



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

KAMALA D. HARRIS
Attorney General of California
MARGARITA PADILLA
Supervising Deputy Attorney General
JAMIE JEFFERSON
Deputy Attorney General
State Bar No. 197142
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612-0550
Telephone: (510) 622-2254
Fax: (510) 622-2270
E-mail: Jamie.Jefferson@doj.ca.gov
*Attorneys for Plaintiff People of the State of
California, ex rel. Deborah O. Raphael, Director,
Department of Toxic Substances Control*

EXEMPT FROM FILING FEES
GOVERNMENT CODE § 6103

FILED
ALAMEDA COUNTY

MAR 6 - 2014

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

**PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. , DEBORAH O.
RAPHAEL, Director of DEPARTMENT
OF TOXIC SUBSTANCES CONTROL,**

Plaintiff,

v.

C. E. TOLAND & SON,

Defendant.

Case No. RG14713998

**STIPULATION FOR SETTLEMENT
AND ENTRY OF FINAL JUDGMENT**

(Code of Civil Procedure § 664.6)

Trial Date: None Set

Action Filed: February 14, 2014

Plaintiff, People of the State of California ex rel. Deborah O. Raphael, Director,
Department of Toxic Substances Control, (the "Department") and Defendant C. E. Toland & Son,
a California corporation ("CE Toland"), enter into this Stipulation for Settlement and Entry of
Judgment ("Stipulation"), and stipulate as set forth herein. The Department and CE Toland
hereinafter are collectively referred to as ("the Parties.")

A. THE COMPLAINT

The Department has filed a Complaint for Civil Penalties and Injunctive relief
("Complaint") against CE Toland pursuant to the California Hazardous Waste Control Law,

1 Health and Safety Code section 25100 et seq. (“HWCL”) and its implementing regulations, Cal.
2 Code of Regulations, Title 22, sections 66000 et seq (“Title 22”). CE Toland is an owner and
3 operator of a manufacturing facility located at 5300 Industrial Way in Benicia, California, where
4 hazardous waste is generated and managed (“the Facility”). This Stipulation settles the matters
5 specifically alleged by DTSC against CE Toland in the Complaint.

6 **B. JURISDICTION AND VENUE**

7 The Department and CE Toland stipulate and agree that the Superior Court of the State of
8 California for the County of Alameda (the “Court”) has subject matter jurisdiction over the
9 matters alleged in the Complaint and personal jurisdiction over the Parties. Venue is proper
10 pursuant to Health and Safety Code section 25183.

11 **C. DEFENDANT’S WAIVER OF HEARING, TRIAL, AND APPEAL**

12 By signing and entering into this Stipulation, CE Toland waives its right to hearing and trial
13 on the matters alleged in the Complaint and to an appeal in this matter.

14 **D. AGREEMENT TO SETTLE DISPUTE**

15 The Parties enter into this Stipulation pursuant to a compromise and settlement of disputed
16 claims by mutually consenting to the entry by the Superior Court of the County of Contra Costa
17 of the Judgment Pursuant to Stipulation in the form attached as Exhibit 1 (“Judgment”). The
18 Parties are each represented by counsel. The Department is represented by the Office of the
19 Attorney General and CE Toland is represented by Castellon and Funderburk LLP. This
20 Stipulation was negotiated and executed in good faith and at arms’ length by the Department and
21 by CE Toland to avoid expensive and protracted litigation regarding the alleged violations of the
22 HWCL and to further the public interest. CE Toland admits to the evidence underlying the
23 violations described in the Inspection Reports (dated October and November, 2011 and July
24 2012), but does not admit to the violations therein alleged. The Department and CE Toland both
25 request entry of judgment on the terms set forth in this Stipulation. The Department and CE
26 Toland agree that there has been no adjudication of any fact or law.

27 ///

28 ///

1 **E. APPLICABILITY.**

2 The provisions of this Stipulation and the Judgment shall apply to and be binding on CE
3 Toland, its subsidiaries and divisions, its parent companies, its officers and directors, its
4 successors and assignees or other entities, acting by, through, under, or on behalf of CE Toland.

