

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Department of the Navy
Naval Air Weapons, China Lake
1 Administration Circle
China Lake, California 93555-6100

ID No. CA2170023152

Respondent.

Docket HWCA20167286

CONSENT ORDER

Health and Safety Code
Section 25187

The California Department of Toxic Substances Control (Department) and Department of the Navy, Naval Air Weapons, China Lake (Respondent) enter into this Consent Order (Order) and agree as follows:

1. Respondent generates, handles, treats and/or stores hazardous waste at 429 E. Bowen in China Lake, California 93555 (Facility).
2. The Department authorized Respondent to manage hazardous waste by issuing a Hazardous Waste Facility Permit, No. 01-NC-06, on August 8, 2001 (Permit).
3. The Department inspected the Facility on November 6, 7 and 8, 2012; November 4, 5 and 6, 2014; and March 2, 3 and 4, 2016.
4. The Department alleges the following violations:
 - 4.1. Respondent violated the California Health and Safety Code, section 25201(a) in that Respondent failed to obtain the proper permit to treat hazardous waste. On or about November 4, 2014, the Department observed Respondent

operating a drum crushing unit operating under a conditionally exempt small quantity treatment tiered permit while inspecting the Drum Storage Area. Pursuant to Health and Safety Code section 25201.5 (a)(2), Respondent does not qualify to treat hazardous waste under a conditionally exempt small quantity treatment permit because of other hazardous waste management activity at the facility that requires the Respondent to obtain a hazardous waste facilities permit.

4.2. Respondent violated the California Code of Regulations, title 22, section 66262.34(f), in that on or about November 4, 2014, Respondent failed to properly label containers of hazardous waste. On or around November 4, 2014 the Department observed five wooden pallets with containers of hazardous paint waste, stored in the Public Works Accumulation Area at the Facility, without a hazardous waste label or the words "Hazardous Waste" and the date on which accumulation begins clearly marked on each container.

4.3. Respondent violated the California Code of Regulations, title 22, sections 66262.34(a)(4) and 66265.35 in that on or around November 4, 2014, Respondent failed to provide adequate aisle space between two rows of 55-gallon drums containing hazardous waste in the Public Works Accumulation Area. The Department measured 17-inches of aisle space between the two rows. Respondent is required to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

4.4. Respondent violated the California Code of Regulations, title 22, section 66273.33.5(a)(1)(B)(1.a) in that on or around November 4, 2014,

Respondent failed to properly store universal wastes. The Department observed approximately 100 Universal Wastes (printers, CRTs, PC towers, and computer monitors) that were being managed directly on the warehouse floor (concrete) in the Defense Reutilization and Marketing Office warehouse at the Facility. Pursuant to California Code of Regulations, title 22, section 66273.33.5(a)(1)(B)(1.a)

Respondent is required to contain any electronic device in a manner that prevents breakage and release of components to the environment.

4.5. Respondent violated the California Code of Regulations, title 22, sections 66273.34(d) and 66273.34(e) in that on or about November 4, 2014 and March 3, 2016, Respondent failed to properly label universal waste devices. On November 4, 2014, the Department observed approximately 100 Universal Waste-Electronic Devices (printers, PC towers, and computer monitors) and twenty Cathode Ray Tubes (CRTs) being stored without universal waste labels. On March 3, 2016, the Department observed seven pallets of universal wastes (projectors, screens, CRTs, computer towers, and videocassette recorders) being stored without universal waste labels. Respondent is required pursuant to California Code of Regulations, title 22, section 66273.34(d) to label or mark clearly with the phrase "Universal Waste-Electronic Device(s)" each individual electronic device or a container or pallet in or on which the electronic devices are contained. Respondent is also required pursuant to California Code of Regulations, title 22, section 66273.34(e) to label with the phrase "Universal Waste-CRT(s)" each individual CRT or a container or pallet on which CRTs are contained.

4.6. Respondent violated the California Code of Regulations, title 22, section 66273.35(b) in that on or around November 4, 2014 and March 2, 2016, Respondent failed to properly label universal waste devices. On November 4, 2014, the Department observed approximately 100 Universal Waste-Electronic Devices (printers, PC towers, and computer monitors) and 20 Cathode Ray Tubes (CRTs) being stored without accumulation start dates. On March 2, 2016, the Department observed seven pallets of universal wastes (projectors, screens, CRTs, computer towers, and videocassette recorders) being stored without accumulation start dates. Respondent was unable to identify how long the universal wastes had been stored. Respondent is required pursuant to California Code of Regulations, title 22, section 66273.35(b) to demonstrate the length of time the universal waste has been accumulated from the date it became a waste or was received.

