

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Delta Scrap & Salvage Inc.
1371 Main Street
Oakley, CA 94561

EPA ID No. CAL000206469

Respondent.

Docket HWCA20247789

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control ("Department") and Delta Scrap & Salvage Inc. ("Respondent") (collectively, "Parties") enter this Consent Order and agree as follows:

1. Respondent is a scrap metal recycling facility as defined in California Health and Safety Code ("HSC") section 25211, which facility may generate hazardous waste at 1371 Main Street, Oakley, California 94561 ("Site").

2. Respondent has operated since approximately 1974 and serves an important community and industry function to provide recycling services, including through the CalRecycle program. The facility is currently one of only a very few CalRecycle facilities still open and operating in the greater vicinity.

3. The Department inspected the Site on May 29, 2019, and June 3, 2019.

4. The Department alleges the following violations:

4.1 The Respondent violated California Code of Regulations, Title 22,

sections 66262.34(a)(4) and 66265.31, in that, on or before May 29, 2019, and June 3, 2019, Respondent failed to maintain and operate the facility to minimize the release of hazardous waste or hazardous waste constituents to the air, soil, or surface water which could threaten human health and the environment by allowing metal recycling activities such as the scrap movement, baling, and storage on unpaved ground which contaminated the soil with copper, lead, and zinc above the California hazardous waste regulatory total threshold limit concentration ("TTLC") and the soluble threshold limit concentration ("STLC") for these metals.

4.2 The Respondent violated HSC section 25212(a) in that, on or before May 29, 2019, and June 3, 2019, Respondent failed to ensure proper removal of compressor oil, a type of Material that Requires Special Handling ("MRSH") by a Certified Appliance Recycler ("CAR") from approximately five to ten compressors that were undrained and showed some leaking onto the steel plates covering unpaved ground.

4.3 The Respondent violated HSC section 25250.5 in that, on or before May 29, 2019, and June 3, 2019, Respondent spilled used oil on steel plates covering unpaved ground evidenced by Department staff collecting a sample of oily soil which was analyzed and determined the presence of diesel (1.83%) and motor oil (1.61%), which establishes oil contamination of soil.

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

6. Jurisdiction exists pursuant to HSC section 25187.

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

8. This Consent Order shall constitute full settlement of the violations alleged above but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. The Respondent has corrected the violations described in Sections 4.2 and 4.3 within this Consent Order. The Respondent disputes the violation alleged in Section 4.1.

COMPLIANCE REQUIREMENTS

10. Definitions: All terms shall be interpreted consistent with Chapter 6.5 of Division 20 of the California Health and Safety Code ("Chapter 6.5") and the regulations promulgated in Division 4.5 of Title 22 of the California Code of Regulations ("Title 22").

10.1 "Metallic Discard" as it is defined in Public Resources Code ("PRC") section 42161.

10.2 "Recycling Residue" as it is defined in PRC section 42163.

10.3 "Vehicle" as it is defined in PRC section 42165.

10.4 "Major Appliance" as it is defined in PRC section 42166 (HSC section 25211)

10.5 "Materials that Require Special Handling" ("MRSH") as it is defined in PRC section 42167 (HSC section 25211)

10.6 "Certified Appliance Recycler" ("CAR") as defined in HSC section 25211.

10.7 "Scrap Recycling Facility" as defined in HSC section 25211.

10.8 "Person" includes any natural person, firm, unincorporated

association, partnership, corporation, trust, or other entity included in HSC section 25118.

11. Respondent shall comply with the following:

11.1 Pursuant to HSC sections 25181 and 25184, Respondent shall comply with the Hazardous Waste Control Law ("HWCL") in connection with the management of hazardous waste, used oil, and MRSH at and from the Site.

