

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Jennings Technology Company LLC
a Delaware corporation doing
business in California
970 McLaughlin Avenue
San Jose, CA 95122

ID No. CAD001216548

Respondent.

Docket HWCA 20091966

CONSENT ORDER

Health and Safety Code
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and Jennings Technology Company LLC, a Delaware corporation doing business in California (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent is a manufacturer of high voltage vacuum capacitors, interrupters, contactors, coaxial relays, and relays used in electrical, industrial, communications, and power industries. Respondent operates a manufacturing and electroplating facility that generates, handles, treats, stores, and/or disposes of hazardous waste. Respondent's facility generates, handles, treats, stores, and/or disposes of hazardous waste and is located at 970 McLaughlin Avenue, San Jose, California 95122 (Site). Respondent acquired this business in 2007.

1.3. Inspection. The Department inspected the Site on January 27 and January 28, 2009.

1.4. Authorization Status. Respondent is a large quantity generator of hazardous waste. Respondent is authorized under Permit by Rule tier for treatment for cyanide destruction, chrome reduction and precipitation, acid/base neutralization, dewatering and drying of treated metal sludge.

1.5. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and 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. 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. Respondent represents that it has corrected the violations set forth in section 2 and claims that there are no presently known existing statutory, regulatory, or permit violations at the Site.

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

1.8. Admissions. Respondent admits the violations described below.

2. VIOLATIONS ALLEGED

2.1. The Department alleges the following violations:

2.1.1. Respondent violated California Code of Regulations, title 22, sections 66262.11 and 66260.200 in that on or about January 27, 2009, Respondent failed to determine if waste was hazardous by testing the waste or applying knowledge of the hazard characteristic.

2.1.2. Respondent violated California Code of Regulations, title 22, section 66265.192 in that prior to and on or about January 27, 2009, Respondent had failed to conduct tank assessments for a) waste cyanide sump and pipes in the Chem room and b) waste acid sump and pipes in the Chem room. Respondent also failed to complete a tank assessment for the waste methanol tank..

2.1.3. Respondent violated California Code of Regulations, title 22, section 66265.195 in that on or about January 27, 2009, whereby Respondent failed to conduct daily tank inspections and retain inspection records for the a) waste methanol tank, , b) acid sump inside Building 2 and c) cyanide sump inside Building 2. Respondent claimed to have conducted weekly tank inspections of the waste methanol tank.

2.1.4. Respondent violated Health and Safety Code sections 25189.5(a), 25201(a), and 25189.2 in that on or about January 27, 2009, Respondent improperly disposed of lead and copper contaminated soldering waste (hazardous waste) to unauthorized points.

2.1.5. Respondent violated Health & Safety Code sections 25201(a), 25189.2(b,c&d), and 25189.5(a) in that on or about January 27, 2009, Respondent

treated hazardous waste without a permit or grant of authorization which resulted in unauthorized disposal. Respondent rinsed wet blast waste filters, dried wet blast waste in an open container, and disposed of rinsed wet blast filters into the municipal garbage. Following the Department's inspection, the filters were determined to be hazardous waste due to the concentrations of copper.

2.1.6. Respondent violated Health and Safety Code section 25201(a) in that on or about January 27, 2009, Respondent stored hazardous waste in containers for more than 90 days without a permit or grant of authorization. Specifically, Respondent stored two paint waste drums containing paint solvents and paints for 122 days over the 90 day limit and an oily rag drum for 64 days over the 90 day limit. During the inspection, a drum containing hazardous waste that was described as "metal dust" in the lab analysis report and later manifested as copper "shavings and dirt" was found outside at the cyclone precipitator. After the inspection, the listed waste was tested and found to be a hazardous waste due to the concentrations of copper, chromium and nickel. The facility continued to store the listed hazardous waste drum for 69 days over the 90 day limit following DTSC's inspection.

2.1.7. Respondent violated California Code of Regulations, title 22, section 66265.171 in that on or about January 27, 2009, Respondent failed to transfer hazardous waste from a damaged container situated under the sludge press, to a container in good condition. The sludge contains nickel, chromium, cadmium, and copper and is classified as a hazardous waste (waste code F006). During the

inspection, DTSC staff observed the damaged container leaking waste onto the floor.

