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8 ex rel. Meredith Williams, Director of the California
Department of Toxic Substances Control*

*EXEMPT FROM FILING FEES
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

13 **PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. Meredith Williams,
14 Director of the CALIFORNIA
DEPARTMENT OF TOXIC SUBSTANCES
15 CONTROL,**

16 Plaintiff,

17 v.

18 **HARRY J. HOTTEL, individually and doing
19 business as DICK'S AUTO WRECKERS,**

20 Defendant.

Case No. **21STCV13609**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

**(Health & Saf. Code, §§ 25181, 25184, and
25189.2)**

1 Plaintiff, the People of the State of California, *ex rel.* Meredith Williams, Director of the
2 Department of Toxic Substances Control (“DTSC”), alleges as follows:

3 **I. STATEMENT OF THE CASE**

4 1. This is a civil action by DTSC against Harry J. Hottel, an individual doing business as
5 Dick’s Auto Wreckers (“Hottel”). Hottel is now, and at all times mentioned in this Complaint was
6 a metal recycler in the State of California. Hottel owns and operates a metal recycling facility
7 located at 15185 Whittram Ave, Fontana, California 92335, which receives and processes
8 automobiles and other metal items (“Facility”).

9 2. In conducting its operations at the Facility, Hottel violated the California Hazardous
10 Waste Control Law (Health & Saf. Code, § 25100 et seq.) (“HWCL”) and its implementing
11 regulations, California Code of Regulations, title 22, section 66260.1 et seq. (“Title 22
12 regulations”), by, *inter alia*: unlawfully storing, treating, or causing the storage and/or treatment
13 of, hazardous waste; failing to minimize the possibility of any release of hazardous waste or
14 hazardous waste constituents to the environment; failing to make a hazardous waste
15 determination on wastes it generates; failing to properly complete hazardous waste manifests; and
16 failing to comply with employee training requirements.

17 3. DTSC seeks injunctive relief against and civil penalties from Hottel for violations of
18 the HWCL and the Title 22 regulations pursuant to sections 25181, 25184, and 25189.2 of the
19 Health and Safety Code.

20 4. Pursuant to Health and Safety Code sections 25181, subdivision (a), and 25182, the
21 Attorney General of California is authorized, at DTSC’s request, to commence an action in the
22 name of the People for injunctive relief and civil penalties under the HWCL. DTSC has
23 requested that the Attorney General bring this action pursuant to the HWCL against Hottel.

24 **II. THE PARTIES**

25 5. DTSC is a public agency of the State of California organized and existing under and
26 pursuant to Health and Safety Code section 58000 et seq. DTSC is the state agency responsible
27 for administering and enforcing the provisions of the HWCL and the Title 22 regulations.

28 6. Meredith Williams is the Director of DTSC.

1 extensive environmental and health-protective requirements for the day-to-day operation of
2 hazardous waste generators and transporters, as well as owners and operators of hazardous waste
3 facilities.

4 14. A “hazardous waste” is a waste that meets any of the criteria established by DTSC.
5 (Health & Saf. Code, §§ 25117 and 25141.) Those criteria consist of lists of particular hazardous
6 wastes, and characteristics of hazardous wastes—including ignitability, corrosivity, reactivity,
7 and toxicity. (Cal. Code Regs., tit. 22, §§ 66261.20-24.)

8 15. “Recycled material” means a recyclable material which has been used or reused, or
9 reclaimed. (Health & Saf. Code, § 25121, subd. (a).) Recyclable material means a hazardous
10 waste that is capable of being recycled. (Health & Saf. Code, § 25120.5.) Recyclable material is
11 subject to full regulation as hazardous waste unless it can qualify for one of the recycling
12 exemptions in Health and Safety Code, section 25143.2. Even hazardous waste that qualifies for
13 a recycling exemption is regulated because it must initially meet, and continue to meet, certain
14 requirements under the HWCL.

15 16. It is unlawful for any person to manage any hazardous waste except as provided in
16 the HWCL or the regulations adopted pursuant to the HWCL. (Health & Saf. Code, § 25154.)

17 17. A person who generates a hazardous waste is subject to the requirements prescribed
18 in the HWCL. (Cal. Code Regs., tit. 22, § 66262.10.)

19 18. A person that generates a waste must determine if the waste is hazardous using the
20 methods outlined in California Code of Regulations, title 22, sections 66262.11 and 66260.200.
21 If the waste is hazardous, the generator must manage it in accordance with the Title 22
22 regulations governing generators of hazardous wastes. (Cal. Code Regs., tit. 22, §§ 66262.11,
23 subd. (d) and 66260.200, subd. (c).)

