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

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 COUNTY OF LOS ANGELES
 14

17 **PEOPLE OF THE STATE OF CALIFORNIA, EX.**
 18 **REL. MEREDITH WILLIAMS, DIRECTOR OF**
 19 **THE DEPARTMENT OF TOXIC SUBSTANCES**
 20 **CONTROL,**

Plaintiff,

21 v.

22 **EMERALD TRANSFORMER LOS ANGELES,**
 23 **LLC, A LIMITED LIABILITY COMPANY; CLEAN**
 24 **HARBORS ENVIRONMENTAL SERVICES, INC.,**
 25 **A CORPORATION; AND DOES 1-10, INCLUSIVE,**

Defendants.
 26
 27
 28

Case No. **21STCV39365**

**COMPLAINT FOR CIVIL PENALTIES
 AND INJUNCTIVE RELIEF**

(Health & Saf. Code, §§ 25181, 25184, 25189
 and 25189.2)

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

3 **STATEMENT OF THE CASE**

4 1. DTSC brings this action to address violations of the California Hazardous Waste
5 Control Law, Health and Safety Code section 25100 et seq., and its implementing regulations,
6 contained in California Code of Regulations, title 22, division 4.5, section 66260.1 et seq.
7 (collectively, “HWCL”). The HWCL establishes comprehensive “cradle to grave” regulations for
8 the generation, storage, transportation, treatment, and disposal of hazardous waste in California.

9 2. DTSC is informed and believes that Defendants Emerald Transformer Los Angeles,
10 LLC, formerly Clean Harbors Los Angeles, LLC; and Clean Harbors Environmental Services,
11 Inc., a corporation (collectively, “Defendants”) owned and/or operated a facility located at 5756
12 Alba Street, Los Angeles, California 90058 (“Facility”) at different times throughout the relevant
13 period. The Facility is a permitted treatment, storage, transfer, and used oil recycling facility. The
14 waste streams managed on site mainly consist of electrical equipment including transformers,
15 capacitors, and bushings from utility companies that contain oily liquids contaminated with
16 polychlorinated biphenyls (“PCBs”). Used oil containing PCBs at concentrations of 50 parts per
17 million (“ppm”) or greater is regulated under the federal Toxic Substances Control Act, 15 U.S.C.
18 §2601 et seq., and that Act’s implementing regulations (collectively, “TSCA”).¹ At lower PCB
19 concentrations (2 ppm to 50 ppm), used oil is subject to certain restrictions listed under Title 40
20 of the Code of Federal Regulations, section 761.20, subdivision (e), and Health and Safety Code
21 section 25250.4, subdivision (a). Concentrations of less than the quantifiable level of 2 ppm are
22 also subject to the provisions of Health and Safety Code section 25250.4, subdivision (a).

23 3. As a result of inspections that DTSC conducted at the Facility on April 26, 27, and
24 28, 2016, August 12, 2016, and January 25, February 1, 9, and 15, 2018; associated reviews of
25 records; and an August 30, 2016 letter of self-disclosure from the Facility, DTSC identified
26 violations of the HWCL committed by Defendants at, and involving, the Facility.

27 _____
28 ¹ See US EPA Fact Sheet for Preventing and Detecting PCB Contamination in Used Oil,
<https://www.epa.gov/pcbs/fact-sheet-preventing-and-detecting-pcb-contamination-used-oil>.

1 wastes. The HWCL mandates a “cradle to grave” hazardous waste registration, tracking, storage,
2 treatment, and disposal system for the protection of the public from the risks posed by hazardous
3 wastes and for the protection of the environment—i.e., soil, air, surface water, and groundwater—
4 from contamination by hazardous wastes and their constituents. Except where otherwise
5 expressly defined in this Complaint, all terms shall be interpreted consistent with the HWCL.

6 17. California administers the HWCL in lieu of the federal Resource Conservation and
7 Recovery Act (“RCRA”), which is codified at 42 United States Code section 6901 et seq.,
8 pursuant to Health and Safety Code sections 25101, subdivision (d), and 25159 through 25159.9.
9 Federal law prohibits California from imposing any requirements less stringent than those
10 authorized under RCRA. (42 U.S.C. § 6929.) The HWCL has stricter requirements for regulating
11 hazardous waste than some of the analogous provisions in RCRA.

