severability.**

The paragraphs of this Agreement shall be severable and should any part hereto be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

**34. Entire Agreement.**

This Agreement shall constitute the entire integrated agreement of PG Energy and the Department. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

**35. Modifications.**

No changes, additions, modifications, or amendments of this Agreement shall be effective unless they are set out in writing and signed by PG Energy and the Department.

**36. Attorney Fees.**

PG Energy and the Department agree to bear their respective attorney fees, expenses, and other costs in connection with negotiation of this Agreement arising prior to the effective date of this Agreement.

**37. Decisions Under this Agreement.**

Except as provided in Paragraph 26 (a), any decision which the Department makes under the provisions of this Agreement, which is not an appealable action under Section 308 of Act 2, is intended to be neither a final action of the Department under 25 Pa. C.S. Section 1021.2, nor an adjudication under 2 Pa. C.S. § 101. Any objection that PG Energy may have to the decision shall be preserved until the Department petitions to enforce this Agreement.

**38. Titles.**

A title used at the beginning of any paragraph of this Agreement may be used to aid in the construction of that paragraph, but shall not be treated as controlling.

**39. Changes in Law.**

If new state laws and regulations are enacted with remediation standards different from those contained in Act 2 and 25 Pa. Code Chapter 250, the new statutory remediation standards and regulations shall apply.

**40. HSCA.**

PG Energy agrees that, in the event that DEP uses HSCA to remediate one of the Properties listed in Exhibit A, then this Agreement constitutes an administrative action under §1301 of HSCA. PG Energy agrees that the Department shall not be required to institute an administrative or judicial enforcement action in addition to this Agreement, in order to be able to apply and initiate enforcement orders and the cost recovery provisions of HSCA, in accordance with §1301(a) and (b) of HSCA.

**41. Termination.**

a. This Agreement shall terminate fifteen (15) years from the effective date of this Agreement.

b. This Agreement may also be extended or terminated by agreement of PG Energy and the Department.

c. The Department may terminate this Agreement if PG Energy commits a material breach as per Paragraph 30. Termination is effective within thirty (30) days of the Department's written notice to PG Energy.

d. Either party may terminate this Agreement after two (2) years following its effective date and after each succeeding two-year period. Written notice of a party's intent to terminate shall be given to the other party within thirty (30) days of the anniversary of the Effective Date of this Agreement. A statement proposing amendments or other modifications, which, if adopted, would allow the agreement to continue, must accompany the notice. Thereafter, PG Energy and the Department shall negotiate in good faith to reach agreement on mutually satisfactory amendments or other modifications. If any party concludes that the negotiations shall not be successful, it shall inform the other parties, in writing. The termination shall be effective thirty (30) days after notice indicating that the negotiations shall be unsuccessful.

**42. Claims by PG Energy Against Third Parties.**

Nothing in this Agreement is intended nor shall be construed to prevent PG Energy from

asserting any claim against any third party.

IN WITNESS WHEREOF, the parties hereto have caused this Consent Order and Agreement to be executed by their duly authorized representatives. The undersigned representatives of PG Energy certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this Consent Order and Agreement on behalf of PG Energy; that PG Energy consents to the entry of this Consent Order and Agreement as a final ORDER of the Department; and that PG Energy hereby knowingly waives its right to appeal this Consent Order and Agreement and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103 (a) and Chapters 5A and 7A; or any other provision of law.

**FOR: PG ENERGY, A DIVISION OF  
SOUTHERN UNION COMPANY**

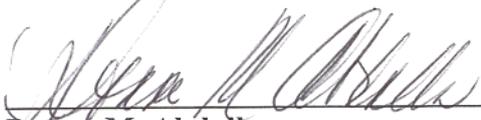
**FOR: THE COMMONWEALTH OF  
PENNSYLVANIA, DEPARTMENT  
OF ENVIRONMENTAL PROTECTION**



**Vincent A. Bonaddio  
Executive Vice President – Operations and  
Engineering Services, PG Energy**



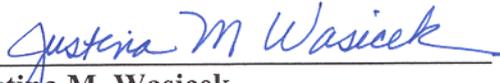
**Nicholas A. DiPasquale  
Deputy Secretary  
Office of Air, Recycling and Radiation  
Protection  
Department of Environmental Protection**



**Donna M. Abdalla  
Vice President – Administration and  
Secretary, PG Energy**



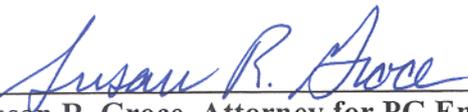
**Dennis K. Morgan  
Executive Vice President – Administration,  
General Counsel and  
Secretary,  
Southern Union Company**



