

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Naval Air Weapons Station, China Lake
429 East Bowen Road
China Lake, California 93555

EPA ID No. CA2170023152

Respondent.

Docket HWCA: HWCA20197538

CONSENT ORDER

Health and Safety Code
Section 25187

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

1. Respondent operates a permitted Hazardous Waste Storage and Treatment Facility located at 429 East Bowen Road in China Lake, California (Facility), as well as numerous hazardous waste satellite accumulation areas and 90-day generator areas.
2. The Facility consists of permitted hazardous waste units including the Container Storage Area.
3. The Department inspected the Respondent's Facility on March 26-27, 2019, where the Respondent handles hazardous waste. Based on the inspection, the Department identified several violations of the Hazardous Waste Control Law (HWCL), Health & Safety Code, section 25100 et seq., and its implementing regulations set forth in the California Code of Regulations, title 22, section 66260.1, et seq. (Title 22 regulations).

DEFINITIONS

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

4.1. "Facility" shall mean Naval Air Weapons Station located at 429 East Bowen Road, China Lake, California.

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

4.3. "Inspection" shall mean the "Compliance Evaluation Inspection", or "CEI", of the Facility that the Department conducted on March 26-27, 2019.

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

VIOLATIONS

5. The Department alleges the following violations from the Inspection:

5.1. Respondent violated California Code of Regulations (Cal. Code Regs.), title 22, section 66264.177, in that on or about March 26, 2019, Respondent failed to segregate multiple containers of incompatible hazardous waste in storage bay #5 of the Container Storage Unit (CSU).

5.2. Respondent violated Cal. Code Regs., title 22, section 66270.30(a), and Permit Part B Section VI(B)(1)(A), in that on or about March 26, 2019, Respondent failed to follow the operational procedures as specified in the Permit Part B, section VI (B)(1)(A) by placing unprocessed containers into storage bays within the CSU.

5.3. Respondent violated Cal. Code Regs., title 22, section 66264.73(b) and Permit Part B Section X(A) in that on or about March 26, 2019 Respondent's operating record (e.g., the inventory log) did not include a description, quantity, location, and quantity of much of the hazardous waste stored within the CSU at the time of the inspection.

5.4. Respondent violated Cal. Code Regs., title 22, section 66264.35, 66270.30(a), and Permit Part B Section VI(B)(1)(f), in that on or about March 26, 2019, Respondent failed to provide sufficient aisle spacing within the CSU to allow unobstructed movement of facility staff to perform emergency procedures.

5.5. Respondent violated Cal. Code Regs., title 22, section 66264.171, in that on or about March 26, 2019, Respondent failed to transfer hazardous waste from leaking containers into containers that are in good condition being stored in the CSU.

5.6. Respondent violated Cal. Code Regs., title 22, section 66266.81(b)(1), in that on or about March 26, 2019, Respondent failed to contain damaged lead-acid batteries in a closed, structurally sound container being stored in the CSU.

5.7. Respondent violated Cal. Code Regs., title 22, section 66270.30(a), and Permit Part B Section VI(C)(1)(e), in that on or about March 26, 2019, Respondent failed to identify leaking and deteriorated containers during their weekly inspections be stored in the CSU.

5.8. Respondent violated Cal. Code Regs., title 22, section 66264.52(d), in that on or about March 26, 2019, Respondent's contingency plan, titled August 2017 Spill Response Plan, did not list or identify a specific emergency coordinator or provide a phone number for the emergency coordinator.

5.9. Respondent violated Cal. Code Regs., title 22, section 66270.30 and Permit Part A, section IV and Permit Part B, section I(J), in that on or about March 26, 2019, Respondent stored hazardous waste in its CSU (comprised of the drums storage area and the bin storage area) in amounts that exceeded the maximum storage capacity for the area allowed by its Permit.

6. Respondent has corrected the violations noted in Paragraphs 5.1 – 5.9 above.

SCOPE AND EFFECT OF CONSENT ORDER

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

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

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

10. 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 5.1 through 5.9 in future enforcement actions or permitting proceeding(s) and/or permit decisions.

11. 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 inspection referenced in Paragraph 3 of this Consent Order, but does not limit the Department from taking appropriate enforcement action concerning other violations, except to the extent provided in this Consent Order.

12. 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.

13. 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 12, 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 12, 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.