24 19. Any “person generating hazardous waste that is transported, or submitted for
25 transportation, for offsite handling, treatment, storage, disposal, or any combination thereof, shall
26 complete a manifest prior to the time the waste is transported or offered for transportation”
27 (Health & Saf. Code, § 25160, subd. (b)(1).) For all shipments of hazardous waste initiated on or
28 after September 5, 2006, a generator “shall use the Uniform Hazardous Waste Manifest printed

1 by a source registered with the United States Environmental Protection Agency.” (*Ibid.*)
2 California Code of Regulations, title 22, section 66262.20 states the same requirements for the
3 use of Uniform Hazardous Waste Manifests.

4 20. Health and Safety Code section 25189.2 precludes any person from treating or
5 storing, or causing the treatment or storage of hazardous waste at a point not authorized by law.
6 (*Id.*, § 25189.2, subd. (d).)

7 21. A “generator who treats, stores, or disposes of hazardous waste on-site shall comply
8 with the applicable standards and permit requirements” for owners and operators of hazardous
9 waste transfer, treatment, storage and disposal facilities, among others. (Cal. Code Regs., tit. 22, §
10 66262.10, subd. (h).)

11 22. A generator who treats, stores, or disposes hazardous waste on-site may not “accept,
12 treat, store, or dispose of a hazardous waste at the facility, area, or site, unless the owner or
13 operator holds a hazardous waste facilities permit or other grant of authorization from [DTSC] to
14 use and operate the facility, area, or site” (Health & Saf. Code, § 25201, subd. (a); Cal.
15 Code Regs., tit. 22, § 66262.10, subd. (h).)

16 23. A generator who accumulates or stores any hazardous waste on-site without a permit,
17 must contain the waste and the containers must be labeled to show, among other things: the date
18 upon which accumulation began; the words “hazardous waste”; the composition and physical
19 state of the waste; and the name and address of the person producing the waste. (Cal. Code
20 Regs., tit. 22, § 66262.34, subd. (f).)

21 24. A generator of hazardous waste who treats, stores, or disposes hazardous waste on-
22 site must comply with the personnel training requirements applicable to owners or operators of
23 hazardous waste transfer, treatment, storage or disposal facilities. (Cal. Code Regs., tit. 22, §§
24 66262.10, subd. (h); 66265.16.)

25 25. A generator of hazardous waste who treats, stores, or disposes hazardous waste on-
26 site “shall ensure that facility personnel take part in annual review of the initial training required”
27 by the HWCL and “shall maintain . . . documents and records at the facility” indicating
28 compliance with the training requirements, including:

1 (1) the job title for each position at the facility related to hazardous waste
2 management, and the name of the employee filling each job; (2) a written
3 job description for each position . . . ; (3) a written description, including
4 a syllabus and/or outline, of the type and amount of . . . training that will be
5 given to each person filling the position . . . ; (4) employee-signed or -certified
6 records that document that the training required . . . has been given to and
7 completed by each employee. (*Id.*, § 66265.16, subds. (c), (d).)

8 26. Hazardous waste must be managed in a manner to minimize the possibility of any
9 unplanned release of the hazardous waste or hazardous waste constituents to the air, soil, or
10 surface water. (Cal. Code Regs., tit. 22, §§ 66265.31 and 66262.10, subd. (h).)

11 27. The HWCL authorizes the Court to impose civil penalties for each separate violation
12 and, for continuing violations, for each day that the violations continue, under two distinct and
13 alternative provisions. Health and Safety Code section 25189, subdivision (b), imposes liability
14 for any negligent or intentional violation of the HWCL and any permit, rule, regulation, standard,
15 or requirement issued or adopted thereunder. Section 25189.2, subdivision (b), is a strict liability
16 provision, which imposes liability for any violation of the HWCL and any permit, rule,
17 regulation, standard, or requirement issued or adopted thereunder. A person may not be held
18 liable for both a civil penalty imposed under section 25189 and under section 25189.2 for the
19 same act. (Health & Saf. Code, §§ 25189, subd. (g), and 25189.2, subd. (f).)

20 28. For violations occurring before January 1, 2018, Health and Safety Code sections
21 25189 and 25189.2 authorize the Court to impose civil penalties of up to \$25,000 for each
22 separate violation or, for continuing violations, for each day that the violations continue. For
23 violations occurring after January 1, 2018, Health and Safety Code sections 25189 and 25189.2
24 authorize the Court to impose civil penalties of up to \$70,000 for each separate violation or, for
25 continuing violations, for each day that the violations continue.

26 29. Health and Safety Code sections 25181 and 25184 authorize the Court to enjoin any
27 ongoing or potential violation of the HWCL, or any applicable rule, regulation, permit, standard,
28 requirement, or order issued or promulgated pursuant to the HWCL.

