

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

South Bay Sand Blasting &
Tank Cleaning Inc.
3589 Dalbergia Street
San Diego, CA 92113

ID No. CAL000827900

Respondent.

Docket HWCA 2010-3168

CONSENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

1.1. Parties. The State Department of Toxic Substances Control (Department) and South Bay Sandblasting & Tank Cleaning Inc. (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent is a registered hazardous waste hauler and is authorized by the Department to transport hazardous waste in California (Transporter registration No. 2982). Respondent is a hazardous waste generator regulated by San Diego County Department of Environmental Health.

1.3. Jurisdiction. Section 25187 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.

DETERMINATION OF VIOLATIONS

2. Based upon observations made and evidence obtained during the

March 8, 2011 complaint investigation and documents submitted by Respondent, the Department has determined that:

2.1. Respondent violated California Health and Safety Code, section 25163(a)(2), in that between November 1, 2010 through February 22, 2011, Respondent transported hazardous waste on nine (9) different instances without a valid transporter registration from the Department.

2.2. Respondent violated California Health and Safety Code, section 25201(a), in that on or about March 8, 2011, Respondent stored twenty three 55-gallon capacity drums holding hazardous waste over 90 days without a permit, permit-by-rule, or grant of conditional authorization or conditional exemption from the Department.

2.3. Respondent violated California Code of Regulations, title 22, section 66265.173(a), in that on or about March 8, 2011, Respondent failed to maintain five (5) containers holding hazardous waste closed except when adding or removing hazardous waste.

3. A dispute exists regarding the alleged violations.

4. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

5. Jurisdiction exists pursuant to Health and Safety Code section 25187.

6. Respondent waives any right to a hearing in this matter.

7. 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.

8. Respondent does admit to the violations alleged above.

SCHEDULE FOR COMPLIANCE

9. Respondent shall comply with the following:

9.1.1. Respondent shall comply with all requirements for transporting hazardous waste according to California Health and Safety Code 25163(a)(2). Respondent renewed its hauler registration on February 23, 2011.

9.1.2 Respondent shall not store hazardous waste for more than 90 days unless the facility holds a permit, permit-by-rule, or grant of conditional authorization or conditional exemption from the Department. Respondent submitted copies of the manifests dated May 9, 2011 used to dispose of the hazardous waste.

9.1.3. Respondent shall maintain all containers holding hazardous waste closed except when adding or removing hazardous waste. Respondent corrected the violation during the inspection.

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

Jose Alfredo Rios,
Supervising Hazardous Substances Scientist I
Enforcement and Emergency Response Program
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

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.

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. 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.

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.

PAYMENTS:

10. Respondent shall pay the Department a total of \$25,000.00 dollars, of which \$10,483.94 dollars is a penalty, \$9,516.06 dollars for the Department's administrative cost and \$5,000 dollars is a credit for attending Compliance School.

10.1. The monetary penalty in the amount of \$20,000 dollars shall be paid in ten (10) equal installments of \$2,000 dollars. The first installment payment must be submitted within 30 days of the effective date of this Order. Subsequent payments must be submitted within 60, 90, 120, 150, 180, 210, 240 and 270 days of the effective date of this Order. The final installment payment must be submitted within 300 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 2010-3168) on the check. Respondent shall transmit the penalty payment(s) 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:

Jose Alfredo Rios,
Supervising Hazardous Substances I
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.

10.2. Respondent hereby agrees to send at least two employees to Compliance School and take a course in Hazardous Waste Compliance. 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 date of this Order. In recognition of this educational investment, Respondent has received a credit of \$5,000.00 dollars, provided that the employees satisfactorily complete the course.

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 180-day period for course completion may be extended by a Department representative, or designee, upon a written request demonstrating good cause from the Respondent.

OTHER PROVISIONS

11. 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.

11.1. 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.

11.2. 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.

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

11.4. 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: _____ //Original Signed by Canuto Lopez//
Canuto Lopez
President
South Bay Sandblasting & Tank Cleaning, Inc.

Dated: _____ //Original Signed by Jose Alfredo Rios//
Jose Alfredo Rios
Supervising Hazardous Scientist I
Enforcement and Emergency Response Program
Department of Toxic Substances Control