

**From:** [Law.Christopher@DTSC](mailto:Law.Christopher@DTSC)  
**To:** [Kracov.Gideon@DTSC](mailto:Kracov.Gideon@DTSC)  
**Cc:** [Rohlfes.Larry@DTSC](mailto:Rohlfes.Larry@DTSC)  
**Subject:** Complaints resulting from civil/criminal referrals from 1/1/2014 through 4/1/2016  
**Date:** Monday, July 11, 2016 5:58:16 PM  
**Attachments:** [Panda FELONY COMPLAINT FOR ARREST WARRANT.PDF](#)  
[American Power Complaint.pdf](#)  
**Importance:** High

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Gideon,

This email responds to your question concerning how many of the civil/criminal referrals from January 1, 2014 through April 1, 2016 were accepted for prosecution.

None of the case referrals issued by DTSC between January 1, 2014 through April 1, 2016 have been rejected by the receiving DA offices or the Attorney General's Office. Two of the referrals have resulted in complaints, which are attached to this email.

The remaining referrals are open cases under review or in settlement negotiations.

Chris

Christopher Law  
Independent Review Panel Liaison  
916-322-0513

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**From:** Kracov, Gideon@DTSC  
**Sent:** Friday, June 10, 2016 12:13 PM  
**To:** Law, Christopher@DTSC  
**Cc:** Rohlfes, Larry@DTSC  
**Subject:** Chris - some follow up questions  
**Importance:** High

Chris:

Chris:

A few follow up questions with answers requested before the July meeting:

In this document, page 3, how many of the 11 civil/criminal referrals were actually accepted for prosecution?: <https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/upload/DTSC-Report-on-OCI-and-EERD-Caselog-Data-for-CY-2014-2015-and-2016-to-1-1-16-May-5-2016.pdf> <https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/upload/DTSC-Report-on-OCI-and-EERD-Caselog-Data-for-CY-2014-2015-and-2016-to-1-1-16-May-5-2016.pdf> <https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/upload/DTSC-Report-on-OCI-and-EERD-Caselog-Data-for-CY-2014-2015-and-2016-to-1-1-16-May-5-2016.pdf> And if they were prosecuted please provide the actual complaint/lawsuit for each one.

In the financial assurances document provided Wednesday, can you please provide the actual document that shows the financial assurance FOR CORRECTIVE ACTION (not the assurance itself but the document(s) that shows the amount and that it is for corrective action) for nos. 39, 61, 67 and 79.

Thank you. If any of these requests are unclear, please follow up with me directly.

Thanks!

Gideon Kracov

Chair, DTSC Independent Review Panel  
[gideon.kracov@dtsc.ca.gov](mailto:gideon.kracov@dtsc.ca.gov)

\*The DTSC Independent Review Panel is a part-time volunteer Panel. This e-mail account may not be checked daily.

1 JAN SCULLY, DISTRICT ATTORNEY  
2 KEVIN W. HIGGINS, Deputy District Attorney (166576)  
3 Office of the District Attorney, County of Sacramento  
4 901 G Street  
5 Sacramento, CA 95814  
6 (916) 874-6174

7 Attorneys for the Plaintiffs  
8 PEOPLE OF THE STATE OF CALIFORNIA

**FILED**  
Superior Court Of California,  
Sacramento  
08/15/2014  
cleurgans  
By \_\_\_\_\_, Deputy  
Case Number:  
**34-2014-00167706**

9  
10 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

11 PEOPLE OF THE STATE OF  
12 CALIFORNIA,

13 Plaintiff,

14 vs.

15 AMERICAN POWER ENERGY  
16 SERVICES, INC., a corporation;  
17 AMERICAN POWER, INC.; DOES ONE  
18 through TEN, inclusive,

19 Defendants.

NO.

**COMPLAINT FOR CIVIL PENALTIES;  
PRELIMINARY AND PERMANENT  
INJUNCTIVE RELIEF**

(Business & Professions Code, Section  
17200, Health & Safety Code, Sections  
25189(b), 25189(c), 25189.2(c).)

20 The People of the State of California, by and through Jan Scully, District Attorney  
21 for the County of Sacramento, hereby allege as follows:

22 **PRELIMINARY ALLEGATIONS**

23 1. The People, by and through Jan Scully, as the District Attorney of the County  
24 of Sacramento, bring this action in the public interest for the purpose of protecting the  
25 public health, safety and welfare.

