

1 from the Facility. The Facility qualifies as a hazardous waste facility under California Health and
2 Safety Code section 25117.1.

3 2. While operating the Facility, Defendant violated the California Hazardous Waste
4 Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, sections
5 25100 et seq. ("HWCL"), and the implementing regulations, California Code of Regulations,
6 Title 22, Division 4.5.

7 3. The Department hereby seeks civil penalties and injunctive relief from Defendant for
8 its violations of the HWCL and its implementing regulations.

9 **PLAINTIFF**

10 4. The Department is a public agency of the State of California organized and existing
11 under and pursuant to Health and Safety Code sections 58000 et seq.

12 5. Deborah O. Raphael is the Director of the Department.

13 6. Pursuant to section 25182 of the Health and Safety Code, the Attorney General of the
14 State of California is authorized, at the request of the Department, to commence an action in the
15 name of the People for civil penalties under the HWCL. The Department has requested the
16 Attorney General to seek civil penalties in this case and injunctive relief against Defendant.

17 **DEFENDANT**

18 7. Defendant is a California corporation with headquarters in Benicia, California.

19 8. Defendant is a metal fabricator specializing in ornamental metal work, such as stairs,
20 rails and other ornamental metal products. Hazardous waste is generated in the course of normal
21 operations as a result of metal prepping, cutting, welding and painting. Defendant also generates
22 hazardous metal dust during cutting, polishing, and buffing activities at the Facility.

23 9. Defendant is a "person" as defined in Health and Safety Code section 25118. Further,
24 Defendant is an "owner" and/or "operator" of a hazardous waste facility and a "generator" of a
25 hazardous waste at the Facility, as defined at California Code of Regulations, title 22, section
26 66260.10.

27 10. When reference is made in this Complaint to any act of Defendant, such allegation
28 shall mean that the owners, officers, directors, agents, employees, contractors, and representatives

1 of Defendant did or authorized such acts or recklessly and/or negligently failed and omitted to
2 adequately or properly supervise, control, or direct Defendant's employees, representatives, or
3 agents while engaged in the management, direction, operation, or control of the affairs of
4 Defendant and did so while acting within the course and scope of their employment or agency.

5 11. Defendants Does 1-20 are the officers, agents, employees, servants, or others acting
6 in interest or concert with Defendant. The Department is ignorant of the true names of defendants
7 sued herein as Does 1-20. When the names of these defendants have been ascertained, the
8 Department will seek leave to amend the Complaint.

9 **JURISDICTION AND VENUE**

10 12. This Court has jurisdiction pursuant to Cal. Const., art. VI, § 10, and Health and
11 Safety Code section 25181, subdivision (a). Venue is proper under Health and Safety Code
12 section 25183. Although the principal office of the Defendant is located in Benicia, California
13 which is in Solano County, Alameda County is the county where the Attorney General has an
14 office nearest to the county in which the principal office of the Defendant is located and therefore
15 venue is proper in Alameda County.

16 **STATUTORY AND REGULATORY BACKGROUND**

17 13. The State of California has a comprehensive – “cradle to grave” – statutory and
18 regulatory framework for the generation, handling, treatment, storage, transport, and disposal of
19 hazardous wastes. The HWCL's implementing regulations specify requirements for the tracking,
20 storage, treatment, and disposal of hazardous waste to protect the public from the risks posed by
21 improper management of hazardous wastes. (Cal. Code Regs., tit. 22, § 66260.1 et seq.)

22 14. The HWCL is the California analogue of the federal Resource Conservation and
23 Recovery Act, 42 U.S.C. § 6901 et seq. (“RCRA”). Pursuant to state and federal law, the
24 Department administers the HWCL in lieu of federal administration of RCRA in California. (See
25 Health & Saf. Code, § 25101, subd. (d); California: Final Authorization of Revisions to State
26 Hazardous Waste Management Program, 66 FR 49118 (September 26, 2001).) Federal law
27 prohibits California from imposing “any requirements less stringent than those authorized under
28 [RCRA].” (42 U.S.C. § 6929.)

1 15. State law – the HWCL – has a more inclusive definition of hazardous waste than does
2 federal law. Hazardous wastes that are regulated under California law but not federal law are
3 known as “non-RCRA hazardous wastes.” (Health & Saf. Code, § 25117.9.)

4 16. A person, as defined in Health and Safety Code section 25118, who generates
5 hazardous waste must determine if the waste is hazardous using the methods outlined in
6 California Code of Regulations, title 22, sections 66262.11 (“Hazardous Waste Determination”)
7 and 66260.200 (“Classification of a Waste as Hazardous or Nonhazardous”). If the waste is
8 hazardous, the generator must manage it in accordance with the regulations governing generators
9 of hazardous waste. (See Cal. Code Regs., tit. 22, §§ 66262.11 and 66260.200, subd. (c).)
10 Defendant is subject to these requirements. If a generator incorrectly classifies hazardous waste
11 as non-hazardous, the generator may be subject to an enforcement action. (See Cal. Code Regs.,
12 tit. 22, 66260.200(d).)

