

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Chemical Waste Management,
Incorporated
35251 Old Skyline Road
P.O. Box 471
Kettleman City, California 93239

EPA ID No. CAT 000646117

Respondent.

Docket HWCA 20102948

ENFORCEMENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

1.1. Parties. The State Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to Chemical Waste Management, Incorporated, a Delaware corporation doing business in California (Respondent).

1.2. Site. Respondent is the owner and operator of a hazardous waste disposal facility located at 35251 Old Skyline Road, Kettleman City, California (Site). Respondent generates, handles, treats, stores, and/or disposes of hazardous waste at the Site.

1.3. Permit Status. Respondent engages in the management of hazardous waste at the Site pursuant to a Hazardous Waste Facility Permit (02-SAC-03) (Permit) issued by Department on June 16, 2003, and modified on May 5, 2005, July 25, 2006, and September 21, 2007.

1.4. Jurisdiction. Section 25187 of the Health and Safety Code authorizes the Department to order action necessary to correct violations and 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.

DETERMINATION OF VIOLATIONS

2. The Department has determined that:

2.1. Respondent violated Health and Safety Code section 25202 subdivision (a), California Code of Regulations, title 22, section 66270.30, subdivision (a) and Part VI (Corrective Action) of the Permit issued to Respondent, in that Respondent failed to notify DTSC within 24 hours of the discovery of a release of a hazardous waste or hazardous constituent. Part VI (Corrective Action) of the Permit provides in part the following:

“In the event the Permittee... discovers new releases of hazardous waste and/or hazardous constituents...the Permittee shall notify DTSC orally within 24 hours of discovery and notify DTSC in writing within 10 days of such discovery summarizing the findings including the immediacy and magnitude of any potential threat to human health and/or the environment.” (Permit, Part VI, 1)

Between February 8, 2010 and July 14, 2010, Respondent discovered release(s) of hazardous waste and/or hazardous constituents. Laboratory analysis of initial soil samples taken on or around February 8, 2010, near the CWM polychlorinated biphenyls (PCB) Flushing/Storage Unit (permitted unit) detected the presence of PCB in the soil at levels ranging up to 15 parts per million (ppm). Subsequent soil samples collected by Respondent and United States Environmental Protection Agency (U.S. EPA) in this same area detected PCBs in the soils at levels ranging up to 440 ppm. At certain thresholds PCB is a hazardous waste. PCB is also a listed hazardous constituent, identified in Appendix VIII to Chapter 11 of Division 4.5, in title 22 of the California Code of Regulations. Respondent failed to notify DTSC of the above discovery of release(s)

of hazardous waste or hazardous constituent within 24 hours of the discovery as required by the Permit.

2.2. Respondent violated Health and Safety Code section 25202 subdivision (a), California Code of Regulations, title 22, section 66270.30, subdivision (a) and Part VI (Corrective Action) of the Permit issued to Respondent, in that Respondent failed to notify DTSC in writing within 10 days of discovery of a release of a hazardous waste or hazardous constituent summarizing the findings including the immediacy and magnitude of any potential threat to human health and/or the environment. Between February 8, 2010 and July 14, 2010, Respondent discovered a release of hazardous waste and/or hazardous constituents. Laboratory analysis of initial soil samples taken on or around February 8, 2010, near the CWM PCB Flushing/Storage Unit, detected PCBs in the soil at levels ranging up to 15 ppm. Subsequent soil samples collected by Respondent and U.S. EPA near this same area detected PCBs in the soils at levels ranging up to 440 ppm. Respondent failed to notify DTSC of the above discovery of release(s) of hazardous waste or hazardous constituent in writing within 10 days of discovery as required by the Permit.

2.3. Respondent violated Health and Safety Code section 25202 subdivision (a), California Code of Regulations, title 22, section 66270.30, subdivision (a) and Part VI (Corrective Action) of the Permit issued to Respondent, in that Respondent failed to notify DTSC orally within 24 hours of the discovery of a release of a hazardous waste or hazardous constituent. On or about April 13, 2010, approximately 1 pint of sandblast grit from cleanup of the floor in the PCB building spilled onto the soil on or around the PCB Flushing/Storage Unit. Respondent's analysis of this material showed PCB levels at less than 6 ppm. Respondent failed to notify DTSC orally within 24 hours of the

discovery of a release of a hazardous waste or hazardous constituent as required by the Permit.

2.4. Respondent violated Health and Safety Code section 25202 subdivision (a), California Code of Regulations, title 22, section 66270.30, subdivision (a) and Part VI (Corrective Action) of the Permit issued to Respondent, in that Respondent failed to notify DTSC in writing within 10 days of discovery of a release of a hazardous waste or hazardous constituent summarizing the findings including the immediacy and magnitude of any potential threat to human health and/or the environment. On or about April 13, 2010, approximately 1 pint of sandblast grit from cleanup of the floor in the PCB building spilled onto the soil on or around the PCB Flushing/Storage Unit. Respondent's analysis of this material showed PCB levels at less than 6 ppm. Respondent failed to notify DTSC in writing within 10 days discovery of a release of a hazardous waste or hazardous constituent summarizing the findings including the immediacy and magnitude of any potential threat to human health and/or the environment as required by the Permit.

