



Jared Blumenfeld
Secretary for
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Department of Toxic Substances Control



Gavin Newsom
Governor

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September 27, 2019

Certified Mail No.: 7018-0680-0000-9827-9607

Mr. Juventino Barajas
AERC Recycling Solutions
30677 Huntwood Ave.
Hayward, California 94544

NOTICE OF PROVISIONAL INSPECTION VIOLATION SCORES, 2019 FACILITY VIOLATION SCORING PROCEDURE SCORE, AND 2019 COMPLIANCE TIER ASSIGNMENT

Dear Mr. Juventino Barajas:

2019 Facility Violations Scoring Procedure (VSP) Score: 26.25
2019 Compliance Tier Assignment: Conditionally Acceptable

The purpose of this letter is to provide AERC Recycling Solutions, CAD982411993, located at 30677 Huntwood Ave., Hayward, CA 94544 (hereinafter, the "Facility") with a provisional inspection violation score for each compliance inspection that was conducted during the preceding ten (10) year period beginning January 1, 2009, through December 31, 2018, the Facility's 2019 VSP Score, and compliance tier assignment pursuant to California Code of Regulations (CCR), title 22, section 66271.53, subdivision (b)(2) and section 66271.54, subdivisions (c).¹

The provisional inspection violation scores for the Facility are provided in the enclosed Inspection Violation Scoring Matrix. A provisional inspection violation score is the sum of the initial score for each Class I violation that occurred during a compliance inspection, and any adjustment to the initial Class I violation score based on repeat violations.² (See 22 CCR § 66271.53, subd. (a).) The basis for the score for each Class I violation is also provided in the enclosed Inspection Violation Scoring Matrix.

¹ Pursuant to Senate Bill (SB) 673 (Stats. 2015, chapter 611), the Department of Toxic Substances Control (DTSC) adopted new hazardous waste permitting criteria regulations, which became effective on January 1, 2019. The full text of the hazardous waste permitting criteria regulations is available at https://www.dtsc.ca.gov/LawsRegsPolicies/Regs/upload/18-DTSC-SB-673-Reg-TEXT_OAL_20181023-revised.pdf. More information regarding SB 673 is available at https://www.dtsc.ca.gov/HazardousWaste/Permit_Roundtables.cfm.

² For purposes of calculating a facility's inspection violation score, DTSC may also consider Class II violations that meet the definition of a Class I violation as specified in CCR, title 22, section 66260.10. (See 22 CCR § 66271.50, subd. (d)(1).)

Based on the provisional inspection violation scores for the Facility for the ten (10) year period beginning January 1, 2009, through December 31, 2018, DTSC has calculated a Facility VSP Score for the Facility of "**26.25**". A Facility VSP Score is the sum of all provisional or final inspection violation scores for each compliance inspection conducted during the preceding ten (10) years, divided by the number of compliance inspections. (See 22 CCR § 66271.54, subd. (a).)

A facility may be assigned to one of three compliance tiers based on its Facility VSP Score:

- "Acceptable." A facility that receives a Facility VSP Score of less than 20 shall be designated as having a Facility VSP Score that is "acceptable". (See 22 CCR § 66271.54, subd. (b)(1).)
- "Conditionally Acceptable." A facility that receives a Facility VSP Score equal to or greater than 20 and less than 40 shall be designated as having a Facility VSP Score that is "conditionally acceptable." Facilities that receive a final compliance tier assignment of "conditionally acceptable" are required to comply with additional requirements outlined in the regulations. (See 22 CCR § 66271.54, subd. (b)(2); 22 CCR § 66271.56.)
- "Unacceptable." A facility that receives a Facility VSP Score equal to or greater than 40 shall be designated as having a Facility VSP Score that is "unacceptable." DTSC is required to initiate permit denial, suspension, or revocation proceedings for facilities that receive a final compliance tier assignment of "unacceptable." (See 22 CCR § 66271.54, subd. (b)(3); 22 CCR § 66271.57.)

As a result of the Facility's VSP Score, DTSC has assigned the Facility to a compliance tier of "**Conditionally Acceptable**". Generally, as discussed further below, a facility's compliance tier assignment becomes final after all provisional inspection violation scores upon which the Facility VSP Score is based become final pursuant to CCR, title 22, section 66271.53, subdivision (d).