12 18. The HWCL vests DTSC with the responsibility to adopt, and revise when
13 appropriate, standards and regulations for the management of hazardous waste to protect public
14 health and environment. (Health & Saf. Code, § 25150.) Accordingly, DTSC has promulgated
15 regulations setting forth extensive human-health-protective and environment-protective
16 requirements for the day-to-day operation of hazardous waste generators, transporters, and
17 owners and operators of hazardous waste facilities. (Cal. Code. Regs., tit. 22, § 66260.1 et seq.)

18 19. A “hazardous waste” is a waste that meets any of the criteria established by DTSC.
19 (Health & Saf. Code, §§ 25117 and 25141.) The criteria consist of (a) lists of particular hazardous
20 wastes, and (b) certain characteristics that wastes can possess that would make them hazardous.
21 (Cal. Code Regs., tit. 22, §§ 66261.1-66261.126.) At certain thresholds, PCBs are a hazardous
22 waste. PCBs also are a listed hazardous constituent. (Cal. Code Regs., tit. 22, div. 4.5, ch. 11,
23 app’x VIII.) With certain exceptions not relevant here, used oil must be managed as hazardous
24 waste. (Health & Saf. Code, § 25250.4, subd. (a).)

25 20. The HWCL has a more inclusive definition of “hazardous waste” than does federal
26 law. Hazardous wastes that are regulated under California law but not under federal law are
27 known as “non-RCRA hazardous wastes.” (Health & Saf. Code, § 25117.9.)
28

1 21. The HWCL provides that an owner or operator of a hazardous waste facility may not
2 “accept, treat, store or dispose of a hazardous waste at the facility, area, or site, unless the owner
3 or operator holds a hazardous waste facilities permit or other grant of authorization from [DTSC]
4 to use and operate the facility, area, or site” (Health & Saf. Code, § 25201, subd. (a).) Health
5 and Safety Code section 25202, subdivision (a), requires “the owner or operator of a hazardous
6 waste facility who holds a hazardous waste facilities permit . . . [to] comply with the conditions of
7 the [permit], the requirements of [the HWCL], and with the regulations adopted by [DTSC]
8 pursuant to [the HWCL].”

9 22. Under California Code of Regulations, title 22, section 66270.30, subdivision (a), a
10 “permittee shall comply with all conditions of [its] permit Any permit noncompliance,
11 except under the terms of an emergency permit, constitutes a violation of the appropriate statute
12 or regulation and is grounds for enforcement action; for permit termination, revocation and
13 reissuance, or modification; or for denial of a permit renewal application.”

14 23. In regards to the maintenance of storage facilities, California Code of Regulations,
15 title 22, section 66264.31, requires that facilities shall be “located, designed, constructed,
16 maintained, and operated to minimize the possibility of a fire, explosion, or any unplanned
17 sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or
18 surface water which could threaten human health or the environment.” Similarly, California Code
19 of Regulations, title 22, section 66264.175, mandates that container transfer and storage areas
20 have a “containment system” which, under subdivision (b)(1), must have “a base [underlying] the
21 containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills,
22 and accumulated precipitation until the collected material is detected and removed.”

23 24. California Code of Regulations, title 22, section 66264.73, subdivision (b)(1),
24 requires the owner or operator of a facility to keep a written operating record that includes “a
25 description and the quantity of each hazardous waste received, and the method(s) and date(s) of
26 its transfer, treatment, storage, or disposal at the facility.” These records also are required to
27 include the “location of each hazardous waste within the facility and the quantity at each
28

1 location,” and shall include “cross-references to specific manifest document numbers.” (*Id.* at
2 subd. (b)(2).)

3 **ENFORCEMENT AUTHORITY UNDER THE HWCL**

4 25. The HWCL authorizes the Court to impose civil penalties under two distinct and
5 alternative statutory provisions. Health and Safety Section 25189 creates liability for any
6 negligent or intentional violation of the HWCL. Health and Safety Code section 25189.2 is a
7 strict liability provision, which creates liability for any violation of the HWCL. A person may not
8 be held liable for a civil penalty imposed under section 25189 and for a civil penalty imposed
9 under section 25189.2 for the same act. (Health & Saf. Code, §§ 25189, subd. (g), and 25189.2,
10 subd. (f).)