**Justina M. Wasicek  
Counsel for DEP**



**Susan R. Groce  
Vice President – Legal and Environmental,  
Southern Union Company**



**Susan R. Groce, Attorney for PG Energy**

**EXHIBIT A  
PROPERTY LIST  
PG ENERGY CONSENT ORDER AND AGREEMENT**

<b>Property Name</b>	<b>Site Type</b>	<b>DEP Region</b>	<b>Municipality Name</b>	<b>County</b>	<b>Address</b>
Bloomsburg	Former MGP	4	Bloomsburg	Columbia	7th St.
Carbondale	Former MGP	2	Carbondale	Lackawanna	8th St.
Danville	Holder/Regulator	4	Danville	Montour	Railroad St.
Montgomery	Holder/Regulator	4	Montgomery	Lycoming	3rd St.
Montoursville	Holder/Regulator	4	Montoursville	Lycoming	South Alley
Muncy Holder Site	Holder/Regulator	4	Muncy	Lycoming	Market St.
Nanticoke#1	Former MGP	2	Nanticoke	Luzerne	Walnut St.
Scranton Greenridge Holder	Holder/Regulator	2	Scranton	Lackawanna	Albright Ave.
Scranton-Bridge St.	Former MGP	2	Scranton	Lackawanna	Bridge St.
Wilkes-Barre	Former MGP	2	Wilkes-Barre	Luzerne	Water St.
Williamsport Holder	Holder/Service Ctr.	4	Williamsport	Lycoming	Rose St.

**EXHIBIT B**  
**PROPERTY PROFILE RANKING SHEET**  
**PG ENERGY CONSENT ORDER AND AGREEMENT**  
**\_\_\_\_\_SITE**

<b><u>PARAMETER</u></b>	<b><u>SCORE</u></b>
<b>1. DISTANCE TO NEAREST SURFACE WATERWAY:</b>	_____
Adjacent to 10 yards (10)	
10 yards to 50 yards (5)	
50 yards to 100 yards (3)	
>100 yards (1)	
<b>2. DOWNSTREAM USE OF SURFACE WATERWAY</b>	_____
Drinking water intake within ½ mile (20)	
Livestock watering within ½ mile (10)	
Stream stocked or used for fishing within ½ mile (10)	
Stream used for water recreation within ½ mile (5)	
<b>3. SIZE OF LOCAL COMMUNITY</b>	_____
Estimated number of people living withing ½ mile:	
>12,000 (5)	
9,000 – 12,000 (4)	
6,000 – 9,000 (3)	
3,000 – 6,000 (2)	
<3.000 (1)	
<b>4. ESTIMATED DEPTH TO GROUNDWATER</b>	_____
Less than 10 feet (10)	
11 to 40 feet (5)	
Greater than 40 feet (1)	
<b>5. USE OF GROUNDWATER</b>	_____
Drinking water wells within ¼ mile (20)	
Known industrial, irrigation or livestock wells within ¼ mile (10)	
Drinking water wells greater than ¼, But less than ½ mile (10)	
Known industrial, irrigation or livestock wells Greater than ¼, but less than ½ mile (5)	
<b>6. POTENTIAL FOR EXPOSURE</b>	_____
Surface or exposed MGP wastes (20) Lack of security fencing (5)	

**PROPERTY PROFILE RANKING SHEET  
PG ENERGY CONSENT ORDER AND AGREEMENT  
\_\_\_\_\_SITE**

(Continued)

**PARAMETER**

**SCORE**

**7. ENVIRONMENTAL CONDITIONS** \_\_\_\_\_

Known or suspected presence of tar waste constituents in soil (20-40)

Known or suspected presence of wood chip wastes in soil (10)

Known or suspected presence of tar waste constituents in groundwater (20)

**8. GAS HOLDERS**

Aboveground gas holder present (5); however,

If more than one, multiply number of holders by 5

In-ground gas holder base remaining on-site (10);

However, if more than one, multiply number of holder bases by 10

**9. ENVIRONMENTAL CONDITIONS (GENERAL)** \_\_\_\_\_

Known or suspected disposal of non-MGP substances (10)

Known or suspected USTs present (10)

Known or suspected USTs previously removed

Without soil sampling (5)