Provisional Inspection Violation Score Disputes and Compliance Tier Assignment Challenges

An owner or operator of a facility may dispute a provisional inspection score pursuant to CCR, title 22, section 66271.53, subdivision (c) by filing a Provisional Inspection Violation Score Dispute Document (template available at <https://dtsc.ca.gov/violations-scoring-procedure/>) within sixty (60) calendar days of this notice. All of the following information must be enclosed with the Dispute Document cover letter:

- A statement that describes in detail the factual and legal basis of the dispute and the relief sought;
- Any claimed erroneous facts, assumptions, approaches, or conclusions of law made by DTSC;

- A statement describing in detail any efforts already made by the owner or operator to resolve the dispute with DTSC; and
- Any photographs, documents, or any other material that supports the owner's or operator's position regarding the disputed provisional inspection violation score.

The owner or operator of a facility may request a one-time extension of up to sixty (60) calendar days to submit a Provisional Inspection Violation Score Dispute Extension Document (template available at <https://dtsc.ca.gov/violations-scoring-procedure/>).

DTSC will issue a written decision, granting or denying, in whole or in part, the relief sought by the owner or operator of a facility disputing a provisional inspection violation score. A provisional inspection violation score will become the final inspection violation score consistent with DTSC's written decision. A provisional inspection violation score will also become the final inspection violation score if the owner or operator of a facility does not file a Dispute Document within sixty (60) calendar days of this notice.

A facility's compliance tier assignment becomes final after all inspection violation scores upon which the Facility VSP Score is based become final pursuant to CCR, title 22, section 66271.53, subdivision (d). Final compliance tier assignments of "acceptable" or "conditionally acceptable" are not subject to additional administrative dispute resolution. (See 22 CCR § 66271.54, subds. (e), (f).) However, owners or operators of facilities assigned to a final compliance tier of "unacceptable" may further administratively challenge their final compliance tier assignment under California Code of Regulations, title 22, section 66271.57.

Issuance of this provisional inspection violation score, Facility 2019 VSP Score, and compliance tier assignment do not constitute an enforcement action. If you have any questions regarding this notice, please contact VSP_Info@dtsc.ca.gov. If you have any questions regarding the dispute process, please contact VSP_Dispute_Inbox@dtsc.ca.gov.

Sincerely,



Keith Kihara, Chief
Enforcement and Emergency Response Division

Enclosure(s)

Violation Scoring Matrix
Proof of Service

Violation Scoring Matrix

Facility Name:		AERC RECYCLING SOLUTIONS		10 Year Date Range:		2009-2018		Permit Effective Date:		2/12/2010		Link to EnviroStor (Inspection Reports, SOVs, etc.)	
Address:		30677 HUNTWOOD AVENUE, HAYWARD, CA 94544		Number of Inspections:		4		Permit Expiration Date:		2/11/2020			
EPA ID:		CAD982411993		Total Number of Violations Scored:		5		Date VSP Completed:		6/27/2019			
Inspection Date:	3/28/2011 CEI & 5/20/2011 FRR	Class I Justification	Citation	Violation	Potential for Harm	Potential for Harm Justification	Extent of Deviation	Extent of Deviation Justification	Initial Score	Repeat (Yes/No)	Date(s) of Previous Violation	Adjustment Factor (%)	Adjusted Score
Inspection Type:	CEI & FRR												
Class I Violations:	1	The deviation from the requirement was significant enough that it represented a significant threat to human health or safety or the environment because of the relative hazard of the waste and/or the proximity of the population at risk.	22 CCR 66264.33	The facility failed to ensure proper operation of its emergency decontamination and communication equipment. An eyewash station near the facility's Unloading Dock was not operational (the water valve was turned completely off at the truck dock) when tested during the inspection and soiled gloves between the water nozzles of a second eyewash station impaired its use. A thick layer of dust (potentially phosphor powder containing mercury) was also observed on eyewash equipment, a telephone, and a fire extinguisher in the production area.	Moderate	Failure to adequately maintain emergency decontamination and communication equipment had the potential to negatively impact human health and the environment because if the emergency equipment did not function during an accidental release of HW, the emergency response and remediation would be delayed and/or inadequate. Therefore, a moderate potential for harm was assigned.	Moderate	The facility's eyewash station was non-operational due to the water being turned off, and other safety equipment was contaminated with phosphor powder. The inadequate maintenance and use of contaminated emergency response equipment could have caused additional exposures. The requirement functioned to some extent as the eyewash station, telephone, and fire extinguisher in this area were the only safety equipment cited in violation.	15	No	n/a	0	15.00
Provisional Inspection Violation Score:													15.00
Inspection Date:	11/26/2013 CEI & 1/22/2014 FRR	Class I Justification	Citation	Violation	Potential for Harm	Potential for Harm Justification	Extent of Deviation	Extent of Deviation Justification	Initial Score	Repeat (Yes/No)	Date(s) of Previous Violation	Adjustment Factor (%)	Adjusted Score
Inspection Type:	CEI & FRR												
Class I Violations:	0	n/a	n/a	No Class I Violations	n/a	n/a	n/a	n/a	0	n/a	n/a	n/a	0.00
Provisional Inspection Violation Score:													0.00

