

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

California Department of Corrections  
and Rehabilitation:

Pelican Bay State Prison  
5905 Lake Earl Drive  
Crescent City, California 95531  
EPA I.D. No.CAD982437048

California State Prison-San Quentin  
1 Main Street  
San Quentin, California 94964  
EPA I.D. No.CAD070178173

Respondent.

Docket HWCA20071362

CONSENT ORDER

Health and Safety Code  
Section 25187

INTRODUCTION

The State Department of Toxic Substances Control (Department) and California Department of Corrections and Rehabilitation (Respondent) enter into this Consent Order and agree as follows:

1. Respondent generates hazardous waste at the following sites: Pelican Bay State Prison, 5905 Lake Earl Drive, Crescent City, California 95531, and California State Prison- San Quentin, 1 Main Street, San Quentin, California 94964 (Sites).

2. The Department alleges the following violation: Respondent violated title 22, California Code of Regulations, section 66273.11 in that on or about January 16 and January 22, 2007, Respondent failed to ensure that universal waste batteries were not disposed of in the municipal trash at California State Prison-San Quentin and Pelican Bay State Prison.

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

compliance.

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

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

6. This Consent Order shall constitute full settlement of the violation alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

### SCHEDULE FOR COMPLIANCE

7. Submittals: Respondent has submitted policies to the Department which accounted for the proper collection of batteries from inmates housed by Respondent, for the screening of batteries from inmates housed by Respondent to prevent their entry into the municipal waste stream, and the retrieval of such batteries that make their way into the municipal waste stream. These policies were approved by the Department and implemented by Respondent at all Sites.

7.1. Communications. All approvals and decisions of the Department made regarding submittals and notifications were communicated to Respondent in writing by the Department. 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 the obligation to obtain such formal approvals as may be required.

7.2. Compliance with Applicable Laws: Respondent shall carry out this Consent Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

7.3. Endangerment during Implementation: In the event that the Department determines that any circumstances or activities (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 of this Consent Order 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 the Stop Work Order.

7.4. 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. 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.

7.5. 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 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 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.

7.6. 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.

7.7 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 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 the Consent Order.

7.8. 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.

7.9. Extension Request: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, 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.

7.10. 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

8. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department a total of \$13,800.00 - \$6,900 to be paid by California State Prison -San Quentin, and \$6,900 by Pelican Bay State Prison. Of the total \$13,800, \$10,489.59 is a penalty and \$3,310.41 is reimbursement of the Department's costs in this matter. Respondent's checks shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Vouchers to:

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

Photocopies of the checks shall be sent to:

Rick Robison, Unit Chief  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 210  
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

9.1 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.

9.2 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.

9.3 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.

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

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

9.6. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable local, state, and federal laws and requirements, including but not limited to waste discharge requirements issued by the State Water Resources Control Board or a California Regional Water Quality Control Board.

Dated 10-14-09

Bob Sweeny

Bob Sweeny, Associate Warden Business Services  
California Department of Corrections and Rehabilitation  
California State Prison-San Quentin

Dated 10/19/09

Dayton W Conover

Dayton Conover, Associate Warden Business Services(★)  
California Department of Corrections and Rehabilitation  
Pelican Bay State Prison

Dated 10/22/09

Rick Robison

Rick Robison, Unit Chief  
Department of Toxic Substances Control