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Department of Toxic Substances Control

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Edmund G. Brown Jr.
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February 12, 2014

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Enforcement and Emergency Response Decision
Department of Toxic Substances Control

IN THE MATTER OF THE ENFORCEMENT ORDER AGAINST OLGA SHAPIRO DBA
PACIFIC OIL COMPANY (DOCKET HWCA 2011 4089; OAH NO. 2013060325)

To the above-referenced parties and their attorneys of record:

Enclosed please find the Final Decision of the Department of Toxic Substances Control (Department) regarding the Enforcement Order in the above-referenced case.

Under Government Code section 11521(a), you have the right to petition the Department for reconsideration of this matter. Any such petition must be filed with the Department no later than 30 days after the Final Decision's effective date as defined in Government Code section 11519(a).

Sincerely,

Original signed by Christopher Cho

Christopher Cho
Attorney
Office of Legal Counsel

Enclosure(s)

BEFORE THE
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL
STATE OF CALIFORNIA

In the Matter of the Enforcement Order
Against:

OLGA SHAPIRO, dba Pacific Oil Co.,

ID #: CAD 983 615 501,

Respondent.

Agency No. HWCA 2011 4089

OAH No. 2013060325

FINAL DECISION

This matter comes before the Department of Toxic Substances Control (the Department) pursuant to the Administrative Procedure Act, Government Code section 11517. The matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH) on August 28, 2013, and September 16, 2013, in Los Angeles, California. The record was closed and the matter submitted for decision at the conclusion of the hearing on September 16, 2013.

Thomas G. Heller, Deputy Attorney General, represented Robert Kou (Complainant). Scott E. Shapiro, Esq., represented Olga Shapiro (Respondent), who was present. On January 7, 2014, DTSC gave notice that it had not adopted the Proposed Decision, and that it would proceed to decide the case itself upon the record, including the transcript of the hearing before the Administrative Law Judge.

FACTUAL FINDINGS

1. Complainant signed and filed the Enforcement Order in his official capacity as the Unit Chief, Enforcement and Emergency Response Division of the Department of Toxic Substances Control (Department). The Enforcement Order alleges Respondent committed five separate violations of statutes or regulations pertaining to hazardous waste transportation, specifies a schedule for compliance directing Respondent to take and refrain from various actions to remedy the alleged violations, and assesses a \$28,500 penalty.
2. Respondent timely requested a hearing to contest the Enforcement Order.
3. Respondent does business as Pacific Oil Company (POC). At all times relevant, Respondent operated a hazardous waste transfer facility at 9130 De Garmo Avenue, Sun Valley, California (Respondent's yard).

4. The Department authorized Respondent to transport hazardous waste by Transporter Registration No. 3115, which expires on March 31, 2014.

Background Information

5. Respondent formed POC in the early 1990s and has been its only owner. She buys used oil from local businesses, such as gas stations and car washes. She then sells the used oil to others. In the process, she uses trucks she owns to transport the used oil.

6. One of Respondent's major customers is Botavia Energy LLC (Botavia), which is located in Ehrenberg, Arizona. When Respondent sells used oil to Botavia, she typically uses a truck driver leased from Botavia to drive the POC truck containing the used oil to Botavia's yard in Arizona. Respondent does not have the leased employee on the POC payroll, but the sales price paid for by Botavia for the used oil is reduced as compensation for Respondent leasing one of its employees to drive the POC truck.

Department's Investigation of Respondent

7. On a date in 2011 not established, the Department's Enforcement and Emergency Response Division received an anonymous complaint that Respondent was engaged in transferring used oil from one truck to another truck without authorization. On April 4, 2011, the Department assigned staff to investigate that complaint.

