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Superior Court Of California
County Of Los Angeles**

NOV 24 2014

**Sherri R. Carter, Executive Officer/Clerk
By: Judi Lara, Deputy**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT**

BC 5 04 8 5 4

**PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. DEPARTMENT OF
TOXIC SUBSTANCES CONTROL,**

Plaintiff,

v.

**NEUTROGENA CORPORATION, a
Delaware corporation,**

Defendant.

Case No.
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

Plaintiff, the People of the State of California, ex rel. Department of Toxic Substances Control (Department), alleges:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and civil penalties under California's Hazardous Waste Control Law (HWCL). (Health & Saf. Code, § 25100 et seq.)

1 title 22, section 66262.34, which incorporates the requirements of sections 66265.31, 66265.35,
2 66265.192, 66265.193, and 66265.195. (See Cal. Code Regs., tit. 22, § 66262.34(a).)

3 8. A generator may treat hazardous waste under a hazardous waste facilities permit or
4 other grant of authorization from the Department, under a permit-by-rule pursuant to the
5 Department's regulations, or under a grant of conditional authorization or conditional exemption.
6 (See Health & Saf. Code, § 25201.)

7 9. To be deemed to have a permit-by-rule for conducting hazardous waste treatment
8 activities, a generator is required to comply with the notification and other requirements of
9 California Code of Regulations, title 22, section 67450.1 et seq., which incorporate the
10 requirements of sections 66265.31, 66265.35, 66265.192, 66265.193 and 66265.195. (See Cal.
11 Code Regs., tit. 22, § 67450.3(c)(9)(B), (F).)

12 10. In order to treat hazardous waste in a wastewater treatment system under a permit-by-
13 rule, a generator is required to obtain authorization from a Certified Unified Program Agency
14 (CUPA) to operate the system in compliance with the Department's permit-by-rule regulations.
15 (Cal. Code Regs., tit. 22, § 67450.1 et seq.)

16 ALLEGATIONS COMMON TO ALL CLAIMS

17 11. The Department and Neutrogena entered into a tolling agreement and extensions
18 thereto to toll any applicable statute of limitations. As a result of this agreement, the period of
19 time from June 20, 2013, through the date of the filing of the Complaint herein, inclusive (the
20 "Tolling Period"), will not be included in computing the time limited by any statute of limitations
21 under the causes of action against Neutrogena that may arise out of claims covered by the tolling
22 agreement. Those claims include the claims that are brought in this action against Neutrogena.

23 12. At all times relevant to this complaint, Neutrogena operated a facility at buildings
24 located at 5735, 5755, 5760, and 5771 West 96th Street, 5705 West 98th Street, and 5760 and
25 5800 Arbor Vitae Street, Los Angeles, California 90045 (Neutrogena Facility), at which
26 Neutrogena manufactures soaps, lotions, cosmetic products, and other items.

27 13. Neutrogena generates hazardous waste and treats hazardous waste on-site as a result
28 of its manufacturing processes at the Neutrogena Facility.

1 14. On March 16 and 17, 2010, Department personnel inspected the Neutrogena Facility.
2 During that inspection and later analysis of facility records and sampling, Department personnel
3 discovered the following HWCL violations:

- 4 • Unauthorized treatment of hazardous waste in Neutrogena's wastewater treatment
5 system (Health & Saf. Code, § 25201).
- 6 • Failure to maintain a written closure plan for the wastewater treatment system (Cal.
7 Code Regs, tit. 22, § 67450.3(c)(11)).
- 8 • Failure to maintain financial assurance for the closure of the wastewater treatment
9 system (Cal. Code Regs., tit. 22, § 67450.13).
- 10 • Failure to provide required secondary containment to a Neutrogena Facility sump and
11 pipes the collected and delivered hazardous waste to Neutrogena's wastewater
12 treatment system (Cal. Code Regs., tit. 22, § 66265.193).
- 13 • Failure to obtain or retain onsite written assessment and certification statements for
14 the design and installation of Neutrogena's wastewater treatment tanks, a hazardous
15 waste storage tank, and a drum washer tank (Cal. Code Regs., tit. 22, § 66265.192).
- 16 • Failure to determine that spent filters from the wastewater treatment system were
17 hazardous waste (Cal. Code Regs., tit. 22, §§ 66260.200, 66262.11).
- 18 • Failure to maintain adequate aisle space between hazardous waste containers (Cal.
19 Code Regs., tit. 22, § 66265.35).
- 20 • Failure to maintain operating instructions and a record of the dates, amounts, and
21 types of waste treated for Neutrogena's drum rinsing and drum crushing operations
22 (Health & Saf. Code, § 25201.5, subd. (d)).
- 23 • Failure to make available hazardous waste tank and drum rinsing tank inspection
24 records to the Department during the inspection (Cal. Code Regs., tit. 22, §
25 66265.74).
- 26 • Disposal of wastewater treatment system filters, a hazardous waste, in the ordinary
27 trash (Health & Saf. Code, § 25189.2, subd. (c)).

1 system without a permit, conditional authorization or conditional exemption, or other grant of
2 authorization from the Department, and without obtaining authorization from the CUPA to
3 operate the system in compliance with the Department's permit-by-rule regulations.

4 22. Neutrogena's treatment of hazardous waste in its wastewater treatment system
5 constituted treatment at a point that is not authorized according to the HWCL.

6 SECOND CAUSE OF ACTION

7 (Failure to maintain closure plan)

8 (Cal. Code Regs., tit. 22, § 67450.3, subd. (c)(11))

9 23. The People re-allege the allegations in paragraphs one through twenty two above.

10 24. Neutrogena's wastewater treatment system is a fixed treatment unit, as defined in
11 California Code of Regulations, title 22, section 66260.10.

12 ~~25. California Code of Regulations, title 22, section 67450.3(c)(11) provides that an~~
13 owner or operator of a fixed treatment unit who does not hold a hazardous waste facilities permit
14 or other grant of authorization for the fixed treatment unit shall maintain compliance with various
15 closure requirements, including the requirement of a written closure plan for the fixed treatment
16 unit.

17 26. From at least five years prior to the filing of this complaint plus the Tolling Period,
18 through at least July 6, 2010, Neutrogena failed to maintain a written closure plan for its
19 wastewater treatment system, a fixed treatment unit, as required under section 67450.3(c)(11).

20 THIRD CAUSE OF ACTION

21 (Failure to maintain financial assurance for closure)

22 (Cal. Code Regs., tit. 22, § 67450.13)

23 27. The People re-allege the allegations in paragraphs one through twenty six above.

24 28. California Code of Regulations, title 22, section 67450.13 provides that an owner or
25 operator of a fixed treatment unit who does not hold a hazardous waste facilities permit or other
26 grant of authorization for the fixed treatment unit shall maintain financial assurance for closure of
27 the fixed treatment unit.

28

1 29. From at least five years prior to the filing of this complaint plus the Tolling Period,
2 through at least May 25, 2010, Neutrogena failed to maintain financial assurance for closure of its
3 wastewater treatment system as required under section 67450.13.

4 **FOURTH CAUSE OF ACTION**

5 (Failure to provide required secondary containment)

6 (Cal. Code Regs., tit. 22, § 66265.193)

7 30. The People re-allege the allegations in paragraphs one through twenty nine above.

8 31. California Code of Regulations, title 22, section 66265.193 provides that the owners
9 and operators of tank systems that receive, treat, or store hazardous waste shall have secondary
10 containment for those systems that complies with HWCL regulations.

11 32. From at least five years prior to the filing of this complaint plus the Tolling Period,
12 through at least September 15, 2010, Neutrogena failed to have secondary containment that
13 complied with HWCL regulations for a sump and pipes that collected and delivered hazardous
14 waste to Neutrogena's wastewater treatment system.