11 26. For violations occurring on or after January 1, 2018, the HWCL authorizes the Court
12 to impose a civil penalty of up to seventy thousand dollars (\$70,000) for each violation of a
13 separate provision of the HWCL. (Health & Saf. Code, §§ 25189, subd. (b), and 25189.2, subd.
14 (b).) For continuing violations, the HWCL authorizes the Court to impose a penalty of up to
15 seventy thousand dollars (\$70,000) for each day that a violation continues. (*Ibid.*) For violations
16 occurring before January 1, 2018, the statutory maximum under the HWCL was twenty-five
17 thousand dollars (\$25,000) for each separate violation or, for continuing violations, for each day
18 that the violations continued. (Stats. 2017, c. 499, § 3.)

19 27. Under Health and Safety Code sections 25181 and 25184, the HWCL authorizes and
20 directs the Court to enjoin any ongoing or potential violation of the HWCL.

21 28. When DTSC determines that any person has engaged in, is engaged in, or is about to
22 engage in any acts or practices which constitute or will constitute a violation of any provision of
23 the HWCL or any rule or requirement issued or promulgated thereunder, and when requested by
24 DTSC, the Attorney General may make application to the Superior Court for an order enjoining
25 such acts or practices, or for an order directing compliance, and upon a showing by DTSC that
26 such person has engaged in or is about to engage in any such acts or practices, a permanent or
27 temporary injunction, restraining order, or other order may be granted. (Health & Saf. Code, §
28 25181, subd. (a).)

1 modification effective September 10, 2015. Pursuant to a Capital Contribution Agreement, made
2 and entered into as of May 24, 2017, by and between Clean Harbors, Inc., and Transformer
3 Service Holdco, LLC, Clean Harbors, Inc., transferred 100% of all issued and outstanding equity
4 interests in Clean Harbors Los Angeles, LLC, to Transformer Service Holdco, LLC. As a result of
5 this transfer, Transformer Services Holdco, LLC became the sole owner of Clean Harbors Los
6 Angeles, LLC. Pursuant to a Membership Purchase Agreement, dated June 8, 2017, Emerald
7 Transformer Western States, LLC, became the sole owner of Transformer Services Holdco, LLC
8 (which is the sole owner of Clean Harbors Los Angeles, LLC). Following the completion of this
9 transaction, the name of the Facility was changed from Clean Harbors Los Angeles, LLC, to
10 Emerald Transformer Los Angeles, LLC. On September 29, 2020, the Facility submitted a permit
11 renewal application to DTSC, which DTSC determined to be “administratively complete” on
12 December 14, 2020. Thus, though the Facility’s permit (the “Permit”) expired on January 26,
13 2021, the Permit continues in effect pending submission of additional documentation and
14 information to DTSC by Emerald Transformer Los Angeles, LLC, and completion of the permit
15 renewal application process.

16 32. Among other provisions, the Permit contains limitations on the amount of hazardous
17 waste that can be stored at the Facility, as well as restrictions on the types of containers that can
18 be used for storage of hazardous waste. The Permit prohibits Defendants from conducting any
19 hazardous waste transfer, storage, treatment, or other management activity unless the activity is
20 specifically described in this Permit or otherwise authorized by law.

21 33. DTSC personnel conducted inspections at the Facility on April 26, 27, and 28, 2016
22 (the “April 2016 Inspection”). After the conclusion of the April 2016 Inspection, DTSC issued an
23 Inspection Report to the Facility on or about June 17, 2016. During the April 2016 Inspection,
24 DTSC personnel made the following observations:

- 25 a. DTSC inspectors observed used oil and hazardous waste oil contaminated with
26 PCBs in the Facility’s yard, an unpermitted area used for loading and offloading
27 (the “Yard”). The Yard was unattended by Facility staff on the weekends. Labels
28 affixed to containers, and profile sheets indicating that the transformers observed

1 contained used oil, enabled the inspectors to confirm that the waste was hazardous.
2 With certain exceptions not relevant here, used oil is managed as hazardous waste
3 pursuant to Health and Safety Code section 25250.4, subdivision (a).

- 4 b. DTSC verified that the Facility received transformers containing PCB-
5 contaminated oil along with profile sheets showing that the oil had been analyzed
6 for PCB concentration. DTSC inspectors observed electrical equipment containing
7 PCB-contaminated oil, received by the Facility between March 24 and April 21,
8 2016, staged in the Yard.
- 9 c. DTSC inspectors were told by the Facility manager that each day the Facility
10 receives six to seven truckloads of electrical equipment containing used oil, PCB-
11 contaminated oil, or TSCA-regulated waste, and that the electrical equipment is
12 staged in the Yard.
- 13 d. DTSC inspectors observed 44 manifested waste loads of electrical equipment,
14 which contained used oil, PCB-contaminated oil, or TSCA-regulated waste, in the
15 Yard.

