

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

J&B Refining, a California Corporation,  
dba J&B Enterprises  
1650 Russell Avenue  
Santa Clara, California 95054

ID No. CAD 982 052 797

Respondent.

Docket HWCA 20050893

ENFORCEMENT ORDER

Health and Safety Code  
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to J&B Refining, a California Corporation, dba J&B Enterprises (Respondent).

1.2. Site. Respondent generates, handles, treats, stores, and/or disposes of hazardous waste at the following site: 1650 Russell Avenue, Santa Clara, California 95054 (Site).

1.3. Inspection. The Department inspected the Site on February 24, and March 4, 2005.

1.4. Jurisdiction. Health and Safety Code, section 25187, subdivision (a), authorizes the Department to order action necessary to correct violations and to assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

## 2. DETERMINATION OF VIOLATIONS

2.1. The Department has determined that:

2.1. Respondent violated Health and Safety Code section 25201, subdivision (a), in that on or about December 17, 2001, Respondent received nine (9) drums of hazardous waste cyanide rinsewater (manifest no. 2075955) without a permit.

Respondent's Standardized Hazardous Waste Facility Permit (HWFP) was not effective until January 7, 2002, and the waste were received 3 weeks early.

2.2. Respondent violated Health and Safety Code, section 25202, subdivision (a); California Code of Regulations, title 22, section 66270.30, subdivision (a); and, HWFP section I.6., subdivision (a), section HWFP II.1., and section HWFP II.7, in that Respondent received, handled and/or stored hazardous waste corrosives, pH=1, in the Gold Recovery Process Room and Hazardous Waste Container Storage Area, an unauthorized area for corrosive acid wastes, to wit:

a. On March 17, 2003, 8 gallons of corrosive acid waste, accompanied by manifest no. 22122893;

b. On June 2, 2003, 9 gallons of corrosive acid waste, accompanied by manifest no. 22123087;

c. On January 31, 2002, 9 gallons of corrosive acid waste, accompanied by manifest no. 20759589;

d. On October 16, 2002, 10 gallons of corrosive acid waste, accompanied by manifest no. 21517104;

e. On February 10, 2004, 8 gallons of corrosive acid waste, accompanied by manifest no. 22752061.

2.3. Respondent violated Health and Safety Code, section 25202, subdivision (a); California Code of Regulations, title 22, section 66270.30, subdivision (a); and, HWFP section I.6., subdivision (a), HWFP section II.1., and HWFP section II.7, in that on or about January 31, and October 16, 2002, March 17 and June 2, 2003, and February 10, 2004, J&B Enterprises conducted treatment of corrosive hazardous

wastes, pH=1 (manifest nos. 22122893, 22123087, 20759589, 21517104, and 22752061, described in 3.2.), in the Acid Wash/Fume Hood, by pH adjustment.

2.4. Respondent violated Health and Safety Code section 25189.2, subdivision (a) and California Code of Regulations, title 22, section 66264.15, subdivision (b)(1)(2) in that on or about May 11, 2001, Respondent wrongly certified in its Standardized Permit Application that a copy of the Inspection Plan would be maintained and available to local, state, or federal agencies upon request. Respondent submitted the certification as an integral part of the formal application for a Standardized Permit. Respondent did not have an Inspection Plan available upon request during the February 24 and March 4, 2005 Inspections at the Site.

2.5. Respondent violated California Code of Regulations, title 22, section 66264.73, subdivision (b), in that on or about February 24, 2005, the facility failed to include the following information in their Operating Record:

a. Description and the quantity of each hazardous waste received and the method(s) and date(s) of its transfer, treatment, and storage at the facility as required by Appendix I of Chapter 14.

b. The location of each hazardous waste within the facility and the quantity at each location was not recorded in an operating record

c. Written record on the treatment of the corrosive acid wastes and/or the description/location, quantity and method(s) of treatment conducted on the wastes, specifically, corrosive acid wastes received on manifests nos. 22122893 and 22123087, dated June 2, 2003 and January 31, 2003, and on manifest nos. 20759589, 21517104, and 22752061, dated October 16, 2002, February 10, 2004, respectively.