2.5. Respondent violated Health and Safety Code section 25202 subdivision (a), California Code of Regulations, title 22, section 66270.30, subdivision (a) and Part VI (Corrective Action) of the Permit issued to Respondent, in that Respondent failed to notify DTSC orally within 24 hours of the discovery of a release of a hazardous waste or hazardous constituent. On or about April 26, 2010, approximately 15 to 20 gallons of PCB liquid spilled onto an asphalt pad when a drum slipped from a forklift and ruptured on the ramp adjacent to the Drum Storage Unit. Respondent's analysis of this material showed PCB levels at 58 ppm which is above the hazardous waste regulatory threshold for PCBs. Additionally, PCB is a listed hazardous constituent, identified in Appendix VIII to Chapter 11 of Division 4.5, in title 22 of the California Code of Regulations.

Respondent failed to notify DTSC orally within 24 hours of the discovery of the release of a hazardous waste or hazardous constituent as required by the Permit.

2.6. The Respondent violated Health and Safety Code section 25202 subdivision (a), California Code of Regulations, title 22, section 66270.30, subdivision (a) and Part VI (Corrective Action) of the Permit issued to Respondent, in that Respondent failed to notify DTSC in writing within 10 days of discovery of a release of a hazardous waste or hazardous constituent summarizing the findings including the immediacy and magnitude of any potential threat to human health and/or the environment. On or about April 26, 2010, approximately 15 to 20 gallons of PCB liquid spilled onto an asphalt pad when a drum slipped from a forklift and ruptured on the ramp adjacent to the Drum Storage Unit. Respondent's analysis of this material showed PCB levels at 58 ppm which is above the hazardous waste regulatory threshold for PCBs. Additionally, PCB is a listed hazardous constituent, identified in Appendix VIII to Chapter 11 of Division 4.5, in title 22 of the California Code of Regulations. Respondent failed to notify DTSC in writing within 10 days of discovery of a release of a hazardous waste or hazardous constituent summarizing the findings including the immediacy and magnitude of any potential threat to human health and/or the environment as required by the Permit.

2.7. The Respondent violated Health and Safety Code section 25202 subdivision (a), California Code of Regulations, title 22, section 66270.30, subdivision (a) and Part VI (Corrective Action) of the Permit issued to Respondent, in that Respondent failed to notify DTSC orally within 24 hours of the discovery of a release of a hazardous waste or hazardous constituent. On or about April 29, 2010, approximately 1 gallon of sandblast grit was spilled on the soil. Respondent's analysis of this material showed PCB levels at less than 6 ppm. Respondent failed to report the discovery of a release of a hazardous

waste or hazardous constituent to DTSC orally within 24 hours as required by the Permit.

2.8. Respondent violated Health and Safety Code section 25202 subdivision (a), California Code of Regulations, title 22, section 66270.30, subdivision (a) and Part VI (Corrective Action) of the Permit issued to Respondent, in that Respondent failed to notify DTSC in writing within 10 days of discovery of a release of a hazardous waste or hazardous constituent summarizing the findings including the immediacy and magnitude of any potential threat to human health and/or the environment. On or about April 29, 2010, approximately 1 gallon of sandblast grit was spilled on the soil. Respondent's analysis of this material showed PCB levels at less than 6 ppm. Respondent failed to notify DTSC in writing within 10 days of discovery of a release of a hazardous waste or hazardous constituent summarizing the findings including the immediacy and magnitude of any potential threat to human health and/or the environment as required by the Permit.

SCHEDULE FOR COMPLIANCE

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

3.1.1. Respondent shall immediately comply with the notification requirements established in Part VI (Corrective Action) of the Permit, which provides in part as follows:

In the event the Permittee identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous constituents, or discovers new Solid Waste Management Units (SWMUs) not previously identified, the Permittee shall notify DTSC orally within 24 hours of discovery and notify DTSC in writing within 10 days of such discovery summarizing the findings including the immediacy and magnitude of any potential threat to human health and/or the environment.

DTSC contacts for receiving verbal and written release reports include:

Mr. Wayne Lorentzen at (916) 255-3883
Permitting Project Manager
Brownfields and Environmental Restoration Program
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826

Mr. Larry Ramirez at (559) 297-3943
Senior Hazardous Substances Scientist
Enforcement and Emergency Response Program
Department of Toxic Substances Control
1515 Tollhouse Road
Clovis, CA 93611

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

Larry Ramirez
Senior Hazardous Substances Scientist
Enforcement and Emergency Response Program
Department of Toxic Substances Control
1515 Tollhouse Road
Clovis, CA 93611

Donald R. Plain, Chief
Emergency Response and Enforcement Branch
Enforcement and Emergency Response Program
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826

Erika Giorgi
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

3.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by

the Performance Manager, 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 the 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, assure worker safety, and report hazardous materials release(s).

3.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Order) are 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 section shall be extended for 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 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 agency having jurisdiction. 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. 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. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

3.9. Data and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and 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. 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 Order.

3.10. 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 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 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 in 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.

OTHER PROVISIONS

4.1. Additional Enforcement Actions: By issuance of this Order, the Department does not waive the right to take further enforcement actions.

4.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to costs, 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.

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. Time Periods. "Days" for purposes of this Order means calendar days.

PENALTY

5. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondent's penalty at FORTY-SIX THOUSAND DOLLARS (\$46,000.00). Payment is due within 30 days from the effective date of the Order. 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:

Donald R. Plain, Chief
Emergency Response and Enforcement Branch
Enforcement and Emergency Response Program
Department of Toxic Substances Control
8800 Cal Center Drive

Sacramento, CA 95826

Erika Giorgi
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

RIGHT TO A HEARING

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

EFFECTIVE DATE

7. 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 requests a hearing within the twenty-day period.

Date of Issuance May 20, 2011

Original Signed by

Donald R. Plain, Chief
Emergency Response and Enforcement
Branch
Enforcement and Emergency Response
Program
Department of Toxic Substances Control