16 34. DTSC personnel conducted an inspection at the Facility on August 12, 2016 (“August
17 2016 Inspection”) following receipt of a complaint against the Facility alleging violations of the
18 HWCL. After the conclusion of the August 2016 Inspection, on or about November 3, 2016,
19 DTSC issued a Complaint Investigation Report. During the August 2016 Inspection, DTSC
20 personnel made the following observations:

- 21 a. In the warehouse building, DTSC inspectors observed several cubic yard boxes,
22 some of which did not have plastic liners or other liners, containing core and scrap
23 metals with oil residues from dismantling transformers, with oil leaking onto the
24 ground.
- 25 b. Also in the warehouse building, DTSC inspectors observed oily liquid on the
26 ground where boxes of scrap metals were stored on pallets, and that some of the
27 boxes did not have plastic liners or other liners.
- 28

- 1 c. DTSC verified that the Facility received transformers containing PCB-
2 contaminated oil along with profile sheets showing that the oil had been analyzed
3 for PCB concentration. DTSC inspectors observed several such transformers
4 containing oil contaminated with PCBs, some of which had not been drained,
5 stored outside the Yard area, which transformers had been stored in the Yard
6 between July 21, 2016 and August 10, 2016.
- 7 d. DTSC inspectors observed several cracks and gaps at the active portion of the
8 hazardous waste area in the Yard.

9 35. On August 30, 2016, the Facility sent a “Disclosure Letter” to DTSC stating that on
10 July 25, 2016, an employee erroneously pumped approximately 25-30 gallons of waste subject to
11 the Toxic Substances Control Act (“TSCA waste”) from a transformer into Tank V-10, a tank
12 designated for PCB-contaminated waste oil. On October 11, 2016, DTSC and the Facility held a
13 meeting regarding the Disclosure Letter. On or about November 14, 2016, DTSC issued a report
14 to the Facility citing this violation.

15 36. DTSC personnel conducted inspections at the Facility on January 25, February 1, 9,
16 and 15, 2018 (the “2018 Inspection”). After the conclusion of the 2018 Inspection, on or about
17 February 15, 2018, DTSC issued a Summary of Violations to the Facility. DTSC then issued an
18 Inspection Report on or about March 22, 2018. During the 2018 Inspection, DTSC personnel
19 made the following observations:

- 20 a. DTSC inspectors observed hazardous waste oil containing PCBs in the Yard,
21 confirming that the waste observed was hazardous based on the labels affixed to
22 the respective containers.
- 23 b. DTSC inspectors observed wastes confirmed to be hazardous, based on the labels
24 affixed to the respective containers, stored in the open bed of a truck parked in the
25 loading/unloading area with 1.5 to 2 inches of liquid sitting in the bed of the truck.
- 26 c. DTSC inspectors observed two large totes and fifteen 55-gallon drums containing
27 TSCA hazardous waste, two additional empty drums lying on their sides, 21
28 transformers, and three very large transformers, all of which, except for the two

1 empty drums, had both hazardous waste and TSCA waste labels, stored in the
2 truck bed.

- 3 d. DTSC inspectors observed three red non-RCRA hazardous waste roll-off bins
4 standing in water, and observed water in the secondary containment area of the
5 blue tank farm located next to the red roll-off bins.
- 6 e. DTSC inspectors observed a transformer, bar code number 63284241, in the
7 transformer container staging area that was supposed to be empty, yet contained
8 close to a foot of liquid inside.
- 9 f. DTSC inspectors reviewed inspection logs for the week of January 25, 2018, and
10 determined that the water observed in the container and tank storage areas and the
11 liquid observed in the truck bed was not recorded.
- 12 g. DTSC inspectors reviewed inspection logs for the week of January 25, 2018, and
13 determined that the ponding observed near the roll-off bins and tank farm areas
14 was not recorded.
- 15 h. DTSC inspectors reviewed the operating logs and tracking forms for the observed
16 TSCA-regulated waste load that was stored in the loading/unloading area, and
17 determined the dates on the manifests used to track the movement of hazardous
18 waste in and around the Facility did not match the dates on the tracking record.
19 The inspectors also noted the absence of documentation showing which day the
20 load was moved into the loading/unloading area.
- 21 i. DTSC inspectors reviewed the manifests and tracking logs for three transformers,
22 bar codes #62097815, #62098707, and #62542578, and determined the manifests
23 and tracking information were not consistent.

