

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Quemetco, Inc.  
720 South Seventh Avenue  
City of Industry, California 91746

EPA ID NUMBER: CAD066233966

Respondent.

Docket No. HWCA 2016-7261

ENFORCEMENT ORDER

Health and Safety Code  
Sections 25187 and 25200.10

INTRODUCTION

1.1. Parties. The State of California Department of Toxic Substances Control (the "Department") issues this Enforcement Order ("Order") to Quemetco, Inc. ("Respondent").

1.2. Facility. Respondent generates, handles, treats, and/or stores hazardous waste at the following location: 720 South Seventh Avenue, City of Industry, California 91746 (the "Facility"). Specifically, Respondent recycles lead-bearing materials, particularly used lead acid batteries from vehicles to reclaim lead and other recyclable materials. Respondent stores hazardous waste, including partially processed, lead-containing materials, in a containment building located on the Facility (the "Containment Building," also known as the "Batch House").

1.3. The Department issued Respondent a Hazardous Waste Facility Permit Operation and Post-Closure Permit ("Permit") effective September 15, 2005, which authorized Respondent to manage hazardous waste at the Facility. Respondent's permit expired on September 15, 2015. Respondent timely submitted a permit application to the Department and is therefore allowed to operate under the terms and

conditions of its expired permit pursuant to California Code of Regulations, title 22, section 66270.51. The Containment Building is a hazardous waste management unit and is identified as "Unit 2" in the Permit.

1.4. Inspection. The Department commenced a compliance evaluation inspection of the Facility on or about May 26, 2016, and continued the inspection on various days thereafter (the "Inspection").

1.5. Jurisdiction. Health and Safety Code section 25187 authorizes the Department to order any action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto. Pursuant to Health and Safety Code section 25187, the Department may also issue an order to require corrective action when the Department determines that there is or may be a release of hazardous waste or constituents into the environment from a hazardous waste facility. Health and Safety Code section 25200.10 authorizes the Department to require corrective action for all releases of hazardous waste or constituents from a solid waste management unit or a hazardous waste management unit. The Permit requires Respondent to conduct corrective action pursuant to Health and Safety Code sections 25187 and 25200.10 to address any releases of hazardous waste or hazardous waste constituents at the Facility.

#### DETERMINATION OF VIOLATIONS

2. The Department has determined that:

2.1. Respondent violated California Code of Regulations, title 22, section 66264.1101(b)(3) in that, at the time of the Inspection, Respondent was not in

compliance with the regulatory requirement that a containment building used to manage hazardous waste containing free liquids or treated with free liquids include a secondary containment system with a functioning leak detection and liquid collection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous waste and liquids at the earliest practicable time. Specifically: (1) the liner drain monitoring well that is allegedly part of the leak detection system for the Containment Building does not collect liquids from the lowest point in the secondary containment system and is incapable of detecting failure of the primary barrier; and (2) the liner drain monitoring well appears to be collecting liquid from sources outside the Containment Building. Respondent's failure to comply with this regulatory requirement prevents, and may have already prevented, Respondent from detecting a release of hazardous waste or hazardous waste constituents into the environment.

2.2. Respondent violated California Code of Regulations, title 22, section 66264.31 in that, at the time of the Inspection, Respondent was not in compliance with the regulatory requirement that a containment building be maintained and operated to minimize the possibility of any releases of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. Respondent also violated California Code of Regulations, title 22, section 66264.1101(c)(3) in that, at the time of the Inspection, Respondent failed to repair a condition that could lead to or has caused a release of hazardous waste. A hole was noted in the wall of the Containment Building and there appeared to be gaps under the doors to the building. Respondent's failure to comply with this regulatory requirement may result, or may have already resulted, in a release of hazardous waste or hazardous waste constituents into the environment.

### FINDINGS OF FACT

3. Based on the Inspection and other available information, the Department has identified the Containment Building as a "Solid Waste Management Unit," which is defined in California Code of Regulations, title 22, section 66260.10 as "any unit at a hazardous waste facility from which hazardous constituents might migrate ...."

3.1. Hazardous waste or hazardous constituents may migrate, and may have migrated, from the Containment Building into the environment through the following pathways: soils and groundwater.

### SCHEDULE FOR COMPLIANCE

4. Based on the foregoing Determination of Violations and Findings of Fact, IT IS HEREBY ORDERED THAT:

4.1.1. Immediately upon the Effective Date of this Order, Respondent shall cease depositing additional hazardous waste or other lead-bearing material in the Containment Building.

4.1.2. Within three (3) days of the Effective Date of this Order, Respondent shall completely enclose the Containment Building to prevent any releases of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. At a minimum, Respondent shall ensure that all holes and/or gaps in exterior walls, including the ceiling, of the Containment Building are repaired, and all gaps and/or spaces under all doors leading into the Containment Building are eliminated or completely sealed. Respondent shall notify the Department in writing and provide a verification signed by an independent, qualified, professional engineer, registered in California, certifying that the Containment Building is completely enclosed and meets the applicable requirements of Division 4.5. of Title 22 of the

California Code of Regulations. Respondent shall also allow the Department to inspect the Containment Building to confirm that the Containment Building is completely enclosed and meets the applicable requirements of Division 4.5 of Title 22 of the California Code of Regulations.