13 17. Generators of hazardous waste that hold hazardous waste at their facility are subject
14 to the hazardous waste management facility requirements of California Code of Regulations, title
15 22, section 66262.34, subdivision (a). A generator who treats, stores, or disposes of hazardous
16 waste on-site shall comply with the applicable standards and permit requirements set forth in
17 chapters 14, 15, 16, 18 and 20 of Division 4.5, California Code of Regulations, title 22, sections
18 66260.10 et seq. (Cal. Code Regs., tit. 22, § 66262.10.) Because hazardous waste is treated and
19 stored at the Facility prior to its shipment off site, Defendant is subject to these requirements.

20 18. In 1992, California adopted a tiered permitting scheme for hazardous waste
21 management facilities. (The Wright-Polanco-Lempert Hazardous Waste Treatment Permit
22 Reform Act of 1992, Stats. 1992, c. 1345 (A.B. 1772).)

23 19. The middle tier of California’s tiered permitting scheme for hazardous waste
24 management facilities is known as permit-by-rule. (Cal. Code Regs., tit. 22, § 67450.1 [“Permit
25 Requirement”] et seq.) It is available to hazardous waste generators who treat certain hazardous
26 wastes by the treatment processes specified in California Code of Regulations, Title 22, section
27 67450.11. Defendant is subject to the permit-by-rule requirements.

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FIRST CAUSE OF ACTION
(Unauthorized Storage and Accumulation of Hazardous Waste)
(Health & Saf. Code, § 25201, subd. (a))
(Cal. Code Regs., tit. 22, § 66262.34, subd. (a))

24. Paragraphs 1 through 23 are re-alleged as if fully set forth herein.

25. Health and Safety Code section 25201, subdivision (a), prohibits an owner or operator of a storage or treatment facility from, inter alia, storing hazardous waste at a facility unless the owner or operator has a permit or grant of authorization from the Department.

26. California Code of Regulations, title 22, section 66262.34, subdivision (a), allows a facility to accumulate hazardous waste for greater than 90 days only with a permit or authorization from the Department.

27. Since on or before June 29, 2012, Defendant stored hazardous wastes (including, copper, selenium, and zinc) in the Facility's oil-water separator beyond the 90 day limit on fourteen separate occurrences) without a permit or grant of authorization by the Department.

28. Since on and before April 1, 2011, March 1, 2010, and August 31, 2010, and continuing thereafter, Defendant stored used oil in four fifty-five (55) gallon containers for greater than ninety (90) days at the Facility without a permit or authorization from the Department.

29. Since on and before October 27, 2011, and continuing thereafter, until June 28, 2012, Defendant stored hazardous waste (bag house dust) in containers for over ninety (90) days at the Facility without a permit or grant of authorization from the Department.

30. Defendant violated Health and Safety Code section 25201, subdivision (a), and California Code of Regulations, title 22, section 66262.34, subdivision (a), in that Defendant stored the above-mentioned hazardous waste at the Facility in containers and tanks, respectively, for over 90 days without a permit or grant of authorization from the Department.

31. Defendant is liable for civil penalties under Health and Safety Code sections 25189 or 25189.2 for its violations of Health and Safety Code section 25201, subdivision (a), and California Code of Regulations, title 22, section 66262.34, subdivision (a).

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**FIFTH CAUSE OF ACTION
(Failure to Train Employees)
(Cal. Code Regs, tit. 22, § 66265.16 (a-e))**

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3 52. Paragraphs 1 through 51 are re-alleged as if fully set forth herein.

4 53. California Code of Regulations, title 22, section 66265.16 (“Personnel Training”),
5 requires that a facility managing hazardous waste have a training plan for its employees; that
6 facility personnel participate in hazardous waste training classes that include certain specified
7 elements; and that the facility keep records of the training received by each employee. Personnel
8 must also receive annual updates of this hazardous waste training. Section 66260.10 defines
9 facility personnel to mean all “persons who work at, or oversee the operations of, a hazardous
10 waste facility, and whose actions or failure to act may result in non-compliance” with the HWCL
11 regulations.

12 54. Since on and before March 29, 2012 and continuing thereafter, Defendant violated
13 California Code of Regulations, title 22, section 66265.16, in that Defendant’s employees had not
14 received hazardous waste training as required by this regulation. The Department is informed and
15 believes that most if not all of Defendant’s employees, except for administrative staff, had
16 responsibilities for management of hazardous waste at the Facility, as the term “management” is
17 defined under the HWCL. (Cal. Health & Safety Code section 25117.2)

18 55. The Department is informed and believes that at the time of the Inspections, the
19 Facility had no records of employee training plan or records indicating that the employees were
20 properly trained. In 2006, the Department informed Defendant’s representative that the employee
21 training plan they provided would not suffice for employee training for a large quantity generator.

22 56. Defendant is liable for civil penalties under Health and Safety Code section 25189 or
23 25189.2 for failing to train each employee as required under California Code of Regulations,
24 section 66265.16.

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