

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:

DOCKET HWCA20217613

Modesto Junk Company  
1421/1425 9<sup>th</sup> Street  
Modesto, California 95354

CONSENT ORDER

EPA ID No. CAL000244970

HEALTH AND SAFETY CODE  
SECTION 25187

Respondent

INTRODUCTION

The State of California Department of Toxic Substances Control (Department) and Modesto Junk Company (Respondent), a California corporation, collectively the "Parties", enter into this Consent Order and agree as follows:

1. Respondent: Respondent is a scrap metal recycling facility as defined in Health and Safety Code section 25211 and generates hazardous waste at 1421/1425 9<sup>th</sup> Street, Modesto, California 95354 (the "Site").

2. Inspection: The Department inspected the Site on September 1, 2020.

VIOLATIONS

3. Allegations: The Department has alleged the following violations against Respondent:

3.1. The Respondent violated California Code of Regulations, Title 22, section 66265.31 in conjunction with California Code of Regulations, Title 22, section 66262.34(a)(4), in that, on and/or before September 1, 2020, Respondent failed to minimize the possibility of a fire and the release of hazardous waste or hazardous waste

1 constituents to the air, soil, or surface water which could threaten human health and the  
2 environment. While collecting background information on the Site prior to the  
3 investigation on September 1, 2020, the Department discovered that two fires had  
4 occurred at the Site within five months of each other. The first on March 27, 2020, and  
5 the second on August 11, 2020. Both fires originated from the metal piles. At the time of  
6 the inspection, although Respondent maintained a prohibited materials policy, there was  
7 no formal load check program or fire prevention program at the Site. Therefore, the  
8 Department alleges Respondent failed to maintain and operate the Site in a way to  
9 minimize the possibility of a fire.  
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12 3.2. Respondent violated California Code of Regulations, Title 22, section  
13 66265.31 in conjunction with California Code of Regulations, Title 22, section  
14 66262.34(a)(4), in that, on September 1, 2020, Respondent failed to minimize the  
15 possibility of a fire and the release of hazardous waste or hazardous waste  
16 constituents to the air, soil, or surface water which could threaten human health and  
17 the environment. During the September 1, 2020 investigation, the Department  
18 observed dirt and debris built up and mixed with the metal piles. Respondent's metal  
19 recycling activities resulted in the accumulation of dirt and debris at the base of and  
20 mixed in with the metal pile. The Department asserts that these piles of dirt and debris  
21 can be considered a waste because they are not recycled, and the Respondent lets it  
22 build up over time. The Department collected and analyzed five samples from the  
23 accumulations of dirt and debris around the base of the metal piles, the results of which  
24 exceeded the total threshold limit concentration (TTLC) for copper, lead, and/or zinc,  
25 and the soluble limit threshold concentration (STLC) for zinc. Pursuant to California  
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1 Code of Regulations, Title 22, section 66261.24(a)(2), the samples exhibited the  
2 characteristic of toxicity and are thus non-RCRA hazardous wastes. Therefore, the  
3 Respondent did not maintain and operate the Site in a way to minimize the possibility  
4 of release of hazardous waste or hazardous waste constituents to the air, soil, or  
5 surface water which could threaten human health and the environment.  
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7 3.3. Respondent violated California Health and Safety Code section 25189.2(d),  
8 in that, on September 1, 2020, Respondent illegally stored hazardous waste dirt and  
9 debris around the baler. During the September 1, 2020 investigation, the Department  
10 observed dirt and debris buildup around the baler on paved ground in the center of the  
11 Site. There was also an open bucket containing more dirt and debris from underneath  
12 the baler. The Department asked Jeff Highiet what the Respondent does with the dirt  
13 and debris, and he stated that they sweep under the baler every month and that the dirt  
14 and debris was placed in barrels and treated as hazardous waste. The Department  
15 collected and analyzed two samples from the dirt and debris around the baler, the  
16 results of which exceeded the TTLC for zinc and/or the STLC for lead and/or zinc.  
17 Pursuant to California Code of Regulations, Title 22, section 66261.24(a)(2), the  
18 samples exhibited the characteristic of toxicity and are thus non-RCRA hazardous  
19 wastes. Additionally, these samples contained motor oil range organics. Pursuant to  
20 Health and Safety Code section 25250.4(a), used motor oil shall be managed as a  
21 hazardous waste. Therefore, the Department asserts that Respondent illegally stored  
22 hazardous waste dirt and debris around the baler.  
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26 3.4. Respondent violated California Health and Safety Code section 25189.2(c),  
27 in that, on September 1, 2020, Respondent disposed, or caused the disposal of, a  
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1 hazardous waste at a point that is not authorized. During the September 1, 2020  
2 investigation, the Department noticed that dirt and debris had accumulated along the  
3 back-fence line of the property. Respondent allowed this dirt and debris to build up  
4 along the back-fence line and exit the facility through gaps in the fence. After the Site  
5 investigation had concluded, the Department walked behind the property, and within an  
6 active Union Pacific Railroad easement, and took a sample of dirt and debris along the  
7 southwestern corner of the back-fence line. Laboratory results of the sample exceeded  
8 the TTLC and STLC for zinc. Pursuant to California Code of Regulations, Title 22,  
9 section 66261.24(a)(2), the sample exhibited the characteristics of toxicity and is thus a  
10 non-RCRA hazardous waste. When tested, this sample had similar results to the  
11 samples taken at the Site, which the Department asserts further demonstrates that this  
12 dirt and debris contaminated with heavy metals found offsite is generated from  
13 Respondent's onsite activities.

