

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Evapco West, Inc.
1900 Almond Avenue
Madera, California 93637

EPA ID: CAD983581398

Respondent.

Docket No.: HWCA 20091963

CONSENT ORDER

Health and Safety Code
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and Evapco, Inc., (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: 1900 Almond Ave Madera, California 93637 ("Site").

1.3. Inspection. The Department inspected the Site on January 28, February 18, and April 8, 2009.

1.4. Authorization Status. Respondent is a Small Quantity Generator and generates hazardous waste at the Site including used oil, metal dust, spent spray paint cans and spent solvents.

1.5. Jurisdiction. Health and Safety Code section 25 187, 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.

1.6. Full Settlement. A dispute exists regarding the violations alleged below pertaining to the Site. The parties wish to avoid the expense of litigation and ensure prompt compliance. By their respective signatures 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. This Order shall constitute full settlement of the violations alleged below. By agreeing to this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction and involving either the Respondent(s) or the Site, except to the extent provided in this Order.

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

1.8. In the event of any conflict between the requirements of this Order, including any attachment, and California Code of Regulations, title 22, said regulations shall control. In the event that Respondent's internal procedures are more stringent than required by regulation, Respondent shall not be penalized for failure to comply with its procedures so long as it remains in compliance with the regulatory requirements.

2. VIOLATIONS ALLEGED

2. The Department alleges the following violations: on about January 28, February 18, or April 8, 2009.

2.1. Respondent violated California Code of Regulations, title 22, section 66262.11, in that the Respondent failed to conduct a waste determination test for floor sweep from the band saw operation on or about January 28, 2009, and for baghouse waste, spent spray paint cans, and solvent based paint removers on or about February 18, 2009.

2.2. Respondent violated California Health and Safety Code, sections 25189.2 and 25201, in that the Respondent disposed into the trash dumpsters floor sweep contaminated with metal dust on or about January 28, 2009, and paint remover and spray paint cans on or about February 18, 2009.

2.3. On or about February 18, 2009, Respondent violated California Code of Regulations, title. 22, section 66262.34(f), in that the Respondent failed to label the baghouse with the hazardous waste markings.

2.4. On or about June 12, 2009, Respondent violated California Health and Safety Code section 25201 and California Code of Regulations, title. 22, division 4.5, section 66262.34 in that Respondent stored metal dust, a hazardous waste, on site for greater than 180 days without authorization.

2.5. On or about February 18, 2009, Respondent violated California Health and Safety Code section 25201(a) and California Code of Regulations, title. 22, section 66261.7 in that Respondent engaged in unauthorized treatment of hazardous waste in a container, which was used to clean filters containing metal dust that is a hazardous waste. Respondent asserted that all prior cleaning activities were exempt under section 25143.14 of the California Health and Safety Code, which provides "the act of removing residues from equipment for the purpose of cleaning the equipment for continued use constitutes generation, and not treatment, of a hazardous waste." The Department did not pursue any penalty for alleged treatment activities associated with the defumer filters. Such activity was immediately discontinued at the Department's request.

2.6. On or about February 18, 2009, Respondent violated 40 CFR 265.201, in that Respondent failed to inspect the laser cutting baghouse, a hazardous waste tank system, at the specified frequency for the amount of accumulated waste, signs of corrosion, and spillage or release of waste.

2.7. On or about January 28, 2009, Respondent violated California Code of Regulations, title 22, section 66265.31, in that Respondent failed to maintain several areas of their facility in a fashion needed to prevent the release of hazardous constituents to the environment.

3. SCHEDULE FOR COMPLIANCE

3. The Respondent has demonstrated compliance with all above listed violations.

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

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

Mr. Charles A. McLaughlin
Performance Manager
State Oversight and Enforcement Branch
Enforcement and Emergency Response Program
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

3.3. Communications. All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by the appropriate Performance Manager or his/her designee. No informal advice, guidance, suggestions, or comments by the Department shall relieve Respondent of its obligation to obtain required formal approvals.