24 **FIRST CAUSE OF ACTION**

25 (Failure to Comply with Hazardous Waste Permit)
26 (Health & Saf. Code, § 25202, subd. (a))
27 (Cal. Code Regs., tit. 22, § 66270.30, subd. (a))

- 28 37. DTSC incorporates Paragraphs 1 through 36 as if fully set forth herein.

1 38. Health and Safety Code section 25202, subdivision (a), requires the owner or operator
2 of a permitted hazardous waste facility that holds a hazardous waste facilities permit to “comply
3 with the conditions of the hazardous waste facilities permit . . . , the requirements of this chapter,
4 and with the regulations adopted by [DTSC] pursuant to this chapter, including regulations which
5 become effective after the issuance of the permit.”

6 39. California Code of Regulations, title 22, section 66270.30, subdivision (a), requires
7 the holder of a hazardous waste facilities permit to “comply with all conditions of [its] permit,”
8 and makes “[a]ny permit noncompliance, except under the terms of an emergency permit, [] a
9 violation of the appropriate statute or regulation and [] grounds for enforcement action; for permit
10 termination, revocation and reissuance, or modification; or for denial of a permit renewal
11 application.”

12 40. Under the Permit, Part V, Special Condition 1, Defendants are “prohibited from
13 conducting any hazardous waste transfer, storage, treatment or other management activity unless
14 it is specifically described in this Permit or otherwise authorized by law.”

15 41. On or before April 26, 2016, one or more of the Defendants violated the Permit, Part
16 V, Special Condition 1, in that they stored containers of transformer equipment containing used
17 oil and/or oil contaminated with PCBs, both of which are managed as hazardous wastes under
18 California law, in an area which was not permitted for such storage. (Cal. Code Regs., tit. 22, div.
19 4.5, ch. 11, app’x VIII; Health & Saf. Code, § 25250.4, subd. (a).) The transformers were
20 accepted and stored in the Yard on March 24, 2016 and April 21, 2016.

21 42. This same permit violation was observed again during the August 2016 Inspection,
22 when DTSC inspectors noted that Defendants had stored 18 containers of transformer equipment
23 containing PCB-contaminated oil in the Yard. According to manifests produced by the Facility,
24 these containers were first stored in the Yard between July 21, 2016 and August 4, 2016.

25 43. Under the Permit, Part IV, Permitted Units and Activities, Unit 1, Unit-Specific
26 Special Condition 1, Defendants are prohibited from leaving containers that are being temporarily
27 staged within Unit 1 unattended when they are outside their designated storage area.
28

1 44. On or before January 25, 2018, one or more of the Defendants violated the Permit,
2 Part IV, Permitted Units and Activities, Unit 1, Unit-Specific Special Condition 1, in that they
3 stored 21 medium transformers, three large transformers, fifteen 55-gallon drums, and two plastic
4 totes, all containing hazardous waste, in a shipment truck bed in the loading/unloading area.
5 These containers were stored in the Yard for at least two weeks before DTSC inspectors
6 discovered them.

7 45. Part V, Special Condition 3 of the Permit requires that, “[i]n the event that any cracks,
8 gaps or tears are detected in a hazardous waste management unit or a secondary containment
9 system or device, repairs shall be initiated as soon as possible and completed within one week of
10 the discovery of the problem.” Further, Defendants must “notify DTSC within 24 hours whenever
11 a crack, gap or tear is found” and “[w]ithin seven days of discovery of the problem, . . . notify
12 DTSC in writing of the corrective measures that have been taken.” (*Ibid.*)

13 46. During or before the August 2016 Inspection, one or more of the Defendants violated
14 the Permit by failing to repair cracks, gaps, or tears that were observed at the active portion of a
15 hazardous waste area.

16 47. The Permit, Part III, General Condition 2(a) requires that Defendants “comply with
17 the terms and conditions of [the] Permit and the provisions of the Health and Safety Code and
18 California Code of Regulations . . . title 22, division 4.5.” As relevant here, California Code of
19 Regulations, title 22, section 66264.73, subdivisions (b)(1) and (2), mandates that Defendants
20 record in writing “a description and the quantity of each hazardous waste received, and the
21 method(s) and date(s) of its transfer, treatment, storage, or disposal at the facility,” and “the
22 location of each hazardous waste within the facility and the quantity at each location.” Moreover,
23 California Code of Regulations, title 22, section 66264.15, subdivision (d), requires an inspection
24 log at the Facility that, at minimum, “shall include the date and time of the inspection, the name
25 of the inspector, a notation of the observations made, and the date and nature of any repairs or
26 other remedial actions.”