30. Health and Safety Code section 25181 provides that, when DTSC determines that any
person has engaged in, is engaged in, or is about to engage in any acts or practices that constitute
or will constitute a violation of any provision of the HWCL, or any rule, regulation, permit,

1 covenant, standard, requirement, or order issued, promulgated, or executed thereunder, and when
2 requested by DTSC, the Attorney General may apply to the superior court for an order enjoining
3 such acts or practices or for an order directing compliance. Upon DTSC's showing that a person
4 has engaged in or is about to engage in such acts or practices, the Court may issue a permanent or
5 temporary injunction, a restraining order, or other appropriate order.

6 31. Health and Safety Code section 25184 provides that in civil actions brought pursuant
7 to the HWCL in which DTSC seeks an injunction or temporary restraining order:

8 [I]t shall not be necessary to allege or prove at any stage of the proceeding
9 that irreparable damage will occur should the temporary restraining order,
10 preliminary injunction, or permanent injunction not be issued; or that the
11 remedy at law is inadequate, and the temporary restraining order, preliminary
injunction, or permanent injunction shall issue without such allegations and
without such proof.

12 **V. GENERAL ALLEGATIONS**

13 32. During all times relevant to the allegations set forth in the Complaint, Hottel
14 conducted metal recycling activities at the Facility, including, but not limited to cutting, shearing,
15 crushing, sorting, and baling of metals. Hottel accepted and continues to accept various metal
16 waste items, including, but not limited to, end-of-life automobiles.

17 33. When this Complaint alleges that Hottel committed any action, such allegations shall
18 mean Hottel committed such acts and is responsible for the actions of his employees or agents;
19 Hottel's employees or agents performed or authorized such acts while acting within the course
20 and scope of their employment or agency for Hottel, or Hottel failed to adequately advise or
21 properly supervise, control, or direct his employees or agents in the management, direction,
22 operation, or control of his affairs.

23 34. DTSC conducted investigations at the Facility on October 17, 2016 and November
24 15, 2016 (2016 investigations).

25 35. During the October 17, 2016 investigation of the Facility, DTSC observed several
26 large piles of soil mixed with metal and debris at the Facility. DTSC also observed soil and debris
27 in a bin located at the Facility. DTSC collected eight sets of samples of dust, debris, and
28 contaminated soil from the piles, bin and at various areas of the Facility for laboratory testing.

1 The laboratory results showed that the samples exceeded hazardous waste regulatory levels for
2 cadmium, copper, lead and/or zinc.

3 36. During the October 17, 2016 investigation, DTSC also observed a shaker table at the
4 yard and was informed that Hottel had been using the shaker table to separate metal pieces and
5 debris that had been embedded in the contaminated soil at the Facility.

6 37. During the November 15, 2016 investigation, DTSC again observed several piles of
7 contaminated soil at the Facility.

8 38. On April 10, 2017, DTSC issued a Summary of Violations (“SOV”) to Hottel for the
9 violations observed during the 2016 investigations.

10 39. On January 16, 2018, DTSC issued to Hottel a request for information and documents
11 under Health and Safety Code section 25185.6 seeking additional information relating to the 2016
12 investigations of the Facility. Hottel responded to the request for information and documents on
13 March 7, 2018.

14 40. On March 29, 2018, DTSC issued an Amended SOV to Hottel.

15 41. The Amended SOV cited violations of the HWCL observed during the 2016
16 investigations of the Facility and based on the information provided in Hottel’s March 7, 2018
17 response to DTSC’s request for information and documents.

18
19 **FIRST CAUSE OF ACTION**
(Illegal Storage of Hazardous Waste)
20 (Health & Saf. Code, §§ 25154 and 25189.2, subd. (d))

21 42. Paragraphs 1 through 38 above are incorporated by reference as though fully set forth
22 herein.

23 43. Health and Safety Code section 25189.2, subdivision (d), in relevant part, states that it
24 is unlawful to store, or to cause the storage of hazardous waste at an unauthorized point. At all
25 relevant times, Hottel did not have a permit or other authorization from DTSC to store hazardous
26 waste at the Facility.

27 44. Health and Safety Code section 25154 states that it is unlawful for any person to
28 manage hazardous waste in a manner not authorized by the HWCL.

1 California Code of Regulations, title 22, section 66260.200, subdivision (c), similarly provides
2 that it is the generator's responsibility to determine if the waste is classified as a hazardous waste.

3 65. On or about October 17, 2016, Hottel violated California Code of Regulations, title
4 22, sections 66260.200, subdivision (c), and 66262.11 in that it failed to classify hazardous waste
5 consisting of contaminated soil and piles of debris and soil at the Facility.

6 66. Pursuant to Health and Safety Code section 25189.2, subdivision (b), Hottel is strictly
7 liable for each instance of failure to make a hazardous waste determination. Health and Safety
8 Code section 25189.2 authorizes the Court to impose civil penalties for each separate violation or,
9 for continuing violations, for each day that the violations continue.

