

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Debri Tech dba Rapid Recycle
5292 Pacheco Boulevard
Pacheco, CA 94553

ID No. CAL000365768

Respondent.

Docket HWCA 20157222

STIPULATION AND ORDER

The California Department of Toxic Substances Control (Department) and Debri Tech dba Rapid Recycle (Respondent) (collectively, the Parties) enter into this Stipulation and Order (Order) and agree as follows:

1. On September 15, 2016, the Department issued an Enforcement Order to Respondent. Thereafter, Respondent timely submitted its Notice of Defense and an administrative hearing took place on July 24, 2017, before an Administrative Law Judge (ALJ).
2. On August 25, 2017, the ALJ's Proposed Decision was delivered to the Department and Respondent.
3. The Department adopted the Proposed Decision in part and modified it in part, and on November 30, 2017, DTSC executed its Final Decision.
4. Respondent did not file a right to petition the Department for reconsideration of the Final Decision within the allowable timeframe.
5. Pursuant to the Final Decision, Respondent owes to the Department a penalty in the amount of \$41,000.

6. Respondent is unable to pay the \$41,000 penalty in one lump sum. Accordingly, the Parties have agreed to the following payment plan as set forth below.

PAYMENT PLAN

7. Within 14 days of the Effective Date of this Order, Respondent shall make an initial payment of \$3,000 to the Department. Thereafter, Respondent shall make monthly payments in the amount of \$2,000, which shall be received by the Department no later than the 10th day of each month for a total of 19 months.

8. Respondent's checks shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Ivan Rodriguez
Enforcement and Emergency Response Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

9. If Respondent fails to make any 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.

GENERAL PROVISIONS

10. Integration: This agreement constitutes the entire agreement between the Parties and may not be amended, supplemented, or modified, except as provided in this agreement.


11. Parties Bound: This Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, 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.

12. Effective Date: The effective date of this Order is the date it is signed by the Department.

13. Governing Law: This Agreement is entered into and shall be interpreted in accordance with the laws of the State of California.

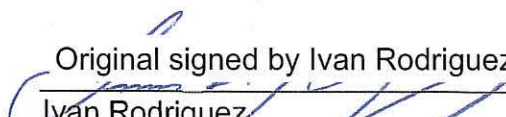
14. Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Dated: 9/25/18


Original signed by Jim Foster

Jim Foster
Debri Tech dba Rapid Recycle

Dated: 10/10/2018


Original signed by Ivan Rodriguez

Ivan Rodriguez
Department of Toxic Substances Control

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

In the Matter of the Enforcement Order
Against:

DEBRI TECH, dba RAPID RECYCLE,

ID No. CAL000365768,

Respondent.

Agency Case No: HWCA 20157222

OAH No. 2016120181

FINAL DECISION

This matter comes before the Department of Toxic Substances Control (Department) pursuant to the Administrative Procedure Act, Government Code section 11517. The matter was heard by Timothy J. Aspinwall, Administrative Law Judge (ALJ), Office of Administrative Hearings on July 24, 2017, in Sacramento, California.

Julianne R. Kay, Staff Attorney, represented the Department. James Foster, Chief Financial Officer of Deбри Tech, dba Rapid Recycle (Respondent) represented Respondent. Evidence was received, the record was closed, and the matter was submitted for decision at the conclusion of the hearing.

The ALJ's decision (Proposed Decision) was delivered to the Department on August 25, 2017. The Department now adopts the Proposed Decision in part and modifies it in part. The Proposed Decision is included as Attachment 1 and is incorporated into the Final Decision.

PARTIAL ADOPTION OF PROPOSED DECISION

The Department adopts portions of the Proposed Decision as written by the ALJ. Specifically, the Department adopts in full the factual findings, legal conclusions, and penalty amounts for Counts 1 (failure to properly label e-waste), 2 (failure to contain releases of e-waste), and 4 (failure to submit annual reports for years 2012 through 2014).

MODIFICATION TO PROPOSED DECISION

The Department modifies the Proposed Decision regarding Counts 3 (failure to properly contain electronic devices) and 5 (failure to provide personnel training). Each is discussed below.

Count 3: Failure to Properly Contain Electronic Devices

The violation at issue in Count 3 is of the regulation requiring universal waste handlers to “contain any electronic device in a manner that prevents breakage and release of components to the environment.” (Cal. Code Regs., § 66273.33.5(a)(1)(B)(1).) Count 3 is addressed in paragraphs 7-8 and 15-16 of the Proposed Decision, and the penalty calculation for all counts is discussed in paragraphs 20-28.

The Department adopts paragraphs 7-8 of the Proposed Decision, which summarize testimony from the Department’s inspector and Respondent’s warehouse manager. The inspector testified that she “observed and photographed various electronic devices, including laptop computers, computer monitors, and computer towers placed on the concrete floor inside the warehouse, not on a pallet or in a container.” (Proposed Decision, ¶ 7.) Respondent’s warehouse manager testified that some items were sitting on the floor waiting to be organized on pallets. (Proposed Decision, ¶ 8.) It is the Department’s position that placement of electronic items directly on the floor without being placed in a container would be a violation of section 66273.33.5(a)(1)(B)(1) because containers are needed to prevent breakage and release of components into the environment.

