

1 KAMALA D. HARRIS
Attorney General of California
2 MARGARITA PADILLA
Supervising Deputy Attorney General
3 LAURA J. ZUCKERMAN
Deputy Attorney General
4 State Bar No. 161896
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2174
Fax: (510) 622-2270
7 E-mail: Laura.Zuckerman@doj.ca.gov

8 *Attorneys for Plaintiff People of the State of*
California ex rel. Miriam Barcellona Ingenito,
9 *Acting Director of the Department of Toxic*
Substances Control

**EXEMPT FROM FILING FEES
GOVERNMENT CODE § 6103**

**ENDORSED
FILED
ALAMEDA COUNTY**

JUL 23 2014

**CLERK OF THE SUPERIOR COURT
By Lynetta M. Irvin, Deputy**

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA

15 **PEOPLE OF THE STATE OF**
16 **CALIFORNIA EX REL. MIRIAM**
17 **BARCELONA INGENITO, ACTING**
18 **DIRECTOR OF THE DEPARTMENT OF**
TOXIC SUBSTANCES CONTROL,

19 Plaintiff,

20 v.

21 **SYNERGY ENTERPRISES, INC., AND**
22 **DOES 1 - 20,**

23 Defendants.

Case No.

RC14734092

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health and Safety Code § 25201, 25189, and
25189.2)

24 The People of the State of California *ex rel.* Miriam Barcellona Ingenito, Acting Director,
25 Department of Toxic Substances Control (the "Department"), allege the following:
26

27 **STATEMENT OF THE CASE**

28 1. Defendant Synergy Enterprises, Inc. ("Synergy" or "Defendant"), a registered

1 hazardous waste transporter, at all times relevant to this Complaint operated an exempt transfer
2 facility at 28436 Satellite Street, Hayward, Alameda County (the "Facility"). Defendant handles
3 hazardous waste at the Facility and arranges for it to be transported off-site. The Facility is a
4 hazardous waste facility under California Health and Safety Code section 25117.1.

5 2. While operating the Facility, Defendant violated the California Hazardous Waste
6 Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, sections
7 25100 et seq. ("HWCL"), and its implementing regulations, California Code of Regulations, Title
8 22, Division 4.5, by handling hazardous waste in an unsafe manner and without complying with
9 the applicable laws and regulations.

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

12 **PLAINTIFF**

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

15 5. Miriam Barcellona Ingenito is the Acting Director of the Department.

16 6. Pursuant to sections 25181 and 25182 of the Health and Safety Code, the Attorney
17 General of the State of California is authorized, at the request of the Department, to commence an
18 action in the name of the People for civil penalties and injunctive relief under the HWCL. The
19 Department has asked the Attorney General to apply to this Court for injunctive relief pursuant to
20 Health and Safety Code sections 25181 and 25184 and for an order imposing civil penalties
21 pursuant to Health and Safety Code sections 25189 and/or 25189.2 for violations of the HWCL
22 and its implementing regulations by Defendant.

23 **DEFENDANT**

24 7. The Department is informed and believes, and thereon alleges, that Defendant is a
25 corporation registered to conduct business in the State of California that operates a hazardous
26 waste transfer facility at 28436 Satellite Street, Hayward, Alameda County, California.

27 8. Defendant is a "person" as defined at Health and Safety Code section 25118.
28 Further, Defendant was, at all times relevant to this Complaint, a transporter of hazardous waste,

1 as "transporter" is defined in California Code of Regulations, title 22, section 66260.10. The
2 Department is informed and believes, and thereon alleges, that the Facility is located in an area
3 zoned industrial by the local planning authority.

4 9. When reference is made in this Complaint to any act of Defendant, such allegation
5 shall mean that the owners, officers, directors, agents, employees, contractors, and representatives
6 of Defendant did or authorized such acts or recklessly and/or negligently failed and omitted to
7 adequately or properly supervise, control, or direct Defendant's employees, representatives, or
8 agents while engaged in the management, direction, operation, or control of the affairs of
9 Defendant, and did so while acting within the course and scope of their employment or agency.

