

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

D.R. Osborne Co., Inc.
251 Walnut Avenue
Holtville, California 92250
CAC001157440

Respondent.

Docket HWCA No. SCUPA 2009 IM003

CONSENT ORDER

Health and Safety Code
Section 25404.1.1

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control Imperial Certified Unified Program Agency (Department) and D.R. Osborne Co., Inc. (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent owns and operates the facility known as D.R. Osborne, located at 251 Walnut Avenue, in the City of Holtville, California 92250 County of Imperial (Site). The respondent stores hazardous materials at the Site.

1.3. Inspection. The Department conducted a complaint investigation at the Site on October 8 and October 9, 2008.

1.4. Authorization Status. Respondent stores hazardous materials at the Site.

1.5. Jurisdiction. Health and Safety Code (HSC), section 25404.1.1, authorizes the Department to order action necessary to correct violations and to assess a penalty when the Department determines that any person has violated specified provisions of the HSC or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.6. Full Settlement. This Order shall constitute full settlement of the violations alleged below. The Parties, and each of them, agree that this Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. By agreeing to this Order, the Department does not waive any right to take other enforcement actions except as specifically provided in this Order.

1.7. Hearing. Respondent waives any and all rights to a hearing in this matter.

1.8. Admissions. Respondent admits the violations as alleged in Section 2 below.

2. VIOLATIONS ALLEGED

2.1. The Department alleges the following violations:

2.1.1. Respondent violated HSC, section 25507 in that on or about October 6, 2008, Respondent failed to report a release of a hazardous materials to the appropriate agencies. Specifically, an Anhydrous Ammonia release occurred which resulted in an Emergency Response from the Holtville Fire Department. The Department and the California Office of Emergency Services were not notified of the hazardous materials release until the Department quoted text from the HSC in the investigation report dated May 18, 2009. The Department had previously issued similar instructions in a Summary of Violations dated October 9, 2008.

2.1.2. Respondent violated HSC, section 25503.5 in that on or about October 6, 2008, Respondent failed to possess a business plan for emergency response.

3. SCHEDULE FOR COMPLIANCE

3.1. Based on the forgoing Determination of Violations, IT IS HEREBY NOTED THAT:

3.1.1. On May 28, 2009, Respondent reported the October 6, 2008 release of a hazardous materials to the appropriate agencies.

3.1.2. On January 29, 2009, Respondent submitted for review and comment a business plan for emergency response.

3.1.3. Respondent shall make all payments at the time(s) and in accord with any other conditions set forth in Section 5 (Penalty) below.

3.1.4. Submittals: All submittals from Respondent pursuant to this Order shall be sent to:

Jesus Torres
Senior Hazardous Substance Scientist
DTSC Imperial CUPA
627 Wake Avenue
El Centro, California 92243

4. OTHER PROVISIONS

4.1. 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, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare or the environment.

4.2. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties and/or damages, as provided by Health and Safety Code, section 25188, and other applicable provisions of law.

4.3. 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, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

4.4. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Order.

5. PENALTY

5.1. Based on the forgoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondent's penalty at \$22,844.00.

5.2. Respondent shall pay the Department \$13,844.00 of the penalty in 5.1. The first payment in the amount of \$4,448.00 shall be made within 15 days from the effective date of this Order. The second payment in the amount of \$9,396.00 shall be made by December 31, 2009. Respondent's check shall be made payable to Department of Toxic Substances Control, and shall identify the Respondent and Docket Number, as shown in the heading of this case, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806
Attn: Cashier

A photocopy of the check shall be sent to Jesus Torres, Sr. HSS, at the same address.

5.3. Department suspends \$9,000.00 of the penalty in 5.1 above in the form of a Supplemental Environmental Project (SEP). Respondent has agreed to a \$9,000.00 SEP to host an eight (8) hour workshop for at least 30 attendees on Anhydrous Ammonia safe handling and management. Respondent shall incur all costs associated with the workshop, including, but not limited to, copying of workshop materials, refreshments, the cost of reserving a facility for the workshop, etc.. Respondent shall:

(a) Contact at least three (3) providers of such training and submit the list of providers to the Department for approval prior to selecting the most experienced and competent provider.

(b) Submit a draft plan for the workshop, to include agenda and invitee list, to the Department for approval by November 30, 2009. Department to finalize invitee list and mail invitations.

(c) Conduct the workshop by February 28, 2010.

The period in which to complete the workshop may be extended by a Department representative, or designee, upon a written request demonstrating good cause from the Respondent.

(d) Upon completion of the SEP a complete written accounting of the cost incurred for said SEP shall be provided to the Department within 30 days. Funds not spent to satisfy the SEP shall be returned to the Department as specified in section 5.4.

5.4. Respondent to pay \$9,000.00 of the penalty in 5.1 above if the Respondent fails to meet the conditions of 5.3 above. Respondent's check shall be made payable to Department of Toxic Substances Control within 120 days of the date of this Consent Order, and shall identify the Respondent and Docket Number, as shown in the heading of this case, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806
Attn: Cashier

A photocopy of the check shall be sent to Jesus Torres, Sr. HSS, at the same address.

5.5. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code, section 25360.1, and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

6. EFFECTIVE DATE

5.6. The effective date of this Order is the date it is signed by the Department.

Dated: October 15, 2009

Original signed by Don Osborne
Don Osborne, Owner
D.R. Osborne Co., Inc./ Respondent

Dated: October 23, 2009

Original signed by Roger Vintze
Roger Vintze
Supervising Hazardous Substance Scientist I
DTSC Imperial CUPA