11.2 MRSH Removal: Respondent shall comply with HSC section 25212 and PRC section 42175 by ensuring that MRSH has been or will be removed from Major Appliances in which they are contained prior to storing in piles and crushing for transport or transferring to a baler, shear, or shredder for recycling. In this context, Respondent does not accept Major Appliances from the public. As such, the only "Major Appliances" that may be subject to this Section 11.2 are commercial vending machines, which Respondent has in the past received pursuant to contract. Respondent has terminated that arrangement such that compliance with HSC section 25211.1 will not be an issue going forward. Respondent shall otherwise comply with applicable recordkeeping requirements provided in HSC section 25211.3.

11.3 Prohibition on acceptance:

A. Respondent shall not accept from off-site locations hazardous waste or hazardous waste constituents including, but not limited to, the following: contaminated soil (e.g. soil contaminated with heavy metals), used oil in sealed units, non-empty refrigerant compressors and compressed gas cylinders, lithium batteries, gasoline, Polychlorinated Biphenyls ("PCB") and mercury-containing

items.

B. If Respondent does inadvertently accept hazardous waste and/or hazardous waste constituents from off-site locations, as identified in paragraph 11.3.A above, Respondent shall make a hazardous waste determination, containerize, label, and manage the hazardous waste and hazardous waste constituents in accordance with the generator requirements of Title 22, Division 4.5, Chapter 12, and notify DTSC through the CalEPA Environmental Complaint system online (<https://calepacomplaints.secure.force.com/complaints/Complaint>) or the Waste Alert Hotline (1-800-698-6942) of the illegal acceptance within 48 hours of discovery of the illegal acceptance.

11.4 Load Checks: Respondent shall implement a load check protocol and load check training program. The protocol and training program shall address various factors including, but not limited to, a protocol to verify no hazardous waste is being unloaded with incoming metal.

11.5 Minimization of Releases: Respondent shall maintain and operate the Site to minimize 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 as required by California Code of Regulations, Title 22, section 66265.31, including, but not limited to:

A. Storage/processing:

(i) Respondent shall store and process metallic discards,

and recycling residues from consolidating, loading, unloading, crushing, baling, and/or shearing activities on a surface designed and constructed of materials to prevent migration of hazardous constituents into the surface. The surface (e.g., steel plates) must be of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used by the Respondent so as to prevent releases to soil, surface water and groundwater. The condition of the surface shall be inspected regularly to monitor its structural integrity and repaired in a timely manner.

(ii) Respondent shall store and process scrap metal in a manner to prevent accidental ignition, reaction, fire, or explosion.

B. Prevention of Dispersal: Respondent shall take all reasonable measures to prevent the uncontained accumulation, storage, and dispersal (including, but not limited to, air dispersal and tracking by equipment, vehicles and persons) of hazardous waste (including, but not limited to, fine powders, as that term is defined in California Code of Regulations, Title 22, section 66260.10) and hazardous waste constituents at the Site and from the Site to off-site locations.

C. Drainage Control: Respondent has instituted appropriate drainage control measures by maintaining stormwater permit coverage pursuant to General Permit for Storm Water Discharges associated with Industrial Activities, Order 2014-0057-DWQ (General Permit) (Waste Discharge Identification number 5S07I026633)

11.6 Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent to:

To: Mr. Elias Ferran, Senior Staff Attorney
Office of Legal Counsel
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, CA 94710

11.7 Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

11.8 Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

11.9 Compliance with Applicable Laws: Respondent shall carry out this Consent Order in compliance with all local, state, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

11.10 Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether pursued in

compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the Site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

11.11 Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

11.12 Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter the Site at reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work

undertaken pursuant to this Consent Order.

11.13 Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

11.14 Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in Paragraph 16, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered by Respondent or its agents in carrying out activities pursuant to this Consent Order.

11.15 Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

11.16 Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

11.17 Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

12. Within thirty (30) days of the Effective Date of this Consent Order, Respondent shall pay the Department a total of thirty-two thousand and five hundred dollars (\$32,500.00), of which sixteen thousand and two hundred and fifty dollars (\$16,250.00) is an administrative penalty, and sixteen thousand and two hundred and fifty dollars (\$16,250.00) is an offset to be paid toward a Supplemental Environmental Project (SEP) described in Paragraph 12.2 below.