4.1.3. Within seven (7) days of the Effective Date of this Order, Respondent shall submit for the Department's review and approval a work plan to remove all stored hazardous waste and other lead-bearing materials from the Containment Building. The work plan shall provide that the removal shall be complete within seven (7) days of the Department's approval of the work plan. The work plan shall detail how Respondent shall remove the stored hazardous waste and other lead-bearing materials from the Containment Building. Respondent must obtain the Department's approval of the work plan prior to commencing the removal process.

4.1.4. Respondent shall immediately notify the Department when all hazardous waste and other lead-bearing materials have been removed from the Containment Building. Respondent shall thoroughly inspect the primary barrier and ensure the primary barrier is free of cracks, gaps, corrosion, or other deterioration that could cause hazardous waste or hazardous waste constituents to be released from the primary barrier. At the conclusion of the inspection, Respondent shall immediately notify the Department in writing of its inspection results. Respondent shall also allow the Department to inspect the Containment Building at any time during the removal process, at the conclusion of the removal process, and upon receipt of Respondent's inspection results.

4.1.5. Within 30 days of the Effective Date of this Order, Respondent shall submit to the Department for review and approval a work plan to establish and maintain

a functioning leak detection and liquid collection system, including verification of a functioning liner system, in compliance with the applicable requirements of Division 4.5 of Title 22 of the California Code of Regulations. Respondent shall ensure that the engineering design of the leak detection and liquid collection system, including any redesign or modification of the system, is signed by an independent, qualified, professional engineer, registered in California.

4.1.6. Within 30 days of the Effective Date of this Order, Respondent shall submit to the Department a work plan for a RCRA Facility Investigation ("RFI Work Plan") to determine the nature and extent of any suspected or actual release of hazardous waste or hazardous constituents at or from the Containment Building. Respondent shall submit a RFI Report to the Department for approval in accordance with the Department-approved RFI Work Plan schedule. The RFI Work Plan and the RFI Report shall be developed in a manner consistent with Part VI, Corrective Action, of the Permit and the Department's and the United States Environmental Protection Agency's guidance documents for the Scope of Work for a RCRA Facility Investigation. Based on the findings of the RCRA Facility Investigation, the Department may require Respondent to conduct additional corrective action work, including Interim Measures, Risk Assessment, Corrective Measure Study and/or Corrective Measures Implementation. Respondent shall reimburse the Department for its costs incurred in overseeing the work required by this section.

4.1.7. The deadlines in this Order shall supersede any inconsistent deadlines in any Summary of Violations or addendums that the Department has issued to Respondent.

4.2. Submittals. All submittals from Respondent pursuant to this Order shall

be sent to:

Roberto Kou, Branch Chief  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control  
9211 Oakdale Avenue  
Chatsworth, CA91311

4.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications shall be communicated to Respondent in writing by a Department Branch Chief or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

4.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect human and public health, public safety, or the environment, the Department may modify the document as deemed necessary and approve the document as modified or return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

4.5. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all local, state, and federal requirements, including, but not limited to, requirements to obtain permits and to assure worker safety.

4.6. Endangerment During Implementation. In the event the Department determines that any circumstance(s) or activity(ies) (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the Facility or in the surrounding area or to the

environment, the Department may order Respondent to stop further implementation of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a stop work order under this section shall be extended for the term of the stop work order.

4.7 Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

4.8. Facility Access. Access to the Facility shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Facility at all reasonable times and at any time when work is being performed either pursuant to this Order or otherwise affecting the Containment Building, for any purpose, including, but not limited to: inspecting records, operating logs, and contracts relating to the Facility; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

4.9. Data and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring,

and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six (6) months prior to destroying any documents prepared pursuant to this Order.

4.10. Government Liabilities. Neither the State of California nor any state department, board, or agency shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties in carrying out activities pursuant to this Order, nor shall the State of California or any department, board, or agency be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

4.11. Incorporation of Plans and Reports. All plans, schedules, and reports that are submitted by Respondent pursuant to this Order and require the Department's approval are incorporated in this Order upon approval by the Department.

4.12. Extension Request. If Respondent is unable to perform any activity or submit any document within the time required under this Order, Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request

shall include a justification for the delay.

4.13. Extension Approvals. The Department may grant Respondent's request for an extension if it determines that good cause exists for an extension. In granting any extension, the Department will specify in writing a new compliance schedule.

#### OTHER PROVISIONS

5.1. Additional Enforcement Actions. The Department reserves all of its statutory and regulatory powers, authorities, rights, and remedies under applicable laws to protect public health or the environment. By issuing this Order, the Department does not waive the right to take further enforcement actions for violations of law, whether or not those violations were identified in this Order.

