

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Lake Elsinore Facility
26725 El Toro Road
Lake Elsinore, California 92532

Respondents:

Juan Carlos Lopez

ID No. CAC002653183

Peter Magee and Donna Magee

Anana Bliss

ID No. CAC002657469

Docket HWCA 20103569

ENFORCEMENT ORDER
AND IMMINENT AND
SUBSTANTIAL ENDANGERMENT
DETERMINATION

Health and Safety Code
Section 25187

INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to Juan Carlos Lopez (Respondent Lopez), an individual; Peter Magee (Respondent P. Magee), an individual; Donna Magee (Respondent D. Magee), an individual; and Anana Bliss (Respondent Bliss), an individual (collectively "Respondents").

1.2. Facility/Site. This order applies to the property located at 26725 El Toro Road, Lake Elsinore, Riverside County, California 92532 (The Facility). The Facility is

identified by Riverside County Assessor's Map Number 14953, Parcel Numbers 14, 15, 16, and 17. The Facility is approximately 18 acres in size and is bordered by El Toro Canyon Road on the East. A Facility diagram and a Facility location map are attached as Exhibits A and B. This Order applies to the Facility and the areal extent of contamination that resulted from activities on the Facility (the Site). Respondent Lopez handled, treated, stored, and/or disposed of hazardous waste at the Facility. Respondent Lopez owned the Facility from approximately 1997 to August 2010. Respondents P. Magee, D. Magee, and Bliss have owned the Facility since August, 2010.

1.3. Permit/Interim Status. Beginning at an undetermined time, and continuing through approximately April 1, 2010 until the present, hazardous waste was stored, treated and/or disposed of at the Facility without a permit or grant of authorization from the Department.

1.4. Jurisdiction. Section 25187(a) of the Health and Safety Code 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. Section 25187(b) of the Health and Safety Code authorizes the Department to issue an order to require corrective action whenever the Department determines that there is or has been a release of hazardous waste or constituents into the environment from a hazardous waste facility. Pursuant to Section 25187(b)(5), persons who are subject to an order issued hereunder include present and prior owners, lessees, or operators of the property where the hazardous waste is

located; present or past generators, storers, treaters, transporters, disposers, and handlers of hazardous waste, and persons who arrange, or have arranged, by contract or other agreement, to store, treat, transport, dispose of, or otherwise handle hazardous waste. Health and Safety Code section 25187(h) further authorizes the Department to require a person to take corrective action immediately upon the issuance of this Order if the Department determines that the violations may pose an imminent and substantial endangerment to the public health or safety or the environment. A request for a hearing shall not stay the effect of the Order pending a hearing decision.

1.5. Exhibits. All exhibits attached to this Order are incorporated herein by reference.

DETERMINATION OF VIOLATIONS AND
IMMINENT AND SUBSTANTIAL ENDANGERMENT

2.1. The Department has determined that:

2.2. Respondent Lopez violated Health and Safety Code sections 25189.2(c) and 25201(a) in that beginning on an undetermined time, and continuing through at least November 16, 2010, Respondent Lopez disposed or caused the disposal of hazardous waste at a point that was not authorized by the Department for disposal of hazardous waste. Respondent Lopez, brought or allowed to be brought approximately 200 drums and 12 tanks contaminated with hazardous substances to the property. Respondent Lopez also brought or allowed to be brought circuit boards, paint, solvent, and flammable wastes to the Facility. Sample data from material taken at the Facility show that hazardous waste with high levels of copper and other metals was released into the environment at or from the Facility, to wit:

(a) On or about November 15, 2010 and November 16, 2010, sample data from material taken from the ground in the northwest upper level at the Facility showed copper levels at 9,600 ppm and a pH of 11.21;

(b) On or about November 15, 2010 and November 16, 2010, sample data taken from stained soil on the west side of the lower level at the Facility showed copper levels at 28,000 ppm.

(c) On or about November 15, 2010 and November 16, 2010, sample data from material taken from the ground on the west side of the lower level at the Facility showed copper levels at 9,600 ppm and a pH of less than 2; and

(d) On or about November 15, 2010 and November 16, 2010, sample data from material taken from the ground where a tank was allegedly cut and material spilled out of it on the west side of the lower level at the Facility showed copper levels at 5,700 ppm.