**10. OTHER**

MGP operated for less than one year (-25) \_\_\_\_\_

**TOTAL SCORE:**

**COMMENTS:**

**PRIORITY:**

**EXHIBIT C  
ACCOUNTING SYSTEM  
PG ENERGY CONSENT ORDER AND AGREEMENT**

Main Activities			DEP Review	Act 2 Equivalent	Act 2 Review
MGP and Gas Holder Properties		Activity	POINTS	Time (Days)	Time (Days)
<b>INITIAL INVESTIGATION WORK PLAN</b>		DEP Review/Approve (1)	100 (5)	60	
<b>INITIAL INVESTIGATION REPORT 90days following field work</b>		DEP Review/Approve (1)	300 (5)	60	
<b>SITE CHARACTERIZATION WORK PLAN (and NIR)</b>		DEP Review/Approve (1)	200	60	
<b>SITE CHARACTERIZATION REPORT 90days following field work</b>		DEP Review/Approve (1)	300	As per Act 2 or 90 days(6)	90 SS
<b>REMEDIAL ACTION/CLEANUP PLANS</b>					
<b>Remedy Selection</b>					
Monitoring Only / Pathway Elimination w/o Construction		DEP Review/Approve (1)	100	↓	
Excavation / Pathway Elimination w/ Construction		DEP Review/Approve (1)	200		
Ground Water Remediation (pump and treat)		DEP Review/Approve (1)	300		
On-Site Remediation (soil or ground water)		DEP Review/Approve (1)	750		
<b>Remedy Design</b>					
Monitoring Only / Pathway Elimination w/o Construction		DEP Review/Approve (1)	300	↓	
Excavation / Pathway Elimination w/ Construction		DEP Review/Approve (1)	400		
Ground Water Remediation (pump and treat)		DEP Review/Approve (1)	450		
On-Site Remediation (soil or groundwater)		DEP Review/Approve (1)	1200		
<b>CLEANUP IMPLEMENTATION</b>					
<b>Cleanup Activities</b>					
Monitoring Only / Pathway Elimination w/o Construction		Notification of Completion (4)	350	NA	Not Applicable
Excavation of Non-Hazardous Waste		Notification of Completion (4)	1100	NA	
Excavation of Hazardous Waste		Notification of Completion (4)	1575	NA	
Ground Water Remediation(pump and treat)		Notification of Completion (4)	1575	NA	
On-Site Remediation (soil or groundwater)		Notification of Completion (4)	2250	NA	
<b>Post-Remedial Care (annual report)</b>					
Ground Water Treatment		Report Submittal (2)	500	NA	Component Cleanup Plan
On-Site Remediation (soil or ground water)		Report Submittal (2)	400	NA	
Other (e.g., Cap Maintenance)		Report Submittal (2)	200	NA	
Monitoring Report (assumes 4 reports, 50 pts. per report)		Report Submittal (2)	200	NA	
<b>FINAL REPORT</b>		DEP Review/Approve (1)	200	60/90 (3)	Final Report 60 (SWH) 90 (SS)
<b>OTHER ACTIVITIES AT MGP AND GAS HOLDER PROPERTIES</b>		DEP Review/Approve Workplan	100	as agreed	
Supplemental Investigation		Report Submittal (2)	300	as agreed	
Ecological Studies		Report Submittal (2)	400	as agreed	RIR (only if applicable and in support of Report)
Mitigation (e.g. 250.311(f))		Report Submittal (2)	600	as agreed	RIR (only if applicable and in support of Report)
Public Involvement (per substantial activity(s))		Report Submittal (2)	200	as agreed	NIR, Public Involvement
Property Purchase		Report Submittal (2)	500	as agreed	Not Applicable
Interim Monitoring (assumes 2 reports per year)		Report Submittal (2)	100	as agreed	
Well Survey (Pathway Evaluation/Non-Use Aquifer Determination)		Report Submittal (2)	100	as agreed	
Treatability Study		Report Submittal (2)	500	as agreed	Supports the Cleanup Plan
<b>SIGNIFICANT INTERMEDIATE ACTION</b>		DEP Review/Approve Workplan	100	ASAP	
Above Ground Holder Removal		IA Report (2)	1000	as agreed	Not Applicable
Below Ground Holder Removal		IA Report (2)	2000	as agreed	
Structure / Source Removal (tar pit/ tar separator)		IA Report (2)	1000	as agreed	
Debris Removal (surficial <2 feet)		IA Report (2)	100	as agreed	
Debris Removal (sub-surface >2 feet)		IA Report (2)	700	as agreed	
Removal of Product from Groundwater (75 points per quarter, if interim)		IA Report (2)	300	as agreed	
Removal of Product from Groundwater Annual Status Report		IA Report (2)	50	as agreed	
<b>FOOTNOTES</b>					
(1) Submittal to DEP earns 80% of points. Remaining 20% upon DEP approval.					
(2) Report submittal to DEP earns 100% of points.					
(3) DEP Review in 60 or 90 days depending on the selected Act 2 standard.					
(4) Submittal of Notice of Completion earns 100% of points.					
(5) Applies only to properties added to Exhibit A after COA effective date.					
(6) Act 2 response obligations apply to Act 2 submittals. Otherwise, DEP shall respond within ninety (90) days.					

**EXHIBIT D**  
**GENERIC WORK PLAN for FORMER MANUFACTURED GAS PLANT**  
**PROPERTIES**

(To be completed within 90 days of the effective date)

**EXHIBIT E**  
**QUALITY ASSURANCE PROJECT PLAN (QAPP)**  
(To be completed within 90 days of the effective date)