

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Clean Harbors San Jose, LLC
1021 Berryessa Road
San Jose, California 95133

ID No. CAD059494310

Respondent.

Docket No. HWCA20197508

CONSENT ORDER

Health and Safety Code
Section 25187

The California Department of Toxic Substances Control (DTSC) and Clean Harbors San Jose, LLC (Respondent), a Delaware entity doing business in California, (collectively, the "Parties") enter into this Consent Order and agree as follows:

DEFINITIONS

1. The following terms used in this Consent Order shall have the meaning set forth below:

1.1. "DTSC Action(s) and Proceeding(s)" shall mean all enforcement, regulatory, or other types of actions, proceedings, matters, and decisions (for purposes of this Consent Order, "decisions" includes determinations), including those pertaining to any Permit, other authorization, or the Violations Scoring Procedure Program, with regard to Respondent, brought or pursued by or against DTSC, any DTSC official or employee, or any DTSC-administered account, either as a party or a real party in interest, whether or not in the name of the People of the

State of California. "DTSC Action(s) and Proceeding(s)" shall not include actions, proceedings, or matters that involve Respondent and third parties to which DTSC, any DTSC official or employee, or any DTSC-administered account, is neither a party nor a real party in interest.

1.2. "Facility" shall mean the hazardous waste facility located at 1021 Berryessa Road, San Jose, California 95133 wherein Respondent generates, handles, treats, and stores hazardous waste.

1.3. "Include(s)" or "Including" shall mean "include(s) without limitation" or "including without limitation," respectively.

1.4. "Inspection" shall mean the Compliance Evaluation Inspection of the Facility that DTSC conducted on February 12-13, 2019.

1.5. "Permit" shall mean the hazardous waste facility permit issued by DTSC to Respondent that was in effect at the time of the Inspection.

1.6. "Violations Scoring Procedure Program" or "VSP Program" shall mean DTSC's implementation of Health and Safety Code section 25200.21 and associated regulations at California Code of Regulations, title 22, chapter 21, article 3.

VIOLATIONS

2. DTSC alleges the following violations from the Inspection:

2.1. Respondent violated Health and Safety Code, section 25202(a), California Code of Regulations, title 22, sections 66264.192(i) and 66270.30(a), and Part V.1 "Inspection Schedule" of the Permit, in that on or about February 12, 2019, Respondent operated 13 permitted hazardous waste tanks and, with respect to each of those 13 tanks, failed to have a current, certified, written assessment

and their associated secondary containment. Those 13 tanks are identified as follows: Process Water Storage Tank #12; Inorganic Wastewater Treatment System Tanks #28, 29, 30; Wastewater Storage Tanks #48, 51, 55; Organics Gravimetric Separation Tanks #61, 62, 63, 64; and Organic/water Mixtures Blending Tanks #65, 66. The last certified written assessment for each of the 13 tanks is dated June 19, 2013. These certified written assessments expired on June 19, 2018.

2.2. Respondent violated Health and Safety Code, section 25202(a), California Code of Regulations, title 22, section 66270.30, and the Part "B" Application of the Permit, in that on or about February 12, 2019, Respondent did not have any of the annual ultrasonic thickness testing reports for each hazardous waste tank onsite certified by a Professional Engineer registered in the State of California, as required by the Part "B" Application consisting of volumes I and II ("Operation Plan"), both dated October 23, 2002.

2.3. Respondent violated California Code of Regulations, title 22, sections 66264.15(a) and (d), in that on or about February 12, 2019, Respondent did not inspect areas of the Facility and record inspections in the inspection log. On February 12, 2019, DTSC observed the dead sump in Container Storage Area 1 filled to the top with liquid. DTSC reviewed Respondent's Container Storage Area 1 daily inspection logs for February 11, 2019 and February 12, 2019. The daily inspection logs' section titled "sumps" was marked with "pass" and the observation section was blank, incorrectly indicating no issues were observed relating to the sumps.

2.4. Respondent violated California Code of Regulations, title 22, section 66264.175(b)(5), in that on or about February 12, 2019, Respondent failed to remove liquid from a sump or collection area in a timely manner. DTSC observed two dead sumps located in Container Storage Areas 1 and 14 to be filled to the top with liquid.

2.5. Respondent violated Health and Safety Code, section 25202(a), California Code of Regulations, title 22, sections 66264.175(b)(l) and 66270.30(a), and Page IV-5 Section 5.a.1. "Secondary Containment for Containers - Basic Design" of the Operation Plan, in that on or about February 12, 2019, Respondent failed to maintain the secondary containment system. DTSC observed the secondary containment within Container Storage Area 14 was deteriorated. The epoxy sealant was missing from large areas of the secondary containment.

2.6. Respondent violated Health and Safety Code sections 25201 and 25202(a), California Code of Regulations, title 22, section 66270.30(a), and Part IV, Unit #26, Specific Condition 2 of the Permit, in that on or about February 12, 2019, Respondent stored twenty-one 55-gallon drums of hazardous waste for over 10 days in an area permitted to store waste for a maximum of 10 days.

