

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Docket HWCA SCUPA 2014 IM002

McNeece Brothers
dba Mann Company, Inc.
1313 Main Street
Brawley, California 92227

CONSENT ORDER

Health and Safety Code
Section 25187 and 25404.1.1

EPA I.D. No. CAL000339338

Respondent.

1. INTRODUCTION

1.1. Parties. The State Department of Toxic Substances Control, Imperial Certified Unified Program Agency (DTSC Imperial CUPA) and McNeece Brothers dba Mann Company, Inc. (Respondent) enter into this Consent Order (Order) and agree as follows:.

1.2. Site. Respondent operates a product petroleum distribution facility at the following site: 1313 Main Street, Brawley California 92227 (Site).

1.3. Inspection. The DTSC Imperial CUPA inspected the Site on October 23, 2013.

1.4. Authorization Status. Respondent does have a certificate to manage hazardous materials and hazardous waste at the Site.

1.5. Jurisdiction. Section 25187 and 25404.1.1 of the Health and Safety Code authorizes the DTSC Imperial CUPA to order action necessary to correct violations and

assess a penalty when the DTSC Imperial CUPA 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. This Order shall constitute full settlement of the violations alleged 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. By agreeing to this Order, the DTSC Imperial CUPA does not waive any right to take other enforcement actions except as specifically 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 as alleged in Section 2 below.

2. VIOLATIONS ALLEGED

2.1. The DTSC Imperial CUPA alleges the following violations:

2.1.1. Respondent violated Health and Safety Code section 25201, in that on or about October 23, 2013, and continuing to January 16, 2014, Respondent released used oil to the soil surrounding the 550 gallon underground storage tank (UST) containing used oil. The used oil was spilled to the soil around at least three sides of the concrete pad containing a UST situated in the center below grade. The releases covered an area of approximately three feet wide by 20 feet long along the east side of the UST.

2.1.2. Respondent violated Health and Safety Code section 25510(a) in that on or about October 23, 2013, and continuing to January 16, 2014, Respondent caused releases in the following areas: 1) within the secondary containment structure of petroleum hydrocarbons for an undetermined period of time within the warehouse; 2) on

soils approximately three feet by three feet adjacent to a diesel fuel aboveground storage tank (AST) and in the secondary containment as a result of a diesel fuel spill of at least 240 gallons; 3) used oil within the secondary containment for a 550 gallon used oil UST; 4) used antifreeze within the secondary containment for a 550 gallon used oil UST; 5) diesel fuel released to concrete and soil adjacent to a diesel fuel valve in fuel farm in East/West orientation and another tank farm in a North/South orientation.

2.1.3. Respondent violated Health and Safety Code section 25284(a), in that on or about January 18, 2012, and continuing to August 7, 2014, Respondent operated an underground storage tank (UST) without a permit.

2.1.4. Respondent violated Health and Safety Code section 25270.8, in that on or about October 23, 2013, and continuing until January 2, 2014, Respondent failed to report a release of petroleum hydrocarbons in excess of 42 gallons to the Office of Emergency Services (OES). Approximately 240 gallons of diesel fuel was released on October 23, 2013.

2.1.5. Respondent violated Health and Safety Code section 25505(a)(4), in that on or about January 18, 2012, and continuing to this day, Respondent failed to implement any of the training described in Respondent's Hazardous Material Business Plan (HMBP).

2.1.6. Respondent violated California Code of Regulations, title 22, section 66265.31, in that on or about October 23, 2013, Respondent failed to operate and maintain the facility in a manner to minimize the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents, when Respondent released used oil and used oil contaminated debris within the secondary containment around the 550 gallon used oil UST and under the two troughs

used to drain containers of various sizes and used oil filters, leading to the 550 gallon used oil UST.

2.1.7. Respondent violated California Code of Regulations, title 22, section 66265.174, in that on or about October 23, 2013, Respondent failed to conduct weekly inspections of all hazardous waste areas, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

2.1.8. Respondent violated California Code of Regulations, title 22, section 66265.173, in that on or about October 23, 2013, Respondent failed to keep closed, except when adding or removing contents, one 550-gallon used oil underground storage tank, one 55-gallon container of used oil and diesel fuel contaminated absorbent, one 55-gallon container of used oil, one 300-gallon bulk container lying on its side and containing residual oil and sludge.

2.1.9. Respondent violated California Code of Regulations, title 22, section 66262.34(f), in that on or about October 23, 2013, Respondent failed to properly label one 55-gallon container of used oil and diesel fuel contaminated absorbent, one 30-gallon container of used oil, one 300-gallon bulk container of oil and sludge, and one 55-gallon container of used oil filters.

2.1.10. Respondent violated California Code of Regulations, title 22, section 66261.7(f), in that on or about October 23, 2013, Respondent failed to write the date on at least 20 containers larger than five gallons when the containers became empty.