5 **F. DEFINITIONS.**

6 Except where otherwise expressly defined in this Stipulation, all terms shall be interpreted
7 consistent with Chapters 6.5 and 6.95 of Division 20 of the California Health and Safety Code
8 and the regulations promulgated under these chapters.

9 “Facility” means the metal manufacturing and finishing facility located at 5300 Industrial
10 Way in Benicia, California where hazardous waste is generated and managed by CE Toland.

11 “Hazardous waste” shall have the definition set forth in California Health and Safety Code
12 section 25117.

13 **G. MONETARY SETTLEMENT REQUIREMENTS.**

14 Judgment shall be entered in this matter for civil penalties against CE Toland in the amount
15 of eight hundred nineteen thousand dollars (\$819,000). The Department has determined that the
16 appropriate amount of penalty for the violations it alleges to be \$819,000 subject to a reduction in
17 accordance with Section G.1, 2 and 3 below.

18 **1. INITIAL PENALTY PAYMENT.**

19 Within thirty (30) calendar days of the date of entry of the Final Judgment in this matter,
20 CE Toland shall pay to the Department five hundred fifty thousand dollars (\$550,000) in civil
21 penalties.

22 **2. SUSPENDED PENALTY.**

23 The balance of the penalty, \$269,000, shall be stayed under the terms of the Judgment,
24 provided that: (a) CE Toland satisfactorily completes the probationary period as provided in
25 Section 3 below.

26 **3. COMPLETION OF PROBATIONARY PERIOD.**

27 Successful completion by CE Toland of the probationary period (described below in section
28 I ¶¶ 11-15) is accomplished when: (1) CE Toland has not committed a Class I violation of the

1 HWCL and/or Title 22 for a period of five (5) years from the entry of Judgment; and (2) has
2 complied with the injunctive terms in section I for a period of five (5) years from the entry of
3 Judgment. If during the probationary period (as described in section I ¶¶ 11-15): (a) the
4 Department determines that CE Toland has one or more new Class I violations of the HWCL
5 and/or Title 22; or (b) violates an injunctive provision of this Stipulation or the Judgment, the
6 balance of the penalty will be payable to the Department within 15 calendar days of written
7 demand by the Department.

8 If CE Toland successfully completes the probationary period, the \$269,000 penalty balance
9 will be deemed satisfied.

10 4. All payments by CE Toland to the Department shall be made by check, payable to
11 “the Department of Toxic Substances Control,” and mailed to:

12 a. Cashier
13 Department of Toxic Substances Control
14 Accounting Office
15 P.O. Box 806
16 Sacramento, CA 95812-0806

17 b. The check to the Department from CE Toland shall bear the name of this case,
18 “People v. CE Toland and Son,” and the court case number.

19 c. An electronic (i.e., pdf) copy of the check shall be sent to each of the following:

20 Dr. Sangat Kals
21 State Oversight and Enforcement Branch
22 Department of Toxic Substances Control
23 8800 Cal Center Drive, MS R1-3
24 Sacramento, CA 95826-3200
25 Sangat.Kals@dtsc.ca.gov

26 Richard Driscoll
27 Office of Legal Affairs
28 Department of Toxic Substances Control
P. O. Box 806
Sacramento, CA 95812-0806
Richard.Driscoll@dtsc.ca.gov

///

1 Jamie B. Jefferson
2 Deputy Attorney General
3 Office of the Attorney General
4 1515 Clay Street, 20th Floor
5 P. O. Box 70550
6 Oakland, CA 94612-0550
7 Jamie.Jefferson@doj.ca.gov

8 **H. GENERAL INJUNCTIVE PROVISIONS.**

9 CE Toland is permanently enjoined as follows:

10 Pursuant to the provisions of the Health and Safety Code §§ 25181 and 25184, CE Toland
11 shall comply with Chapter 6.5 of Division 20 of the Health and Safety Code (Health & Saf. Code,
12 § 25100 et seq.) and the regulations promulgated under this chapter (California Code of
13 Regulations (Cal. Code Regs.), tit. 22, § 66000 et seq.) in its operations of the Facility.

