

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Superior Processing,
A California Corporation
1115 Las Brisas Place
Placentia, California 92870

EPA ID: CAL000234155

Respondent.

Docket HWCA 20081782

Consent Order

Health and Safety Code
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and Superior Processing (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent generates, handles, treats, stores, and/or disposes of hazardous waste at the following site: 1115 Las Brisas Place, Placentia, California (Site).

1.3. Inspection. The Department inspected the Site on June 18 and 19, 2008.

1.4. Authorization Status. Respondent is a large quantity generator (LQG) and generates the following hazardous waste: metal sludge, spent cyanides, nickel solution, corrosive waste, and corrosive waste with metals.

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1.5. Jurisdiction. Health and Safety Code, section 25187, 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 Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.6. Full Settlement. By their respective signatures 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. This Order shall constitute full settlement of the violations alleged below. By agreeing to this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction and involving either the Respondent(s) or the Site, except to the extent 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 described below.

2. VIOLATIONS ALLEGED

2. The Department alleges the following violations:

2.1. Respondent violated California Code of Regulations, title 22, section 66265.32, subdivisions(a) and (c), on or about June 18, 2008, in that the Respondent failed to provide the facility with an internal communication or alarm system, which is capable of providing immediate emergency instructions to all facility personnel. In addition, Respondent failed to maintain plating shop/treatment area spill kit with necessary spill control equipment such as but not limited to chemical absorbent.

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2.2. Respondent violated California Health and Safety Code, section 25201, subdivision (a), and California Code of Regulations, title 22, section 66262.34, subdivision (a), on or about June 18, 2008, in that the Respondent engaged in the onsite storage of three containers of hazardous waste for a period of time greater than 90-days without a permit or grant of authorization.

2.3. Respondent violated California Code of Regulations, title 22, section 66265.192, subdivision (a), and section 66265.193, subdivision (a), on or about June 18, 2008, in that:

(a) Respondent operated two hazardous waste tank systems used to transfer, store, and/or treat hazardous corrosive and metal-bearing waste without having prepared a written assessment certified by an independent, qualified professional engineer registered in California, showing that the tank systems are suitably designed to hold and treat hazardous waste.

(b) Respondent failed to provide secondary containment/device for all components of the hazardous waste tank system including piping and utilized secondary containment/devices that were not sized appropriately for the hazardous waste tanks within them.

2.4. Respondent violated California Code of Regulations, title 22, section 66265.195, subdivision (a), on or about June 18, 2008, in that the Respondent failed to conduct daily tank inspections of two hazardous waste tank systems and to maintain a written daily tank inspection log recording the findings and observations of the daily tank inspections.

2.5. Respondent violated California Code of Regulations, title 22, section 66262.11, on or about June 18, 2008, in that:

(a) Respondent failed to perform waste determination on used rags that were used to clean printed circuit boards and were contaminated with spent solvent.

(b) Respondent failed to determine if the sludge generated by the panel scrubber machine was a hazardous waste.

2.6. Respondent violated California Code of Regulations, title 22, section 66265.16, on or about June 18, 2008, in that the Respondent failed to establish a complete written training program for employees that handle, manage, or treat hazardous waste.

2.7. Respondent violated California Code of Regulations, title 22, section 66262.34, subdivision (f), on or about June 18, 2008, in that Respondent failed to label containers of hazardous waste with the appropriate hazardous waste label, accumulation date, and facility information.

2.8. Respondent violated California Code of Regulations, title 22, section 66265.173, subdivision (a), on or about June 18, 2008, in that Respondent failed to close approximately 15 containers of hazardous waste during periods of time when the hazardous waste containers were not either being filled or emptied.

2.9. Respondent violated California Code of Regulations, title 22, section 67450.3, subdivision (c) (8) (A), on or about June 18, 2008, in that Respondent failed to develop and maintain a waste analysis plan for two onsite fixed hazardous waste treatment units.

2.10. Respondent violated California Code of Regulations, title 22, section 66265.31, on or about June 18, 2008, in that Respondent failed to maintain or operate the facility to minimize the possibility of fire and/or release to the environment. In particular, spills of hazardous waste were found in the vicinity of the facility's crane plating line, hand plating line and waste treatment area. The spilled waste had been left around the cited equipment in some cases for over a week and was located around equipment used by the employees. Therefore, the employees could come in contact with the spilled hazardous waste.