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

14 **JURISDICTION AND VENUE**

15 11. This Court has jurisdiction pursuant to Cal. Const., art. VI, § 10, and Health and
16 Safety Code section 25181, subdivision (a). Venue is proper in this Court under Health and
17 Safety Code section 25183 in that the violations took place in Hayward, Alameda County,
18 California, and the principal office of the Defendant in California is in Hayward, in Alameda
19 County.

20 **STATUTORY AND REGULATORY BACKGROUND**

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

26 13. The HWCL is the California analogue of the federal Resource Conservation and
27 Recovery Act, 42 U.S.C. § 6901 et seq. ("RCRA"). Pursuant to both state and federal law, the
28 Department administers the HWCL in lieu of federal administration of RCRA in California. (See

1 Health & Saf. Code, § 25101, subd. (d); California: Final Authorization of Revisions to State
2 Hazardous Waste Management Program, 66 FR 49118 (September 26, 2001).) Federal law
3 prohibits California from imposing “any requirements less stringent than those authorized under
4 [RCRA].” (42 U.S.C. § 6929.)

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

8 15. Persons who store and dispose of hazardous waste are subject to a number of laws
9 and regulations, including, but not limited to, Health and Safety Code section 25100 et seq. and
10 California Code of Regulations, title 22, section 66260 et seq. The Department is informed and
11 believes, and thereon alleges, that Defendant, for all times relevant to this Complaint, stored
12 and/or disposed of hazardous waste in California, and is therefore subject to those requirements.

13 16. Hazardous waste transporters are subject to a number of laws and regulations,
14 including, but not limited to, Health and Safety Code section 25160 et seq. and California Code of
15 Regulations, title 22, Chapter 13 (sections 66263.10 to 66.263.50). The Department is informed
16 and believes, and thereon alleges, that Defendant, for all times relevant to this Complaint,
17 transported hazardous waste and is therefore subject to these requirements in California.

18 17. Transporters of hazardous waste are exempt from California’s requirements for a
19 permit for waste storage when, during the normal course of transportation, they hold the
20 hazardous waste at one location for six days or less, or 10 days or less for transfer facilities in
21 areas zoned industrial or agricultural by the local planning authority.

22 **ENFORCEMENT AUTHORITY UNDER THE HWCL**

23 18. The HWCL authorizes the Court to impose civil penalties under two distinct and
24 alternative provisions. Section 25189 of the Health and Safety Code creates liability for any
25 negligent or intentional violation of the HWCL. Section 25189.2 is a strict liability provision,
26 which creates liability, on a strict liability basis, for any violation of the HWCL. Each day of
27 violation of each provision of the HWCL is a separate violation, subject to penalty under Health
28 and Safety Code sections 25189 or 25189.2.

1 physical state of the waste, the hazard property, the name and address of the generator, and the
2 accumulation start date.

3 30. Defendant is liable for civil penalties under Health and Safety Code section 25189
4 or 25189.2 for its violations of California Code of Regulations, title 22, sections 66262.11 and
5 66262.34, subdivisions (f)(1) and (f)(3).

6 **REQUEST FOR RELIEF**

7 The Department requests that the Court grant the following relief:

- 8 1. Enter judgment that Defendant has violated the HWCL and its implementing
9 regulations as described in the First and Second Causes of Action;
- 10 2. Enter judgment that Defendant is liable for civil penalties for violations of the
11 HWCL and its implementing regulations on the First and Second Causes of Action, as authorized
12 by Health and Safety Code section 25189, or, in the alternative, by Health and Safety Code
13 section 25189.2, for each day of each violation according to proof;
- 14 3. Grant the Department its costs of suit herein; and
- 15 4. Grant such other and further relief as the court deems just and proper.

16 Dated: July 23, 2014

Respectfully Submitted,
KAMALA D. HARRIS
Attorney General of California
MARGARITA PADILLA
Supervising Deputy Attorney General

(Original signed by Laura J. Zuckerman
LAURA J. ZUCKERMAN
Deputy Attorney General
*Attorneys for Plaintiff People of the State
of California ex rel. Miriam Barcellona
Ingenito, Acting Director of the
Department of Toxic Substances Control*

26 OK2013508821

27
28