In paragraphs 15-16, the ALJ determined that the Department did not establish that Respondent failed to manage electronic devices in a manner that prevented breakage and release of e-waste into the environment because “many of the items were placed in an area for resale” and “other components were waiting to be placed on pallets.” In other words, the ALJ’s determination that the items were not e-waste was solely based on the length of time the items were placed directly on the floor. The ALJ’s analysis only looked at long-term versus short-term storage. The regulation at issue, however, does not address the length of time or the reason why items are stored. There is no exception to the regulatory requirements if an item is stored for a short time or for resale.

During the ALJ hearing, the Department did not present evidence to refute testimony from Respondent’s warehouse manager that the items were not e-waste because they were stored for resale purposes. Therefore, the Department accepts the ALJ’s determination that the Department did not establish that a violation occurred, and the Department agrees with the elimination of the \$4,000 penalty. However, as explained above, the Department does not agree with the basis underlying the ALJ’s determination.

Count 5: Failure to Provide Personnel Training

Count 5 of the Proposed Decision is regarding violations of the regulations on personnel training. Paragraphs 11 and 19 of the Proposed Decision address Count 5, and the penalty calculation for all counts is discussed in paragraphs 20-28. The Department adopts paragraphs 11 and 19 but does not agree with the penalty modification by the ALJ. As shown in the table in paragraph 24, Count 5 includes three violations by Respondent, each with a penalty of \$6,000, plus an economic benefit penalty of \$1,620 for a total of \$19,620. The ALJ revised the extent of deviation from “major” to “moderate” based on Respondent’s partial compliance, which reduced

each violation to \$4,000. The ALJ also removed the economic benefit penalty of \$1,620 based on Respondent's partial compliance.

The Department agrees with the ALJ's decision that Respondent showed some partial compliance with the training requirements; however, that partial compliance was only in relation to one of Respondent's three violations of the applicable regulations. (Cal. Code Regs. § 66273.36.) As discussed in paragraph 19 of the Proposed Decision, Respondent's warehouse manager testified that Respondent partially complied because the warehouse manager "conducts weekly personnel training for warehouse employees regarding safety, cleanup, and handling of waste." This corresponds to the requirement to ensure that all personnel who manage universal wastes are thoroughly trained in proper waste management and emergency response procedures. (Cal. Code Regs., § 66273.36(a).)

The Proposed Decision acknowledges that the other two requirements in the regulations were not even partially met by Respondent. Paragraph 19 states that Respondent "failed to maintain required documentation of personnel training," which is required under section 66273.36(c). Also, Respondent "did not provide specific details regarding the content of his training" and "did not establish that the personnel training met the specific requirements outlined in the applicable regulations," which are required under section 66273.36(b). Respondent did not meet subsections (b) and (c) of section 66273.36 at all. Thus, the penalty should not be revised from major to moderate for those two violations.


Based on Respondent's partial compliance to one of three violations under Count 5, the Department agrees to remove the \$1,620 economic benefit penalty and to revise the extent of deviation from "major" to "moderate." The extent of violation will remain at "major" for the other two violations under Count 5. Thus, the penalty for Count 5 will be \$4,000 for one violation and \$6,000 for each of two violations, for a total of \$16,000 out of the original penalty amount of \$19,620.

ORDER

The Enforcement Order against Debris Tech, dba Rapid Recycle, is affirmed with the following amendments: paragraph 3.1.3 of the Enforcement Order is stricken and the monetary penalty is reduced from the original amount of \$48,620 to \$41,000.

IT IS SO ORDERED.

DATE: 11.30.17


Original signed by Jim Foster

Barbara A. Lee
Director
Department of Toxic Substances Control

EXHIBIT 1

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Debri Tech dba Rapid Recycle
5292 Pacheco Boulevard
Pacheco, CA 94553

ID No. CAL000365768

Respondent.

Docket HWCA 20157222

ENFORCEMENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

1.1. Parties. The State Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to Debri-Tech dba Rapid Recycle (Respondent).

1.2. Site. Respondent handles and treats universal waste at 5292 Pacheco Boulevard, Pacheco, California 94553 (Site).

1.3. Permit/Interim Status. Respondent notified the Department of its intention to treat cathode ray tubes (CRTs) and universal waste – electronic devices (EDs) in accordance with California Code of Regulations, title 22, section 66273.74, subdivision (a).

1.4. Jurisdiction. Section 25187 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and 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.

1.5. Exhibits. All exhibits attached to this Order are incorporated herein by this reference.

DETERMINATION OF VIOLATIONS

2. The Department has determined that:

2.1. On or about September 17, 2015 the Respondent violated California Code of Regulations, title 22, section 66273.5, subdivision (a), section 66273.34, subdivision (a), 66273.34, subdivision (c), 66273.34, subdivision (d), 66273.34, subdivision (e), and 66273.34, subdivision (g) in that Respondent failed to properly label or clearly mark each container or pallet in or on which universal waste electronic devices (UWED) are contained with the phrase "Universal Waste – Electronic Devices", "Universal Waste-CRTs" and "Universal Waste – Batteries", and failed to accumulate UWEDs and batteries within a designated area demarcated by boundaries that are clearly labeled. Debris Tech was unable to demonstrate the length of time the UWEDs had been accumulated from the date they became a waste or were received.