Violation Scoring Matrix

Facility Name:		AERC RECYCLING SOLUTIONS		10 Year Date Range:		2009-2018		Permit Effective Date:		2/12/2010		Link to EnviroStor	
Address:		30677 HUNTWOOD AVENUE, HAYWARD, CA 94544		Number of Inspections:		4		Permit Expiration Date:		2/11/2020		(Inspection Reports, SOVs, etc.)	
EPA ID:		CAD982411993		Total Number of Violations Scored:		5		Date VSP Completed:		6/27/2019			
Inspection Date:	1/27/2016 CEI/FCI & 6/6/2016 FRR	Class I Justification	Citation	Violation	Potential for Harm	Potential for Harm Justification	Extent of Deviation	Extent of Deviation Justification	Initial Score	Repeat (Yes/No)	Date(s) of Previous Violation	Adjustment Factor (%)	Adjusted Score
Inspection Type:	CEI/FCI & FRR												
Class I Violations:	1	The deviation from the requirements was significant enough that it could have resulted in a failure to assure that HW are destined for and delivered to an authorized HW facility.	HSC 25202(a), 22 CCR 66260.200, 22 CCR 66262.11, HWFP, Part V, Special Condition 10	The facility failed to make an appropriate HW determination. The facility's HWFP requires monthly submissions of samples of crushed glass and metal end caps processed by its lamp processing machine to verify that the samples do not exceed HW criteria for mercury. Facility samples found that the mercury concentration exceeded HW criteria, which required the facility to manage the metal end caps as HW. The facility failed to handle the metal end caps as HW.	Major	In 1/2014 and 8/2015, the metal end cap mercury concentration (38 mg/kg and 69 mg/kg respectively) exceeded the HW total threshold limit. 10,954 pounds of mercury-impacted aluminum end caps were found in violation. Because the facility did not make an appropriate HW determination and sent the waste to a metal recycler, there was a major potential for harm to human health and safety and the environment due to the waste containing HW levels of mercury, a neurotoxin.	Major	The HWFP required monthly submission of samples to verify the wastestream did not exceed HW criteria for mercury. In 1/2014 and 8/2015, the facility failed to make a proper HW determination and manage the metal end caps as HW. The requirement was completely ignored.	25	No	n/a	0	25.00
	2	The deviation from the requirements was significant enough that it could have resulted in a failure to assure that HW are destined for and delivered to an authorized HW facility.	HSC 25203	The facility caused the disposal of HW to a facility that is not permitted to handle HW. For a period in excess of a year, the facility shipped the HW metal end caps to metal recyclers that were not authorized to received HW.	Major	The facility shipped 10,954 pounds of aluminum end caps that exceeded the HW threshold for mercury to metal recyclers, who were not authorized to receive HW, and thus did not have the proper precautions to prevent harm to human health and safety and the environment when the waste containing metal was received. The volume and characteristics of the HW at issue in this violation represented a major potential for harm.	Major	6,120 pounds of mercury-impacted end caps was sent to Alco Iron & Metal on 3/10/2014 and 4,834 pounds was sent to CASS, Inc. on 9/10/2015. Neither of these facilities were authorized to receive HW. The requirement to send HW to an authorized facility was completely ignored.	25	No	n/a	0	25.00
	3	The deviation from the requirements was significant enough that it could have resulted in a failure to assure that HW are destined for and delivered to an authorized HW facility.	HSC 25160(b)(1)	The facility transported HW metal end caps with a Bill of Lading instead of with a HW manifest for a period in excess of a year.	Major	The facility shipped 10,954 pounds of aluminum end caps that exceeded the HW threshold for mercury to metal recyclers using a Bill of Lading instead of a HW manifest. The volume and characteristics of the HW in violation represented a major potential for harm.	Moderate	6,120 pounds of mercury-impacted end caps was sent to Alco Iron & Metal on 3/10/2014 and 4,834 pounds was sent to CASS, Inc. on 9/10/2015 using a Bill of Lading. Some of the information required to be provided in a manifest (such as shipping dates, volume of material, and who it was shipped to and from) was tracked on the Bills of Lading. The requirement functioned to some extent, although not all of its important provisions were complied with.	20	No	n/a	0	20.00
Provisional Inspection Violation Score:													70.00

