

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Port of San Francisco
Pier 1
San Francisco, CA 94111

Respondent.

Docket Number HWCA2003-0108

CONSENT ORDER

Health and Safety Code
Section 25187

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

1. Respondent stored soil, that the Department alleges was a hazardous waste, at Pier 92, San Francisco, California (Site).
2. The Department inspected the Site on September 6, 2002.
3. The Department alleges that the Respondent violated Health and Safety Code, section 25201, in that from January, 1999, to approximately February 3, 2003, the Port of San Francisco knowingly stored approximately 15,000 cubic yards of soil containing non-RCRA hazardous waste levels of lead at Pier 92.
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 violation alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

SCHEDULE FOR COMPLIANCE

9. Respondent shall comply with the following:

9.1. (a) Respondent has completed a stock pile soil removal pursuant to the approved work plan for the Port of San Francisco, Pier 92.

(b) Respondent has taken soil samples to verify that any remaining soil has not been impacted by hazardous waste constituents present in the stock pile and does not pose a risk to human health and the environment.

9.2. 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.

9.3. 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 11.3, in carrying out activities referenced in 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 referenced in this Consent Order.

9.4. Incorporation of Plans and Reports. All plans, schedules, and reports that required Department approval and were submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order.

PAYMENTS

10.1. Respondent shall pay the Department the total sum of \$175,000, which includes \$57,000 as reimbursement of the Department's enforcement costs incurred in connection with this matter, \$63,000 as a penalty, and \$55,000

as reimbursement of the Department's oversight costs incurred in connection with this matter.

10.2. Payment in the amount of \$175,000 is due within 60 days from the effective date of this Order.

10.3. Respondent's check 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 shall be sent:

To: Mr. Paul S. Kewin
Unit Chief
Northern California Branch
Statewide Compliance Division
8800 Cal Center Drive
Sacramento, CA 95826-3628

To: Mr. James J. Grace
Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

All checks shall reference the name of the Facility, the Respondent's name and address, and the docket number of this Consent Agreement.

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

Dated: 4/28/04

(Original signed by Douglas F. Wong)

Douglas F. Wong
Executive Director, Port of San Francisco

Approved as to Form:

Dennis J. Herrera
City Attorney

(Original signed by Noreen Ambrose)

Noreen Ambrose
Deputy City Attorney

Dated: 4/30/04

(Original signed by Charlene Williams)

Charlene Williams, Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control