26 2. Pursuant to California Health & Safety Code, Sections 25181, and 25182,  
27 the Office of the District Attorney for the County of Sacramento may bring an action for

1 civil penalties and injunctive relief for violations relative to the processing or disposal of  
2 hazardous wastes and/or a violation of Chapter 6.5 of the Health & Safety Code, or any  
3 rule, regulation, permit, covenant, standard, requirement, or order issued, promulgated, or  
4 executed thereunder, respectively.

#### 5 DEFENDANTS

6 6. Plaintiff is informed and believes and thereupon alleges that defendant is a  
7 corporation, doing business as, AMERICAN POWER ENERGY SERVICES, INC.; a  
8 corporation; and AMERICAN POWER, INC.

9 The word "defendant" or "defendants" as used in this Complaint shall refer to each  
10 and every name listed above.

11 The true names and capacities of DOES ONE through TEN, are presently unknown  
12 to plaintiff, and plaintiff will seek leave of court to amend this complaint to allege such  
13 names and capacities as soon as they are known.

#### 14 JURISDICTION AND VENUE

15 7. The activities and conditions constituting violations of local and state law,  
16 including the storage and disposal of hazardous wastes, alleged herein, have been carried  
17 out in the County of Sacramento, State of California.

18 8. Venue is proper in this county pursuant to Article 6, Section 10 of the  
19 California Constitution and Sections 393 and 395.5 of the California Code of Civil  
20 Procedure.

#### 21 ENFORCEMENT AUTHORITY

22 9. Health & Safety Code, Sections 25180(d), 25182, and 25189, provide for  
23 civil liability for any violations of Chapter 6.5 of the Health & Safety Code concerning  
24 Hazardous Waste Control, or any rule, regulation, permit, covenant, standard,  
25 requirement, or order issued, promulgated, or executed thereunder.

26 10. Health & Safety Code, Section 25181 authorizes the Department of Toxic  
27 Substances Control to refer matters to the District Attorney's Office in the county where



1 contained.

2 18. On or about and between May 6, 2009 and May 16, 2013, Defendant failed  
3 to properly demonstrate the length of time that universal waste lamps had been  
4 accumulated from the date that they became a waste or were received by the facility as  
5 universal waste.

6 19. On or about and between May 6, 2009 and May 16, 2013, Defendant failed  
7 to manage universal waste lamps in a manner that prevents release into the environment.

8 20. On or about and between May 6, 2009 and May 16, 2013, Defendant failed  
9 to contain universal waste lamps in a closed, structurally sound, compatible container that  
10 does not show evidence of leakage or damage.

11 21. On or about and between May 6, 2009 and May 16, 2013, Defendant failed  
12 to immediately cleanup and place in a container any universal waste lamp that is broken  
13 or shows evidence of a hazardous waste release to the environment.

14 22. On or about and between May 6, 2009 and May 16, 2013, Defendant failed  
15 to ensure that all personnel who manage universal waste lamps from offsite sources at the  
16 universal waste handler's facility are thoroughly familiar with proper universal waste  
17 management and emergency response procedures, relative to those persons'  
18 responsibilities.

19 23. On or about and between May 6, 2009 and May 16, 2013, Defendant failed  
20 to initially train all personnel who manage or who supervise those who manage universal  
21 waste from offsite sources.

22 24. On or about and between May 6, 2009 and May 16, 2013, Defendant failed  
23 to keep a record of each shipment of universal waste lamps sent from the universal waste  
24 handler's facility to another facility.

25 **FIRST CAUSE OF ACTION**

26 **(Violation of California Business & Professions Code, Section 17200.)**

27 25. Plaintiff re-alleges and incorporates herein by reference each and every  
28

1 allegation contained in paragraphs 1 through 24 above.

2 26. Defendant engaged in an unlawful, unfair and fraudulent business act and  
3 practice in violation of Business & Professions Code, Section 17200.

4 **SECOND CAUSE OF ACTION**

5 **(Violation of Health & Safety Code, Section 25189(b).)**

6 27. Plaintiff re-alleges and incorporates herein by reference each and every  
7 allegation contained in paragraphs 1 through 26 above.