Violation Scoring Matrix

Facility Name: AERC RECYCLING SOLUTIONS		10 Year Date Range: 2009-2018		Permit Effective Date: 2/12/2010		Permit Expiration Date: 2/11/2020		Date VSP Completed: 6/27/2019		Link to EnviroStor (Inspection Reports, SOVs, etc.)					
Address: 30677 HUNTWOOD AVENUE, HAYWARD, CA 94544		Number of Inspections: 4		Total Number of Violations Scored: 5											
EPA ID: CAD982411993															
Inspection Date:	Inspection Type:	Class I Justification	Citation	Violation	Potential for Harm	Potential for Harm Justification	Extent of Deviation	Extent of Deviation Justification	Initial Score	Repeat (Yes/No)	Date(s) of Previous Violation	Adjustment Factor (%)	Adjusted Score		
5/29/2018 CEI & 6/19/2018 FRR	CEI & FRR														
Class I Violations: 0		n/a		No Class I Violations		n/a		n/a		n/a		0.00			
Class II Violations: 1		The deviation from the requirement represented a significant threat to human health or safety or the environment because of the relative hazard of the waste. In addition, the deviation was significant enough that it could have resulted in a failure to assure that HW are destined for and delivered to an authorized HW facility.		HSC 25163(a)		The facility failed to have a valid registration issued by DTSC when transporting HW. The facility's HW Transportation Registration expired on 6/30/2017 and was reinstated on 7/10/2018. During the period in which the facility had no transportation registration, the facility illegally transported HW on at least 6 separate occasions.		Moderate		The waste illegally transported was comprised of 5,854 pounds of plant scrap containing mercury (D009), 1 pound of HW contaminated soil, and 805 kilograms of PCB ballast. A moderate deviation was assigned due to the wastestream and volume in violation.		Major		The facility was out of compliance for over one year and transported HW at least 6 times during that period. The requirement to transport HW with a transporter registration was completely ignored for a period in excess of a year.	
									Provisional Inspection Violation Score:		20.00				

FACILITY VIOLATIONS SCORING PROCEDURE SCORE				
Inspection Number	Number of Violations Scored	Inspection Type(s)	Inspection Date(s)	Provisional Inspection Violation Score
1	1	CEI & FRR	3/28/2011 CEI & 5/20/2011 FRR	15.00
2	0	CEI & FRR	11/26/2013 CEI & 1/22/2014 FRR	0.00
3	3	CEI/FCI & FRR	1/27/2016 CEI/FCI & 6/6/2016 FRR	70.00
4	1	CEI & FRR	5/29/2018 CEI & 6/19/2018 FRR	20.00
Sum of Provisional Inspection Violation Scores				105.00
*FACILITY VSP SCORE				26.25

*FACILITY VSP SCORE = Sum of Provisional Inspection Violation Scores/Total Number of Inspections conducted in 10 year (calendar) timeframe

- CCR = California Code of Regulations
- CDI = Case Development Inspection
- CEI = Compliance Evaluation Inspection
- CI = Complaint Investigation
- DTSC = Department of Toxic Substances Control
- EPA ID = Environmental Protection Agency Identification
- FCI = Focused Compliance Inspection
- FRR = Financial Records Review
- FSD = Facility Self Disclosure
- FUI = Follow-Up Inspection
- GAR = Groundwater Audit Report
- GME = Groundwater Monitoring Evaluation
- HSC = Health and Safety Code
- HW = Hazardous Waste
- HWFP = Hazardous Waste Facility Permit
- mg/kg = milligrams per kilogram
- n/a = Not Applicable
- NFRR = Non-Financial Record Review
- PCB(s) = Polychlorinated biphenyl(s)
- RCRA = Resource Conservation and Recovery Act
- SOV = Summary of Violations
- VSP = Violations Scoring Procedure

PROOF OF SERVICE

1. I served the NOTICE OF PROVISIONAL INSPECTION VIOLATION SCORES, 2019 FACILITY VIOLATION SCORING PROCEDURE SCORE, AND 2019 COMPLIANCE TIER ASSIGNMENT on Juventino Barajas, AERC Recycling Solutions., EPA ID Number CAD982411993.
2. I served Juventino Barajas, AERC Recycling, by mailing a copy of the aforementioned document via Certified Mail, Receipt No. 7018-0680-0000-9827-9607, return receipt requested, in a sealed envelope addressed to:

Mr. Juventino Barajas
AERC Recycling Solutions
30677 Huntwood Ave.
Hayward, California 94544

3. My name, business address, and telephone number are:

Alan Korematsu
Department of Toxic Substances Control
HWMP, 11th Floor
1001 I Street
Sacramento, CA 95812-0806
(916) 323-3706

I declare under penalty of perjury that the foregoing is true and correct and that this declaration of Proof of Service is executed on October 4, 2019 at Sacramento, California.



(Signature)