2.11. Respondent violated California Code of Regulations, title 22, section 67450.3, subdivision (c) (11) (B), on or about June 18, 2008, in that the Respondent failed to provide the complete closure plan, including accurate disposal cost estimates and volume of waste in stored onsite, which is necessary for the closure for the two onsite fixed treatment units and the related tank systems.

2.12. (a) Respondent violated California Health and Safety Code, section 25201, subdivision (a), on or about June 18, 2008, in that the Respondent failed to obtain authorization for the onsite treatment of cyanide in two fixed hazardous waste treatment units.

(b) Respondent violated California Code of Regulations, title 22, section 66265.199, subdivision (a), on or about June 18, 2008, in that the Respondent caused incompatible hazardous waste, acid and cyanide, to be mixed in the same tank system. Cyanide was found in two fixed treatment units, both of which also receive acidic hazardous waste.

(c) Respondent violated California Code of Regulations, title 22, section 67450.3, subdivision (c) (7), in that the Respondent failed to permanently mark each onsite fixed treatment unit with the facility identification information and serial number.

(d) Respondent violated California Health and Safety Code, section 25201, subdivision (a), in that the Respondent failed to obtain a permit of grant of authorization prior to treatment of hazardous waste by allowing solvent contaminated rags to dry out in the air.

2.13. Respondent violated California Code of Regulations, title 22, sections 66265.174 and 66265.15, on or about June 18, 2008, in that Respondent failed conduct weekly inspections of the hazardous waste containers.

2.14. Respondent violated California Health and Safety Code, sections 25201, subdivision (a), and 25189, on or about June 18, 2008, in that Respondent caused the disposal of hazardous waste to a point that is not authorized by the Department. In particular, hazardous waste was generated, approximately one year prior to the inspection, by a fire in the crane line plating equipment area. This hazardous waste remained on the floor and around the plating tanks at the time of the inspection.

2.15. Respondent violated California Code of Regulations, title 22, section 66265.74, subdivision (a), on or about June 18, 2008, in that Respondent failed to furnish a copy of the biennial report for 2005 and 2007 to the Department during the inspection.

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2.16. Respondent violated California Code of Regulations, title 22, sections 66273.34, subdivision (c), and 66273.34, subdivision (c), on or about June 18, 2008, in that Respondent failed to place universal waste lamps in a structurally sound container that is labeled with the term "Universal Waste-Lamps".

2.17. Respondent violated California Code of Regulations, title 22, section 66262.23, subdivision (a), in that Respondent failed to submit copies of uniform hazardous waste manifests to the Department within 30 days of each hazardous waste shipment that occurred from the site since September 2006.

3. SCHEDULE FOR COMPLIANCE

3. Respondent shall comply with the following:

3.1.1. Respondent has corrected the violations cited above. Respondent demonstrated an unusually cooperative attitude and corrected the violations within the time required and without extension.

3.1.2. Respondent shall operate hereafter in a manner that shall prevent recurrences of the violations cited herein.

3.1.3. Respondent shall send at least three employees to the California Compliance School, Modules I - V, and submit to the Department, within 180 days of the effective date of this Consent Order, Certificates of Satisfactory Completion thereof.

3.1.4. Respondent shall ensure that, at all times hereafter, at least one employee of Respondent shall have completed Compliance School. No more than a six month gap in this requirement shall be allowed at any time and no credits shall be permitted for the attendance of employees at Compliance School.

3.1.5. Immediately, and for a period thereafter of not less than five years, Respondent shall maintain this Order as part of its operating record.

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

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

Charles A. McLaughlin
Performance Manager
State Oversight and Enforcement Branch
Enforcement and Emergency Response Program
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

3.3. Communications. All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by the appropriate Branch Chief, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department shall relieve Respondent of its obligation to obtain required formal approvals.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or the environment, the Department may:

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- (a) Modify the document and approve the document as modified, or
- (b) Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

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

3.6. Endangerment during Implementation. In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Order) is creating an imminent or substantial endangerment to the health or welfare of people on the Site, in the surrounding area, or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as is needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended by the term of such Stop Work Order.

