

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

W. David Marini Farms
405 Olive
Holtville, California 92250

EPA I.D. CAL000286045

Respondent.

Docket HWCA SCUPA 2012 IM002

CONSENT ORDER

Health and Safety Code
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control Imperial Certified Unified Program Agency (Department) and W. David Marini Farms (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent generates, handles, and in certain locations disposed in the past hazardous waste at the following site: 405 Olive, Holtville, Imperial County (Site).

1.3. Inspection. The Department inspected the Site on November 18, 2010 and September 23, 2011 and on various dates thereafter.

1.4. Authorization Status. Respondent does not have a State permit, certificate, registration, authorization, or interim status to manage hazardous waste at the Site.

1.5. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and to 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.

1.6. Full Settlement. This Order shall constitute full settlement of the violations alleged below. The Parties, and each of them, agree that this Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. By agreeing to this Order, the Department does not waive any right to take other enforcement actions except as specifically provided in this Order.

1.7. Hearing. Respondent waives any and all rights to a hearing in this matter.

1.8. Admissions. Respondent admits the violations as alleged in Section 2 below.

2. VIOLATIONS ALLEGED

2.1. The Department alleges the following violations:

2.2. Respondent violated Health and Safety Code Section 25250.5 (a), in that on or about November 18, 2010 and September 23, 2011 for a total of two separate instances, Respondent did cause the disposal to the soil of used oil, a California-regulated hazardous waste.

2.3. Respondent violated California Code of Regulations, title 22, section 66262.34 (f) and 66265.173(a) in that on or about November 18, 2010, and again on September 23, 2011, for a total of two separate instances, Respondent failed to keep 15 and 12 containers respectively, of various sizes, closed except when adding or removing hazardous wastes.

2.4. Respondent violated California Code of Regulations, title 22, section 66265.31 (f) in that on or about November 18, 2010 and September 23, 2011, Respondent operated the facility such that a release occurred of used oil, a California-regulated hazardous waste.

2.5. Respondent violated Health and Safety Code section 25503.5, in that on or about November 18, 2010 and September 23, 2011, Respondent failed to have prepared a business plan for emergency response to a release or threatened release of a hazardous material.

3. SCHEDULE FOR COMPLIANCE

3.1. Respondent shall comply with the following:

3.1.1 Respondent has corrected the violation set forth above. Respondent shall operate hereafter in a manner that shall prevent recurrences of the violation cited herein.

3.1.2. Respondent shall make all payments at the time(s) and in accord with any other conditions set forth in Section 5 (Penalty) below.

4. OTHER PROVISIONS

4.1. 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 Respondent, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare or the environment.

4.2. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties and/or damages, 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 Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, 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 Order.

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

5. PENALTY

5.1. Respondent shall pay the Department a total penalty of \$23,500.00. The penalty shall be paid in quarterly installments of \$5,875 to the Department commencing no later than 30 days of the effective date of this Order. All payments shall be made within one year of the effective date of this order.

5.2. Respondent's check(s) for the penalty shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, 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(s) shall be sent to:

Roger Vintze
Branch Chief
DTSC Imperial CUPA
627 Wake Avenue
El Centro, California 92244

5.3. 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.

6. EFFECTIVE DATE

6.1. The effective date of this Order is the date it is signed by the Department.

Dated: May 20, 2013

Original signed by W. David Marini
W. David Marini
Respondent

Dated: May 17, 2013

Original signed by Roger Vintze
Roger Vintze
Department of Toxic Substances Control