2.7. Respondent violated Health and Safety Code, section 25202(a), California Code of Regulations, title 22, sections 66264.35 and 66270.30(a), and Part IV, Unit #1, Special Condition 2 of the Permit, in that on or about February 12, 2019, Container Storage Area 2 had less than the two feet of aisle spacing required by the Permit.

3. Respondent has corrected the violations noted in paragraphs 2.1 – 2.7 above.

SCOPE AND EFFECT OF CONSENT ORDER

4. The Parties wish to avoid the expense of litigation and to ensure prompt compliance.

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

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

7. This Consent Order shall constitute full settlement of the violations alleged above but does not limit DTSC from taking appropriate enforcement action concerning other violations, except to the extent provided in this Consent Order.

8. The Parties agree that the violations alleged in this Consent Order are admitted and deemed proven for any purpose in any DTSC Action(s) and Proceeding(s). Such purposes may include seeking enhanced penalties and/or to show a pattern, course of conduct, and/or a history of non-compliance. In any DTSC Action(s) and Proceeding(s), Respondent shall not defend against, challenge, or dispute DTSC's use of, or reliance on, the violations alleged in this Consent Order as being deemed admitted and deemed proven.

COMPLIANCE REQUIREMENTS

9. Respondent shall immediately comply with the Hazardous Waste Control Law (Health & Saf. Code, § 25100 et seq.) and its implementing regulations (California Code of Regulations, title 22, section 66260.1, et seq.), as well as the hazardous waste facility permit issued to Respondent effective June 18, 2021, at the Facility and in connection with its operations.

PAYMENTS

10. Within 30 days of the Effective Date of this Consent Order, as defined in paragraph 14, Respondent shall pay DTSC a total of \$62,000. Respondent's

check or electronic funds transfer (EFT) shall be made payable to the Department of Toxic Substances Control. Respondent shall make payment by EFT, as directed in the "Electronic Fund Transfer Instructions" provided by DTSC to Respondent. As soon as the EFT payment is completed, Respondent shall notify DTSC's Accounting Office by email (accounting@dtsc.ca.gov), with LeeAnn Young (leeann.young@dtsc.ca.gov) and Colin Roberts (colin.roberts@dtsc.ca.gov) copied. If the payment is made by check, it shall identify Respondent and Docket Number as shown in the caption of this Consent Order, 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 via email to LeeAnn Young (leeann.young@dtsc.ca.gov) and Colin Roberts (colin.roberts@dtsc.ca.gov).

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 DTSC in pursuing collection, including attorney's fees.

OTHER PROVISIONS

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

12. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to costs, penalties, and/or punitive

damages, including without limitation any costs incurred by DTSC 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.

13. Parties Bound: This Consent Order shall 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 DTSC and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

14. Effective Date: The Effective Date of this Consent Order is the date it is signed by DTSC.

15. Integration: This Consent Order constitutes the entire agreement between the Parties and may not be amended, supplemented, or modified, except by express written agreement signed by authorized representatives of each of the Parties.

16. Future Statutory, Regulatory, or Permitting Changes: Nothing in this Consent Order shall exempt or excuse Respondent from complying with existing law, or with meeting any more stringent requirements that may be imposed by applicable law or changes in the applicable law. Moreover, nothing in this Consent Order shall exempt or excuse Respondent from complying with any future hazardous waste facility permits, permit amendments, permit modifications, or authorizations issued to or applicable to the Facility.

17. Continuing Jurisdiction: In the event that any provision of this Consent Order, or the application of any such provision to any Party or set of circumstances,

is for any reason or to any extent determined to be invalid, unlawful, void or unenforceable (hereafter collectively "Void"), the Parties hereto shall negotiate in good faith to modify this Consent Order in a mutually acceptable manner so as to produce a Consent Order so as to effect the Parties' original intent as closely as possible and to the fullest extent possible without any Void provisions. In the event that the Parties are unable to mutually agree on such a modification to this Consent Order, the Court or other tribunal having jurisdiction to do so is authorized, and requested, to modify this Consent Order so as to affect the Parties' original intent as closely as possible and to the fullest extent possible without any Void provisions.

18. Authority to Enter Into this Consent Order: Each signatory to this Consent Order certifies that such signatory is fully authorized by the Party such signatory represents to enter into this Consent Order and to execute it on behalf of such Party.

19. Counterparts: This Consent Order may be executed and delivered in one or more counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

Dated: 8/17/2022

Original signed by Eric Gerstenberg

Eric Gerstenberg
President
Respondent

Original signed by LeeAnn Young

Dated: 08-18-22

LeeAnn Young
Senior Environmental Scientist (Supervisor)
Enforcement and Emergency Response Division
Department of Toxic Substances Control