

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Interstate 5 at the Valencia Boulevard
Overpass in Santa Clarita, California
(Los Angeles County)

C.C. Myers, Inc.
1822 S. Lewis Street
Anaheim, CA, 92805

Respondent,

Docket HWCA20040505

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and C.C. Myers, Inc., a California corporation (Respondent), enter into this Consent Order and agree as follows:

1. Respondent generated waste at a site without an EPA identification number, handled waste, and caused the transportation without a hazardous waste manifest and disposal of waste at a landfill not authorized to receive hazardous waste (Class I) contrary to the specifications in California Department of Transportation Permit Number 700-1957, issued to Newhall Land and Farming Company for these construction activities on Interstate 5 at the Valencia Boulevard overpass in Santa Clarita, California (Los Angeles County),. Respondent later determined that a paint sample from an adjacent roadway was hazardous because it exceeded the regulatory threshold for lead Respondent was the prime contractor for the project and had hired Sterndahl Enterprises, Inc., a California Corporation, to grind the traffic paint striping from the pavement,.

2. The Department conducted an investigation between February 2003 and February of 2004, based in part on information from Respondent that its own chemical analysis of a paint sample from an adjacent roadway was hazardous in that it exceeded the regulatory threshold for lead,,

3. The Department alleges the following violations:

3.1. Respondent violated Title 22, California Code of Regulations, section 66261.11(c) (1), in that on or about September 19, 2000, Respondent failed to test the lead paint debris to determine if it was hazardous waste,,

3.2. Respondent violated Health and Safety Code, section 25189.2(c), in that on or about September 19, 2000, Respondent caused the disposal of hazardous waste at a facility which does not have a Hazardous Waste Facility Permit or authorization from the Department,,

3.3. Respondent violated Health and Safety Code, section 25160(b)(1) in that on or about September 19, 2000, Respondent failed to complete a manifest prior to offering hazardous waste for transportation as required under Health and Safety Code section 25160(b)(1)..

4. The parties wish to avoid the expense of litigation and to ensure prompt compliance,,

5, Jurisdiction exists pursuant to Health and Safety Code section 25187.

6,. Respondent waives any right to a hearing in this matter,

7, 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,.

8 Respondent does not admit the violations alleged above, except as follows: Respondent admits the facts alleged above for the purposes of any subsequent action brought pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 et seq

8.1 Respondent will presume future traffic paint debris to be hazardous waste and will manage such paint debris in accordance with applicable state law, rule, permit, requirement, or specification, including but not limited to a California Department of Transportation permit requirement, unless Respondent determines, either by sample analyses or generator knowledge, that the paint debris is not hazardous waste

SCHEDULE FOR COMPLIANCE

9. Respondent shall comply with the following, effective immediately:

9.1. In accordance with applicable provisions of the Hazardous Waste Control Law, referenced in paragraph 8 above, and of the California Code of Regulations, Title 22, Respondent:

9.1.1 Shall determine, either by sample analysis or generator knowledge, if lead paint traffic debris generated by its activities exhibits hazardous waste characteristics and manage it accordingly,

9.1.2. Shall not cause the disposal of hazardous waste to an unauthorized facility,,

9.1.3. Shall complete a manifest prior to offering hazardous waste for transportation,.

9.1.4 Shall confirm that an EPA ID number exists for every site where its activities will cause hazardous waste, including but not limited to thermoplastic or lead-based paint waste, to be generated, managed, transported or disposed

9.1.5 Shall successfully complete the listed training and submit the requisite verifying documents as described in paragraph 10.2 below,,

9.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Florence Gharibian, Branch Chief
Statewide Compliance Division
Department of Toxic Substance Control
1011 North Grandview Avenue
Glendale, California, 91201

9.3. 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,,

9.4. 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,

9.5. 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,

9.6. Sampling, Data, and Document Availability: Respondent shall retain this Consent Order and any subsequent related correspondence and document at its headquarters office for a minimum of six years after the Department's execution of this Consent Order. If the Department requests that some or all of 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.,,

9.7. 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 11.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order,

PAYMENTS

10.1. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department a total of \$19,000 in penalties, Respondent's check shall be made payable to Department of Toxic Substances Control, 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.

10.2. Respondent agrees to send at least two (2) employee(s) to California

Compliance School Modules I-V, inclusive,,

10.2.1 Attendance must be completed and Respondent must submit a Certificate of Satisfactory Completion for each employee issued by the California Compliance School to DTSC, as noted in paragraph 9.2 above, within 185 days of the date of this Order, In recognition of this educational investment, the total penalty imposed by this Order has been reduced by \$2,000 if both of the employee(s) specified above satisfactorily complete the specified modules and DTSC receives the Certificate(s) of Satisfactory Completion within 185 days of the effective date of this Order,

10.2.2. If Respondent fails to submit the certificate(s) as required, an additional penalty in the amount of \$2,000 is due and payable within 30 days after the 185-day period expires,, The 185-day period may be extended by a DTSC Branch Chief upon a written request demonstrating good cause,,

10.3. A photocopy of the check shall be sent to each of the following people:

10.3.1. Mr. Mukul Agarwal, Unit Chief
Statewide Compliance Division
Department of Toxic Substance Control
1011 North Grandview Avenue
Glendale, California 91201

10.3.2. Ms. Vivian Murai, Staff Counsel
Office of Legal Counsel & Investigations
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806.

10.4. 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 attorney's fees,,

OTHER PROVISIONS

11 1 Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order

11 2 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

11 3 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

11 4 Effective Date: The effective date of this Consent Order is the date it is signed by the Department

11 5 Intearation: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as agreed, in writing, by the parties

Dated:- 10/29/04

Original Signed by C.C.Myers

Clinton C Myers, CEO
For C C Myers, Inc

Dated:- 11/10./04

Original Signed by Florence Gharibian

Florence Gharibian, Branch Chief
Statewide Compliance Division
Department of Toxic Substances Control