

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Docket HWCA SCUPA 2012 IM004

Consolidated Ag Services LLC
3390 Dogwood Road
Imperial, California 92251
and
Donald Wharton, an individual
and
John Wagner, an individual
(Respondents)

CONSENT ORDER

Health and Safety Code
Section 25187 and 25404.1.1

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control Imperial Certified Unified Program Agency (Department) and Consolidate Ag Services LLC and Donald Wharton, an individual and principal of Consolidated Ag Services LLC; and John Wagner, an individual and principal of Consolidated Ag Services LLC (hereinafter the Respondents) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondents generated and handled hazardous waste at the following site: 3390 Dogwood Road, Imperial, Imperial County (Site).

1.3. Inspection. The Department inspected the Site beginning on October 17, 2012 and on various dates thereafter.

1.4. Authorization Status. Respondents do not have a State permit, certificate, registration, authorization, or interim status to manage hazardous waste at the Site.

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

three different locations on the Site. The first location for disposal was aerosol cans disposed in garbage cans located in between B1 (Building 1) and B3 (Building 3). The second location of disposal was lead shots disposed on the concrete pad and the adjacent soils near the Chemical Wash and Recycling Unit. The third location was used oil disposed to the soils immediately adjacent to the 750-gallon capacity used oil tank located at the fuel farm.

2.4. Respondents violated California Code of Regulations, title 22, section 66262.11, in that on or about October 17, 2012, Respondents did fail to properly characterize and test the contents of approximately 37 containers of varying sizes for their hazardous waste potentials.

2.5. Respondents violated Health and Safety Code, section 25505.5(a) (1), in that on about October 17, 2012, Respondents failed to establish and implement a Hazardous Materials Business Plan (HMBP) for emergency response at the site.

2.6. Respondents violated California Code of Regulations, title 22, section 66265.173, in that on about October 17, 2012, Respondents failed to keep closed approximately four containers containing California regulated hazardous waste when not in use. There were one, 55-gallon metal drum of used oil; two, 5-gallon plastic containers of used oil; and, one, 750-gallon tank containing used oil, were all kept open even though Respondents was not adding or removing hazardous wastes from the containers.

2.7. Respondents violated Health and Safety Code, section 25270.4.5.(a) in that on about October 17, 2012, Respondents failed to establish and implement a Spill

Prevention Control and Countermeasure Plan (SPCC) plan for the site given
Respondents exceeded the thresholds thus requiring the preparation of the SPCC.

3. SCHEDULE FOR COMPLIANCE

3.1. Respondents shall comply with the following:

3.1.1. Respondents have corrected the violations set forth above.

3.1.2. Respondents 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 past, current, or future operations of Respondents, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondents 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 Respondents 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 Respondents 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, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this

Order.

4.4. 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. Respondents shall pay the Department a total penalty of \$28,640 of which \$20,000 shall be a credit for a Supplemental Environmental Project (SEP) as described below. The Respondents shall remit the remaining \$8,640.00 to the Department within 180 days of the effective date of this Order.

5.2. Supplemental Environmental Project: Respondents agrees to a Supplemental Environmental Project whereby no more than \$20,000 of the penalty described in this Order can be used towards the successful completion of the SEP. Respondents shall submit within 90 days of the effective date of this Order a written SEP proposal to the Department for the Departments evaluation. At any time the Department determines the Respondents is not reasonable in the proposal or implementation of the SEP the Department may require Respondents to cease acting on the SEP and remit the \$20,000 within 30 days of a written notification from the Department. The SEP recommended by the Respondents or the Department is subject to the sole approval of the Department. Should no SEP be approved by the Department within 365 days of the effective date of this Order, Respondents shall remit the \$20,000 within 395 days of the effective date of this Order to the Department as described below. Any SEP monies not spent from the Department approved SEP shall be

remitted to the Department within 30 days of the SEP being completed or no later than 395 days of the effective date of this Order. The Respondents signatures on this Order agree they are personally bound to fulfill the conditions of this Order in the event that Respondents is unable to meet the deadlines stated above.

5.3. Respondents check(s) for the penalty shall be made payable to Department of Toxic Substances Control, shall identify the Respondents 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:

Roger Vintze
Branch Chief
DTSC Imperial CUPA
627 Wake Avenue
El Centro, California 92244

5.4. If Respondents fails to make payment as provided above, Respondents 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.

6. EFFECTIVE DATE

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

Dated: 3/16/14

Original signed by Don Wharton
Consolidated Ag Services LLC
Respondent

Dated: 3/11/14

Original signed by Don Wharton
Don Wharton
Respondent

Dated: 3/11/2014

Original signed by John Wagner
~~John Wagner~~
Respondent

Dated: 3/17/14

Original signed by Roger Vintze
Roger Vintze
Department of Toxic Substances Control