

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Docket HWCA No. SCUPA 2010 IM002

Gargiulo Cooling
861 Main Street
Brawley, California 92227

CONSENT ORDER

Health and Safety Code
Section 25404.1.1

Respondent.

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control Imperial Certified Unified Program Agency (Department) and Gargiulo Cooling (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent owns and operates the facility known as Gargiulo Cooling, located at 861 Main Street, in the City of Brawley, California 92227 County of Imperial (Site). The respondent stores hazardous materials at the Site.

1.3. Inspection. The Department conducted a Certified Unified Program Agency Inspection at the Site on March 24 and March 25, 2010.

1.4. Authorization Status. Respondent stores hazardous materials at the Site.

1.5. Jurisdiction. Health and Safety Code (HSC), section 25404.1.1, 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 HSC or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.6. Full Settlement. This Order shall constitute full settlement of the violations alleged 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. By agreeing to this Order, the Department does not waive any right to take other enforcement actions except as specifically provided in this Order.

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

1.8. Admissions. Respondent admits the violation as alleged in Section 2 below.

2. VIOLATIONS ALLEGED

2.1. The Department alleges the following violations:

2.1.1. Respondent violated HSC, section 25503.5 and California Code of Regulations, title 19, section 2729.1 in that on or about March 24 and March 25, 2010, Respondent failed to possess a business plan for emergency response.

3. SCHEDULE FOR COMPLIANCE

3.1. Based on the forgoing Determination of Violations, IT IS HEREBY NOTED THAT:

3.1.1. On September 28, 2010, Respondent submitted for review and comment a draft business plan for emergency response.

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

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

Jesus Torres
Senior Hazardous Substance Scientist
DTSC Imperial CUPA
627 Wake Avenue
El Centro, California 92243

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 Respondent, 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.

4.2. 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.

4.3. 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.

4.4. 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. Respondent shall pay the Department a total penalty of \$5,000. Of the total due, \$3,000 is a penalty; and, \$2,000 shall be a credit for a Supplemental Environmental Project (SEP).

5.2. Supplemental Environmental Project: Respondent has agreed to a \$2,000 SEP to be paid to the Imperial Valley Regional Occupational Program (IVROP) to increase community awareness of environmental issues. Within thirty (30) days of the effective date of this Order, Respondent shall make payment to IVROP at the following address:

Imperial Valley Regional Occupational Program

687 State Street

El Centro, California 92243

Attn: Lupe F. Garcia, Program Assistant

In the event that Respondent shall fail to complete the SEP, Respondent shall make payment of the \$2,000 to the Department within 30 days of failing to complete the SEP.

5.3. Respondent's shall pay the Department \$3,000 of the penalty in 5.1. Check(s) shall be made payable to Department of Toxic Substances Control within 30 days from the effective date of this Order. Check(s) shall identify the Respondent and Docket Number, as shown in the caption of this Order, 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
Attn: Cashier

A photocopy of the check(s) shall be sent to:

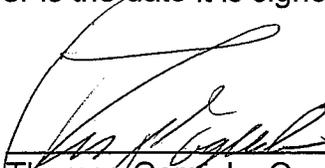
Jesus Torres
Senior Hazardous Substance Scientist
DTSC Imperial CUPA
627 Wake Avenue
El Centro, California 92243

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

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

Dated: _____



Thomas Gargiulo, Owner
Gargiulo Cooling/ Respondent

Dated: 10/11/10



Roger Vintze
Supervising Hazardous Substance Scientist I
DTSC Imperial CUPA