15 **FIFTH CAUSE OF ACTION**

16 (Failure to obtain or retain onsite written assessment and certification statements)

17 (Cal. Code Regs., tit. 22, § 66265.192)

18 33. The People re-allege the allegations in paragraphs one through thirty two above.

19 34. California Code of Regulations, title 22, section 66265.192(g) provides that the owner
20 or operator of a new tank system or components shall obtain and keep on file at the facility
21 written statements by those persons required to certify the design of the tank system and supervise
22 the installation of the tank system in accordance with the requirements of subdivisions (b)
23 through (f) of section 66265.192, to attest that the tank system was properly designed and
24 installed and that repairs pursuant to subdivisions (b) and (d) of section 66265.192 were
25 performed. These written statements shall also include the certification statement as required in
26 California Code of Regulations, title 22, section 66270.11(d).

27 35. On March 16-17, 2010, the Department discovered that Neutrogena had never
28 obtained the required assessment and certification of Neutrogena's wastewater treatment system

1 tanks and drum washer tank, and had only obtained a partial assessment of Neutrogena's four
2 thousand gallon hazardous waste storage tanks.

3 **SIXTH CAUSE OF ACTION**

4 (Failure to make hazardous waste determination)

5 (Cal. Code Regs., tit. 22, §§ 66260.200, 66262.11)

6 36. The People re-allege the allegations in paragraphs one through thirty five above.

7 37. California Code of Regulations, title 22, section 66262.11 provides that a person who
8 generates a "waste," as defined in HWCL regulations, shall determine if that waste is a hazardous
9 waste using a method specified in section 66262.11.

10 38. California Code of Regulations, title 22, section 66260.200 provides that a generator
11 who incorrectly determines that a hazardous waste is nonhazardous and fails to manage the waste
12 pursuant to the provisions of the HWCL is in violation of HWCL requirements and is subject to
13 enforcement action.

14 39. Neutrogena generates hazardous waste at the Neutrogena Facility.

15 40. From at least five years prior to the filing of this complaint plus the Tolling Period,
16 through March 16, 2010, Neutrogena failed to determine that spent filter bags from its wastewater
17 treatment system were hazardous waste.

18 **SEVENTH CAUSE OF ACTION**

19 (Failure to maintain adequate aisle space between hazardous waste containers)

20 (Cal. Code Regs., tit. 22, § 66265.35)

21 41. The People re-allege the allegations in paragraphs one through forty above.

22 42. California Code of Regulations, title 22, section 66265.35 provides that the owner or
23 operator of a hazardous waste facility shall maintain aisle space to allow the unobstructed
24 movement of personnel, fire protection equipment, spill control equipment, and decontamination
25 equipment to any area of facility operation in an emergency, unless it can be demonstrated to the
26 Department that aisle space is not needed for any of these purposes.

27 43. On March 16-17, 2010, Neutrogena failed to maintain adequate aisle space between
28 hazardous waste containers in two areas of the Neutrogena Facility: an area containing four

1 hazardous waste storage containers next to a large hazardous waste storage tank, and a fenced
2 area containing hazardous waste in cardboard boxes.

3 44. On or about October 22, 2009, Neutrogena also failed to maintain adequate aisle
4 space between hazardous waste containers at the Neutrogena Facility.

5 EIGHTH CAUSE OF ACTION

6 (Failure to maintain operating instructions and records of wastes treated for drum rinsing and
7 crushing operations)

8 (Health & Saf. Code, § 25201.5, subd. (d))

9 45. The People re-allege the allegations in paragraphs one through forty four above.

10 46. Health and Safety Code section 25201.5, subdivision (d) provides, inter alia, that a
11 generator that conducts hazardous waste treatment operations pursuant to subdivision (c) must
12 prepare and maintain written operating instructions and a record of the dates, amounts, and types
13 of waste treated for a period of three years.

14 47. On March 16-17, 2010, the Department discovered that Neutrogena failed to maintain
15 written operating instructions and records of the dates, amounts, and types of wastes treated for a
16 period of three years for drum rinsing and crushing operations conducted at the Neutrogena
17 Facility pursuant to Health and Safety Code section 25201.5, subdivision (c).