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16 3.5. Respondent violated California Health and Safety Code section 25163(a)(1),  
17 in that, on and/or before September 1, 2020, Respondent generated hazardous waste  
18 in excess of the limits set forth for a Conditionally Exempt Small Quantity Generator  
19 (CESQG) and therefore transported hazardous waste without a valid registration.  
20 During the September 1, 2020 investigation, the Department requested copies of the  
21 Respondent's hazardous waste manifests and was provided copies of their CESQG  
22 Hazardous Waste Invoice and Waste Disposal Records on September 10, 2020. When  
23 reviewing the documents, it was determined that the Respondent did not meet the  
24 exemption and requirements set forth in Health & Safety Code section 25218.4 to  
25 dispose of hazardous waste and be considered a CESQG for the month of June 2020.  
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Respondent exceeded the maximum allowable weight of hazardous material generated by a CESQG in June of 2020, when Respondent transported 50 pounds of batteries/oil and sawdust to the County Household Hazardous Facility on June 6, 2020 and then had 350 gallons of used oil picked up and transported based on the Consolidated Manifest Invoice from George W. Lowry Inc. on June 8, 2020. Therefore, the Respondent was in violation in June 2020, when the Respondent transported hazardous waste without a valid registration because the weight transported exceeded the exemption limit of 220 lbs. per month of hazardous waste they could transport as an CESQG.

3.6. Respondent violated California Code of Regulations, Title 22, section 66262.11, in that, on and/or before September 1, 2020, Respondent failed to properly characterize and identify hazardous waste being documented on their CESQG Hazardous Waste Invoice and Waste Disposal Records. During the September 1, 2020 investigation, when the Department asked Jeff Highiet what the Respondent does with the dirt and debris sweepings from under the baler, he informed the Department that the sweepings under the baler were placed in barrels and treated as hazardous waste. Jeff Highiet said that the Respondent mixed this dirt and debris with other hazardous wastes from around the site like "sawdust" and transported them to the County Household Hazardous Waste Facility once every 30 days or so. In looking over the CESQG Hazardous Waste Invoice and Waste Disposal Records from the County Household Hazardous Waste Facility, the Department observed that the waste being transported was incorrectly identified in the Miscellaneous waste items category as oil and sawdust, or oil, sawdust, and batteries. The waste was not identified as dirt and debris waste that contained possible heavy metals. As a result, the Respondent failed to properly

1 characterize and identify the hazardous waste they were generating and transporting as  
2 oil and sawdust instead of characterizing it as dirt and debris waste contaminated with  
3 heavy metals, oil, and sawdust.

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5 SCOPE AND EFFECT OF CONSENT ORDER

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

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

8 6. Settlement: This Consent Order shall constitute full settlement of the violations  
9 alleged above but does not limit the Department from taking appropriate enforcement  
10 action concerning other violations. Respondent reserves the right to assert any  
11 defenses in the future.

12 7. Mutual Resolution: A dispute exists regarding the alleged violations. The Parties  
13 wish to avoid the expense of litigation and to ensure prompt compliance.  
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16 COMPLIANCE REQUIREMENTS

17 8. Corrective Action: Respondent corrected the violations alleged above in  
18 paragraph 3.

19 9. Hazardous Waste Law: Respondent shall immediately comply with the  
20 Hazardous Waste Control Law (HWCL) (Health and Safety Code sections 25100 et  
21 seq.) and its implementing regulations (California Code of Regulations, Title 22, section  
22 66260.1 et seq.) including, but not limited to, the following:  
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24 9.1. Storage of Hazardous Waste: Respondent shall make a hazardous waste  
25 determination, containerize, label, and manage all hazardous waste and/or hazardous  
26 waste constituents in accordance with the generator requirements of Title 22, Division  
27 4.5.  
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9.4. Prevention of Dispersal: Respondent shall take all measures necessary 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 and hazardous waste constituents at the Site and from the Site to off-site locations.

9.5. Drainage Control: Respondent shall take reasonable drainage control measures necessary to prevent releases of hazardous waste and/or hazardous constituents to soil and/or groundwater on-site and to off-site locations. Respondent shall maintain all necessary permits for stormwater/process water systems.

