

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

P-KAY Metal, Inc.
2448 East 25th Street
Los Angeles, California 90058

EPA ID No. CAL000024110

Respondent

Docket HWCA 2009-1997

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control (Department) and P.KAY Metal, Inc. (Respondent) enter into this Consent Order (Order) and agree as follows:

1. Respondent acts as the Importer of Record for hazardous waste generated by P.Kay de Mexico located in Tijuana, B.C. Mexico. Respondent is a global supplier of soldering materials and operates a fully permitted Transfer and Storage Facility in Los Angeles, California.

2. On March 25, 2009, the Department conducted a border truck stop inspection at the US Customs and Border Protection, Otay Mesa Port of Entry in San Diego County.

3. Based on the inspection the Department alleges the following violation(s):

3.1. Respondent violated California Code of Regulations, title 22, section 66262.60, in that on or about March 25, 2009, Respondent imported twenty-seven, 55-gallon metal drums holding tin powder and flakes, without complying with the

State of California requirements for imports of hazardous waste.

3.2 Respondent violated California Health and Safety Code section 25160(b)(1) and California Code of Regulations, title 22, section 66262.20 (a), in that on or about March 25, 2009, Respondent imported twenty-seven, 55-gallon metal drums holding tin powder and flakes, a RCRA hazardous waste, without preparing a Uniform Hazardous Waste Manifest.

3.3 Respondent violated California Code of Regulations, title 22, section 66262.32, in that on or about March 25, 2009, Respondent imported twenty-seven, 55-gallon metal drums holding tin powder and flakes, a RCRA hazardous waste, without proper hazardous waste labels.

3.4 Respondent violated California Code of Regulations, title 22, section 66262.11(a), in that on or about March 25, 2009, Respondent imported twenty-seven, 55-gallon metal drums holding tin powder and flakes without making a hazardous waste determination.

4. A dispute exists regarding the alleged violations.
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 admits the violations alleged above.

SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:

10.1 Respondent shall meet all State of California requirements for imports of hazardous waste, including proper waste determination, manifesting and labeling.

10.2 Respondent shall meet all the conditions for exclusion prior to the acceptance of any hazardous waste when claiming a shipment as Excluded Recyclable Material.

10.3. Respondent manifested and labeled all twenty seven drums as RCRA hazardous waste and shipped them to U.S. Ecology, a RCRA permitted landfill in Beatty Nevada for proper disposal. Respondent submitted copies of the manifests used to dispose of all 27 drums to the Department.

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

Alfredo Rios, Unit Chief
San Diego Border Unit
Enforcement and Emergency Response Program
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

10.5. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Performance Manager, 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.

10.6. 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.

10.7. 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.

10.8. 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.

10.9. 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.

10.10. 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.

10.11. 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.

Respondent shall preserve all such data, reports, and other documents 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.

10.12. 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.

10.13. 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.

10.14. 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.

10.15. 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.

PAYMENTS:

11. Within 30 days of the effective date of this Order, Respondent shall pay to the Department a total penalty of \$18,000.00 dollars, of which \$13,000 dollars is a monetary penalty and \$5,000 dollars as an educational credit for attending Compliance School.

11.1. The penalty shall be paid in three installments of \$4,333.33 dollars, respectively. The first installment payment must be paid within 30 days of the effective date of this Order. The second installment payment must be paid within 365 days of the effective date of this Order. The third installment payment must be paid within 730 days of the effective date of this Order.

Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number (HWCA 2009-1997) on the check. Respondent shall transmit the penalty payments 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:

Alfredo Rios, Unit Chief
San Diego Border Unit
Enforcement and Emergency Response Program
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

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.

11.2. Respondent hereby agrees to send two employees to specified California Compliance School (Modules I-IV). Attendance must be completed and the Respondent must submit a Certificate of Satisfactory Completion issued by the California Compliance School to the Department within 180 days of the effective date of this Order. In recognition of this educational investment, Respondent has received a credit of \$5000.00, provided that the employee(s) satisfactorily complete the specified modules.

If Respondent fails to submit the certificate as required, the penalty is due and payable within 30 days after the 180-day period expires. The 90-day period may be extended by a Department representative, or designee, upon a written request demonstrating good cause from the Respondent.

OTHER PROVISIONS

12.1. 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.

12.2. 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.

12.3. 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.

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

12.5. 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: January 24, 2010

Original signed by Larry Kay
Mr. Larry Kay, President
P KAY Metal Inc.

Dated: February 3, 2010

Original signed by Alfredo Rios
Alfredo Rios, Unit Chief
San Diego Field Office
Enforcement and Emergency Response Program
Department of Toxic Substances Control