14 **I. SPECIFIC INJUNCTIVE PROVISIONS.**

15 1. Upon entry of the Judgment in this matter, consistent with California Code of
16 Regulations, title 22, section 66262.11, subdivision (b)(1). The records shall be maintained at the
17 Facility for a period of at least three years from the date of testing and be made available to the
18 Department and to the local CUPA upon request. Additionally, each new waste stream shall be
19 tested and, if applicable, managed according to Land Disposal Restrictions consistent with
20 California Code of Regulations, title 22, Chapter 18.

21 2. CE Toland shall clearly mark each container of hazardous waste with the initial date
22 on which accumulation begins and a label with the words "Hazardous Waste," the composition
23 and physical state of the waste, the hazardous properties, and the name and address of the
24 generator as required by Cal. Code Regs., tit. 22, §66262.34; (b) CE Toland shall accumulate all
25 hazardous waste in accordance with applicable accumulation periods pursuant to Cal. Code Regs.,
26 tit. 22, §66262.34; and (c) CE Toland shall lawfully and timely dispose of all accumulated
27 hazardous waste at an authorized point pursuant to Health and Safety Code sections 25201 and
28 25189.5(a).

 3. CE Toland CE Toland shall conduct weekly inspections of all areas of the Facility
 where hazardous waste is generated or accumulated to inspect for mismanagement of hazardous

1 waste, including, but not limited to, and inspection of all waste containers at the Facility destined
2 for municipal solid waste (garbage) landfills; all areas used for metal prepping, sanding,
3 primering, and painting; all areas used to accumulate used oil and other hazardous waste liquids;
4 and the Facility's baghouse dust and smog hog dust collection areas. CE Toland shall conduct
5 weekly inspections of containers used to accumulate hazardous waste in accordance to Cal. Code
6 Regs., tit. 22, §66265.174 and 66262.34(a)(1)(A). CE Toland shall maintain a written log on-site
7 of the inspections performed as part of the Facility's operating record required by Cal. Code
8 Regs., tit. 22, §66265.15. The inspections at a minimum shall ensure that the Facility is managed
9 in accordance with Cal. Code Regs., tit. 22, including, without limitation, §66265.15, 66265.31,
10 66262.34, 66273.35, 66265.73, 66265.171, 66265.172, 66265.173, 66265.174, 66265.176,
11 66265.177, 66265.191, 66265.192, 66265.193, 66265.194, 66265.195. If hazardous waste spills
12 and/or releases are discovered at the Facility, CE Toland shall take appropriate action consistent
13 with HWCL and will log the type and amount of hazardous waste spilled and/or released.

14 4. Within thirty (30) calendar days from entry of the Final Judgment, and from that time
15 thereafter, CE Toland shall have and maintain a tank assessment performed for each tank and
16 tank system used by the Facility to accumulate, store, transfer, treat, and/or otherwise manage
17 hazardous waste. Each tank assessment shall be performed by an independent, qualified,
18 professional engineer, registered in California, in accordance with Cal. Code Regs., tit. 22,
19 §66265.191 and 66265.192. CE Toland shall maintain a copy of each tank assessment required at
20 the Facility and make it available upon request to DTSC and the local CUPA.

21 5. Within thirty (30) calendar days from entry of the Final Judgment, and from that time
22 thereafter, CE Toland shall provide adequate secondary containment assessment for each tank and
23 tank system used by the Facility to accumulate, store, transfer, treat, and/or otherwise manage
24 hazardous waste. CE Toland shall provide and maintain adequate secondary containment for
25 each tank and tank system as required by law. As part of the tank integrity assessment required in
26 paragraph 2.4 above, the secondary containment assessment shall be certified by an independent,
27 qualified, professional engineer registered in California, in compliance with Cal. Code Regs., tit.
28 22, §66265.193.