8. Department staff inspected Respondent's yard on May 18, 2011. The Department staff subsequently interviewed Respondent at her home and reviewed documents she had in her possession pertaining to POC. Department staff also interviewed POC employees and other knowledgeable witnesses. The last interview with individuals knowledgeable about Respondent's business was on June 2, 2011. The last known activity in this investigation was on December 8, 2011, when Department inspectors conferred with a Department Associate Governmental Program Analyst, Tari Patterson, concerning individuals eligible to drive a truck owned by an entity that has a Department transporter registration. No explanation was provided for the delay in conferring with Ms. Patterson.

9. The Department issued an Investigation Report concerning this activity. The report was dated and signed January 12, 2012, but not given to Respondent until January 27, 2012. At no time did the Department notify Respondent that it needed an extension of time to complete its investigation or issue the report due to circumstances beyond its control.

10. Based on this investigation, the Department concluded that Respondent had not engaged in truck-to-truck transfers. However, after interviewing witnesses and reviewing available documents, Department staff concluded that Respondent had violated several provisions of California's Hazardous Waste Control Law, which is set forth in Chapter 6.5 of Division 20 of the Health and Safety and its accompanying regulations.

Hazardous Waste Transfer Manifests

11. Respondent's Transporter Registration allows her to transport hazardous waste in this state, as well as transport hazardous waste to other states. Used oil is considered hazardous waste for these purposes. When transporting hazardous waste, California Code of Regulations, title 22, section 66263.20, requires the parties involved in the transaction to use and complete the Uniform Hazardous Waste Manifest (manifest), in pertinent part, as follows:

Subdivision (a): A transporter (here Respondent) shall not accept hazardous waste from a generator (e.g., automotive repair shop, gas station, car wash, etc.) unless it is accompanied by a manifest completed and signed.

Subdivision (b): Before transporting the hazardous waste, the transporter shall complete, sign and date the Transporter of Waste section of the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter shall return a signed copy to the generator prior to removal of the waste from the generator's facility.

Subdivision (c): The transporter shall ensure that the manifest accompanies the hazardous waste.

Subdivision (d): The transporter shall have a manifest in the transporter's possession while transporting the hazardous waste and shall release the manifest to another transporter or to the owner or operator of the designated hazardous waste facility accepting the waste.

Subdivision (e): A transporter transporting hazardous waste into or out of California shall have in their possession a manifest with the generator and transporter sections completed.

Subdivision (f): The transporter shall submit to the Department a legible copy of the manifest completed by the generator, transporter and the party who accepted the hazardous waste for each load of hazardous waste transported out of the State, within 15 days of the date that the load is accepted by the designated facility on the manifest.

Subdivision (g): A transporter who delivers hazardous waste to another transporter or to the designated facility who accepts it shall: (1) obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest; and (2) retain one copy of the manifest; and (3) give the remaining copies of the manifest to the accepting transporter or designated facility.

12. The manifest form has several duplicate pages. The information written on the top copy transfers to the underlying copies. After the generator completes the information on the top copy pertinent to it, the bottom page containing the duplicate information is torn off and kept by the generator. The transporter completes the information on the top copy pertinent to it. Upon delivery to another transporter, or the facility that ultimately accepts the hazardous waste, the transporter tears off the bottom copy and retains it. The remainder of the form containing the original signatures is received by the facility that accepts the waste. If that facility is located in California, it is required to send a copy of the manifest to the Department. If the accepting facility is located in another state, it is expected to also send in a copy of the manifest to the Department (and comply with the laws of its own state) but the Department acknowledges it has no jurisdiction over out-of-state facilities.

13. Manifests sent to the Department are received, logged and the information is maintained in its Hazardous Waste Tracking System (HWTS).

14. When Department staff conducted their investigation described above, they requested Respondent to provide copies of manifests for her hazardous waste transports. Respondent advised them that many of her manifest copies had been lost or destroyed after a dispute with her off-site storage provider. However, she produced copies of over 1,500 manifests for transports that had occurred in October 2009 and November 2009, June and July 2010, and January and February 2011. All of these invoices involved transactions where Respondent purchased used oil from local businesses and sold it to Botavia.