27 48. On or before January 25, 2018, one or more of the Defendants violated the Permit,
28 Part III, General Condition 2(a), in that the Facility’s operating record used to track hazardous

1 wastes coming in and moving around the Facility did not match the actual storage and movement
2 dates for the reviewed time frame of February 2017 to February 2018, in violation of California
3 Code of Regulations title 22, section 66264.73, subdivisions (b)(1) and (2), which requires that
4 the Facility's operating record describe the dates of storage and the location within the Facility.

5 49. On or before January 25, 2018, one or more of the Defendants violated the Permit,
6 Part III, General Condition 2(a), in that the water observed in the area near the three non-RCRA
7 roll-off bins and the liquid observed in the bed of the truck where hazardous waste containers
8 were stored was not noted in the inspection log, in violation of California Code of Regulations,
9 title 22, section 66264.15, subdivision (d), which requires that a notation of observations be made
10 in the inspection log.

11 50. On or before July 25, 2016, one or more of the Defendants failed to comply with
12 Health and Safety Code § 25202, subdivision (a), and the Permit, Part V, Special Condition 1,
13 when an employee erroneously pumped approximately 25-30 gallons of TSCA-regulated waste
14 into a tank designated for non-TSCA PCB-contaminated waste oil without a permit or grant of
15 authorization from DTSC.

16 51. Pursuant to Health and Safety Code section 25189, subdivision (b), Defendants are
17 liable for civil penalties of up to \$70,000 for each violation of the HWCL or, in the alternative,
18 pursuant to Health and Safety Code section 25189.2, subdivision (b), each strict liability violation
19 of the HWCL. Health and Safety Code sections 25189, subdivision (b), and 25189.2, subdivision
20 (b), authorize the Court to impose civil penalties for each separate violation or, for continuing
21 violations, each day that the violations continue. For violations occurring before January 1, 2018,
22 the statutory maximum under the HWCL was twenty-five thousand dollars (\$25,000) for each
23 separate violation or, for continuing violations, for each day that the violations continue. (Stats.
24 2017, c. 499, § 3.)

25 52. DTSC is further entitled to injunctive relief to abate existing violations and to prevent
26 future violations of the HWCL under Health and Safety Code section 25181.

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1 **SECOND CAUSE OF ACTION**

2 (Failure to Properly Maintain Containment System)
3 (Cal. Code Regs., tit. 22, § 66264.175, subds. (a) & (b)(1))

4 53. DTSC incorporates Paragraphs 1 through 36 as if fully set forth herein.

5 54. Under California Code of Regulations, title 22, section 66264.175, subdivision (a),
6 “[c]ontainer transfer and storage areas shall have a containment system that is designed and
7 operated in accordance with [the requirements listed in subdivision (b) of this section].” Under
8 California Code of Regulations, title 22, section 66264.175, subdivision (b)(1), a containment
9 system must have a “base [underlying] the containers which is free of cracks or gaps and is
10 sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected
11 material is detected and removed.”

12 55. During or before the August 2016 Inspection, one or more of the Defendants violated
13 California Code of Regulations, title 22, section 66264.175, subdivisions (a) and (b)(1), in that
14 they failed to promptly repair the observed cracks, gaps, or tears as soon as possible in such a
15 manner that the coating on the floor within the containment system was virtually impermeable to
16 precipitation and wastes and thus sufficiently impervious to contain leaks, spills, and accumulated
17 precipitation until the collected material was detected and removed.

18 56. Pursuant to Health and Safety Code section 25189, subdivision (b), Defendants are
19 liable for civil penalties of up to \$70,000 for each violation of the HWCL or, in the alternative,
20 pursuant to Health and Safety Code section 25189.2, subdivision (b), each strict liability violation
21 of the HWCL. Health and Safety Code sections 25189, subdivision (b), and 25189.2, subdivision
22 (b), authorize the Court to impose civil penalties for each separate violation or, for continuing
23 violations, each day that the violations continue. For violations occurring before January 1, 2018,
24 the statutory maximum under the HWCL was twenty-five thousand dollars (\$25,000) for each
25 separate violation or, for continuing violations, for each day that the violations continue. (Stats.
26 2017, c. 499, § 3.)