1 6. Within thirty (30) calendar days from entry of the Final Judgment, and from that time
2 thereafter, CE Toland shall (a) prepare and implement a written daily tank inspection plan for
3 each tank and tank system used at the Facility to accumulate, store, transfer, treat, and/or
4 otherwise manage hazardous waste as required by Cal. Code Regs., tit. 22, §66265.195 (a-c), and
5 shall maintain an accurate log of the daily inspections conducted, including any corrective actions
6 taken. CE Toland shall make the written daily inspection plan and log of daily inspections
7 available upon request by the Department and the local CUPA.

8 7. CE Toland shall maintain and operate the Facility to minimize the possibility of
9 unplanned, sudden or non-sudden release of hazardous waste or hazardous waste constituents as
10 required by Cal. Code Regs., tit. 22, §66265.31.

11 8. CE Toland shall comply with the employee training requirements as mandated by
12 Cal. Code Regs., tit. 22, §66265.16, pertaining to the management of hazardous waste, including,
13 but not limited to, the training of relevant full-time, part-time, and contract employees, and all
14 managers responsible for Facility personnel that may manage or otherwise come in contact with
15 hazardous waste in the scope of their work duties. CE Toland shall maintain employee training
16 records as required by these regulations.

17 9. CE Toland's Facility includes an outdoor painting area used to prepare and paint
18 metal work pieces. CE Toland's prepping and painting operations may cause the release of
19 hazardous waste or hazardous constituents, including but not limited to paint waste and metal
20 dust, to the environment and/or in the vicinity of the Facility's employees. CE Toland shall
21 ensure that all prepping and painting operations meet the following requirements for control of
22 hazardous waste and hazardous waste constituents: (a) CE Toland shall continue to use the
23 current control measures (perimeter fence at height of at least five feet) for the outdoor painting
24 area at the CE Toland's Facility. CE Toland is responsible for the maintenance of the perimeter
25 fence and shall ensure that it is adequately maintained. CE Toland shall also include equipment
26 operating and maintenance manual(s), a written maintenance schedule for paint waste collection
27 equipment, and training documentation for employees responsible for equipment operation and
28 waste management of wastes from painting operations.

1 (b) CE Toland shall use at the Facility the paint waste collection equipment at all times
2 when painting and metal preparations are in operation and may cause the release of hazardous
3 waste or hazardous constituents. CE Toland shall (a) continue to adhere to a maintenance
4 schedule for the paint waste collection equipment and shall maintain the equipment in proper
5 working order at all times; (b) not conduct painting or metal preparation if the paint waste
6 collection equipment is not functioning properly; (c) conduct daily inspections and keep records
7 at the Facility of the painting and metal preparation area and paint waste collection equipment; (d)
8 restrict cleaning and surface preparation (such as, but not limited to, sanding and grinding) and
9 painting operations to the covered section of the Facility's outdoor location, located on the East
10 side of the Facility; (e) perform cleaning of all residuals in the painting area at the end of each
11 shift; (f) discharge of ignitable wastes to the Facility's separator or sanitary sewer is prohibited;
12 (g) a continuous concrete or steel berm shall be constructed around the entire painting area to
13 prevent runoff from entering nearby storm water drains or the nearby marsh; and (h) the painting
14 area shall be enclosed by a perimeter fence at height of at least five feet to prevent drift of paint
15 waste and metal dust.

16 10. CE Toland shall conduct daily inspections for releases of paint waste and metal dusts
17 on the ground immediately around the painting area of the Facility. In the event of a release of
18 hazardous waste, CE Toland shall take the appropriate action consistent with the Hazardous
19 Waste control Law. CE Toland shall maintain a written daily log of the painting and metal
20 preparation area and paint waste collection equipment at the Facility that, at a minimum, includes:

- 21 (1) The operational status of the paint waste collection equipment;
- 22 (2) Whether spills or releases were observed; and
- 23 (3) Any maintenance work done to the areas or equipment.

24 Any spills or releases discovered shall be cleaned up immediately and noted in the daily log
25 of inspections, including the amount of waste cleaned up. CE Toland shall maintain the
26 inspection log on site and make the log available to the Department or the CUPA for review upon
27 request.

