

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Calvin Smith dba
Delta Materials Recycling
8999 Elk Grove Florin Rd.
Elk Grove, California 95624
Sacramento County

ID No. CFL000000407

Respondent.

Docket HWCA20124889

CONSENT ORDER

Health and Safety Code

Section 25187

INTRODUCTION

The State Department of Toxic Substances Control (Department) and Delta Materials (Respondent) enter into this Consent Order and agree as follows:

- 1.1. Respondent owns and operates a facility (the Facility) in Elk Grove California, which is engaged in the collection of aluminum cans, glass containers, plastic, scrap metal, appliances, electronic devices (E-waste), cathode ray tube televisions (CRTs) and other universal waste.
- 1.2. The Department inspected the Facility on September 15, 2011. After the inspection, the Department issued a Summary of Violations to the Respondent.
- 1.3. A dispute exists regarding the alleged violations.
- 1.4. The parties wish to avoid the expense of litigation and to ensure prompt compliance.
- 1.5. Jurisdiction exists pursuant to Health and Safety Code section 25187.
- 1.6. Respondent waives any right to a hearing in this matter.
- 1.7. 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.

1.8. The Parties enter into this Consent Order as a compromise and settlement of disputed claims for the purpose of avoiding prolonged and complicated litigation and in furtherance of the public interest. In the event of any subsequent action brought pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 et seq., within five (5) years of the date the violations occurred, this agreement and information regarding the alleged violations are admissible in a formal proceeding.

VIOLATIONS ALLEGED

2. As a result of its inspection, the Department alleges the following violations:

2.1. Respondent violated California Health and Safety Code section 25289.5 and 25201(a) in that the facility stored hazardous waste on-site for a time period greater than 180-days and allowed the deposition of hazardous waste to the soil. In particular, Respondent stored burned CRTs units on the ground for more than allowable accumulation times. In addition, broken glass from the CRTs, ash and burned component parts were deposited on the ground.

2.2. Respondent violated California Health and Safety Code section 25201(a) in that Respondent stored a 55-gallon drum of used oil at the Facility for a time period of approximately two (2) years.

2.3. Respondent violated California Code of Regulations title 22 66273.34(d)-(e) in that Respondent failed to label hundreds of electronic devices, and CRTs with any of the required information.

2.4. Respondent violated California Code of Regulations title 22 66273.35(b) (1) (B) 1 and (a) (1) (B) 1 in that Respondent failed to manage and contain electronic devices and CRTs in a manner to prevent release. During the inspections of the facility, numerous monitors and CRTs were observed stored on the ground. Many of the CRTs were stored with the glass monitor directly in contact with the ground, which was composed largely of gravel. Other e-waste

devices were stacked in piles without stretch wrap or other means to prevent e-waste items from falling on the ground. DTSC staff observed numerous e-waste devices which were leaning or tilting where they could fall over onto the ground. The storage area is situated outside and exposed to adverse weather conditions such as wind and rain.

2.5. Respondent violated California Code of Regulations title 22 66273.72(c)(2)(A) in that Respondent engaged in dismantling of e-waste devices, including but not limited to, cutting power cords off CRTs and removal of fan units without notification to DTSC which constitutes unauthorized treatment. Respondent had notified DTSC only that the facility was a collection facility.

2.6. Respondent violated California Code of Regulations title 22 66273.35(a)-(b) in that Respondent failed to demonstrate the length of time that hundreds of e-waste devices were onsite including a Gaylord container full of monitors.

2.7. Respondent violated California Code of Regulations title 22 66273.37(a) in that Respondent failed to immediately clean universal waste and residuals of universal waste. During the inspection, DTSC staff observed numerous wires, alkaline batteries, printed circuit boards and broken CRT glass on the soil at the facility.

2.8 Respondent violated California Code of Regulations title 22 66273.36(a)(b)(c)(d) in that the Respondent failed to adequately train employees who manage universal waste either by providing initial training after hire or annually thereafter. DTSC staff observed wires, alkaline batteries, printed circuit boards and broken CRT glass around the facility in which spills had been left on the ground. In addition, burned CRTs were stored onsite past the accumulation time frame. During the inspection, Mr. Calvin Smith, owner, acknowledged that he did not have any training records at the Facility and employees have dismantled e-waste devices there.

SCHEDULE FOR COMPLIANCE

3.1. Respondent certifies that it has corrected all of the above violations, addressed the circumstances which gave rise to the violations, and has closed the Facility which ensures the violations will not occur in the future.

3.2. Immediately upon the effective date of this Order, and for a period of five years, Respondent shall not direct or participate in any business operation to store, treat, or otherwise manage hazardous waste without authorization from the Department.

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

Mr. Keith Kihara, Chief
Statewide Emergency Response and Sacramento Enforcement Branch
Enforcement and Emergency Response Division
Hazardous Waste Management Program
8800 Cal Center Drive
Sacramento, California 95826-3200

3.4. 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.

3.5. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people at the Facility or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

3.6. 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.

3.7. Site/Facility Access: Access to the Facility shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent 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. The Department and its authorized representatives may enter and move freely about all property at the Facility at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Facility; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings in any way pertaining to work undertaken pursuant to this Consent Order.

3.8. 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 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.

3.9. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent 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.

3.10. 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.

PAYMENTS

4.1. As a result of DTSC's audit of Respondent's financial documents, DTSC has determined that Respondent is not able to pay any monetary penalty. Therefore, DTSC is settling this matter with no monetary penalty from Respondent regarding the violations. Respondent certifies by signing this Order that all financial information provided to the Department is true and accurate.

OTHER PROVISIONS

5.1. 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.

5.2. 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.

5.3. 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.

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

5.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

5.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

This consent order may be signed in counterparts.

Dated: 12-12-13

Original signed by Calvin Smith

Respondent

Dated: Feb. 7, 2014

Original signed by Sangat Kals

Sangat Kals, Ph.D., Unit Chief
Statewide Emergency Response and Sacramento Enforcement B
Hazardous Waste Management Program
Department of Toxic Substances Control