2.3. On or before November 16, 2010, Respondent Lopez violated Health and Safety Code Sections 25189.2(d) and 25201(a) by treating and storing or causing the treatment and storage of hazardous waste at a point that was not authorized for treatment or storage of hazardous waste, to wit:

(a) Respondent Lopez stored or caused the storage of hazardous waste in a 2,000-gallon tank located on the middle level at the Facility. Sample data of the hazardous waste stored in this 2,000 gallon tank showed copper levels at 290,000 ppm and a pH of 2.92;

(b) Respondent Lopez stored or caused the storage of hazardous waste in a 3,000-gallon tank labeled "Recycled Water Tank" on the middle level at the Facility.

Sample results of the hazardous waste stored in this 3,000 gallon tank showed copper levels at 210,000 ppm;

(c) Respondent Lopez stored or caused the storage of hazardous waste in drums. A sample from a pile of dirt located between the middle and lower level at the Facility taken from drums brought to the site showed copper levels at 22,000 ppm; and

(d) Respondent Lopez treated or caused the treatment of hazardous waste by burning it.

2.4. Pursuant to Health and Safety Code section 25187(h), the Department has further determined that the foregoing violations and the extensive release of hazardous waste into the environment at or from the Facility may pose an imminent and substantial endangerment to the public health or safety or the environment because hazardous waste and hazardous waste constituents of concern such as metals, volatile organics, Dioxins, and PAHs have migrated or may migrate from the Facility into the environment through the following pathways: subsurface soil and groundwater, soil gas intrusion to indoor air, airborne dust particulate matter, and rain surface runoff.

2.5. This determination of imminent and substantial endangerment is based on the nature of the hazardous substances found at the Facility, the health effects of the chemicals in those substances, the routes of exposure, and the potential for public health/environment risk.

2.6. The Facility is improved with four onsite un-registered groundwater supply wells. An intermittent surface water stream passes through the Facility along the border with the El Toro Canyon Road. The wells are unprotected and may be contaminated by the contaminated soil at the Facility. The surface water stream may become

contaminated by the surface water runoff of contaminated soil at the Facility. Copper, one of the contaminants detected at the Facility in high concentrations, is toxic to fish, biota, and algae in the surface water stream.

2.7. The Facility is located in a sparsely populated undeveloped area of Lake Elsinore. The Facility is currently vacant and unoccupied. The western border of the Facility, which is located on top of the hill, is not fenced. Wildlife and people can easily access the Facility and become directly exposed to the contaminated soil. Squatters have been observed residing on the Facility grounds and using water from the four onsite un-registered groundwater supply wells and surface water. Wildlife and people at the Facility may be directly exposed to the surface water stream. Residences are located directly down gradient from the surface water stream. Residents of neighboring properties use groundwater for all domestic water needs and crop irrigation and may be exposed to the contaminants in the water.

SCHEDULE FOR COMPLIANCE AND
CORRECTIVE ACTION REQUIREMENTS

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

3.1.1. Immediately upon the date of issuance of this Order, Respondents shall not store, treat, or dispose of any hazardous waste at the Facility without authorization from the Department.

3.1.2. Respondents shall conduct corrective action under Department oversight in accordance with the Scope of Work for Corrective Action contained in Exhibit C attached hereto.

a. Corrective action work required by this Order shall be performed under the direction and supervision of a project coordinator with expertise in hazardous waste site cleanup. All engineering and geologic work required by this Order shall be performed respectively under the direction and supervision of a professional engineer or professional geologist, registered in California. Within 14 days of the effective date of this Order, Respondents shall notify the Department's Project Manager, in writing, of the name, title, and qualifications of the project coordinator, professional engineer and/or professional geologist, and of any contractors or consultants and their personnel to be used in carrying out the work under this Order in conformance with applicable State law, including but not limited to, Business and Professions Code sections 6735 and 7835.

b. Respondents are liable for all of the Department's costs that have been incurred in taking response actions at the Site (including costs of overseeing response actions performed by Respondents) and costs to be incurred in the future, including, but not limited to, overseeing the corrective action work required by this Order.