8 28. Defendant intentionally and/or negligently violated provisions of Chapter 6.5 of  
9 the Health & Safety Code, or a permit, rule, regulation, standard, or requirement issued or  
10 promulgated pursuant to this chapter, to wit, 22 California Code of Regulations, Section  
11 66273.32(a) by failing to send written notification of universal waste management to the  
12 Regional Administrator, and receive a federal ID Number, before accumulating 5,000  
13 kilograms of universal waste, in violation of Health & Safety Code, Section 25189(b).

14 29. Defendant intentionally or negligently violated a provision of Chapter 6.5 of the  
15 Health & Safety Code, or a permit, rule, regulation, standard, or requirement issued or  
16 promulgated pursuant thereto, to wit, 22 California Code of Regulations, Section 66273.34  
17 (c), in that the defendant failed to label and clearly mark containers and packages  
18 containing lamps as "Universal Waste--Lamp(s)".

19 30. Defendant intentionally or negligently violated a provision of Chapter 6.5 of the  
20 Health & Safety Code, or a permit, rule, regulation, standard, or requirement issued or  
21 promulgated pursuant thereto, to wit, 22 California Code of Regulations, Section §  
22 66273.35 (b), in that, it was not able to demonstrate the length of time that the universal  
23 waste has been accumulated from the date it became a waste or was received.

24 31. Defendant intentionally or negligently violated a provision of Chapter 6.5 of the  
25 Health & Safety Code, or a permit, rule, regulation, standard, or requirement issued or  
26 promulgated pursuant thereto, to wit, 22 California Code of Regulations, Section §  
27 66273.33(b)(1), in that defendant, a universal waste handler failed to manage lamps in a  
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1 way that prevents releases of any universal waste or component of a universal waste to  
2 the environment, by failing to contain any lamp in a container or package that is  
3 structurally sound, adequate to prevent breakage, and compatible with the contents of the  
4 lamp.

5 32. Defendant intentionally or negligently violated a provision of Chapter 6.5 of the  
6 Health & Safety Code, or a permit, rule, regulation, standard, or requirement issued or  
7 promulgated pursuant thereto, to wit, 22 California Code of Regulations, Section §  
8 66273.33(b)(2), in that defendant, a universal waste handler failed to immediately clean up  
9 and place in a container any lamp that is broken and any lamp that shows evidence of  
10 leakage or damage that could cause the release of mercury or other hazardous  
11 constituents to the environment.

12 33. Defendant intentionally or negligently violated a provision of Chapter 6.5 of the  
13 Health & Safety Code, or a permit, rule, regulation, standard, or requirement issued or  
14 promulgated pursuant thereto, to wit, 22 California Code of Regulations, Section §  
15 66273.36(a), in that the defendant failed to ensure that all personnel who manage  
16 universal wastes at the universal waste handler's facility were thoroughly familiar with  
17 proper universal waste management and emergency response procedures relative to  
18 those persons' responsibilities.

19 34. Defendant intentionally or negligently violated a provision of Chapter 6.5 of  
20 the Health & Safety Code, or a permit, rule, regulation, standard, or requirement issued or  
21 promulgated pursuant thereto, to wit, 22 California Code of Regulations, Section §  
22 66273.36(b) a universal waste handler shall initially train and provide annually, thereafter,  
23 training to all personnel who manage or who supervise those who manage universal  
24 wastes.

25 35. Defendant intentionally or negligently violated a provision of Chapter 6.5 of the  
26 Health & Safety Code, or a permit, rule, regulation, standard, or requirement issued or  
27 promulgated pursuant thereto, to wit, 22 California Code of Regulations, Section §

1 66273.39(c), that a universal waste handler shall keep a record of each shipment of  
2 universal waste sent from the universal waste handler's facility to another facility.

3 36. Defendant intentionally or negligently violated a provision of Chapter 6.5 of the  
4 Health & Safety Code, or a permit, rule, regulation, standard, or requirement issued or  
5 promulgated pursuant thereto, to wit, 22 California Code of Regulations, Section §  
6 66273.39(c), that a universal waste handler shall keep a record of each shipment of  
7 universal waste sent from the universal waste handler's facility to another facility.

8 37. Defendant negligently disposed or caused the disposal of a hazardous waste  
9 at a point which was not authorized under law in violation of violated Health & Safety  
10 Code, Section 25189(c).

11 38. A person who disposes, or causes the disposal of, a hazardous or extremely  
12 hazardous waste at a point that is not authorized according to the provisions of Chapter  
13 6.5 of the Health & Safety Code, in violation of Health & Safety Code, Section 25189.2(c).