15. Department staff researched Respondent's activity inputted into the HWTS and found that approximately 98 percent of the manifests she provided to them during the investigation had not been received by the Department as required by California Code of Regulations, title 22 section 66263.20(f).

16. With regard to those transactions, when Respondent purchased the used oil from a local business (the generator), the local business would complete and sign the generator part of the manifest, keep a copy for itself, and give the rest of the manifest form to the POC employee (the transporter), who transported the used oil to Respondent's yard in a truck owned by Respondent. From Respondent's yard, Alexander DeLeon (DeLeon), a Botavia employee who was leased to POC by Botavia, drove the POC truck containing the used oil to Botavia's yard in Arizona. For the transactions in October and November 2009, the only transporter listed on the manifests was POC. For the remaining transactions in 2010 and 2011, the POC employee who first picked up the used oil signed the manifest as a first transporter on behalf of POC; the Botavia employee who was leased by Respondent to drive the POC truck to Arizona signed the manifest as a secondary transporter on behalf of Botavia. Upon arrival at the Botavia yard in Arizona, a Botavia employee, usually Christian Sanchez, signed the manifest on behalf of Botavia as the designated facility accepting the used oil.

17. According to Respondent, the secondary transporter information on the manifest was only completed in Arizona and never in California. Respondent testified that was done because the truck would have to go through two weigh stations on the way to Arizona, and signing the manifest in California before entering Arizona would complicate that process. Moreover, it is clear from her testimony that Respondent understood that Botavia was not a registered transporter in California and therefore that it could not legally transport hazardous waste in California. However, Respondent failed to present any credible evidence from Botavia or other sources verifying when, where or under what circumstances the manifests were signed by Botavia as the secondary transporter.

18. Respondent testified that she was told by Mr. Sanchez of Botavia that it was sending copies of the manifests to the Department for the transactions with POC. Although the HWTS has record of over 500 manifests sent from Botavia in 2009, there is no other persuasive or credible evidence indicating that Botavia regularly sent manifests to the Department for hazardous waste it accepted from Respondent. Respondent presented no credible evidence indicating the same. When Department staff interviewed Mr. Christian over the telephone during their investigation, he was vague about the manifests, stating only that he "believed" Botavia sent copies of the manifests to the generator and POC, and that he "thought" copies were also sent to the Department. Under these circumstances, it was not established that Respondent had reasonable assurance that Botavia was regularly sending completed manifests back to the Department.

19. Respondent presented an excerpt from a video training session on the Department's website pertaining to the manifest completion process. The Department trainer advises that for hazardous waste being transported to another state, the generator and transporter are required to send the manifest to the Department. However, the trainer also indicates that the generator and transporter do not have to send a copy of the manifest to the Department if they know the out-of-state facility accepting the hazardous waste is also returning a completed manifest to the Department. In that case, the Department trainer indicated that the State does not need to have duplicate copies of the same document.

20. California Code of Regulations, title 22 section 66263.20(g)(1), requires a transporter (here, POC) that delivers hazardous waste to another transporter or to a facility that accepts the hazardous waste to "obtain the handwritten signature of the transporter or of the owner or operator of the designated facility on the manifest." From 2010 through 2011, the manifests in question contain digital imitations of handwritten signatures from both Mr. DeLeon as the transporter and Mr. Sanchez as the owner/operator of the receiving facility. On these manifests, both DeLeon and Sanchez identify themselves with Botavia. Based on the uniformity in how the digital signatures for both individuals were affixed to the manifests, it appears that those signatures were done by machine and placed on the manifests well after transfer of possession of the used oil. Complainant contends the manifests must contain original handwritten signatures, and that the digital imitations of handwritten signatures affixed after the used oil is transferred do not comply with the regulation.

Hazardous Waste Annual Reports

21. In addition to submitting manifests to the Department, registered of used oil are also required to submit two types of annual reports.