c. The Department may bill Respondents for costs incurred in taking response actions at the Site prior to the effective date of this Order. The Department will bill Respondents quarterly for its response costs incurred after the effective date of this Order. Respondents shall pay the Department within sixty (60) days of receipt of any DTSC billing. Any billing not paid within sixty (60) days is subject to interest calculated from the date of the billing pursuant to Health and Safety Code section 25360.1. All payments made by Respondents pursuant to this Order shall be by cashier's or certified check made payable to "DTSC." Respondents shall reference the

name of the facility and Docket Number HWCA 20103569 on the check and send the check to:

California Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

An electronic (i.e., Adobe PDF) copy or paper photocopy of all payment checks shall be sent to:

Irena Edwards
Brownfields and Environmental Restoration Program
California Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630-4732

3.2. Submittals. All submittals and notifications from Respondents pursuant to this Order shall be sent to:

Irena Edwards
Brownfields and Environmental Restoration Program
California Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630-4732

For all final reports, Respondents shall submit one hard (paper) copy and one electronic copy, with all applicable signatures and certification stamps, as a text-readable Adobe Portable Document Format (PDF) file as specified in Exhibit D. For files that cannot be sent via e-mail or DTSC's FTP Server, the electronic copy shall be submitted on a compact disc (CD) or 3.5" floppy diskette and labeled with the name of the report, the author, and the date.

3.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications will be communicated to Respondents in writing

by Manny Alonzo, Unit 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 Respondents shall be construed to relieve Respondents of the obligation to obtain such formal approvals as may be required.

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

- a. Modify the document as deemed necessary and approve the document as modified, or
- b. Return the document to Respondents with recommended changes and a date by which Respondents must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws: Respondents 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 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 Facility or in the surrounding area, or to the environment, the Department may order Respondents 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.

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 Respondents. Notwithstanding compliance with the terms of this Order, Respondents may be required to take further actions as are necessary to protect public health or welfare or the environment.

3.8. Site Access: Access to the Facility 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 Facility at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Facility; reviewing the progress of Respondents in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Respondents 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.

3.9. Data and Document Availability. Respondents shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondents or on Respondents' behalf in any way pertaining to work undertaken pursuant to this Order. Respondents shall allow the

Department and its authorized representatives to take duplicates of any samples collected by Respondents pursuant to this Order. Respondents 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 Respondents 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, Respondents shall either comply with that request or deliver the documents to the Department or permit the Department to copy the documents prior to destruction. Respondents shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

3.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents 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 Respondents or its agents in carrying out activities pursuant to the Order.

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

3.12. Extension Request: If Respondents are unable to perform any activity or submit any document within the time required under this Order, the Respondents may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. 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

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

4.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondents 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.

4.3. Parties Bound: This Order shall apply to and be binding upon Respondents, and their officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations.

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

4.5. Compliance with Waste Discharge Requirements: Respondents shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

PENALTY

5. Based on the foregoing DETERMINATION OF VIOLATIONS, Respondent Lopez shall pay the Department a penalty at One Hundred Eighty-Nine Thousand Six Hundred Dollars (\$189,600.00). Payment is due within 30 days from the effective date of the Order. Payment shall be made by check payable to the Department of Toxic

Substances Control. The check shall identify Respondent Lopez and Docket Number HWCA 20103569 on it, and shall be sent to:

California Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

An electronic (i.e. Adobe PDF) copy or paper photocopy of the check shall be sent to:

Roberto Kou
Acting Branch Chief
Enforcement & Emergency Response Program
California Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, CA 91311-6505; and

Jennifer Connor
Staff Counsel
Office of Legal Affairs
California Department of Toxic Substances Control
1001 I Street, 23rd floor,
P. O. Box 806
Sacramento, California 95812-0806

RIGHT TO A HEARING

6. Respondents may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondents.

EFFECTIVE DATE

7. This Order, except for Paragraph 5, is effective immediately upon the date of issuance indicated below because the Department has determined that the violations associated with these paragraphs may pose an imminent and substantial endangerment to the public health or safety or the environment. Paragraph 5 of this Order is effective 20 days from the date of mailing the cover letter transmitting the Order to the

Respondents, unless Respondent Lopez requests a hearing within the 20-day period.

Date of Issuance: November 14, 2011

Original Signed by Roberto Kou
Roberto Kou
Acting Branch Chief
Enforcement & Emergency Response
Program
Department of Toxic Substances Control