10 67. Pursuant to Health and Safety Code section 25181, subdivision (a), Hottel should also
11 be enjoined by the Court from continuing to operate the Facility in violation of this requirement
12 to make hazardous waste determinations.

13 **FIFTH CAUSE OF ACTION**

14 (Failure to Properly Complete Hazardous Waste Manifests)
15 (Health & Saf. Code, § 25160, subd. (b)(1); Cal. Code Regs., tit. 22, § 66262.23)

16 68. Paragraphs 1 through 38 above are incorporated by reference as though fully set forth
17 herein.

18 69. Health and Safety Code section 25160, subdivision (b), and California Code of
19 Regulations, title 22, section 66262.23, subdivision (a), require a generator of waste to prepare
20 complete and accurate hazardous waste manifests when it transports, or offers for transport,
21 hazardous waste offsite for treatment, storage, or disposal.

22 70. On or about December 5-9, 12 and 14, 2016; February 24, 2017; March 8 and 11,
23 2017; July 26, 2017; and August 21, 2017, Hottel violated Health and Safety Code section 25160,
24 subdivision (b), and California Code of Regulations, title 22, section 66262.23 in that it failed to
25 properly complete hazardous waste manifests for shipments of hazardous waste from the Facility
26 by using incorrect California waste codes, improper shipping names, inaccurate or illegible EPA
27 identification numbers for the transporters of the hazardous waste, and failing to provide the
28 quantity of waste shipped.

1 71. Pursuant to Health and Safety Code section 25189.2, subdivision (b), Hottel is strictly
2 liable for each instance of failure to properly complete a hazardous waste manifest. Health and
3 Safety Code section 25189.2 authorizes the Court to impose civil penalties for each separate
4 violation or, for continuing violations, for each day that the violations continue.

5 72. Pursuant to Health and Safety Code section 25181, subdivision (a), Hottel should also
6 be enjoined by the Court from continuing to operate the Facility in violation of this requirement.

7 **SIXTH CAUSE OF ACTION**
8 (Failure to Comply with Personnel Training Requirements)
9 (Cal. Code Regs., tit. 22, § 66265.16, subs. (c) and (d))

10 73. Paragraphs 1 through 38 above are incorporated by reference as though fully set forth
11 herein.

12 74. California Code of Regulations, title 22, sections 66262.10, subdivision (h) and
13 66265.16 require a generator of hazardous waste who treats and stores hazardous waste on-site to
14 comply with the personnel training requirements applicable to owners or operators of hazardous
15 waste transfer, treatment, storage or disposal facilities.

16 75. Pursuant to California Code of Regulations, title 22, section 66265.16, subdivisions
17 (c) and (d), a generator of hazardous waste who treats and stores hazardous waste on-site “shall
18 ensure that facility personnel take part in annual review of the initial training required” by the
19 HWCL and “shall maintain . . . documents and records at the facility” indicating compliance with
20 the training requirements, including:

21 (1) the job title for each position at the facility related to hazardous waste
22 management, and the name of the employee filling each job; (2) a written
23 job description for each position . . .; (3) a written description, including
24 a syllabus and/or outline, of the type and amount of . . . training that will be
25 given to each person filling the position . . .; (4) employee-signed or -certified
26 records that document that the training required . . . has been given to and
27 completed by each employee. (*Id.*, § 66265.16, subs. (c), (d).)

28 76. On or about October 17, 2016, Hottel violated California Code of Regulations, title
22, section 66265.16, subdivisions (c) and (d) in that the five employees who manage hazardous
26 waste at the Facility did not have updated and documented annual refresher training.

27 77. Pursuant to Health and Safety Code section 25189.2, subdivision (b), Hottel is strictly
28 liable for each instance of failure to comply with personnel training requirements. Health and

1 Safety Code section 25189.2 authorizes the Court to impose civil penalties for each separate
2 violation or, for continuing violations, for each day that the violations continue.

3 78. Pursuant to Health and Safety Code section 25181, subdivision (a), Hottel should also
4 be enjoined by the Court from continuing to operate the Facility in violation of this requirement.

5 **PRAYER FOR RELIEF**

6 DTSC requests that the Court grant the following relief:

7 1. Enter judgment that Hottel violated the HWCL, as alleged in the First through Sixth
8 Causes of Action;

9 2. Enter judgment that Hottel is liable for civil penalties according to proof for those
10 violations set forth in the First through Sixth Causes of Action as authorized by Health and Safety
11 Code section 25189.2;

12 3. Enter temporary restraining orders, preliminary injunctions, permanent injunctions, or
13 other orders requiring Hottel to comply with the HWCL and the Title 22 regulations;

14 4. Grant DTSC its costs of suit; and

15 5. Grant such other and further relief as the Court deems just and proper.

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18 Dated: April 9, 2021

Respectfully Submitted,

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Acting Attorney General
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22 

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