22. Health and Safety Code section 25250.10 requires every registered transporter of used oil to submit a report on or before March 1 of each year regarding the used oil transported during the preceding calendar year, specifying the shipping description of the used oil, the volume of each type of used oil, and the facilities to which the used oil was transported.

23. Respondent failed to submit a report for the calendar year 2008, and Respondent submitted annual reports for the calendar years 2009 and 2010 in February of 2012, which was well after the deadline and after the Department concluded its investigation.

24. Health and Safety Code section 25250.29(f), also requires registered transporters to submit a report on or before March 1 of each year regarding used oil transported out of state during the preceding calendar year when they are the listed transporter on the manifest.

25. Respondent did not timely submit an out-of-state transport report for the calendar year 2010 (to be submitted by March of 2011 to the Department).

26. Complainant alleged that Respondent also failed to timely submit these two types of annual reports for the calendar years 2011 and 2012, but Complainant later found that the Department had timely received those reports and therefore conceded there was no violation for those two years.

27. Respondent points to the Used Oil Hauler Report form that the California Department of Recycling and Recovery (CalRecycle) also requires used oil haulers to complete and submit on a quarterly basis. The form instructs used oil haulers to send completed forms to the Department (although they are advised to contact CalRecycle with questions). Used oil haulers are also instructed to “[o]nly report the destinations to which **your** company transports. **Do not** include oil transported from your facility to another destination by another hauler.” [Bold in original.] CalRecycle’s report form includes a place to disclose used oil hauled out-of-state. Department staff testified that if one of its registered transporters timely submitted quarterly reports to CalRecycle (which the Department received), it would not have to submit to the Department the above-described reports required by Health and Safety Code sections 25250.10 and 25250.29.

28. Respondent testified that she did not file the annual reports described above because she was misled by the instructions on CalRecycle’s report form. She testified that because many of the transactions in question involved a secondary hauler (i.e., Botavia), she read the CalRecycle form instructions as not requiring her to submit the CalRecycle forms. Since she believed she did not have to submit quarterly reports to CalRecycle, she testified she believed she did not have to submit the annual reports to the Department.

Respondent's stated understanding of the CalRecycle form instruction is dubious and employs circular logic. For example, POC was the only transporter listed in the 2009 manifests. As for the other years, Respondent testified that she viewed POC as the transporter of the used oil into Arizona, but she did not establish when or if Botavia actually took over the transportation before the oil reached Botavia's yard in Ehrenberg. In any event, the CalRecycle forms were separate and distinct from the annual reports that had to be submitted to the Department. Since Respondent failed to timely submit quarterly reports to CalRecycle, she failed to establish that she was exempt from filing the annual reports with the Department.

Transporting Hazardous Waste

29. Health and Safety Code section 25163(a)(1), prohibits transferred custody of hazardous waste to a transporter who does not hold a valid registration issued by the Department. In this case, although Respondent is a registered transporter with the Department, Botavia is not.

30. Beginning in 2010, and continuing thereafter, Respondent transported the used oil she sold to Botavia by the method previously described with DeLeon as the driver for the secondary transporter. Complainant contends this method violated the law because the driver of the truck was typically an employee of Botavia, and that Respondent was therefore transferring custody of hazardous waste to Botavia, an unregistered transporter. The identity of the transporter of the used oil while in Arizona is not at issue in this case because the Department does not have jurisdiction over that activity in another state.

31. Beginning in at least January 2010, DeLeon's signature appears on manifests as "Transporter 2." The Company name for Transporter 2 is "Botavia Energy, LLC." Respondent testified that DeLeon was a secondary transporter for the used oil in question and that she had possession of these manifests, most of which identify DeLeon as a transporter for Botavia, not POC.

