

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Acme Fill Corporation
Mr. Nicholas J. Farros Sr., President
950 Waterbird Way
Martinez, CA 94553

ID No. CAD041835695

Respondent.

Docket HWCA 20040527

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 Acme Fill Corporation (Respondent).

1.2. Site. Respondent operates a closed hazardous waste disposal site at the following location: 950 Waterbird Way, Martinez, California (Site).

1.3. Permit/Interim Status. The Department authorized Respondent to manage hazardous waste by interim status document issued on October 23, 1981.

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. The Respondent violated California Code of Regulations, title 22, division

4.5, chapter 15, section 66265.97, subsection (b)(1) in that for over three years, from March 10 2003 until January 27, 2007, Respondent failed to design a groundwater monitoring system which included the identification of the uppermost aquifer and aquifers hydraulically connected, to wit:

- a) Respondent failed to characterize the nature of geologic contacts at the western margin of the facility. By not characterizing the nature of geologic contacts at the western margin of the facility, the adequacy of the groundwater monitoring system could not be demonstrated.
- b) Respondent failed to identify the vertical migration pathways within the uppermost aquifer. By not characterizing the vertical interconnection of water-bearing zones within the uppermost aquifer, the adequacy of the groundwater monitoring system could not be demonstrated.

2.2. The Respondent violated California Code of Regulations, title 22, division 4.5, chapter 15, section 66265.73, subsection (b)(6) in that for over two years, from March 10 2003 until August 5 2005, Respondent failed to maintain as part of their operating record monitoring, testing, or analytical data, and corrective action, to wit:

- a) Respondent failed to include in the operating record the boring log for water level well WPZ-1E.
- b) The Respondent failed to maintain in the operating record accurate well-head and screened-interval elevations. The as-built specifications for ground surface and top-of-screen elevations for wells PC-20A, PC-21A, PC-21B, PC-22A, and MW-501 did not match the Sampling and Analysis Plan (SAP) Tables SAP-2 and SAP-3 ground surface elevations and depths-to-screens.

2.3 The Respondent violated California Code of Regulations, title 22, division 4.5, chapter 15, section 66265.99, subsection (e)(6) in that for the five years preceding August 31, 2009, the Respondent failed to analyze groundwater samples at well MW-501 for all constituents contained in Appendix IX at least annually, to wit: Respondent is required to conduct groundwater monitoring under the Evaluation Plan Monitoring Program because a release has been detected in well MW-501 and facility failed to

conduct the required analyses.

2.4 The Respondent violated California Code of Regulations, title 22, division 4.5, chapter 15, section 66265.99, subsection (e)(3) in that for the five years preceding August 31, 2009, the Respondent failed to collect samples from each monitoring point at least quarterly, to wit: Respondent only collected samples from each monitoring point semi-annually.

2.5 The Respondent violated California Code of Regulations, title 22, division 4.5, chapter 15, section 66265.91, subsection (b) in that for the five years preceding August 31, 2009, Respondent failed to comply with the concentration limit provisions of the statistical evaluation plan, to wit: Respondent failed to update the concentration limits for all constituents of concern as stipulated in the statistical evaluation plan.

SCHEDULE FOR COMPLIANCE

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

3.1.1. For the violation cited in section 2.1 above, Respondent completed corrective action on January 27, 2007. No further action is required.

3.1.2. For the violation cited in section 2.2 above, Respondent completed corrective action on August 5, 2005. No further action is required.

3.1.3 For the violation cited in section 2.3 above, within 90 days of the effective date of this Order, Respondent shall: a) submit analytical results, for a sample collected from MW-501, for all constituents contained in Appendix IX to chapter 14 of the title 22, California Code of Regulations, and b) submit a modified Interim Status SAP that specifically lists all constituents for Appendix IX to chapter 14 in the table of target analytes and specifies the sampling frequency for all constituents for Appendix IX to chapter 14 as annually. The compliance schedule for Section 3.1.3.b may change upon the issuance of new permit conditions.

3.1.4. For the violation cited in section 2.4 above, within 90 days of the effective date of this Order, Respondent shall: a) submit the first report for quarterly detection monitoring of ground water, and b) submit a modified Interim Status SAP that

specifies a monitoring sampling frequency of quarterly for detection monitoring of ground water. The compliance schedule for Section 3.1.4.b may change upon the issuance of new permit conditions.

3.1.5. For the violation cited in section 2.5 above, within 120 days of the effective date of this Order, Respondent shall: a) update the concentration limits in accordance with California Code of Regulations, title 22, section 66265.94, and b) update the statistical evaluation plan in accordance with California Code of Regulations, title 22, section 66265.97(e). The compliance schedule for Section 3.1.5 may change upon the issuance of new permit conditions.

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

Mr. Paul S. Kewin
Unit Chief
Northern California Branch
Enforcement & Emergency Response Program
8800 Cal Center Drive
Sacramento, CA 95826-3200

3.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Unit 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.

4.5. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board, which are attached as Exhibit A.

PENALTY

5. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondent's penalty at \$246,152. Payment 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:

Mr. Paul S. Kewin
Unit Chief
Northern California Branch
Enforcement & Emergency Response Program
8800 Cal Center Drive
Sacramento, California 95826-3200

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 it is served on Respondent, unless Respondent requests a hearing within the twenty-day period.

Date of Issuance: September 29, 2009

Original signed by Paul Kewin
Paul S. Kewin
Unit Chief
Department of Toxic Substances Control