4.7. Respondent violated the California Code of Regulations, title 22, sections 66262.34(a)(1) and 66265.174 in that on or about November 4, 2014, Respondent failed to conduct weekly inspections at the generator storage areas at the Facility from January 7, 2014 to April 16, 2014. The Department reviewed Respondent's weekly inspection records from December 2012 to November 2014 and found no record of weekly inspections from January 7, 2014 to April 16, 2014, or approximately 14 weeks. Respondent is required pursuant to California Code of Regulations, title 22, section 66265.174 to inspect areas used for container storage or transfer, at least weekly, looking for leaking containers and for deterioration of containers.

4.8. Respondent violated the California Code of Regulations, title 22, sections 66262.34(a)(4) and 66265.16(c) in that on or about November 4, 2014, Respondent failed to provide annual training to employees. While reviewing Respondent's training records of the Respondent's employees who work in the Public Works Area, the Department was informed that one of the Respondent's employees did not complete annual hazardous waste training. Respondent is required pursuant to California Code of Regulations, title 22, section 66265.16(c) to have facility personnel take part in an annual review of the training required in California Code of Regulations, title 22, section 66265.16(a).

4.9. Respondent violated the California Code of Regulations, title 22, sections 66262.34(a)(1), 66265.31, and 66265.173(b) in that on or around November 6, 2012, Respondent failed to maintain and operate the Facility in a way that minimizes the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. The Department observed a release of used oil onto the soil from two electrical transformers that were stored in inadequate secondary containment. Respondent is required pursuant to California Code of Regulations, title 22, section 66265.31 to maintain and operate the facility to minimize the possibility of a release of hazardous waste to the air, soil, or surface water. Respondent is also required pursuant to California Code of Regulations, title 22, section 66265.173(b) to not open, handle, or store containers containing hazardous waste in a manner which may rupture the container or cause it to leak.

4.10. Respondent violated the California Code of Regulations, title 22, sections 66262.34(a)(3) and (f) in that on or about November 6, 2012, Respondent failed to label or clearly mark containers storing hazardous waste. The Department observed Respondent store 106 used electrical transformers containing used oil that were not labeled or clearly marked with the words "Hazardous Waste" and/or have the date on which accumulation begins. Respondent is required pursuant to California Code of Regulations, title 22, section 66262.34(a)(3) and (f) to properly label hazardous waste containers.

4.11. Respondent violated the California Health and Safety Code section 25201(a) in that on or about November 6, 2012, Respondent stored approximately 106 containers of hazardous waste for more than 90-days. The Department observed Respondent stored used electrical transformers containing used oil near the equipment yard. A representative of the Respondent informed the Department that the observed transformers had been stored there for more than two years. Respondent does not have authorization to store hazardous waste for more than 90-days at this area of the Facility.

4.12. Respondent violated the California Code of Regulations, title 22, sections 66262.34(a)(1) and 66265.1084(a)(2) in that on or about November 6, 2012, Respondent failed to determine the average volatile organic concentration of hazardous waste at the point of waste origination for each hazardous waste placed in a hazardous waste management unit. Respondent stored hazardous waste containing unknown volatile organic concentrations in nine underground storage tanks in the Salt Wells laboratories at the Facility. Respondent failed to adequately

determine the average volatile organic concentrations of hazardous waste as required pursuant to California Code of Regulations, title 22, section 66265.1084.

5. The parties wish to avoid the expense of litigation and to ensure compliance.

6. Jurisdiction exists pursuant to Health and Safety Code section 25187.

7. Respondent waives any right to a hearing in this matter.

8. Respondent agrees that it will not assert equitable defenses including but not limited to laches, in connection with the Department's use of violations alleged in paragraphs 4.1 through 4.12 in future enforcement actions or permitting proceeding(s) and/or permit decisions.

9. This Consent Order shall constitute full settlement of the violations alleged above, as well as any other allegations of violations arising from or otherwise based in whole or in part on the inspections referenced in Section 3 of this Consent Order, but does not limit the Department from taking appropriate enforcement action concerning other violations including, but not limited to, the violations identified during an inspection on March 27, 2019.

10. Department reserves its authority under the Hazardous Waste Control Law to 1) enforce the Consent Order, 2) use the violations in the Consent Order to seek enhanced penalties in any subsequent administrative or civil action to show a pattern or course of conduct or a history of non-compliance, and 3) use the violations alleged in the Consent Order in Department's permit decision process.

11. Respondent does not admit to the violations alleged in this Consent Order. However, the Parties agree that for any of the specified matters described in

Paragraph 10, above, the violations alleged in this Consent Order will be deemed proven without any need for testimony or other evidence to the extent they are used by the Department as evidence in an administrative or civil proceeding as a basis for enhanced penalties; and/or for permitting proceeding(s), decision(s), and/or process(es); and/or to enforce this Consent Order. Further, Respondent agrees that, in any of the specified matters in Paragraph 10, above, Respondent will not dispute the facts underlying the violations alleged in this Consent Order or the Department's use of the violations alleged in this Consent Order as a basis for enhanced penalties; and/or for permitting proceeding(s), decision(s), and/or process(es); and/or to enforce this Consent Order.