12.1 Respondent's check or electronic funds transfer (EFT) shall be made payable to Department of Toxic Substances Control. If Respondent makes payment by EFT, the payment shall be made as directed in the "Electronic Fund Transfer Instructions" provided by the Department to Respondent. As soon as the EFT payment is completed, Respondent shall notify the Department's Accounting

Office by email (Accounting@dtsc.ca.gov), and Bonny Lew (Bonny.Lew@dtsc.ca.gov). If payment is made by check, the check shall identify the 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 also be sent:

To: Bonny Lew, Senior Environmental Scientist (Supervisory)
Department of Toxic Substances Control
Office of Criminal Investigations
8800 Cal Center Drive
Sacramento, California 95826

Mr. Elias Ferran, Senior Staff Attorney
Office of Legal Counsel
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, CA 94710

12.2. Within thirty (30) calendar days of the Effective Date of this Consent Order, in addition to the administrative penalty amount set forth in Paragraph 12, Respondent shall provide the Department with a copy of receipt(s) of payment(s) totaling sixteen thousand and two hundred and fifty dollars (\$16,250.00) as a SEP payment ("SEP Payment") to Save the Bay, a 501(c)(3) nonprofit organization located at 560 14th Street, #400, Oakland, CA, 94612 ("SEP Recipient"). If the SEP Recipient refuses or does not otherwise retain the SEP Payment or is otherwise disqualified by the Department, the parties shall meet and confer within fourteen (14) days to agree whether the SEP Payment shall be remitted instead as a penalty payment to the Department or if an alternative SEP should be identified.

If the parties cannot agree, then the allocated SEP Payment shall be paid as a penalty as specified in Paragraph 12.

12.3. In the event that Respondent fails to make the SEP payment within thirty (30) days of the Effective Date of this Consent Order, Respondent shall pay to the Department the remaining balance of sixteen thousand and two hundred and fifty dollars (\$16,250.00) as an administrative penalty pursuant to the HWCL within seven (7) days. Upon proof that Respondent has completed the SEP payment within thirty (30) days of the Effective Date of this Consent Order the suspended penalty shall be deemed satisfied.

13. 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 the Department in pursuing collection, including, but not limited to, attorney's fees.

OTHER PROVISIONS

14. Reservation of Authority: The Department reserves its authority under the Hazardous Waste Control Law to: 1) enforce this Consent Order; 2) use all violations alleged in this Consent Order, and Respondent's admissions to those violations, to seek enhanced penalties in any subsequent administrative or civil action to show a pattern or course of conduct, or a history of noncompliance; and 3) use all violations alleged in this Consent Order, whether or not admitted by Respondent pursuant to Paragraph 9, and Respondent's admissions to those violations, in any future Department permit decision, proceeding, or process.

15. Penalties for Noncompliance: Failure to comply with the terms of this

Consent Order may subject Respondent to civil penalties and/or punitive damages 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.

16. 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 the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

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

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

19. 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.

20. Future Statutory or Regulatory 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.

21. Authority to Bind: Each person executing this Consent Order

represents that he or she has full and legal authority to execute this Consent Order for and on behalf of the respective party for whom he or she is executing this Consent Order and to bind that party.

22. Electronic Signatures: The parties acknowledge and agree that this Consent Order may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

23. 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 on and the same document.

Dated: 7/10/24 Original signed by Ken Graunstadt Jr.

Ken Graunstadt Jr., CEO
Delta Scrap & Salvage Inc.
Respondent

Dated: 07/10/2024 Original signed by Bonny Lew

Bonny Lew
Senior Environmental Scientist (Supervisory)
Office of Criminal Investigations
Department of Toxic Substances Control