10. Penalty: Respondent shall pay or cause to be paid to the Department the total sum of One-Hundred Thirty-Four Thousand Four Hundred Dollars (\$134,400) in administrative penalties (the "Penalty") as follows:

10.1. The Penalty shall be paid in four equal installments of Thirty-Three Thousand Six Hundred Dollars (\$33,600) paid as follows: (a) the first installment paid within 30 calendar days of the Effective Date of this Consent Order, as defined in paragraph 17 below; (b) the second installment paid within 30 calendar days of the first anniversary of the Effective Date; (c) the third installment paid within 180 calendar days after the second installment; and (d) the fourth installment paid by the second anniversary of the Effective Date. There shall be no prepayment penalty for early payments.

10.2. Payments may be made by electronic funds transfer (EFT) or cashier's check 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" set forth in Attachment 1. As soon as the EFT payment is completed, Respondent shall notify the Department's Accounting Office by email ([accounting@dtsc.ca.gov](mailto:accounting@dtsc.ca.gov)) and Nicole Hinton ([Nicole.Hinton@dtsc.ca.gov](mailto:Nicole.Hinton@dtsc.ca.gov)). If paid by cashier's 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

If payment is made by cashier's check, a photocopy of the check shall also be sent via email to Nicole Hinton ([Nicole.Hinton@dtsc.ca.gov](mailto:Nicole.Hinton@dtsc.ca.gov)) and Elias Ferran ([Elias.Ferran@dtsc.ca.gov](mailto:Elias.Ferran@dtsc.ca.gov)).

1 11. If Respondent fails to make payment as provided above, Respondent agrees to  
2 pay interest at the rate established pursuant to Health and Safety Code section 25360.1  
3 and to pay all costs incurred by the Department in pursuing collection, including but not  
4 limited to, attorney's fees.

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6 OTHER PROVISIONS

7 12. Definitions: All terms in this Consent Order shall be interpreted consistent with  
8 the HWCL and its implementing regulations (California Code of Regulations, Title 22,  
9 section 66260.1 et seq.).

10 13. Reservation of Authority: The Department reserves all rights (1) to enforce this  
11 Consent Order; and (2) to use, rely on, the violations admitted and deemed proven,  
12 without any need for further testimony or evidence, for any purpose, in Department  
13 Action(s) and Proceeding(s).

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

17 15. Penalties for Noncompliance: Failure to comply with the terms of this Consent  
18 Order may subject Respondent to cost penalties and/or punitive damages, including  
19 without limitation, any costs incurred by the Department or other government agencies  
20 as a result of such failure, as provided by Health and Safety Code section 25188 and  
21 other applicable provisions of law.

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

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

7 18. Integration: This Consent Order constitutes the entire agreement between the  
8 parties and may not be amended, supplemented, or modified, except as provided by  
9 express written agreement and signed by authorized representatives of each of the  
10 Parties.

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12 19. Future Statutory or Regulatory Changes: Nothing in this Consent Order shall  
13 exempt or excuse Respondent from complying with existing law, or with meeting any  
14 more stringent requirements that may be imposed by applicable law or changes in the  
15 applicable law.

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17 20. Continuing Jurisdiction: In the event that any provision of this Consent Order, or  
18 the application of any such provision to any Party or set of circumstances, is for any  
19 reason or to any extent determined to be invalid, unlawful, void or unenforceable  
20 (hereafter collectively "Void"), the Parties hereto shall negotiate in good faith to modify  
21 this Consent Order in a mutually acceptable manner so as to produce a Consent Order  
22 so as to effect the Parties' original intent as closely as possible and to the fullest extent  
23 possible without any Void provisions. In the event that the Parties are unable to mutually  
24 agree on such a modification to this Consent Order, the Court or other tribunal having  
25 jurisdiction to do so is authorized, and requested, to modify this Consent Order so as to  
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1 affect the Parties' original intent as closely as possible and to the fullest extent possible  
2 without any Void provisions.

3 21. Authority to Bind: Each person executing this Consent Order represents that he  
4 or she has full and legal authority to execute this Consent Order for and on behalf of the  
5 respective party for whom he or she is executing this Consent Order and to bind that  
6 party.  
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8 22. Counterparts: This Consent Order may be executed and delivered in one or  
9 more counterparts, each of which when executed and delivered shall be deemed to be  
10 an original, but such counterparts shall together constitute one and the same document.  
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12 Dated: 5/20/2024 DocuSigned by:  
Original signed by Jeffrey L. Highiet

13 Jeffrey L. Highiet  
14 Chief Executive Officer  
15 Modesto Junk Company  
Respondent

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17 Dated: 05/22/2024 Original signed by Dylan Clark

18 Dylan Clark  
19 Environmental Program Manager  
20 Office of Criminal Investigations  
21 Department of Toxic Substances Control  
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