18 NINTH CAUSE OF ACTION

19 (Failure to make available hazardous waste tank and drum rinsing tank records to the
20 Department for inspection)

21 (Cal. Code Regs., tit. 22, § 66265.74)

22 48. The People re-allege the allegations in paragraphs one through forty seven above.

23 49. California Code of Regulations, title 22, section 66265.74 states that all records
24 required under chapter 15 of division 4.5 of title 22 of the California Code of Regulations shall be
25 made available at all reasonable times for inspection by the Department.

26 50. On March 16-17, 2010, during a Department inspection of the Neutrogena Facility,
27 Neutrogena did not make available inspection records required under chapter 15 of division 4.5 of
28

1 title 22 of the California Code of Regulations regarding the condition of a Neutrogena hazardous
2 waste storage tank and a drum rinsing tank.

3 **TENTH CAUSE OF ACTION**

4 (Disposal of hazardous waste at an unauthorized point)

5 (Health & Saf. Code, § 25189.2, subd. (c))

6 51. The People re-allege the allegations in paragraphs one through fifty above.

7 52. Health and Safety Code section 25189.2, subdivision (c) provides that a person who
8 disposes, or causes the disposal of, a hazardous or extremely hazardous waste at a point that is not
9 authorized according to the provisions of the HWCL is liable for a civil penalty of not more than
10 twenty-five thousand dollars (\$25,000) for each violation. Each day on which the deposit
11 remains is a separate additional violation, unless the person immediately files a report of the
12 ~~deposit with the department and is complying with an order concerning the deposit issued by the~~
13 department, a hearing officer, or a court of competent jurisdiction for the cleanup.

14 53. From at least five years prior to the filing of this complaint plus the Tolling Period,
15 through March 16, 2010, Neutrogena disposed of hazardous waste consisting of spent filter bags
16 from its wastewater treatment system in a trash container at the Neutrogena Facility, a point not
17 authorized under the HWCL.

18 54. On information and belief, Neutrogena disposed of the spent filter bags in a trash
19 container at the Neutrogena Facility on a weekly basis from at least five years prior to the filing
20 of this complaint plus the Tolling Period, through at least March 16, 2010.

21 **ELEVENTH CAUSE OF ACTION**

22 (Failure to maintain and provide receipts/manifests for used oil shipments)

23 (Health & Saf. Code, § 25250.19, subd. (c)-(d))

24 55. The People re-allege the allegations in paragraphs one through fifty four above.

25 56. Health & Safety Code section 25250.19, subdivision (c) provides that generators of
26 used oil shall record in an operating log and retain for three years the information specified in
27 paragraphs (1) to (5), inclusive, of subdivision (a) of section 25250.18 for each shipment of
28

1 recycled or exempted oil. Section 25250.19, subdivision (d) provides that the operating log is
2 subject to audit and verification by the Department.

3 57. Neutrogena generates used oil at the Neutrogena Facility.

4 58. On March 16, 2010, Neutrogena failed to provide to the Department the operating
5 log for each shipment of recycled or exempted oil from the Neutrogena Facility during the
6 preceding three years.

7 **PRAYER FOR RELIEF**

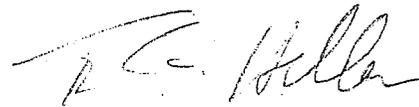
8 The People of the State of California pray:

- 9 1. For an injunction ordering Neutrogena and its agents, servants, employees,
10 representatives, and all persons acting in concert or participating with Neutrogena, not to engage
11 in the violations alleged above;
- 12 2. For judgment against Neutrogena for civil penalties, in an amount according to proof;
- 13 3. For costs of suit; and
- 14 4. For such additional relief as the Court deems appropriate.

15
16 Dated: November 17, 2014

Respectfully Submitted,

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19 SARAH E. MORRISON
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21 

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25 California, ex rel. Department of Toxic
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