2.1.8. Respondent violated California Code of Regulations, title 22, section 66265.198 in that on or about January 27, 2009, Respondent failed to maintain protective distances with legible signage and markings between the 5000 gallon waste methanol tank and public ways, streets, and/or alleyways as required by National Fire Protection Association's "Flammable Combustible Liquids Code." The waste methanol tank contained an ignitable hazardous waste that was less than ten (10) feet from the fence/property line and which lacked required signage and other markings to alert the public to the ignitable danger.

2.1.9. Respondent violated California Code of Regulations, title 22, section 66265.196 in that on or about January 27, 2009, Respondent failed to remove the cyanide sump from service after Respondent discovered that the secondary containment was compromised and the inner containment was damaged. In addition, the Respondent failed to remove the waste methanol tank system which was found to have degraded, cracked secondary containment and seismically under-secured transfer pumps.

2.1.10. Respondent violated California Code of Regulations, title 22, section 66265.31 in that on or about January 27, 2009, Respondent failed to maintain the facility to minimize the possibility of release of hazardous waste to the air, soil or surface water. Respondent failed to contain wet blast waste that was spilled on the floor and aisle where employees walk. The wet blast waste is intermittently hazardous due to the variable concentrations of copper. In addition,

solder containing lead was spilled on the floor and walkway around the soldering booth.

2.1.11. Respondent violated California Code of Regulations, title 22, sections 66273.33 and 66273.35 in that on or about January 27, 2009, Respondent failed to store universal waste in a covered container. Respondent failed to mark universal waste boxes containing lamp waste and battery waste with accumulation start dates. Respondent did not have a system in place where it could demonstrate the start date of accumulation of universal waste.

2.1.12 Respondent violated California Code of Regulations, title 22, section 66262.34 in that on or about January 27, 2009, Respondent failed to properly label the hazardous waste tank of methanol as well as various hazardous waste containers with the appropriate hazardous waste information on signage/labels.

2.1.13 Respondent violated California Code of Regulations, title 22, section 66265. 17 in that on or about January 27, 2009, Respondent failed to properly post signage which prohibits smoking near the ignitable hazardous waste containers of acetone.

3. SCHEDULE FOR COMPLIANCE

3.1. Respondent shall comply with the following:

3.1.1. Respondent has returned to compliance in regard to the violations alleged.

3.1.2. Respondent shall operate hereafter in a manner that shall prevent recurrences of the violations cited herein.

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

3.1.4. Within 60 days of the effective date of this Order, Respondent shall initiate and cause to be performed by a qualified and independent third party, a comprehensive hazardous waste audit of conditions, operations and practices (Audit), to be conducted at the facility located at 970 McLaughlin Avenue, San Jose, California. The purpose of the Audit is to better inform and expedite Respondent's continuing environmental compliance efforts, especially with regard to the Hazardous Waste Control Law, Health and Safety Code sections 25100 et seq. (HWCL) and regulations promulgated thereunder. The third party shall be either a Registered Environmental Assessor or Professional Engineer, licensed in California, and knowledgeable and experienced in environmental regulations, including but not limited to the HWCL and its associated regulations, as well as other state, federal, and local environmental laws, regulations, and ordinances. Respondent shall conduct an Audit every twelve months for a period of three (3) years.

By July 1, 2011, July 1, 2012, and July 1, 2013, Respondent shall submit to the Department a report (Audit Report) that describes the Audit and findings, analysis, conclusions, and recommendations resulting from the Audit. The Audit Report shall include all measures taken, or timelines to be implemented, to address the findings, conclusions, and recommendations identified in the Audit Report. Respondent shall promptly correct any violations discovered during the Audit as required by federal, state, and local law.

The findings of the Audit and Audit Report are in no way binding on the Department. The Department shall, in its sole discretion, determine the classification associated with violations, if any, whether discovered as a result of an

Audit, inspection or any other method, and in no way delegates or waives its enforcement authority. Furthermore, the Department's action or inaction neither impairs nor waives the Department's authority to enforce the HWCL or its associated regulations.