32. POC does not pay DeLeon himself for his services. Botavia and POC had a contract describing their arrangement involving DeLeon, but the Administrative Law Judge who initially heard this matter ruled that its contents were inadmissible. The used oil was transported in a POC vehicle and DeLeon was insured as a driver by POC. Since 2009, POC enrolled Mr. DeLeon in the federal Department of Transportation's (DOT) Random Drug and Alcohol Testing Program, and he holds a medical card required by DOT. Mr. DeLeon is also registered through POC in the California Department of Motor Vehicles (DMV) Pull Notice Program. POC makes sure that Mr. DeLeon is randomly drug tested, and that he takes and passes a driving test. Mr. DeLeon has also passed the federal Transportation Security Administration (TSA) clearance process through POC. Respondent offered no evidence of supervisory control she had over DeLeon, if any.

Monetary Penalty Calculations and Schedule for Compliance

33. The Enforcement Order includes a schedule for compliance, which

requires Respondent to take, or refrain from, certain actions in response to the alleged violations.

34. Other than arguing that the schedule for compliance is unnecessary, Respondent did not identify or establish that any particular part of the schedule for compliance is unreasonable or unrelated to the alleged violations.

35. The Enforcement Order also includes a total monetary penalty of \$28,500. Complainant calculated the monetary penalty by analyzing the various factors specified in California Code of Regulations, title 22 sections 66272.60 through 66272.69. The base penalties calculated were \$6,000 for the alleged failure to submit manifests to the Department; \$6,000 for the alleged failure to obtain handwritten signatures on the manifests; \$6,000 for the alleged failure to timely submit the two types of annual reports (Complainant considered the alleged failures in this regard as involving just one category); and \$10,500 for the alleged transfer of hazardous waste to an unregistered transporter. Complainant found no aggravating factors existed to warrant increasing the base penalties, and no mitigating factors to warrant a reduction. Complainant has several years of experience analyzing the regulations for such monetary penalties and in reviewing the calculations performed by those he supervises. In this case, Complainant's calculations and methodology were also reviewed and approved by his supervisor.

36. It was established by a preponderance of the evidence that Complainant correctly calculated the amounts in question and reasonably exercised discretion in analyzing and applying the factors identified in the above regulations in making his calculations. The fact that the Department erroneously alleged Respondent failed to timely submit both annual reports for calendar years 2011 and 2012 does not warrant a reduction in the monetary penalty. Complainant's calculations for the out-of-state reports assumed there were multiple violations, which was an error. It was established, however, that Respondent failed to timely submit several annual reports under Health and Safety Code section 25250.10 (Factual Finding 23) as well, and both failure-to-report violations were calculated under a single penalty amount. The penalty for the report violations therefore still involved multiple violations.

LEGAL CONCLUSIONS

Jurisdiction and Burdens

1. Health and Safety Code section 25187 authorizes the Department to order action necessary to correct violations and assess a monetary 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.

2. An agency seeking civil remedies and penalties against a party holding a license or registration bears the burden of proof. (*Brown v. City of Los Angeles* (2002))

102 Cal.App.4th 155.) In this case, Complaint has the burden of proof.

3. Evidence Code section 115 states that, except as otherwise provided by law, the standard in a civil action is proof by a preponderance of the evidence. As there is no law requiring otherwise, Evidence Code section 115 applies here. The more exacting clear and convincing evidence standard applies only to actions involving professional licensing rights or permits. The revocation of a nonprofessional or occupational license, like Respondent's, requires only the preponderance of the evidence standard. (*Imports Performance v. Dept. of Consumer Affairs, Bur. of Automotive Repair* (2011) 201 Cal.App.4th 911, 917.)

Respondent's Statute of Limitations Argument

4A. Pursuant to Health and Safety Code section 25185(a), the Department may conduct an inspection of a permitted facility during a reasonable hour. When the Department conducts such an inspection, the Department "shall provide a copy of the inspection report" to the facility within five days from the preparation of the report, but not later than 65 days after the inspection. (Health & Saf. Code § 25185(c)(2)(A).) The time period may be extended as a result of circumstances beyond the Department's control, if it notifies the involved facility within 70 days from the date of the inspection and provides the inspection report to the facility operator in a timely manner after the reason for the delay ends. (Health & Saf. Code § 25185(c)(2)(B).)

