

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Clayton Manning,
dba and/or owner of
Delta Auto Wrecker
6 Industry Road
Pittsburg, California 94565
ID No. None

Respondent.

Docket No. HWCA 02-02940461

OAH Case No. 2006120612

FIRST AMENDED ENFORCEMENT
ORDER

Health and Safety Code
Section 25187

Date: March 12, 2007

Time: 9:00 a.m.

Location: 1515 Clay Street, Ste. 206
Oakland, CA 94612

INTRODUCTION

- 1.1. Parties. The State Department of Toxic Substances Control (“Department” or “DTSC”) issues this First Amended Enforcement Order (“Order”) to Mr. Clayton Manning, dba and/or owner of Delta Auto Wrecker (collectively, “Respondent”).
- 1.2. Site. This Order applies to the entire site located at 6 Industry Road, Pittsburg, Contra Costa County, California. This site, which DTSC refers to as the “Delta Auto Wrecker Site, Pittsburg,” is referred to herein as the “Site.” The Site consists of approximately one acre of land and is identified by Contra Costa County Assessor’s Parcel Numbers 073-042-003-1 and 073-042-004-9. The Site is occupied by three buildings and one storage shed. It is mostly unpaved.
- 1.3. Generation, Storage and Disposal of Hazardous Waste. Respondent has generated, stored and disposed of the following hazardous waste at the Site: Used oils and petroleum solvents waste.
- 1.4. Jurisdiction. Section 25187 of the Health and Safety Code authorizes the Department to order action necessary to correct violations, and to 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.

- 1.5. Exhibits. Copies of the statutes and regulations applicable to this Order are attached as an exhibit. All exhibits attached to this Order are incorporated herein by this reference.
- 1.6. Amended Order. This Order amends and supersedes the Enforcement Order that DTSC issued on October 3, 2006. The Department is submitting this amended order before the matter is submitted for decision, pursuant to California Government Code section 11507.

DETERMINATION OF VIOLATIONS

2. The Department has determined that:
 - 2.1. Respondent violated Health and Safety Code sections 25250.4 and 25201, and 22 California Code of Regulations section 66262.34, in that Respondent stored sixteen drums and containers of used oil at the Site without a hazardous waste permit or authorization from the Department, and without complying with the requirements for accumulating used oil on-site. The Department discovered this violation on or about August 15, 2002.
 - 2.2. Respondent violated Health and Safety Code section 25201, in that Respondent disposed of hazardous waste on the Site and by using a sump pump and pumping hazardous waste from the Site to the property adjacent to the Site. The Department discovered this violation on or about August 15, 2002.

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- 2.3. Respondent violated 22 California Code of Regulations section 66262.12, subdivision (a), in that on or about August 15, 2002, Respondent did not have an EPA Identification Number as a generator. An EPA Identification number for generator Raquel Auto Repair, located at the Site, became inactive on June 30, 2002.
- 2.4. Respondent violated 22 California Code of Regulations section 66262.40, subdivision (a), in that on or about August 15, 2002, Respondent failed to maintain at the Site manifests for three years of disposal of used oil.

SCHEDULE FOR COMPLIANCE

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

- 3.1. Immediately, Respondent shall stop pumping any liquid or solid materials from the Site to property adjacent to the Site. All hazardous waste shall be properly contained in 55-gallon drums or containers, and stored in a safe manner until removal.
- 3.2. Immediately, Respondent shall remove all hazardous waste from the Facility, and properly close any sumps on the property.
- 3.3. Within 20 days of this Order, Respondent shall not accumulate any hazardous waste at the Site until it has demonstrated to DTSC that it has complied with the requirements in Title 22 California Code of Regulations section 66262.34 for the accumulation of hazardous waste on-site.

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3.4. Preliminary Endangerment Assessment

3.4.1. Within 20 days of the effective date of this order, Respondent shall meet with the DTSC Site Mitigation and Brownfields Reuse Program staff in the Berkeley Regional Office to develop a plan for Respondent to conduct a Preliminary Endangerment Assessment ("PEA") to determine whether a release or threatened release of hazardous substances exists at the Site which poses a threat to human health or the environment. The PEA shall be conducted in accordance with the DTSC guidance manual for evaluating hazardous substance release sites, titled: "Preliminary Endangerment Assessment Guidance Manual," State of California, Environmental Protection Agency, Department of Toxic Substances Control (January 1994).

3.4.2. Within 45 days after the meeting described in Section 3.4.1, Respondent shall submit to DTSC for approval a PEA workplan. Unless otherwise indicated by DTSC in writing, the workplan shall include a sampling plan designed to determine the type and general extent of contamination at the Site; a health and safety plan addressing health and safety issues and safe work practices; a quality assurance/quality control plan to produce data of known quality, and a schedule for completing the PEA. DTSC shall

approve the PEA workplan as submitted, or require Respondent in writing to modify the workplan or any of its parts as a condition for approval.

- 3.4.3. Respondent shall cause the approved PEA workplan to be executed, and shall submit to DTSC according to the workplan schedule a report that documents whether a release has occurred or threatened release exists, the threat the Site poses to human health and the environment, and whether further action is necessary.
- 3.4.4. The work performed pursuant to this Agreement shall be under the direction and supervision of a qualified project coordinator, with expertise in hazardous substance site cleanup. At the time Respondent submits the PEA Workplan for approval, Respondent also shall submit: a) the name and address of the project coordinator; and b) the resume of the coordinator in order to demonstrate expertise in hazardous substance site cleanup. The Proponent shall promptly notify DTSC of any change in the identity of the Project Coordinator. All engineering and geological work shall be conducted in conformance with applicable state law, including but not limited to, Business and Professions Code sections 6735 and 7835.

- 3.5. Within 20 days of the effective date of this Order, Respondent shall demonstrate to DTSC that it has changed the EPA Identification Number to reflect the current name of the business on the Site.
- 3.6. Within 20 days of the effective date of this Order, Respondent shall produce to DTSC copies of bills-of-lading of shipment of used oils.

OTHER PROVISIONS

4. The following additional provisions shall apply to this Order:
 - 4.1. Submittals. All submittals from a Respondent pursuant to this Order shall be sent simultaneously to:

Alan Ito
Senior Hazardous Substances Scientist
Task Force Support and Special Investigations Branch
Department of Toxic Substances Control
8800 California Center Drive
Sacramento, California 95826

Ms. Barbara Cook, P.E., Chief
Northern California Coastal Cleanup Operations Branch
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710
 - 4.2. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondent in writing by the Branch Chief, DTSC, 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.

4.3. 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:

4.3.1. Modify the document as deemed necessary and approve the document as modified; or

4.3.2. 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.

4.4. 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.

4.5. Endangerment during Implementation: In the event that the Department determines that any circumstances or activities (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.

- 4.6. 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.

- 4.7. 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.

4.8. 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.

4.9. Government Liabilities: The State of California, including DTSC, 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.

4.10. 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.

4.11. Requests for an Extension.

4.11.1. If Respondent is unable to perform any activity or submit any document within the time required under this Order, 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.

4.11.2. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

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

4.13. 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.

- 4.14. 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.
- 4.15. 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 \$76,500.00. 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:

Rick Robison
Supervising Hazardous Substances Scientist
Task Force Support & Special Investigations Branch

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Department of Toxic Substances Control
700 Heinz Ave., Ste. 200
Berkeley, California 94710

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 20 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 of Amended Order: February 26, 2007

Signature: _____

Stephen Sterling
Chief, Task Force Support & Special Investigations Branch
Department of Toxic Substances Control

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