

**COPY**

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 JANET GAARD,  
Chief Assistant Attorney General  
3 KEN ALEX,  
Senior Assistant Attorney General  
4 DONALD ROBINSON,  
Supervising Deputy Attorney General  
5 JAMES POTTER, State Bar No. 166992  
6 OLIVIA W. KARLIN, State Bar No. 150432  
7 Deputy Attorneys General  
300 South Spring Street, Suite 1702  
8 Los Angeles, CA 90013  
Telephone: (213) 897-0473  
9 Fax: (213) 897-2802

10 Attorneys for Plaintiff PEOPLE OF THE STATE OF  
11 CALIFORNIA, ex rel. MAUREEN GORSEN, Director,  
12 CALIFORNIA DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF ORANGE

15  
16 PEOPLE OF THE STATE OF CALIFORNIA,  
ex rel. MAUREEN GORSEN, Director,  
17 CALIFORNIA DEPARTMENT OF TOXIC  
18 SUBSTANCES CONTROL  
Plaintiff,

19 vs.

20 ROOKE CORPORATION, a California  
21 Corporation, dba Aviation Equipment Inc.;  
22 AVIATION EQUIPMENT STRUCTURES,  
INC., a California Corporation, DOES 1 to  
23 20,

24 Defendants.  
25

26 The People of the State of California, ex rel. Maureen Gorsen, Director of the  
27 Department of Toxic Substances Control ("the Department"), alleges the following:  
28

//

**EXEMPT FROM FILING FEE  
GOVERNMENT CODE § 6103**

**FILED**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

JUN 13 2008

ALAN SLATER, Clerk of the Court

BY: R. LUCEY, DEPUTY

30-2008

00107995

JUDGE STEVEN L. PERK  
DEPT. C32





1 statutory and regulatory framework for the generation, handling, treatment, transport,  
2 and disposal of hazardous wastes. The HWCL's implementing regulations specify  
3 requirements for the tracking, storage, treatment, and disposal of hazardous waste to  
4 protect the public from the risks posed by improper management of hazardous wastes.  
5 (Cal. Code Regs., tit. 22, § 66260.1 *et seq.*)

6 15. The HWCL is the California analog of the federal Resource Conservation  
7 and Recovery Act, 42 U.S.C. section 6901 *et seq.* ("RCRA"). Pursuant to state and  
8 federal law, the Department administers the HWCL in lieu of federal administration of  
9 RCRA in California. (See Health & Safety Code § 25101(d); California: Final  
10 Authorization of Revisions to State Hazardous Waste Management Program, 66 FR  
11 49118 (September 26, 2001).) Federal law prohibits California from imposing "any  
12 requirements less stringent than those authorized under [RCRA]." (42 U.S.C. § 6929.)

13 16. State law – the HWCL – has a more inclusive definition of hazardous  
14 waste than does federal law. Hazardous wastes that are regulated under California law  
15 but not federal law are known as "non-RCRA hazardous wastes." (Health & Safety  
16 Code § 25117.9.) Whereas California regulation of RCRA hazardous wastes must be no  
17 less stringent than rules promulgated by the United States Environmental Protection  
18 Agency, California's rules regulating the handling of non-RCRA hazardous wastes are  
19 in some instances less stringent than the analogous rules regulating the handling of  
20 RCRA wastes.

21 17. The HWCL and RCRA prescribe detailed operating and safety  
22 requirements for facilities that treat, store, recycle, or dispose of hazardous wastes –  
23 known either as "TSD facilities" or "hazardous waste management facilities." (See Cal.  
24 Code Regs., tit. 22, § 66265.1 *et seq.*) Companies that merely generate hazardous  
25 waste in the course of other operations and promptly send that waste offsite for  
26 management are not hazardous waste management facilities and are subject to lesser  
27 requirements. (See Cal. Code Regs., tit. 22, § 66262.1 *et seq.*)

28 18. Generators of hazardous waste that hold hazardous waste on site are

1 subject to the hazardous waste management facility requirements specified in California  
2 Code of Regulations, title 22, section 66262.34(a). Hazardous waste is held at  
3 Defendants' Facility prior to shipment offsite, accordingly, the Facility is subject to these  
4 requirements.  
5

#### 6 ENFORCEMENT AUTHORITY UNDER THE HWCL

7 19. The HWCL authorizes the Court to issue civil penalties under two distinct  
8 and alternative provisions. Section 25189 of the Health and Safety Code creates  
9 liability for any negligent or intentional violation of the HWCL. Section 25189.2 is a strict  
10 liability provision, which creates liability, on a strict liability basis, for any violation of the  
11 HWCL. A person may not be held liable for separate civil penalties imposed under  
12 sections 25189 and 25189.2 for the same act. (Health & Safety Code § 25189.2(d).)