14 **THIRD CAUSE OF ACTION**

15 **(Violation of Health & Safety Code, Section 25189(c).)**

16 39. Plaintiff re-alleges and incorporates herein by reference each and every  
17 allegation contained in paragraphs 1 through 38 above.

18 40. Defendant negligently disposed or caused the disposal of a hazardous waste  
19 at a point which was not authorized under law in violation of violated Health & Safety  
20 Code, Section 25189(c).

21 **FOURTH CAUSE OF ACTION**

22 **(Violation of Health & Safety Code, Section 25189.2 (c).)**

23 41. Plaintiff re-alleges and incorporates herein by reference each and every  
24 allegation contained in paragraphs 1 through 40 above.

25 42. A person who disposes, or causes the disposal of, a hazardous or extremely  
26 hazardous waste at a point that is not authorized according to the provisions of Chapter  
27 6.5 of the Health & Safety Code, in violation of Health & Safety Code, Section 25189.2(c).

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief as to each Defendant:

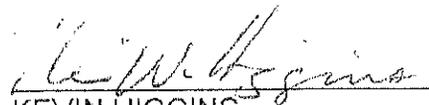
1. An order finding Defendant civilly liable pursuant to California Business & Professions, Section 17200, Health & Safety Code, Sections 25189(b) and (c), as well as applicable sections of the California Code of Regulations as set forth herein.
2. For a preliminary and permanent injunction enjoining Defendants, and each of them, and their agents, lessees, tenants, employees, representatives, successors in interest, and all persons acting under, in concert with or for them from conducting or permitting others to violate any laws, regulations, and/or ordinances concerning the handling of hazardous waste and/or materials by a universal waste handler.
3. Such other and further relief as the Court deems just and proper.

DATED: 7-16-2014

Respectfully submitted,

JAN SCULLY

DISTRICT ATTORNEY



KEVIN HIGGINS  
Deputy District Attorney



COUNT 3

On or about November 20, 2013, in the County of Los Angeles, the crime of KNOWINGLY DISPOSE HAZARDOUS WASTE AT SITE HAVING NO PERMIT, in violation of HEALTH AND SAFETY CODE SECTION 25189.5(B), a Felony, was committed by DA XIONG PAN and PANDA INTERNATIONAL TRADING CO., INC., who did knowingly dispose and cause the disposal, and reasonably should have known that they were disposing and causing the disposal of hazardous waste, to wit: Copper, Lead, Zinc, Cadmium, Nickel, Chromium, at a facility which did not have a permit from the Department of Toxic Substances Control issued pursuant to Chapter 6.5 of Division 20 of the Health and Safety Code, and at a point which was not authorized according to Chapter 6.5 of Division 20 of the Health and Safety Code.

\* \* \* \* \*

COUNT 4

On or about November 20, 2013, in the County of Los Angeles, the crime of STORAGE OF HAZARDOUS WASTE, in violation of HEALTH AND SAFETY CODE SECTION 25189.5(D), a Felony, was committed by DA XIONG PAN and PANDA INTERNATIONAL TRADING CO., INC., who did knowingly treat and store hazardous waste to wit: Copper, Lead, Zinc, Cadmium, Nickel, Chromium, at a facility which did not have a permit from the Department of Toxic Substances Control issued pursuant to Chapter 6.5 of Division 20 of the Health and Safety Code, and at a point which was not authorized according to Chapter 6.5 of Division 20 of the Health and Safety Code.

\* \* \* \* \*

COUNT 5

On or about November 20, 2013, in the County of Los Angeles, the crime of DEPOSITING HAZARDOUS WASTE, in violation of PENAL CODE SECTION 374.8(B), a Felony, was committed by DA XIONG PAN and PANDA INTERNATIONAL TRADING CO., INC., who knowingly caused hazardous substances to be deposited into or upon any road, street, highway, alley, railroad right-of-way, upon the land of another or into the waters of the state of California.