28 ///

1 **PROBATIONARY PERIOD**

2 11. For a period of five (5) years (the “probationary period”) after the entry of the Final
3 Judgment in this matter, CE Toland shall employ and maintain a corporate officer or employee
4 knowledgeable in the California environmental laws that are subject of this Stipulation and Final
5 Judgment, as an “Environmental Associate.” The Environmental Associate’s responsibility shall
6 be to manage the CE Toland’s compliance with the injunctive terms in this Stipulation for Entry
7 of Final Judgment. The duties of the Environmental Associate shall include collecting and
8 maintaining copies of all written advisements of violation, including Notices of Violation
9 (“NOVs”) and inspection reports, issued or performed by the local CUPA, relating to the Facility
10 for a period of five (5) years and to undertake good faith efforts to assess CE Toland’s
11 compliance with applicable laws and regulations, and to correct any noted deficiencies or
12 violations. CE Toland shall have the right, at its sole option, to retain a third party contractor to
13 perform all or part of the responsibilities set forth in this paragraph, in lieu of having such
14 responsibilities performed by a corporate officer or employee of CE Toland.

15 12. If CE Toland elects to retain a third party contractor to perform all or part of the
16 responsibilities set forth in paragraph 11, CE Toland shall remain responsible for the actions of
17 said contractor and shall not otherwise be relieved of the requirements set forth in the Final
18 Judgment. Beginning one year after the entry of the Final Judgment in this matter, and
19 continuing for the next four years from entry of the Final Judgment, CE Toland’s Environmental
20 Associate shall submit to DTSC an annual status report describing CE Toland’s program for
21 compliance with the terms of the injunction and the implementation of such compliance program,
22 any material change made to the program in the preceding year, any NOV issued to CE Toland
23 for the Facility, any actions taken in response to such NOV, and any penalties paid by CE Toland
24 with respect to such NOVs. Each such annual report shall be signed by CE Toland’s
25 Environmental Associate, or other management representative, under penalty of perjury.

26 13. Within thirty (30) calendar days of entry of the Judgment, CE Toland shall retain the
27 services of a qualified and independent third party Auditor, selected by CE Toland, who for a
28 period of three (3) years will conduct a comprehensive environmental compliance audit of

1 conditions, operations, and practices of the Facility located at 5300 Industrial way, Benicia,
2 California. The Auditor shall be either a qualified engineer identified to and approved by DTSC,
3 or Professional Engineer, and knowledgeable and experienced in environmental regulations,
4 including but not limited to the HWCL and Title 22 , as well as other state, federal ,and local
5 environmental laws, regulations, and ordinances applicable to the Facility's operations. The
6 Auditor shall submit an annual environmental audit report to CE Toland, with a copy to DTSC,
7 within 15 calendar days of each anniversary date of this Final Judgment for a period of three
8 years following the date of entry of Final Judgment. The Auditor, in conjunction with the CE
9 Toland, will develop an environmental audit protocol meeting the requirements of this Final
10 Judgment and shall provide it to DTSC for review and comment. The purpose of the Audit is to
11 better inform and expedite CE Toland's continuing environmental compliance effort, especially
12 with regard to the HWCL and Title 22. In addition to any other audit objectives deemed
13 appropriate by the CE Toland, the environmental audit shall evaluate CE Toland's compliance
14 with Chapter 6.5 of Division 20 of the Health and Safety Code, and the implementing regulations.
15 The environmental compliance audits shall also evaluate the implementation and effectiveness of
16 the CE Toland program to maintain compliance with Chapter 6.5 of Division 20 of the Health and
17 Safety Code. The environmental audit reports referenced above shall include, but not be limited
18 to, a complete description and discussion of all environmental audit objectives, scope and criteria,
19 audit activities, audit findings and audit conclusions, recommendations and shall identify and
20 discuss all audit evidence considered or relied upon to support the audit conclusions. The
21 environmental audit report shall also contain a brief description of any written advisements or
22 violation, including formal Notices of Violation and inspection reports directed to the CE Toland
23 by any local, state, or federal agency that identifies any violation or any environmental protection
24 law relating to the management of any hazardous material or waste. Such reports shall also
25 include, but not be limited to, a brief description of any such noted violations including whether
26 CE Toland paid any fines, costs or other payments and what corrective measures, if any, were
27 taken by CE Toland. Within thirty (30) days after receipt by DTSC of each environmental audit

28

1 report, CE Toland shall provide DTSC with a plan to correct any deficiencies raised in the
2 environmental audit reports.