5.2. Penalties for Noncompliance. Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

5.3. Parties Bound. This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including, but not limited to, individuals, partners, and subsidiary and parent corporations.

5.4. Time Periods. For purposes of this Order, "days" means calendar days.

5.5. Compliance with Waste Discharge Requirements. Respondent shall comply with all applicable waste discharge requirements issued by the State Water

Resources Control Board or a California regional water quality control board.

PENALTY

6. The Department reserves the right to assess a penalty at a later time against Respondent for the violations identified in this Order or for any other violations of the Hazardous Waste Control Law (Health & Saf. Code, § 25100 et seq.) and its implementing regulations.

RIGHT TO A HEARING

7. Respondent may request a hearing to challenge this Order. Appeal procedures are described in the attached Statement to Respondent.

EFFECTIVE DATE

8. This Order is final and effective 15 days from the date it is served on Respondent (the "Effective Date"), unless Respondent requests a hearing within the 15-day period pursuant to section 7 of this Order.

Date of Issuance: July 25<sup>th</sup>, 2014

  
\_\_\_\_\_  
Roberto Kou, Branch Chief  
Enforcement & Emergency Response Division  
Department of Toxic Substances Control

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Quemetco, Incorporated.  
720 South Seventh Avenue  
City of Industry, California 91746

EPA ID NUMBER: CAD066233966

Respondent.

Docket No. HWCA 2016-7261

STATEMENT TO RESPONDENT

Enforcement Order  
Health and Safety Code  
Sections 25187 and 25200.10

TO THE ABOVE RESPONDENT:

An Enforcement Order (Order) is attached to this statement and is hereby served upon you. The Order has been filed by the Department of Toxic Substances Control (Department).

UNLESS A WRITTEN REQUEST FOR A HEARING SIGNED BY YOU OR ON YOUR BEHALF IS DELIVERED TO THE DEPARTMENT OR POSTMARKED WITHIN FIFTEEN CALENDAR DAYS AFTER THE DATE OF THE COVER LETTER YOU RECEIVED WITH YOUR COPY OF THE ORDER, YOU WILL BE DEEMED TO HAVE WAIVED YOUR RIGHT TO A HEARING IN THIS MATTER. IF YOU DO NOT FILE A TIMELY HEARING REQUEST, THE ENFORCEMENT ORDER BECOMES FINAL AUTOMATICALLY.

The request for a hearing may be made by delivering or mailing one copy of the enclosed form entitled "Notice of Defense" or by delivering or mailing a Notice of Defense as provided in section 11506 of the Government Code to:

Chief Counsel  
Office of Legal Counsel  
Department of Toxic Substances Control  
1001 I Street, 23rd floor,  
P. O. Box 806  
Sacramento, California 95812-0806

The enclosed Notice of Defense, if signed and filed with the Department, is deemed a specific denial of all parts of the Order, but you will not be permitted to raise any objection to the form of the Order unless you file a further Notice of Defense as provided in section 11506 of the Government Code within fifteen days after service of the Order upon you.

If you file a Notice of Defense within the time permitted, a hearing on the allegations made in the Order will be conducted by the Office of Administrative Hearings of the Department of General Services in accordance with the procedures specified in Health and Safety Code section 25187 and Government Code sections 11507 et seq.

The hearing may be postponed for good cause. If you have good cause, you must notify the Department within ten working days after you discover the good cause. Failure to notify the Department within ten days will deprive you of a postponement.

Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are attached. If you desire the names and addresses of witnesses or an opportunity to inspect and copy items in possession, custody, or control of the Department, you may contact:

Chief Counsel  
Office of Legal Counsel  
Department of Toxic Substances Control  
1001 I Street, 23<sup>rd</sup> Floor  
P. O. Box 806  
Sacramento, California 95812-0806

Whether or not you have a hearing, you may confer informally with the Department to discuss the alleged facts, determinations, corrective actions and penalty. An informal conference does not, however, postpone the fifteen-day period you have to request a hearing on the Order. An informal conference may be pursued simultaneously with the hearing process.

You may but are not required to be represented by counsel at any or all stages of these proceedings.

## GOVERNMENT CODE

### **Section 11507.5. Exclusivity of discovery provisions**

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

### **Section 11507.6. Request for discovery**

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic,

mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

### **Section 11507.7. Motion to compel discovery**

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be

served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

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NOTICE OF DEFENSE

Health and Safety Code  
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I, the undersigned Respondent, acknowledge receipt of a copy of the Enforcement Order, Statement to Respondent, Government Code sections 11507.5, 11507.6, and 11507.7, and two copies of a Notice of Defense.

I request a hearing to permit me to present my defense to the allegations contained in the Enforcement Order.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature of Respondent)

Please Type or Print the Name and Mailing Address of Respondent

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City)

\_\_\_\_\_  
(State)

\_\_\_\_\_  
(Zip)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Inspector)

STATE OF CALIFORNIA  
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(Inspector)