27 57. DTSC is further entitled to injunctive relief to abate existing violations and to prevent
28 future violations of the HWCL under Health & Safety Code section 25181.

1 **THIRD CAUSE OF ACTION**

2 (Failure to Record)

3 (Cal. Code Regs., tit. 22, §§ 66264.15, subd. (d), 66264.73, subds. (b)(1)-(2))

4 58. DTSC incorporates Paragraphs 1 through 36 as if fully set forth herein.

5 59. Under California Code of Regulations, title 22, 66265.15, subdivision (d), the owner
6 or operator is required to “record inspections in an inspection log or summary” including “[a]t a
7 minimum . . . the date and time of the inspection, the name of the inspector, a notation of the
8 observations made, and the date and nature of any repairs or other remedial actions.”

9 60. On or about January 25, 2018, one or more of the Defendants failed to properly
10 record a notation of the observations of: 1) accumulated water in the area where three non-RCRA
11 roll-off bins are stored, adjacent to the secondary containment area of the blue unregulated tank
12 farm; and, 2) liquid in the bed of the truck where hazardous waste containers were stored illegally
13 in the loading area. Each of these observations was made by DTSC staff during DTSC’s
14 inspection.

15 61. California Code of Regulations, title 22, section 66264.73, subdivisions (b)(1) and (2)
16 mandate that, in its written operating record, Defendants record “a description and the quantity of
17 each hazardous waste received, and the method(s) and date(s) of its transfer, treatment, storage, or
18 disposal at the facility,” and “the location of each hazardous waste within the facility and the
19 quantity at each location.”

20 62. On or before January 25, 2018, one or more of the Defendants failed to properly
21 record the dates of transfer, treatment, and storage of each hazardous waste received, the location
22 of hazardous waste within the Facility, and the quantity at each location, as the operating record
23 did not match the actual storage and movement dates for the reviewed timeframe of February
24 2017 to February 2018.

25 63. Pursuant to Health and Safety Code section 25189, subdivision (b), Defendants are
26 liable for civil penalties of up to \$70,000 for each violation of the HWCL or, in the alternative,
27 pursuant to Health and Safety Code section 25189.2, subdivision (b), each strict liability violation
28 of the HWCL. Health and Safety Code sections 25189, subdivision (b), and 25189.2, subdivision

1 (b), authorize the Court to impose civil penalties for each separate violation or, for continuing
2 violations, each day that the violations continue.

3 64. DTSC is further entitled to injunctive relief to abate existing violations and to prevent
4 future violations of the HWCL under Health and Safety Code section 25181.

5 **FOURTH CAUSE OF ACTION**
6 (Failure to Properly Operate and Maintain Facility to Minimize Possibility of Release of
7 Hazardous Waste)
8 (Cal. Code Regs., tit. 22, § 66264.31)

9 65. DTSC incorporates Paragraphs 1 through 36 as if fully set forth herein.

10 66. Under California Code of Regulations, title 22, section 66264.31, “[f]acilities shall be
11 located, designed, constructed, maintained, and operated to minimize the possibility of a fire,
12 explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste
13 constituents to air, soil, or surface water which could threaten human health or the environment.”

14 67. During or before the August 2016 Investigation, one or more of the Defendants failed
15 to maintain and operate the Facility to minimize the possibility of a fire, explosion, or any
16 unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to
17 air, soil, or surface water by allowing several cubic yard boxes, some of which did not have
18 plastic liners, of core and scrap metals with oil residues from dismantling transformers to leak oil
19 onto the ground in the warehouse building.

20 68. Pursuant to Health and Safety Code section 25189, subdivision (b), Defendants are
21 liable for civil penalties of up to \$70,000 for each violation of the HWCL or, in the alternative,
22 pursuant to Health and Safety Code sections 25189.2, subdivision (b), each strict liability
23 violation of the HWCL. Health and Safety Code sections 25189, subdivision (b), and 25189.2,
24 subdivision (b), authorize the court to impose civil penalties for each separate violation or, for
25 continuing violations, each day that the violations continue. For violations occurring before
26 January 1, 2018, the statutory maximum under the HWCL was twenty-five thousand dollars
27 (\$25,000) for each separate violation or, for continuing violations, for each day that the violations
28 continue. (Stats. 2017, c. 499, § 3.)