13 20. Sections 25181 and 25184 of the Health and Safety Code authorize and  
14 direct the superior court to enjoin any ongoing or potential violation of the HWCL.

15 21. Section 25181 of the Health and Safety Code authorizes the superior  
16 court to grant "a permanent or temporary injunction, restraining order, or other order"  
17 when the Attorney General, at the request of the Department, applies for an order  
18 enjoining violations of the HWCL or of any rule or requirement issued thereunder, and  
19 the Department shows that the person against whom the order is sought has violated or  
20 will violate those provisions.

21 22. Health and Safety Code section 25184 provides, that in civil actions  
22 brought pursuant to the HWCL in which an injunction or temporary restraining order is  
23 sought:

24 It shall not be necessary to allege or prove at any stage of the  
25 proceeding that irreparable damage will occur should the temporary  
26 restraining order, preliminary injunction, or permanent injunction not  
27 be issued; or that the remedy at law is inadequate, and the  
28 temporary restraining order, preliminary injunction, or permanent  
injunction shall issue without such allegations and without such  
proof.



1           27.     On March 14, 2006, Defendants stored at the Facility blankets that had  
2 been used as the absorbent element in air\_filters for Chromium VI-containing paint  
3 sprayers (the "Hazardous Waste Filter Blankets"), and were awaiting transport for  
4 disposal. Because the Hazardous Waste Filter Blankets were contaminated with  
5 compounds containing Chromium VI, they are therefore classified as a hazardous waste

6           28.     The Department observed the Hazardous Waste Filter Blankets in three  
7 locations: (1) at least a dozen blankets were stored in cardboard boxes outside of and  
8 behind the Facility, loosely covered by an unsecured tarp; (2) two or three blankets  
9 were stacked on top of each other, with the bottom blanket in direct contact with the  
10 outside pavement, and between two cardboard boxes; and (3) two blankets were  
11 resting in a container outside the Facility near a paint spray booth. Health and Safety  
12 Code sections 25189.2(c) and 25201 prohibit the unauthorized disposal of hazardous  
13 waste as defined by California Code of Regulations, title 22, § 66260.10.

14           29.     California Code of Regulations, title 22, § 66265.31 requires that  
15 hazardous waste facilities be maintained and operated to minimize the possibility of a  
16 fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or  
17 hazardous waste constituents to air, soil, or surface water which could threaten human  
18 health or the environment.

19           30.     The Facility's mismanagement of the Hazardous Waste Filter Blankets  
20 allowed the wind dispersal of hazardous waste during the March 14, 2006 inspection  
21 which potentially may have emitted hazardous waste into the air or otherwise into the  
22 environment and may have caused individuals to be exposed to hazardous waste.

23           31.     The Orange County Health Care Agency had cited Aviation for  
24 mismanagement of similar blankets in 2001.

25           32.     Defendants violated Health and Safety Code §§ 25189.2(c), 25201 and/or  
26 California Code of Regulations, title 22, § 66265.31 in that the Facility managed the  
27 Hazardous Waste Filter Blankets in a manner described in paragraphs 27 and 28 above  
28 that did not minimize the possibility of a release to the environment and that constituted

1 disposal of hazardous waste.

2  
3 SECOND CAUSE OF ACTION

4 (Filter "Blankets" Containing Chromium VI – Mismanagement of Hazardous Waste.  
5 Multiple Counts Including Violations of California Code of Regulations,  
6 Title 22, §§ 66262.34 and/or 66265.173)  
(All Defendants)

7 33. Paragraphs 1 through 25 are realleged as if fully set forth herein.

8 34. California Code of Regulations, title 22, § 66265.173 requires a facility  
9 owner or operator to ensure that any container holding hazardous waste remains closed  
10 during storage or transfer except when necessary to add or remove hazardous waste.

11 35. California Code of Regulations, title 22, § 66262.34(f) requires a generator  
12 that accumulates hazardous waste to mark the container with information specified  
13 therein.

14 36. As described in paragraph 28 above, the Defendants held Hazardous  
15 Waste Filter Blankets at the Facility in unmarked, open containers in violation of the  
16 above regulations.

17 37. The Defendants' management of the Hazardous Waste Filter Blankets at  
18 the Facility violated numerous provisions of the HWCL, including without limitation  
19 California Code of Regulations, title 22, §§ 66262.34(f) and 66265.173. Violation of  
20 each provision is a separate violation, subject to penalty under Health and Safety code  
21 § 25189 or § 25189.2.

22 THIRD CAUSE OF ACTION

23 (Storage of Hazardous Wastes in Violation of  
24 California Health and Safety Code § 25189.2)  
(All Defendants)

25 38. Paragraphs 1 through 25 are realleged as if fully set forth herein.

26 39. Health and Safety Code § 25123.1 allows an entity that generates a  
27 hazardous waste to store the waste on the site for up to 90 days; further storage is  
28 prohibited by § 25201.





