

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

City of Corning  
4312 Rawson Rd.  
Corning, California 96021-9373

ID No. No ID number for this site

Respondent.

Docket HWCA 20091999

CONSENT ORDER

Health and Safety Code  
Section 25187

The State Department of Toxic Substances Control (Department) and the City of Corning, California, Respondent, enter into this Consent Order and agree as follows:

1. Respondent handles hazardous waste at the Tehama County Green Waste transfer station on 4312 Rawson Road, Corning California 96021-9373.
2. The Department inspected the Site on June 11 and December 14, 2009.
3. The Department alleges the following violations:
  - 3.1 The Respondent violated California Health and Safety Code, 25189.2(c), in that, the City of Corning allowed the illegal disposal of hazardous waste at its property located at 4312 Rawson Road, to wit.
    - a. On June 11<sup>th</sup>, 2009, DTSC inspected the facility and took soil samples. One of the samples collected contained levels of lead that exceed the hazardous waste criteria.
    - b. On May 29, 2009, CAL/EPA received a complaint alleging the complainant was contracted to level green waste debris not suitable to go to Willabrator Energy. While leveling the debris he was told to bury a few large stumps that remained. During the burial the complainant uncovered what he suspected to be hazardous waste.

The material was described as being a green fuzzy material found in layers at the site. During DTSC investigation these green layers were discovered and found to be non-hazardous. However this shows there was some digging done on the site which is not allowed at the site due to the high levels of lead found in the soil there. The reburied soil that was found to contain Hazardous Waste levels of lead constitutes illegal disposal.

c. Unburned material was dug up at the site with manufactured dates of 1988, after the permit for dump and burn operation at this site expired.

d. On December 14<sup>th</sup>, 2009, DTSC, during DTSC investigation of the site, a bottle of bleach, several soap containers, and a pesticide container with fluid in it were found scattered throughout the green waste and debris at the site.

4. A dispute exists regarding the alleged violations.
5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.
6. Jurisdiction exists pursuant to Health and Safety Code section 25187.
7. Respondent waives any right to a hearing in this matter.
8. 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.
9. By entering this Consent Order the Respondent does not admit any of the violations alleged.

#### SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:
  - 10.1.1 Not later than 120 days after the effective date of this order, respondent shall submit to the department details on what the site will be used for

in the future. This should include how the site will be managed to ensure that no hazardous waste will be disposed of at the site.

10.1.2 The covered burn ash contains metal substances classified as hazardous in California Code of Regulations, Title 22 (see Appendix A Tehama County Landfill / Corning Dump Site Sampling Report dated August 17, 2009 for laboratory analysis of burn ash). Post closure land use shall be restricted to activities that will not result in penetration of the soil cover or exposure of the burn ash (e.g., non-irrigated open space), and shall exclude construction of buildings and structures over the burn dump area. Proposed land uses that violate these restrictions shall require the proponent to apply to the Tehama County Department of Environmental Health for removal of land use restrictions, and to the Department of Toxic Substances Control for a variance or removal of land use restrictions pursuant to section 25233 or 25234 of the California Health and Safety Code.

10.1.3 Not later than 120 days after the effective date of this order, respondent shall sign and record a Land Use Covenant as approved by DTSC in accordance with California Code of Regulations, title 22, section 67391.1 to restrict the use of the site if lead and/or other hazardous wastes will remain at the site.

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

Enrique Baeza  
Supervising Criminal Investigator  
DTSC Criminal Investigations.  
P.O. Box 806  
Sacramento, California 95812-0806

10.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, 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 its obligation to obtain such formal approvals as may be required.

10.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may 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.

10.5. 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 and to assure worker safety.

10.6. 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 on the site 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.

10.7. 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.

10.8. 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 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 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 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, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.9. Sampling, 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 Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent 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 Consent 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 Consent Order.

10.10. 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 specified in paragraph 12.3, 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.

10.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.12. 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.

10.13. 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

11.1. 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.

11.2. 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.

11.3. 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.

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

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

11.6. 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.

Dated: February 5, 2010

Original Signed by Stephen J Kimbrough  
Corning City Manager

Dated: February 9, 2010

Original signed by Enrique Baeza  
Supervising Criminal Investigator  
Department of Toxic Substances Control