

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Docket HWCA 2009-2050

Clean Harbors San Jose, LLC
1021 Berryessa Road
San Jose, California 95133

CONSENT ORDER

Health and Safety Code
Section 25187

CAD 059 494 310

Respondent.

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and Clean Harbors San Jose, LLC (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent generates, handles, treats, stores, and/or disposes of hazardous waste at the following site: 1021 Berryessa Road, San Jose, California (Site).

1.3. Inspection. The Department inspected the Site on April 27 and April 28, 2009.

1.4. Authorization Status. Respondent is a permitted hazardous waste storage, treatment and transfer facility.

1.5. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and to assess a penalty

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"Hazardous Waste Tank Certification – Tank 51 Wastewaste Storage Tank Temporary Certification Clean Harbors, LLC San Jose, California". According to the Respondent, upgrades were completed on or about October 26, 2007. Tank 51 was certified for use at its permitted capacity or 15,000 gallons on June 30, 2008.

3. SCHEDULE FOR COMPLIANCE

3.1. Respondent shall comply with the following:

3.1.1. Respondent corrected the violation set forth above by completing the required 5-year tank certification on June 30, 2008. In addition to completing the 5-year tank certification on June 20, 2008, Respondent verified and re-certified on May 19, 2009 that work conducted on Tank 51 on October 26, 2007 was completed in accordance with Tank Design, Inspection & Certification Services report number 07-10-

1. Respondent shall maintain all tank certifications in accordance with requirements specified in Respondent's permit and Article 10 of Chapter 14 of title 22, California Code of Regulations.

3.1.2. Respondent shall make all payments at the time(s) and in accord with any other conditions set forth in Section 5 (Penalty) below.

4. OTHER PROVISIONS

4.1. 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

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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.

1.6. Full Settlement. This Order shall constitute full settlement of the violations alleged below. The Parties, and each of them, agree that this Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. By agreeing to this Order, the Department does not waive any right to take other enforcement actions except as specifically provided in this Order.

1.7. Hearing. Respondent waives any and all rights to a hearing in this matter.

1.8. Admissions. 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., within 5 years of the date the violations occurred.

2. VIOLATIONS ALLEGED

2.1. The Department alleges the following violation: On or about and between October 31, 2007 and June 11, 2008, Respondent violated California Code of Regulations, title 22, section 66264.192 (b) in that Respondent operated permitted hazardous waste tank, Tank 51, in excess of the capacity specified in the October 3, 2007 temporary tank certification approximately 33 times. On October 3, 2007, Tank 51 was certified for use up to 85% capacity as specified in the report entitled,

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past, current, or future operations of Respondent, except as provided in this Order. 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.

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 corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

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

5. PENALTY

5.1. Respondent shall pay the Department the total sum of \$4,000, of which \$ 2,645.00 is a penalty and \$1,355.00 as reimbursement of the Department's costs incurred in this matter.

5.2. Payment of the total sum specified in paragraph 5.1 is due within 30 days from the effective date of this Order.

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5.3. Respondent's check(s) shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, 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

A photocopy of the check(s) shall be sent to:

Patti Barni
State Oversight and Enforcement Branch
Enforcement and Emergency Response Program
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710

and

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

5.4. 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.

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6. EFFECTIVE DATE

6.1. The effective date of this Order is the date it is signed by the Department.

Dated: 4/28/10

Michael Crisenbery VP Environmental Compliance
Michael Crisenbery, Vice President,
Environmental Compliance
Clean Harbors San Jose, LLC

Dated: 4/29/10

Patricia Barni
Patricia Barni
State Oversight and Enforcement Branch
Enforcement and Emergency Response
Program
Department of Toxic Substances Control