2.5. Respondent's amended operating record submitted on March 14, 2005, did not include the following information:

a. Description of hazardous waste by its common name and any applicable EPA Hazardous Waste Number or California Hazardous Waste Number. Waste description shall include the waste's physical form (liquid, solid, sludge, etc.);

- b. Estimated or manifest reported weight, volume or density (gallons, liters, etc.);
- c. Method(s) by handling codes (s) used to treat, store or dispose each quantity of hazardous waste received (S01-storage in container; S02-storage in tanks; T57-evaporation, etc.);
- d. The location of each hazardous waste within the facility and the quantity at each location was not recorded in an operating record.

2.6. Respondent violated California Code of Regulations, title 22, section 66264.54, in that on or about February 24, 2005, Respondent failed to immediately amend its Contingency Plan, revised on October 2002, to wit:

a. On page 1 of the plan, informational changes are discussed and it cross-references Section X, as “Amendment of Emergency Response Plan, page 23.” Section X of the plan is “Shutdown Procedures”, page 24. An Amendment to the Emergency Response Plan is not located in Section X, but in Section XIII, Page 26.

b. On page 1 of the plan, companies that are available to provide secondary emergency spill response clean-up services are discussed. The plan refers to the “Chemical Spill Emergency Response Procedures” as located in Section VII. Section VII is entitled, “Earthquake and other Unpredicted Disaster”, page 14. The “Chemical Spill Emergency Response Procedures” is not located in section VII, but in section VIII.

c. On page 4 of the plan, shutdown procedures for utility mains, is referenced as Section XI. Section XI on page 25, is “Confined Space Procedures.” The correct section for shutdown procedures for utility mains in Section X.

d. In Section V, “Evacuation Procedures”, (page 10 of the plan), the designated assembly area described is Laurelwood Avenue, the former location of the Respondent’s facility, and not its current location. The plan was not revised to reflect the change in location of the facility.

e. On page 2 of the plan, the list of Emergency Coordinators does not match the list provided to employees during the September 17, 2003 Emergency

Response/Contingency Plan training. The plan was not amended to reflect the change in Emergency Coordinators.

2.7. Respondent violated California Code of Regulations, title 22, section 66264.16, subdivision (c), in that on or about September 2004, Respondent failed to provide to four employees, annual review of the following: Driver Training (as applicable); Procedures for Processes Used; Waste Analysis Plan; Emergency Response and Contingency Plans; Forklift Safety Training; Introduction to Industrial Toxicology and Hygiene; Documentation of Training Requirement.

2.8. Respondent violated California Code of Regulations, title 22, section 66264.13, in that on or about January 27, 2004, Respondent failed to obtain a detailed chemical and physical analysis of the representative sample of the waste prior to storage and/or treatment, to wit:

Respondent did not have a waste profile for the gold cyanide plating rinsewater solution received on January 27, 2004, manifest no. 22752026, during the inspection. The waste profile provided to the Department during the inspection was for spent gold plating solution. Respondent did not have a waste profile for the gold cyanide plating rinsewater.

2.9. Respondent violated California Code of Regulations, title 22, Section 66264.13, in that on or about: January 22, 2003, January 22, 2004, January 22, 2005 and January 22, 2006, Respondent failed to adjust its closure cost estimate 60 days prior to the anniversary date of their Certificate of Deposit for the calendar years of 2003, 2004, 2005 and 2006 using the most recent inflation factor. Respondent's failure to adjust the closure cost estimate caused the Certificate of Deposit to be under funded by \$8,017.71.

### 3. SCHEDULE FOR COMPLIANCE

3.1. Based on the foregoing Determination of Violations, IT IS HEREBY ORDERED THAT:

3.1.1. Respondent has returned to compliance on violations 3.1, 3.2, 3.3, 3.5, 3.8, and 3.9.

3.1.2. Within 30 days of receipt of the effective date of this Order, Respondent shall correct violation 3.4. by submitting to the Department a revised Inspection Plan/Schedule, to comply with title 22, Cal. Code Regs. section 66264.15 and other applicable inspection requirements for tanks and containers as required in title 22, Cal. Code Regs. section 66264.174, and 66264.195.