2.2. On or about September 17, 2015, the Respondent violated California Code of Regulations, title 22, section 66273.37 subdivision (a), in that Respondent failed to immediately contain all releases of universal waste and universal waste residues outside of the Site, such as loose/broken circuit boards, loose wires, consumer batteries, splitters, and other types of e-waste to the environment.

2.3. On or about September 17, 2015 the Respondent violated California Code of Regulations, title 22, section 66273.33.5, subdivision (a)(1)(B)(1) in that Respondent stored electronic devices, such as computers, loose residual printed circuit boards,

liquid crystal display (LCD), cathode ray tube (CRT), and central processing unit (CPU), on the floor of the Site without proper containment.

2.4. Respondent violated California Code of Regulations, title 22, section 66273.32, subdivision (d)(2), and section 66273.74, subdivision (b)(1), in that Respondent failed to submit an electronic or written annual report for the years of 2012, 2013, and 2014 by February 1st of the following year, respectively.

2.5. On and after September 17, 2012, Respondent violated California Code of Regulations, title 22, section 66273.36, in that Respondent failed to ensure that all personnel who manage universal waste are thoroughly familiar with proper universal waste management procedures. Respondent also failed to provide a written plan of initial and annual training using written material that includes the types of hazards associated with universal waste and the proper procedures for responding to releases of universal wastes. Respondent failed to retain a written record of personnel who have received the training for at least three years from the date the person last managed any universal waste at the Site.

SCHEDULE FOR COMPLIANCE

3. Based on the foregoing Determination of Violations, IT IS HEREBY ORDERED THAT:

3.1.1. Effective immediately, Respondent shall implement procedures to properly label containers containing electronic waste.

3.1.2. Effective immediately, Respondent shall implement procedures to prevent all releases of universal waste to the environment.

3.1.3. Effective immediately, Respondent shall implement procedures to contain all universal waste electronic devices.

3.1.4. Respondent shall submit to the Department future annual reports by February 1st of each year for the preceding year for the electronic device and CRT handling activities.

3.1.5. Effective immediately, Respondent shall develop and implement a written training plan for personnel who manage universal waste that includes the types of hazards associated and the proper procedures for responding to releases of universal waste. Respondent shall provide this training to new employees and provide an annual training to personnel. Respondent shall also retain all training records for at least three years from the date the person last managed any universal waste at the Site.

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

Denise Tsuji, Branch Chief
Enforcement and Emergency Response Division
8810 Cal Center Drive
Sacramento California 95826
Department of Toxic Substances Control

Christopher Cho, Attorney III - Spec
Department of Toxic Substances Control
1001 I Street, 23rd Floor
Sacramento California 95814

Sangat Kals, Senior Environmental Scientist (Supervisory)
Enforcement and Emergency Response Division
Department of Toxic Substances Control
8810 Cal Center Drive
Sacramento California 95826

Linda Han, Environmental Scientist
Enforcement and Emergency Response Division
Department of Toxic Substances Control
8810 Cal Center Drive
Sacramento California 95826

3.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of the obligation to obtain such formal approvals as may be required.

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 the Order or fails to protect public health or safety or the environment, the Department may:

- a. Modify the document as deemed necessary 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 circumstances or activity (whether or not pursued in compliance with this Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or 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 needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the 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 past, current, or future operations of Respondent. Notwithstanding compliance with the terms of this Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

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 agency having jurisdiction. 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. 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. Respondent shall permit such persons to inspect and copy all records, documents, and other writings,

including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

3.9. Data and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and its authorized representatives to take duplicates 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. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

3.10. Government Liabilities: The State of California shall not 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, nor shall the State of California 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 require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

3.12. Extension Request: 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.

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.

OTHER PROVISIONS

4.1. Additional Enforcement Actions: By issuance of this Order, the Department does not waive the right to take further enforcement actions.

4.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, 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.

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

PENALTY

5. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondent's penalty at \$48,620. Payment of penalty is due within 30 days from the effective date of the Order. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number, as shown in the heading of this case. Respondent shall deliver the penalty payment to:

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

A photocopy of the check shall be sent to:

Sangat Kals, Ph.D.
Senior Environmental Scientist (Supervisory)
Enforcement and Emergency Response Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento California 95826

RIGHT TO A HEARING

6. Respondent may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondent.

EFFECTIVE DATE

7. This Order is final and effective twenty days from the date of mailing, which is the date of the cover letter transmitting the Order to Respondent, unless Respondent requests a hearing within the twenty-day period.

Date of Issuance Sept. 15, 2016

Original signed by Sangat Kals

Sangat Kals, Ph.D. Senior Environmental Scientist (Supervisory)
Enforcement and Emergency Response Division
Department of Toxic Substances Control