\* \* \* \* \*

**NOTICE: Conviction of this offense will require the defendant to provide DNA samples and print impressions pursuant to Penal Code sections 296 and 296.1. Willful refusal to provide the samples and impressions is a crime.**

**NOTICE: The People of the State of California intend to present evidence and seek jury findings regarding all applicable circumstances in aggravation, pursuant to Penal Code section 1170(b) and *Cunningham v. California* (2007) 549 U.S. 270.**

**NOTICE: A Suspected Child Abuse Report (SCAR) may have been generated within the meaning of Penal Code §§ 11166 and 11168 involving the charges alleged in this complaint. Dissemination of a SCAR is limited by Penal Code §§ 11167 and 11167.5 and a court order is required for full disclosure of the contents of a SCAR.**

**NOTICE: Any allegation making a defendant ineligible to serve a state prison sentence in the county jail shall not be subject to dismissal pursuant to Penal Code § 1385.**

Further, attached hereto and incorporated herein are official reports and documents of a law enforcement agency which the undersigned believes establish probable cause for the arrest of defendants DA XIONG PAN and PANDA INTERNATIONAL TRADING CO., INC for the above-listed crimes. Wherefore, a warrant of arrest is requested for DA XIONG PAN.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS COMPLAINT, CASE NUMBER BA446120, CONSISTS OF 5 COUNTS.

Executed at LOS ANGELES, County of Los Angeles, on April 28, 2016.

  
\_\_\_\_\_  
GLORIA GAMINO  
DECLARANT AND COMPLAINANT

.....  
JACKIE LACEY, DISTRICT ATTORNEY

BY:   
\_\_\_\_\_  
RICHARD MAGLEBY  
DEPUTY DISTRICT ATTORNEY

AGENCY: CALIF DEPT OF TOXIC SUBSTANCES CONTROL    I/O: GLORIA GAMINO    ID NO.:    PHONE : (714) 484-5391

DR NO.:    OPERATOR: ESM    PRELIM. TIME EST.: 6 HOURS

<u>DEFENDANT</u>	<u>CII NO.</u>	<u>DOB</u>	<u>BOOKING NO.</u>	<u>BAIL RECOM'D</u>	<u>CUSTODY R'TN DATE</u>
PAN, DA XIONG	A09624228	9/11/1960		\$40,000	05/27/2016

It appearing to the Court that probable cause exists for the issuance of a warrant of arrest for the above-named defendant, the warrant is so ordered.

DA PAN

BAIL: \$ \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Above Entitled Court

NON-WARRANT DEFENDANTS:

<u>DEFENDANT</u>	<u>CII NO.</u>	<u>DOB</u>	<u>BOOKING NO.</u>	<u>BAIL RECOM'D</u>	<u>CUSTODY R'TN DATE</u>
PANDA INTERNATIONAL TRADING CO., INC.		1/1/2001		\$0	

**FELONY COMPLAINT -- ORDER HOLDING TO ANSWER -- P.C. SECTION 872**

It appearing to me from the evidence presented that the following offense(s) has/have been committed and that there is sufficient cause to believe that the following defendants guilty thereof, to wit:

*(Strike out or add as applicable)*

DA XIONG PAN

<u>Ct.</u>	<u>Charge</u>	<u>Charge Range</u>	<u>Allegation</u>	<u>Alleg. Effect</u>
1	HS 25189.5(D)	16-2-3 County Jail		
2	PC 374.8(B)	16-2-3 County Jail		
3	HS 25189.5(B)	16-2-3 County Jail		
4	HS 25189.5(D)	16-2-3 County Jail		
5	PC 374.8(B)	16-2-3 County Jail		

PANDA INTERNATIONAL TRADING CO., INC.

<u>Ct.</u>	<u>Charge</u>	<u>Charge Range</u>	<u>Allegation</u>	<u>Alleg. Effect</u>
1	HS 25189.5(D)	16-2-3 County Jail		
2	PC 374.8(B)	16-2-3 County Jail		
3	HS 25189.5(B)	16-2-3 County Jail		
4	HS 25189.5(D)	16-2-3 County Jail		
5	PC 374.8(B)	16-2-3 County Jail		

I order that the defendants be held to answer therefore and be admitted to bail in the sum of:

DA XIONG PAN \_\_\_\_\_ Dollars

PANDA INTERNATIONAL TRADING CO., INC. \_\_\_\_\_ Dollars

and be committed to the custody of the Sheriff of Los Angeles County until such bail is given. Date of arraignment in Superior Court will be:

DA XIONG PAN \_\_\_\_\_ in Dept \_\_\_\_\_

PANDA INTERNATIONAL TRADING CO., INC. \_\_\_\_\_ in Dept \_\_\_\_\_

at: \_\_\_\_\_ A.M.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Committing Magistrate*