4B. Respondent argues this action is time-barred because the Department exceeded the time limit it had to issue a report after its inspections. The Department started its investigation on May 18, 2011, and concluded it on June 2, 2011. The inspection report was dated January 12, 2012, but not given to Respondent until January 27, 2012. The Department failed to notify Respondent that it needed to extend the time limit due to circumstances beyond its control. Thus, the Department inexplicably failed to provide a copy of its inspection report (dubbed by the Department as the "Investigation Report") well more than 200 days after the inspection was concluded.

4C. The issue turns on whether the time limit specified by section 25185 is directory or mandatory. If it is directory, it does not operate as a limitations period for purposes of a civil or administrative enforcement action such as this. If it is mandatory, it does. The California Supreme Court in *People v. Cobb* (2010) 48 Cal.4th 243 discussed three distinct factors in determining whether a statutory time limit is directory or mandatory. One factor is whether the statute specifies the time limit is jurisdictional. (*Id.*) Silence on that point is not dispositive; unless the Legislature clearly expresses a contrary intent, time limits are typically deemed to be directory. (*Id.*, at p. 249.) Another factor is whether the Legislature includes a penalty or consequence for non-compliance; failure to do so typically demonstrate a statute is directory. (*Id.*, at p. 250.) Finally, a time limit is directory if the purposes of the statute in question would be defeated by holding the time limit mandatory. (*Id.*, at p. 250.)

4D. In this case, the factors enumerated in *Cobb* weigh in favor of the time limit in Health and Safety Code section 25185 being deemed directory. Section 25185 does not specify whether the time limit is jurisdictional. However, section 25185 provides no remedy

or penalty for missing the time limit. Viewed in combination, these two factors provide no evidence that the Legislature intended the time limit to be mandatory. Finally, the purposes of the statute would be defeated by holding the time limit mandatory. Section 25185 and its accompanying statutes are part of a broader scheme of the Hazardous Waste Control Law, set forth in Chapter 6.5 of Division 20 of the Health and Safety Code, allowing the Department and local agencies to inspect, investigate, and seek redress for hazardous waste violations. Deeming section 25185 to be mandatory, and therefore operate as a statute of limitations, would frustrate that purpose. Moreover, viewing the time limit as mandatory would be inconsistent with the five year limitations period expressly provided in Code of Civil Procedure section 338.1 for civil and administrative actions to enforce the Hazardous Waste Control Law set forth in Chapter 6.5, which includes section 25185.

4E. Under these circumstances, the time limit in section 25185 is directory, and does not operate as a limitations period. The Department's action in this matter was therefore not time-barred by its failure to timely provide a copy of its inspection report to Respondent.

Cause for the Schedule of Compliance and Penalty

5. Respondent violated California Code of Regulations, title 22 section 66263.20(f), in that beginning in October 2009, and continuing through at least February 2011, Respondent failed to submit completed copies of manifests to the Department within 15 days after hazardous waste was transported out-of-state and accepted by the designated facility on the manifest, in this case Botavia located in Arizona. Botavia did not regularly return completed manifests to the Department for the used oil it purchased from Respondent, and Respondent failed to establish that she had reasonable assurance or proof from Botavia that it was doing so. Therefore, the training instructions provided by the Department on its website advising transporters not to send in completed transporter manifests when they know the designated out-of-state facility is returning them to the Department does not exonerate Respondent from this violation. (Factual Findings 1-19.) The assessed penalty of \$6,000 is reasonable, and not arbitrary or capricious, particularly in light of Respondent's hundreds failures to submit the manifests, resulting in a nearly total disregard of this regulation.