3.1.3. Within 30 days of receipt of the effective date of this Order, Respondent shall correct violation 3.6. by submitting a copy of the amended Contingency Plan to local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

3.1.4. Within 30 days of receipt of this Order, Respondent shall provide the required training to the four employees as identified in violation 3.7. In addition, Respondent shall ensure that all employees handling hazardous wastes are current with their training in accordance with the Training Plan. Documentation shall be kept on site and shall always be made available during inspections.

3.1.5. Respondent shall comply with all terms, requirements, and conditions set forth in Section 5 (Penalty) below.

3.2. Submittals. All submittals from a Respondent pursuant to this Order shall be sent to:

Luz T. Castillo  
Senior Hazardous Substances Scientist  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control  
700 Heinz Avenue  
Berkeley, California 94710

3.3. Communications. All approvals and decisions of the Department made regarding such submittals and notifications will be communicated to Respondent in writing by the 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 the obligation to obtain such formal approvals as may be required.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or the environment, the Department may:

a. Modify the document as deemed necessary and approve the document as modified, or

b. 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.

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

3.6. Endangerment during Implementation. In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Order) is 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 of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this paragraph shall be extended by the term of the Stop Work Order.

3.7. Liability. Nothing in this 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. Notwithstanding compliance with the terms of this Order, Respondent may be required to take such further actions as are

necessary to protect public health or welfare or the environment.

3.8. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any other agency having jurisdiction. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all 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 Order; and conducting such tests as the Department may deem necessary. Nothing in this 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.

3.9. Sampling, Data and Document Availability.

3.9.1. Respondent shall permit the Department and/or its authorized representatives to inspect and copy all sampling, testing, monitoring, and/or other data (including, without limitation, the results of any such sampling, testing and monitoring) generated by Respondent, or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Order.

3.9.2. Respondent shall allow the Department and/or its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this 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 Order.

3.9.3. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either:

- (a) comply with that request,
- (b) deliver the documents to the Department, or
- (c) notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order and permit the Department to copy the

documents prior to destruction.

3.10. Government Liabilities. Neither the State of California nor the Department shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties specified in paragraph 4.3, in carrying out activities pursuant to this Order. Neither the State of California nor the Department shall be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

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

3.12. Extension Request. If Respondent is unable to perform any activity or submit any document within the time required under this 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.

3.13. 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.

#### 4. OTHER PROVISIONS

4.1. Additional Enforcement Actions. By issuance of this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction involving either Respondent(s) or the Site.

4.2. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties, and/or damages as provided by Health and Safety Code, section 25188, and other applicable provisions of law.

4.3. Parties Bound. This Order shall apply to and be binding upon Respondent, and its officers, directors, agents, employees, contractors, consultants, receivers,

trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

4.4. Privileges. Nothing in this Consent Agreement shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney work-product. However, the assertion of any privilege shall not relieve any party of its obligations under this Consent Order.

4.5. Time Periods. "Days" for the purpose of this Order means calendar days.

## 5. PENALTY

5.1. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondent's penalty at \$42,700.

5.2. Payment is due within 30 days from the effective date of the Order.

5.3. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number, as shown in the heading of this case. Respondent shall deliver the penalty payment 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:

Luz T. Castillo  
Senior Hazardous Substances Scientist  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control  
700 Heinz Avenue  
Berkeley, California 94710

and

James J. Grace  
Senior Staff Counsel  
Office of Legal Counsel  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200

6. RIGHT TO A HEARING

6.1. Respondent may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondent.

7. EFFECTIVE DATE

7.1. Service by mail: This Order is final and effective twenty days from the date of mailing, which is the date of the cover letter transmitting the Order to Respondent, unless Respondent submits a written request for a hearing within the twenty-day period.

Date of Issuance: 11/09/2007 Department of Toxic Substances Control

Date signed      11/09/2007      Original signed by Luz Castillo  
Luz T. Castillo  
Senior Hazardous Substances Scientist  
Enforcement and Emergency Response  
Program

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