COMPLIANCE REQUIREMENTS

14. Respondent shall immediately comply with all applicable provisions of 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.), at the Facility and in connection with its operations, including, but not limited to:

14.1. California Code of Regulations (Cal. Code Regs.), title 22, section 66264.177 and 66270.30(a), by separating containers of incompatible wastes from one another by means of a dike, berm, wall, or other device.

14.2. California Code of Regulations (Cal. Code Regs.), title 22, section 66270.30(a), and Permit Part B Section VI(B)(1)(A), by following the operational procedures as specified in the Permit.

14.3. California Code of Regulations (Cal. Code Regs.), title 22, section 66264.73(b) and Permit Part B Section X(A), by maintaining an operating record at the facility, including a description and the quantity of each hazardous waste received, the location of such waste, and quantity in each location of the Facility.

14.4. California Code of Regulations (Cal. Code Regs.), title 22, section 66264.35 and 66270.30(a) and Permit Part B Section VI(B)(1)(f), by providing sufficient aisle spacing within the CSU to allow unobstructed movement of facility staff to perform emergency procedures, such as unobstructed firefighting or container moving procedures.

14.5. California Code of Regulations (Cal. Code Regs.), title 22, section 66264.171, by transferring hazardous waste from leaking containers into containers that are in good condition.

14.6. California Code of Regulations (Cal. Code Regs.), title 22, section 66266.81(b)(1), by containing damaged lead acid batteries so as to minimize the release of acid and lead, and to protect the handlers and the environment, including at a minimum the storage of the damaged battery in a nonreactive, structurally secure, closed container capable of preventing release of acid and lead.

14.7. California Code of Regulations (Cal. Code Regs.), title 22, section 66270.30(a) and Permit Part B Section VI(C)(1)(e), by inspecting the CSU weekly for signs of spills, leaks, or damaged containers.

14.8. California Code of Regulations (Cal. Code Regs.), title 22, section 66264.52(d), by maintaining a contingency plan that lists names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator.

14.9. California Code of Regulations (Cal. Code Regs.), title 22, section 66270.30 and Permit Part A, section IV and Permit Part B, section I(J), by complying with maximum storage capacities allowed by the permit.

PAYMENTS

15. Within 60 days of the Effective Date of this Consent Order, as defined in Paragraph 19, Respondent shall pay the Department a total of \$151,200.00, as a penalty. Respondent's check or electronic funds transfer (EFT) shall be made payable to the 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.: HWCA20197538 (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 Kevin Sanchez (Kevin.Sanchez@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

A photocopy of the check shall be sent:

To: Kevin Sanchez
Senior Environmental Scientist (supervisory)
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826

Stevie Asao
Senior Attorney
Office of Legal Counsel
Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, CA 91311

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

16. 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.

17. 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 applicable provisions of law.

18. 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.

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

20. 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.

21. Future Statutory, Regulatory, or Permitting Changes: Nothing in this Consent Order shall exempt or excuse Respondent from complying with existing

applicable 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 applicable future hazardous waste facility permits, permit amendments, permit modifications, or authorizations issued to or applicable to the Facility.

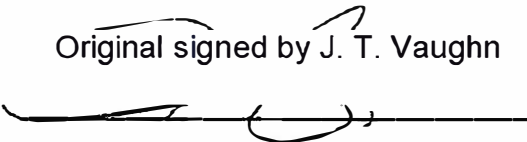
22. Modification of Consent Order: In the event that any provision of this Consent Order, or the application of any such provision to any Party or set of circumstances, is for any reason or to any extent determined to be invalid, unlawful, void or unenforceable (hereafter collectively "Void"), the Parties 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, any court or other tribunal which is then determined to have jurisdiction and to be the proper venue for resolution of the issue of any required modification to this Consent Order, subject to resolution of any potential legal proceedings addressing jurisdiction and/or venue, will hereby be deemed to be authorized, and requested, to modify this Consent Order so as to effect the Parties' original intent as closely as possible and to the fullest extent possible without any Void provisions.

23. 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.

24. 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.

25. 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.

26. 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.

Dated: 10 Jul 2023 

Original signed by J. T. Vaughn

Name: J. T. Vaughn

Title: Captain, U.S. Navy

Commanding Officer

Dated: 08/15/2023 

Original signed by Kevin Sanchez

Name: Kevin Sanchez

Title: Unit Chief

Department of Toxic Substances Control