6A. Respondent violated California Code of Regulations, title 22 section 66263.20(g)(1), in that beginning in October 2009, and continuing through at least February 2011; Respondent failed to obtain the handwritten signature of the secondary transporter or of the owner or operator of the designated accepting facility on approximately 1,500 manifests for used oil transported from Respondent's yard to Botavia's yard in Arizona. (Factual Findings 1-32.)

6B. California Code of Regulations, title 22 section 66263.20 (g)(1), requires that the initial or sole transporter obtain a "handwritten signature" of the secondary transporter or accepting facility on the manifest. Subdivisions (g)(2) and (3) of the same regulation require the initial or sole transporter to retain one copy of the manifest, and give the remaining copies of the manifest to the accepting transporter or facility at the time of transfer. When considering the overall process of completing the manifests established by

Regulation 66263.20, it becomes clear that the Legislature's intent was to ensure that the actual individuals involved in the process personally sign the manifest at the actual time of transfer.

6C. In *Ni v. Slocum* (2011) 196 Cal.App.4th 1636, it was held that an electronic or digital signature does not comply with Elections Code section 100 regarding how an individual signs a petition to place an initiative on the ballot. In that case, the court found that the Legislature's general approval of the use of electronic signatures in commercial and governmental transactions, through Government Code section 16.5 and the Uniform Electronic Transactions Act (UETA) (Civ. Code, § 1633.1 et seq.), did not trump the particular requirement of Elections Code section 100 that the signatures be "personally affixed" to the petition. (*Id.*, at p. 1646-1647.) The court was also concerned that allowing electronic signatures would effectively eliminate petition circulators present during the signature process, which would appear to make the process more susceptible to fraud, potentially undercutting the integrity of the electoral process. (*Id.*, at p. 1653.)

6D. In this case, it was not established that the Botavia driver of the used oil, Mr. DeLeon, signed the manifests at the time custody of the used oil was transferred. Rather, the evidence indicates that Mr. DeLeon simply accepted the manifests at the time he took the POC truck out of Respondent's yard. That process is at odds with the intent of California Code of Regulations, title 22 section 66263.20. While no evidence suggests anyone other than DeLeon drove the transporting truck, placement of digitized signature reproductions on manifests well after the fact makes the overall process susceptible to fraud. In this case, it required a hearing to determine what actually happened.

6E As the United States Environmental Protection Agency wrote regarding the federal counterpart to California's handwritten signature requirement on manifests, "[i]t must be emphasized that, unlike a handwritten signature, a digital signature is not a personal attribute or characteristic of the signer." (*Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Electronic Manifests*, 66 FR 28240 (May 22, 2001)). A driver's mere digital signature placed on a hazardous waste manifest at some point after the transfer defeats the purpose of holding the driver accountable during the entire transfer. After all, if he has not personally signed the manifest at the time of transfer, then he has not assumed responsibility for the waste. A handwritten signature, unique to the individual, promotes accountability over the transaction and makes repudiation of the transfer by the driver less likely. Hazardous waste in particular, with its health and environmental risks in transport, must have adequate tracking safeguards and assurances of responsibility by its handlers. In any event, the language of section 66263.20 is clear, and Respondent did not comply with its requirements.

6F. Respondent's argument that she is not responsible for how Botavia employees signed the manifests is of no moment. Respondent's argument is not persuasive that the federal E-SIGN Act (15 U.S.C. § 7001(a)), which is similar to the aforementioned UETA, allowed Botavia's employees to use digitized reproductions of their signatures in order to comply with California Code of Regulations, title 22 section 66263.20. Similar to the *Slocum* case, general statutory approval for using electronic signatures must give way when

doing so is inconsistent with the underlying intent of the law in question. Here, section 66263.20 requires the transporter to obtain the handwritten signature of the secondary transporter or the operator/owner of the designated facility at the time of transfer. That was not done. The assessed penalty of \$6,000 is reasonable, and not arbitrary or capricious, particularly in light of Respondent's hundreds of individual failures to obtain handwritten signatures, which the Department consolidated into a single violation.