The deadlines set forth in this section may be extended by the Department only upon written request demonstrating good cause from Respondent. In the event that Respondent fails to submit annual Audit Reports by the deadlines set forth in this section, a stipulated penalty of two hundred and fifty dollars (\$250.00) shall be assessed for each day late up to a total of ten thousand dollars (\$10,000.00) per audit report.

3.1.5. Respondent hereby agrees to send at least five employees, including all employees that supervise, oversee, or train other employees in hazardous waste management at the Site, to the California Compliance School Modules I through V. Attendance must be completed and Respondent must submit the Certificates of Satisfactory Completion issued by the California Compliance School for at least 5 employees to the Department within 180 days of the date of this Order.

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

To: 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 any required formal approvals.

3.4. 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 this Order or fails to protect public health or safety or the environment, the Department may:

- a. Modify the document and approve the document as modified; or
- b. 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.

3.5. 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.

3.6. Endangerment During Implementation. In the event that the Department determines that any circumstances 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 the 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.

3.7. 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.

3.8. 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.

3.9. Sampling, Data, and Document Availability.

3.9.1. 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 (6) years after the conclusion of all activities under this Order.

3.9.2. 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.

3.10. 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 specified in paragraph 5.2, in carrying out activities pursuant to this Order. Neither the State of California nor the Department shall be a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Order.

3.11. Incorporation of Plans and Reports: All plans, schedules, and reports that were submitted by Respondent pursuant to the violations set forth above and/or this schedule for compliance and were approved by the Department are hereby incorporated into this Order. 12.6.

3.12. 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.

4. PENALTY

4.1. Respondent shall pay the Department a total sum of \$347,000.00, of which \$10,000.00 is reimbursement of the Department's costs and \$337,000.00 is a penalty.

4.2. In accordance with Paragraph 4.4 below, payment of \$342,000.00 is due within 30 days from the effective date of this Order.

4.3. Respondent's check shall be made payable to Department of Toxic Substances Control, 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 shall be sent to:

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

and

Sonia Feldstein
Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, CA 94710

4.4. Compliance School. As set forth in paragraph 3.1.5 and 4.1 of this

Order, Respondent may satisfy \$5,000 of the total penalty of \$337,000.00 by Jennings Technology Company LLC

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submitting the California Compliance School Certificates of Satisfactory Completion (Certificates) for at least five (5) employees within 180 days of the effective date of this Order. The Respondent must provide certificates to demonstrate that each of the required number of employees has successfully completed California Compliance School, Modules I – V.

In the event that the Respondent fails to submit the Certificates as required, a stayed penalty of \$5,000 becomes due and payable within 30 days after the expiration of the 180 day period. The 180 day period may be extended by the Department only upon written request demonstrating good cause from Respondent, so long as the request is received by the Department at least ten (10) days prior to the expiration of the 180 day period.

4.5. 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.

5. OTHER PROVISIONS

5.1. 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.

5.2. 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.

5.3. Privileges. Nothing in this Order shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney work-product. However, the assertion of any privilege shall not relieve any party of its obligations under this Order.

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

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

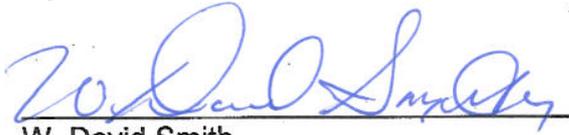
6. PUBLIC COMMENT

6.1. This Order shall be subject to a public comment period for not less than 30 days after execution by the parties. DTSC may modify or withdraw its consent to the order if comments received disclose facts or considerations that indicate that the Order is inappropriate, improper, or inadequate.

7. EFFECTIVE DATE

7.1. The effective date of this Order shall be the last day of the public comment period set forth in Section 6 above, unless the Department notifies the Respondent within five (5) days of the end of the public comment period of its intent to modify or withdraw its consent to the Order.

Dated: 28 Feb 2011 Respondent, Jennings Technology Company, LLC



W. David Smith
Corporate Secretary and Director

Dated: _____ Department of Toxic Substances Control

Gale Filter
Deputy Director
Enforcement and Emergency Response Program