SCHEDULE FOR COMPLIANCE

12. The violations alleged above in Sections 4.1 through 4.12 have been corrected.

12.1. Respondent shall comply with all applicable laws concerning the storage and management of hazardous waste, including, but not limited to, the following provisions:

12.1.1 Respondent shall not treat hazardous waste without obtaining a permit from the Department in violation of the Health and Safety Code 25201(a).

12.1.2 Respondent shall properly label containers storing hazardous wastes in accordance with California Code of Regulations, title 22, section 66262.34(f).

12.1.3 Respondent shall provide adequate aisle space in accordance with California Code of Regulations, title 22, sections 66262.34(a)(4) and 66265.35.

12.1.4 Respondent shall properly store universal wastes in accordance with California Code of Regulations, title 22, section 66273.33.5(a)(1)(B)(1.a).

12.1.5 Respondent shall properly label universal waste electronic devices in accordance with California Code of Regulations, title 22, sections 66273.34(d) and 66273.34(e).

12.1.6 Respondent shall label universal waste electronic devices with accumulation start dates in accordance with California Code of Regulations, title 22, section 66273.35(b).

12.1.7 Respondent shall conduct weekly inspections at generator storage areas in accordance with California Code of Regulations, title 22, sections 66262.34(a)(1) and 66265.174.

12.1.8 Respondent shall provide annual training to employees working with or around hazardous wastes in accordance with California Code of Regulations, title 22, sections 66262.34(a)(4) and 66265.16(c).

12.1.9 Respondent shall operate the facility in a manner that minimizes the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment in accordance with California Code of Regulations, title 22, sections 66262.34(a)(1), 66265.31, and 66265.173(b).

12.1.10 Respondent shall label electrical transformers used to store hazardous waste oil in accordance with California Code or Regulation, title 22, sections 66262.34 (a)(3) and 66262.34(f).

12.1.11 Respondent shall store electrical transformers that contain hazardous waste oil for no more than 90 days in accordance with Health and Safety Code 25201(a).

12.1.12 When required by regulation, the Respondent shall determine the average volatile organic concentration of hazardous waste at the point of waste origination for each hazardous waste placed in a hazardous waste management unit in accordance with California Code of Regulation, title 22, sections 66262.34(a)(1) and 66265.1084(a)(2).

PAYMENTS

13. Within 60 days of the effective date of this Consent Order, Respondent shall pay the Department a total of \$105,230.00, as a penalty. Respondent's check or Electronic Fund Transfer (EFT) shall be made payable to Department of Toxic Substances Control.

If Respondent makes the above payment by EFT, it shall ask the Defense Finance and Accounting Service to include the following with the EFT for the purpose of identification: Docket No.: HWCA20167286 (Respondent Department of the Navy, Naval Air Weapons, China Lake, ID No.: CA2170023152).

As soon as Respondent has requested payment to the Department, Respondent shall notify the Department's Accounting Office by e-mail (accounting@dtsc.ca.gov), with a copy of the e-mail to April Ranney (April.Ranney@dtsc.ca.gov) and Stevie Asao (Stevie.Asao@dtsc.ca.gov).

Respondent will endeavor to confirm that the Defense Finance and Accounting Service has transmitted the EFT payment to the Department.

If Respondent makes the above payment by check, Respondent shall deliver the check 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

And a photocopy of the check shall be sent to:

Stevie Asao
Senior Attorney
Office of Legal Counsel
Department of Toxic Substances Control
1001 "I" Street
Sacramento, California 95814

April Ranney
Environmental Program Manager
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710

If Respondent fails to make payment as provided above, the Department reserves the right to seek interest on any portion of the total amount set forth above that remains unpaid more than 60 days after the effective date of this Consent Order, and to seek all costs incurred by the Department in pursuing collection, including attorney's fees. Respondent disputes the Department's authority to impose interest charges on a federal agency, or to recover attorney's fees or other collection costs from a federal agency, and reserves its right to dispute any such imposition of interest or collection costs by the Department.

OTHER PROVISIONS

14. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

14.1. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may, to the extent consistent with applicable law, subject Respondent to civil penalties 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 provisions of law, as applicable.

14.2. Parties Bound: This Consent Order shall, to the extent consistent with applicable law, apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

14.3. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

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

14.5. 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.

14.6. Anti-Deficiency Act (ADA): Nothing in this Order shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, (ADA) 31 U.S.C. Sec. 1341. Respondent shall make every reasonable effort to ensure that funds are available for purposes of complying with this Order. In the event that funds are not available, the Parties will negotiate a revised schedule as soon as practicable.

SIGNATORIES

15. Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Order.

Original signed by J.T. Vaughan

Dated: 09 NOV 2021

J.T. Vaughan
Captain, U.S. Navy
Commanding Officer

Original signed by April Ranney

Dated: November 29, 2021

April Ranney
Environmental Program Manager I
Department of Toxic Substances Control