2.1.11. Respondent violated California Code of Regulations, title 22, section 66266.81, in that on or about October 23, 2013, Respondent failed to write the date that at

least six used lead acid batteries were no longer usable.

2.1.12. Respondent violated California Code of Regulations, title 22, section 66266.130, in that on or about October 23, 2013, Respondent failed to place at least ten used oil filters into the used oil filter container within a reasonable time period. According to employee onsite, used oil filters are typically left on the trough leading to the used oil UST for at least 24 hours.

3. SCHEDULE FOR COMPLIANCE

3.1. Respondent shall comply with the following:

3.1.1. This violation has been corrected to the satisfaction of the DTSC Imperial CUPA. 3.1.2. This violation has been corrected to the satisfaction of the DTSC Imperial CUPA.

3.1.3. Within 30 days of the effective date of this Order, Respondent shall perform soil analysis around the secondary containment of the 550 gallon used oil tank to determine if used oil has been released. This sampling shall be around all sides and under the secondary containment.

3.1.4. This violation has been corrected to the satisfaction of the DTSC Imperial CUPA.

3.1.5. This violation has been corrected to the satisfaction of the DTSC Imperial CUPA.

3.1.6. This violation has been corrected to the satisfaction of the DTSC Imperial CUPA.

3.1.7. This violation has been corrected to the satisfaction of the DTSC Imperial CUPA.

3.1.8. Within 30 days of the effective date of this Order, Respondent shall develop written procedures to ensure that all hazardous material containers are kept closed at all times, except when adding or removing contents.

3.1.9. Within 30 days of the effective date of this Order, Respondent shall develop written procedures to ensure that all hazardous waste containers are properly labeled.

3.1.10. Within 30 days of the effective date of this Order, Respondent shall develop written procedures to ensure all containers larger than five gallons are dated when emptied of hazardous materials.

3.1.11. Within 30 days of the effective date of this Order, Respondent shall develop written procedures to ensure all used batteries are properly dated when no longer usable.

3.1.12. Within 30 days of the effective date of this Order, Respondent shall develop written procedures to ensure that used oil filters are managed according to the law and placed in appropriate containers immediately after they are drained.

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

4. OTHER PROVISIONS

4.1. 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, 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.

4.2. 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.

4.3. 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, and upon the DTSC Imperial CUPA and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

4.4. Integration. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Order.

5. PENALTY

5.1. Respondent shall pay the DTSC Imperial CUPA a total penalty of \$44,160. Of the total due, \$22,080 is a penalty and \$22,080 is for funding Supplemental Environmental Projects (SEPs). A \$745 credit is given against the SEP funding for the cost of sending a Respondent employee to the 2017 CUPA Conference, which leaves a remaining SEP balance of 21,335. The penalty of \$22,080 shall be paid to the DTSC Imperial CUPA no later than 60 days from the effective date of this Order.

5.2. Supplemental Environmental Projects.

5.2.1 Supplemental Environmental Project #1: Respondent shall provide monies from this settlement, not to exceed \$10,000, towards a hazardous waste/hazardous

materials training program in Imperial County, subject to the approval of the DTSC Imperial CUPA, within 90 days from the effective date of this Order. Respondent shall prepare a written plan (Plan) within 45 days from the effective date of this Order describing the steps in which the hazardous waste/hazardous materials training program will occur and provide an estimated itemized cost for implementing the training program. This Plan is subject to the approval of the DTSC Imperial CUPA prior to implementation. Respondent shall provide a receipt for the costs incurred upon a request from the DTSC Imperial CUPA. Respondent agrees to remit any unspent portion of the \$10,000 credit to the DTSC Imperial CUPA within 60 days of the conclusion of the hazardous waste/hazardous materials training program and shall identify the Respondent and Docket Number, as shown in the caption of this Order. In the event unforeseen events preclude the scheduling or implementation of the supplemental environmental program within 120 days of the effective date of this Order, Respondent shall be excused from performing the SEP and shall remit the additional \$10,000 to the DTSC Imperial CUPA in the manner already described.

5.2.2 Supplemental Environmental Project #2: Respondent has agreed to provide monies from this settlement, not to exceed \$11,335, to the Imperial County Fire Department for emergency response equipment.

5.3. Respondent's check(s) for the penalty shall be made payable to the 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

A photocopy of the check shall be sent to:

Roger Vintze
Branch Chief
DTSC Imperial CUPA
Enforcement and Emergency Response Division
Department of Toxic Substances Control
627 Wake Avenue
El Centro, CA 92243

5.4. If Respondent fails to make 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 DTSC Imperial CUPA in pursuing collection including attorney's fees.

6. EFFECTIVE DATE

6.1. The effective date of this Order is the date it is signed by the DTSC Imperial CUPA.

Dated: Signed on 4/28/2017

Original Signed by Harlan Calhoun

Harlan Calhoun
Respondent

Dated: Signed on 4/28/2017

Original Signed by Steven Gailey for

Roger Vintze
DTSC Imperial CUPA