3 14. The findings of the Audit and Audit Report are in no way binding on the Department.
4 The Department shall, in its sole discretion, determine the classification associated with
5 violations, if any, whether discovered as a result of an Audit inspection or any other method, and
6 the Department in no way delegates or waives its enforcement authority. Furthermore, the
7 Department's action or inaction neither impair nor waive the Department's authority to enforce
8 the HWCL and/or Title 22.

9 15. The deadlines set forth in this section may be extended by the Department only upon
10 written request from CE Toland demonstrating good cause. In the event that CE Toland fails to
11 submit an annual Audit Report by the deadlines set forth in this section, a stipulated penalty of
12 two hundred and fifty dollars (\$250.00) shall be assessed for each day the Audit Report is late, up
13 to a total of ten thousand dollars (\$10,000.00) per audit. If such a stipulated penalty arises, CE
14 Toland shall pay the Department within 15 days of written demand for payment.

15 **J. SATISFACTION OF CIVIL PENALTY PAYMENT REQUIREMENT.**

16 1. If at any point during the five (5) year period after the date of entry of Judgment, the
17 Department determines that CE Toland: (a) commits one or more Class I violation listed in
18 Section I above and/or (b) fails to make the payments required by Sections G.1 of this Stipulation
19 and Judgment, then the full amount of the \$269,000 penalty, plus interest, will be immediately
20 due and payable to the Department, less any payment previously made by or on behalf of CE
21 Toland to the Department. Interest will be calculated based on interest that would have accrued
22 on the amount of \$269,000 from the date of entry of Judgment at a fixed rate of 3%.

23 2. If the Department determines that CE Toland has defaulted under the terms of this
24 Stipulation or the terms of the Judgment, the Department must provide CE Toland with written
25 notice of the default. Such written notice constitutes notice to CE Toland of a reasonable
26 opportunity to cure the default on the terms required by the Department. If CE Toland fails to
27 cure the default within ten business days of the receipt of the notice, the Department may proceed
28 to pursue all its rights and remedies to enforce the Judgment. Notwithstanding the foregoing,

1 nothing herein is intended or shall be construed to preclude the Department from initiating an
2 enforcement action against CE Toland for any violations of the HWCL and/or Title 22 not alleged
3 in this matter.

4 **K. NOTICE TO THE PARTIES.**

5 1. All submissions and notices required by this Stipulation and the Final Judgment shall
6 be in writing (with electronic copy) and sent to:

7 a. For Plaintiff:

8 Dr. Sangat Kals
9 Statewide Emergency Response and Sacramento Enforcement Branch
10 Department of Toxic Substances Control
11 8800 Cal Center Drive, MS R1-3
12 Sacramento, CA 95826-3200
13 Sangat.Kals@dtsc.ca.gov

14 Richard Driscoll
15 Office of Legal Affairs
16 Department of Toxic Substances Control
17 P.O Box 806
18 Sacramento, CA 95812-0806
19 Richard.Driscoll@dtsc.ca.gov

20 Jamie B. Jefferson
21 Deputy Attorney General
22 Office of the Attorney General
23 1515 Clay Street, 20th Floor
24 Oakland, CA 94612-0550
25 Jamie.Jefferson@doj.ca.gov

26 b. For CE Toland:

27 Ted Toland
28 Ted@CEToland.com]
Blake Toland
Blake@CEToland.com

C.E. Toland & Son
Metal Craftsmen
5300 Industrial Way
Benicia, Ca 94510

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

Copy to:

Ruben A. Castellon
rcastellon@candffirm.com

All approvals and decisions regarding any matter requiring approvals or decisions under the terms of this Stipulation and the Judgment shall be communicated in writing. Each Party may change its respective representative(s) for purposes of notice by providing the name and address of the new representative, in writing, to all Parties. The change shall be effective within seven calendar days of the date of the written notice.

