

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Morgan Environmental Services  
1601 Poplar Street  
Oakland, CA 94607

ID No. CAT 080013428

Respondent.

Docket HWCA 2009-0037

CONSENT ORDER

Health and Safety Code  
Section 25187

The State Department of Toxic Substances Control (Department) and Morgan Environmental Services Inc. (Respondent) enter into this Consent Order and agree as follows:

1. Respondent handles hazardous waste at 1601 Poplar Street, Oakland, CA (Site).
2. The Department inspected the Site on April 17, 2009.
3. The Department alleges the following violation:

The respondent violated Morgan Environmental Services violated Health and Safety Code, section 25201 (a) and, California Code of Regulations, title 22, section 66263.18 (b) (1), in that between 1/18/08 and 1/23/09, hazardous waste was stored at 1601 Poplar Street, Oakland without a permit or authorization, for more than 10 days at an exempt transfer facility as defined in California Code of Regulations, title 22, section 66263.18a. Respondent's manifests showed that the 10-day holding time was exceeded for approximately 63 manifests ranging from 1

day to 43 days in excess of the allowable time frame as noted in the following

table:

<b>Year 2008</b>	<b>Manifest</b>	<b>Morgan Environmental Pick up date</b>	<b>Transporter 2 or direct delivery</b>	<b>In excess of 10 days</b>
1	000122995JJK	1/7/08	1/25/08	8
2	000123016JJK	1/7/08	1/25/08	8
3	000123142JJK	1/8/08	1/25/08	7
4	000123012JJK	1/9/08	1/25/08	4
5	000123013JJK	1/10/08	1/25/08	4
6	000123008JJK	1/11/08	1/25/08	4
7	001520994JJK	1/14/08	2/25/08	32
8	000122942JJK	1/25/08	2/14/08	10
9	000122948JJK	1/28/08	2/15/08	8
10	000122957JJK	1/31/08	2/12/08	1
11	000122941JJK	1/31/08	2/14/08	3
12	000122937JJK	2/1/08	2/15/08	4
13	000122956JJK	2/1/08	2/14/08	3
14	000123067JJK	2/14/08	2/26/08	1
15	000122871JJK	5/30/08	7/22/08	43
16	000122866JJK	6/3/08	7/22/08	39
17	000122867JJK	6/5/08	7/22/08	37
18	000122858JJK	6/9/08	7/22/08	33
19	000122859JJK	6/11/08	7/22/08	29
20	000122860JJK	6/16/08	7/22/08	26
21	000122864JJK	6/16/08	7/22/08	26
22	000122910JJK	6/18/08	7/22/08	22
23	000122911JJK	6/19/08	7/22/08	23
24	000122862JJK	6/25/08	7/22/08	15
25	000122863JJK	6/26/08	7/22/08	15
26	001520974JJK	6/27/08	7/23/08	16
27	000122886JJK	7/3/08	7/23/08	9
28	000122908JJK	7/8/08	7/22/08	4
29	000122887JJK	7/9/08	7/23/08	2
30	000122888JJK	7/11/08	7/23/08	2

31	000122889JJK	7/25/08	8/7/08	3
32	000122890JJK	7/25/08	8/7/08	3
33	000122896JJK	7/25/08	8/7/08	3
34	000122897JJK	7/25/08	8/7/08	3
35	001520969JJK	8/8/08	8/25/08	7
36	001520956JJK	9/2/08	9/19/08	7
37	001520957JJK	9/2/08	9/19/08	7
38	001520958JJK	9/4/08	9/29/08	14
39	001520959JJK	9/4/08	9/19/08	4
40	001520960JJK	9/4/08	9/19/08	4
41	001520961JJK	9/4/08	9/19/08	4
42	001520962JJK	9/5/08	9/19/08	4
43	000122912JJK	9/16/08	9/29/08	3
44	000122915JJK	9/29/08	10/17/08	8
45	000122913JJK	10/1/08	10/17/08	4
46	005232211JJK	10/2/08	10/17/08	4
47	000122923JJK	10/3/08	10/17/08	4
48	005232212JJK	10/4/08	10/17/08	3
49	005232213JJK	10/4/08	10/17/08	3
50	001520954JJK	10/6/08	11/10/08	25
51	000122929JJK	10/14/08	11/10/08	17
52	000122930JJK	10/17/08	11/10/08	14
53	001520930JJK	10/20/08	11/10/08	11
54	001520928JJK	10/21/08	11/10/08	10
55	001520932JJK	10/21/08	11/10/08	10
56	001519501JJK	10/23/08	11/10/08	7
57	001520929JJK	10/24/08	11/10/08	7
58	001520886JJK	11/7/08	12/1/08	14
59	001520883JJK	11/12/08	12/1/08	7
60	001520856JJK	11/18/08	12/1/08	3
61	000122917JJK	12/4/08	12/18/08	3
62	001520881JJK	12/19/08	1/23/09	25
63	001520879JJK	12/24/08	1/23/09	18

4. A dispute exists regarding the alleged violation.
5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.
6. Jurisdiction exists pursuant to Health and Safety Code section 25187.
7. Respondent waives any right to a hearing in this matter.
8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.
9. Respondent does not admit the allegations made in the Consent Order, except as follows: Respondent admits the facts alleged in the Consent Order for the purposes of any subsequent action brought pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 et seq., within 5 years of the date of violations alleged in the Consent Order occurred.

#### SCHEDULE FOR COMPLIANCE

9. Respondent shall comply with the following:
  - 9.I. Effective immediately, Respondent shall comply with California Code of Regulations, title 22, section 66263.18 for purposes of operating under the transfer facility exemption or obtain a hazardous waste facility permit. During the normal course of transportation, Respondent shall not hold hazardous waste, in excess of 10 days.

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9.1.1. Respondent shall make all payments at the time and in accordance with any conditions set forth in paragraph 10.

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

Mr. Leo Valdez, Hazardous Substances Scientist  
State Oversight and Enforcement Branch  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710

9.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch 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 Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

9.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may 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.

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9.5. 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.

9.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent 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 for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

9.7. Liability: Nothing in this Consent 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 Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

9.8. 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 Consent 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 may 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 Consent 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 Consent Order.

9.9. Sampling, 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 Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent 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 Consent 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 Consent Order.

9.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent 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 this Consent Order.

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

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

9.13. 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.

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## PAYMENTS

10. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department a total of \$4,280, of which \$3560 is a penalty and \$720 is reimbursement of the Department's costs. 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: Mr. Leo Valdez, Hazardous Substances Scientist  
State Oversight and Enforcement Branch  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710

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.

## OTHER PROVISIONS

11.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

11.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil 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.

11.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, 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 Consent Order.

11.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Thomas Morgan, CEO  
Morgan Environmental Services  
Respondent

Dated: \_\_\_\_\_

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Ms. Patti Barni  
State Oversight and Enforcement Branch  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control