3.7. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of Respondent's operations, 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.

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3.8. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any other agency having jurisdiction. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law.

3.9. Sampling, Data, and Document Availability.

3.9.1. Respondent shall permit the Department and/or its authorized representatives to inspect and copy all sampling, testing, monitoring, and/or other data (including, without limitation, the results of any such sampling, testing and monitoring) generated by Respondent, or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Order.

3.9.2. Respondent shall allow the Department and/or its authorized representatives to take duplicates or splits of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order.

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3.9.3. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either:

- (a) comply with that request,
- (b) deliver the documents to the Department, or
- (c) notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order and permit the Department to copy the documents prior to destruction.

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

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that were submitted by Respondent pursuant to the violations set forth above, and/or this schedule for compliance, and were approved by the Department are hereby incorporated into this Order.

3.12. Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

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3.13. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

4. OTHER PROVISIONS

4.1. 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.

4.2. 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. Notwithstanding the above, the obligations set forth in paragraph 5 below are the sole responsibility of the above captioned corporate entity, its successors and assigns.

4.3. Privileges. Nothing in this Agreement shall be construed to require any party to waive any privilege. However, the assertion of any privilege shall not relieve any party of its obligations under this Order.

4.4. Time Periods. "Days" for the purpose of this Order means calendar days.

4.5. Captions and Headings. Captions and headings used herein are for convenience only and shall not be used in construing this Order.

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4.6. Severability. If any provision of this Order is found by a court of competent jurisdiction to be illegal, invalid, unlawful, void or unenforceable, then such provision shall be enforced to the extent that it is not illegal, invalid, unlawful, void, or unenforceable, and the remainder of this Order shall continue in full force and effect.

4.7. Entire Agreement. This Order contains the entire and only understanding between the Parties regarding the subject matter contained herein and shall supercede any and all prior and/or contemporaneous oral or written negotiations, agreements, representations and understandings and may not be amended, supplemented, or modified, except as provided in this Order. The Parties understand and agree that in entering into this Order, the Parties are not relying on any representations not expressly contained in this Order.

4.8. Counterparts. This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

4.9. Non-Waiver. The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Contract constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

5. PENALTY

5.1. Except as is set forth below, Respondent shall pay the Department the total sum of \$272,684.00, which includes \$3,600.00 as reimbursement of the Department's costs incurred in connection with this matter.

5.2.1. (a) If Respondent shall have been alleged to have committed one or more Class One violations (as defined by California Code of Regulations, title 22, section 66260.10) within five years of the effective date of this Order; and, said violation(s) (“Subsequent Violation(s)”) are sustained by operation of law, agreement, or the decision of any person authorized by law to sustain a violation, the total amount set forth in paragraph 5.1 above, minus credit for all sums paid, shall then be immediately due and owing, without further notice.

(b) Nothing in this paragraph is intended to prohibit Respondent from exercising its right to appeal a finding of Subsequent Violation(s), if any, under the law, and any such time to file such an appeal must run before the provisions of this paragraph are exercised.

(c) In the event that Respondent shall self-disclose any violation which shall be determined to be a Class 1 violation, the Department may, in its sole discretion, elect not to enforce the provisions of this paragraph.

5.2.2. In the event that no violation has been alleged and sustained as set forth in paragraph 5.2.1 above, and all payments required to be paid as set forth in paragraph 5.3 below have been timely paid, then the remaining balance of \$200,684.00 shall be forgiven.

5.3. Subject to the provisions of paragraph 5.2 above, payment of \$72,000.00 is due within thirty days of the effective date of this order.

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5.4. Respondent's checks shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption 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

Photocopies of the check(s) shall be sent to:

Charles A. McLaughlin
Performance Manager
State Oversight and Enforcement Branch
Enforcement and Emergency Response Program
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

and

James J. Grace
Senior Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

5.5. If Respondent fails to make any required 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.

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6. EFFECTIVE DATE

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

Dated: OCT 23, 2009


Signature

MICHAEL MCGUIRE - PRESIDENT
Printed Name and Title
Respondent

Dated: _____

Susan J. Laney
Assistant Deputy Director
Enforcement & Emergency Response Program
Department of Toxic Substances Control

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