L. AUTHORITY TO ENTER INTO STIPULATION.

Each signatory to this Stipulation certifies that he or she is fully authorized by the party he or she represents to enter into this Stipulation, to execute it on behalf of the party represented, and to legally bind that party.

M. NO WAIVER OF RIGHT TO ENFORCE.

The failure of the Department to enforce any provision of this Stipulation or the Final Judgment shall neither be deemed a waiver or modification of such provision, nor in any way affect the validity of this Stipulation or the Final Judgment. The failure of the Department to enforce any such provision shall not preclude it from later enforcing the same or other provisions of this Stipulation or the Final Judgment. No oral advice, guidance, suggestions, or comments by employees or officials of the Department or CE Toland, or people or entities acting on behalf of CE Toland, regarding matters covered in this Stipulation or the Final Judgment shall be construed to relieve CE Toland of its obligations under this Stipulation or the Final Judgment.

N. APPLICABILITY OF STIPULATION AND FINAL JUDGMENT.

Unless otherwise expressly provided herein, the provisions of this Stipulation and the Final Judgment shall apply to and be binding upon: (a) CE Toland, and upon its officers directors, managers, employees, agents, successors, assignees, and other "persons," as that term is defined under the Health and Safety Code section 25118, acting, by, through, or on behalf of CE Toland; and (b) DTSC and any successor agency of DTSC that may have responsibility for and jurisdiction over the subject matter of the Stipulation and Final Judgment.

1 **O. EFFECT OF STIPULATION AND FINAL JUDGMENT.**

2 Other than “Covered Matters” as defined in Paragraph J.1 below, nothing herein is
3 intended, nor shall it be construed, to preclude the Department, or any state, county, or local
4 agency, department, board, or entity from exercising its authority under any law, statute, or
5 regulation. Nothing herein precludes the Department from taking action to enforce the terms of
6 the Stipulation and Final Judgment.

7 **P. NO LIABILITY OF THE DEPARTMENT.**

8 CE Toland covenants not to pursue any civil or administrative claims against the
9 Department or against any governmental unit of the State of California, any counties, or
10 municipalities in the State of California, or against their officers, employees, representatives,
11 agents, or attorneys for actions taken against CE Toland arising out of or related to Covered
12 Matters in this proceeding.

13 Further, the Department shall not be liable for any injury or damage to persons or property
14 resulting from acts or omissions by CE Toland, its officers, directors, employees, agents,
15 representatives, successors, or contractors, in carrying out activities pursuant to this Stipulation or
16 the Judgment, nor shall the Department be held as a party or guarantor of any contract entered
17 into by CE Toland, its officers, directors, employees, agents, representatives, successors, or
18 contractors, in carrying out the requirements of this Stipulation or the Judgment.

19 **Q. INTEGRATION.**

20 This Stipulation and the Final Judgment constitutes the entire agreement between the
21 Department and CE Toland with respect to the matters specifically alleged in the Complaint and
22 may not be amended or supplemented except as provided for in this Stipulation or the Final
23 Judgment.

24 **R. CONTINUING JURISDICTION.**

25 The Parties agree that this Court has continuing jurisdiction to interpret and enforce this
26 Stipulation and the Final Judgment. This court shall retain continuing jurisdiction to enforce the
27 terms of this Stipulation and the Final Judgment and to address any other matters arising out of or
28 regarding this Stipulation and the Final Judgment.

1 **S. EQUAL AUTHORSHIP.**

2 This Stipulation and the Final Judgment were drafted equally by the Parties hereto. The
3 Parties agree that the rule of construction holding that ambiguity is construed against the drafting
4 Party shall not apply to the interpretation of this Stipulation and the Final Judgment.

5 **T. AMENDMENTS TO THIS STIPULATION AND THE FINAL JUDGMENT.**

6 This Stipulation and the Final Judgment may only be amended pursuant to a written
7 agreement signed by the Parties, followed by written approval by the Court, or by an order of the
8 Court following the filing of a motion or application.