3.4. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all applicable local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.5. Endangerment During Implementation. In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Order) is creating an imminent or substantial endangerment to the health or welfare of people on the Site, 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 is needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended by the term of such Stop Work Order.

3.6. 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 Respondent's operations, 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.

3.7. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any other agency having jurisdiction. 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. 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.

3.8. Sampling, Data, and Document Availability.

3.8.1. Respondent shall permit the Department and/or its authorized representatives to inspect and copy all sampling, testing, monitoring, and/or other data (including, without limitation, the results of any such sampling, testing, and monitoring) generated by Respondent, or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Order.

3.8.2. Respondent shall allow the Department and/or 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.

3.8.3. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either:

- a. comply with that request,
- b. deliver the documents to the Department, or
- c. notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order and permit the Department to copy the documents prior to destruction.

3.9. Government Liabilities. Neither the State of California nor the Department shall 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. Neither the State of California nor the Department shall be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

3.10. Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this 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.

3.11. 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.

4. OTHER PROVISIONS

4.1. 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.

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

4.3. Privileges. Nothing in this Agreement shall be construed to require any party to waive any privilege. However, the assertion of any privilege shall not relieve any party of its obligations under this Order.

4.4. Time Periods. "Days" for the purpose of this Order means calendar days.

4.5. Captions and Headings. Captions and headings used herein are for convenience only and shall not be used in construing this Order.

4.6. Severability. If any provision of this Order is found by a court of competent jurisdiction to be illegal, invalid, unlawful, void, or unenforceable, then such provision shall be enforced to the extent that it is not illegal, invalid, unlawful, void, or unenforceable, and the remainder of this Order shall continue in full force and effect.

4.7. Entire Agreement. This Order contains the entire and only understanding between the Parties regarding the subject matter contained herein and shall supersede any and all prior and/or contemporaneous oral or written negotiations, agreements, representations, and understandings and may not be amended, supplemented, or modified, except as provided in this Order. The Parties understand and agree that in entering into this Order, the Parties are not relying on any representations not expressly contained in this Order.

4.8. Counterparts. This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

4.9. Non-Waiver. The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter,

nor shall a waiver of any breach or default of this Contract constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

4.10 Modification. Either Party to this Order may request a modification or termination to the Schedule for Compliance, paragraph 3, and any part thereof. Any such request shall only become effective upon the written approval of both parties to this Order.

5. PENALTY

5.1. Respondent shall pay the Department the total sum of \$73,940.00, (Seventy three thousand nine hundred and forty dollars), provided, however, that Respondent has the option to reduce this penalty by up to \$5,000 (Five thousand dollars). The penalty has been adjusted downward due to the level of cooperation demonstrated by Respondent in returning to compliance. To further reduce the penalty, Respondent may send up to five employee(s) to California Compliance School Modules. Respondent must submit a Certificate of Satisfactory Completion for each employee, issued by the California Compliance School to Department of Toxic Substances Control within 185 days of the effective date of this Order. In recognition of this educational investment, the penalty imposed by this Order will be reduced by \$1,000 per person to a maximum of \$5,000. The 185-day period may be extended by a DTSC Performance Manager upon a written request demonstrating good cause. The written request for extension must be delivered to DTSC prior to the 185-day deadline.

5.2. In accordance with paragraph 5.5 below, payment in the amount of \$68,940.00 is due within 30 days after the effective date of this order. If Respondent does not timely submit five Certificate(s) of Satisfactory Completion for the California Compliance School Modules, an additional penalty of \$5,000 is due and payable within 30 days after the expiration of the 185-day period referenced in paragraph 5.1 above.

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:

Mr. Charles A. McLaughlin
Performance Manager
State Oversight and Enforcement Branch
Enforcement and Emergency Response Program
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.

6. EFFECTIVE DATE

6. The Effective Date of the Order shall be the date on which the Department executes the Order.

Date: 9/9/11

Evapco, Inc.

Signature: _____


John J. Calkins
Vice President, General Counsel

Date: Oct. 6, 2011

Signature _____


Charles A. McLaughin, Performance Manager *for*
State Oversight and Enforcement Branch
Enforcement and Emergency Response Program