7. Respondent violated Health and Safety Code section 25250.10, in that she did not timely submit reports for the calendar years 2008, 2009 and 2010 (to be submitted by March 1 of the subsequent year) regarding the used oil Respondent transported. (Factual Findings 1-28.) The assessed penalty for this violation is consolidated with the violation below (See Legal Conclusions, section 8) and described there.

8. Respondent violated Health and Safety Code section 25250.29(f), in that Respondent did not timely submit an out-of-state transport report for the calendar year 2010. (Factual Findings 1-28.) The assessed penalty for this violation is \$6,000 is reasonable, and not arbitrary or capricious, particularly considering Respondent committed four violations under two regulations, which the Department consolidated under a single penalty.

9A. Respondent violated Health and Safety Code section 25163(a)(1), in that it was established by a preponderance of the evidence that she transferred custody of hazardous waste to a secondary transporter who did not hold a valid registration issued by the Department. The manifests, beginning in June of 2010, plainly show that "BOTAVIA ENERGY, LLC" is consistently the secondary transporter with a different EPA number (AZR000503789). The digital signature of DeLeon, an employee of Botavia and who receives no compensation from POC, is listed as the driver for "BOTAVIA, LLC." Respondent admitted that she had custody of these manifests containing this information. She therefore cannot disavow knowledge of her company's stated role on the manifests. Given the clarity of the information on the manifests in question, there can be no doubt that POC represented itself to all involved in the handling of the used oil and to regulatory agencies that it transferred used oil to the secondary transporter Botavia, a company not authorized by the Department to transfer hazardous waste.

9B. Respondent's argument that DeLeon should be treated as a POC employee because of measures she had taken in regard to him (see Factual Finding 32) cannot outweigh the plain language of the manifests in which POC represented itself as transferring custody of used oil to Botavia. First, Respondent failed to show she had any supervisory control over DeLeon. Second, Respondent did not pay DeLeon for his services, an important factor in considering an employee-employer relationship. Lastly, there is no indication that POC's insurance of DeLeon, for instance, was anything more than a private contractual term in an agreement with Botavia, an agreement which operated for the benefit of those parties and not as a safeguard to human health and the environment. Respondent represented her company as

transferring hazardous waste to Botavia on an official government document, and she cannot now, hundreds of transfers later, repudiate a role her company so clearly assumed. The assessed penalty for this violation of \$10,500 is reasonable, and not arbitrary or capricious, particularly in light of the hundreds of transfers constituting the violation, and demonstrating her total disregard for this regulation.

Monetary Penalty Calculations and Schedule for Compliance

10. The monetary penalty was calculated assuming Respondent violated the five discrete areas discussed above in Legal Conclusions 5 through 9, which are enumerated in the Enforcement Order as paragraphs 2.1 through 2.5. The total penalty of \$28,500 alleged by the Department is warranted.

11. The schedule for compliance is contained in the Enforcement Order in section 3, and the various remedial actions ordered to be taken are enumerated as paragraphs 3.1.1 through 3.1.13. Respondent did not identify or establish that any particular part of the schedule for compliance is unreasonable or unrelated to the alleged violations.

ORDER

The Enforcement Order against Olga Shapiro, dba Pacific Oil Co., is affirmed with the following amendments: Violations 2.3 and 2.4 of the Enforcement Order shall omit any allegations of failures to submit reports for the calendar years of 2011 and 2012 due by March 1 of the subsequent year. Respondent shall pay the Department penalties of \$28,500 and follow the schedule of compliance set forth in the Enforcement Order.

IT IS SO ORDERED.

DATED: 2/11/14

Original signed by Deborah O. Raphael

Deborah O. Raphael
Director
Department of Toxic Substances Control