9 **U. COUNTERPART SIGNATURES.**

10 This Stipulation may be executed in several counterpart original signatures, all of which
11 taken together shall constitute an integrated document.

12 **V. ENTRY OF FINAL JUDGMENT PURSUANT TO STIPULATION.**

13 The Parties further stipulate that upon submission of this Stipulation to the Court, the Court
14 shall enter the Final Judgment in this matter in the form set forth in the attached Exhibit 1. The
15 “Effective Date” of the Final Judgment is the date the Final Judgment is entered by the Court. If
16 the Court does not approve the Final Judgment in the form and substance proposed in Exhibit 1
17 hereto, each Party reserves the right to withdraw both the Stipulation and the Final Judgment
18 upon written notice to all Parties and the Court.

19 **W. MATTERS COVERED AND RESERVED CLAIMS.**

20 1. The Final Judgment entered in this matter is a final and binding resolution and
21 settlement of the violations and causes of action specifically alleged by the Department against
22 CE Toland in the Complaint for violations observed during the inspections dated October and
23 November, 2011 and July 2012. The matters described in the previous sentence are “Covered
24 Matters.” The Department reserves the right to pursue any claim, violation, or cause of action
25 that is not a Covered Matter (“Reserved Claims”). Claims, violations, or causes of action against
26 independent contractors of CE Toland, if any, are not resolved by the Final Judgment.

27 2. Any violations or causes of action that are not specifically alleged in the Complaint
28 against CE Toland, including, but not limited to, any alleged violations that occurred after the

1 inspection dates of October and November, 2011 and July 2012 are not resolved, settled, or
2 covered by the Final Judgment.

3 3. Notwithstanding any other provision of the Final Judgment, Reserved Claims include,
4 but are not limited to, any claims or causes of action for performance of corrective action,
5 response action, or recovery of costs of actions, concerning or arising out of actual past or future
6 releases, spills, leaks, discharges, or disposal of hazardous materials, hazardous wastes, and/or
7 hazardous substances.

8 4. In any subsequent action that may be brought in the name of the Department based on
9 any Reserved Claims, CE Toland agrees that it will not assert that the failure to pursue the
10 Reserved Claims as part of this action constitutes claim-splitting or laches or is otherwise
11 inequitable because of this asserted failure. This Paragraph does not bar CE Toland from
12 asserting any statute of limitations that may be applicable to any Reserved Claims or any other
13 defense, except as provided herein.

14 **X. NECESSITY FOR WRITTEN APPROVALS.**

15 All notices, approvals, and decisions of the Department under the terms of this Stipulation
16 or the Final Judgment shall be communicated to CE Toland in writing. No oral advice, guidance,
17 suggestions, or comments by employees or officials of the Department regarding submissions or
18 notices shall be construed to relieve CE Toland of its obligations to obtain any final written
19 approval required by this Stipulation or the Final Judgment.

20 **Y. COSTS AND ATTORNEYS' FEES.**

21 Except as provided for herein, each Party to this Stipulation and Final Judgment shall bear
22 its own costs and attorneys' fees.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

IT IS SO STIPULATED.

DATED: January 29, 2014

Plaintiff, People of the State of California, *ex rel.*
Deborah O. Raphael, Director, Department of
Toxic Substances Control

Original signed by Paul Kewin
By: _____
PAUL KEWIN, Division Chief
Enforcement and Emergency Response Division
Hazardous Waste Management Program
Department of Toxic Substances Control

DATED: January 29, 2014

C. E. TOLAND & Son, Inc.
Original signed by C. E. Toland
By: _____
Print name: C. E. TOLAND
Title: Owner

APPROVED AS TO FORM:
Original signed by Jamie B. Jefferson
JAMIE B. JEFFERSON
Deputy Attorney General
Office of the Attorney General
For Plaintiff

Original signed by Ruben Castellon
RUBEN CASTELLON
CASTELLON & FUNDERBURK LLP
For Defendant

OK2012507726
2 CE Toland Stipulation for Settlement Final January 2014.docx.doc