

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Mel Bernie Co., Inc.
dba 1928 Jewelry Company
3000 Empire Avenue
Burbank, California 91504
ID No. (CAD048476683)

Respondent.

Docket HWCA
SRPD01/02NAEO-4260

ENFORCEMENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

1.1. Parties. The State Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to Mel Bernie Co., Inc. dba 1928 Jewelry Company (Respondent).

1.2. Site. Respondent generates and treats hazardous waste at the following site: 3000 Empire Avenue, Berkeley, California (Site).

1.3. Permit/Interim Status. The Department authorized Respondent to operate a cyanide destruction unit by Consent Order issued on March 23, 2000. Los Angeles County Certified Unified Program Agency (CUPA) authorized Respondent to operate two treatment units by way of renewal of its Permit by Rule (PBR) issued on April 6, 2000. Respondent generates the following hazardous wastes: Wastewater from electroplating operations, including electroplating operations where cyanides are used in the process; wastewater treatment sludge from electroplating operations; plating bath residues from the bottom of plating baths from electroplating operations

where cyanides are used in the process; spent stripping and cleaning solutions from electroplating operations where cyanides are used in the process; spent hydrocarbon solvents; used lubricating oil; and tin dross from metal casting and soldering operations.

1.4. 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. The Department has determined:

2.1. Respondent violated California Code of Regulations, title 22, section 66270.1, subdivision (c) in that on or about August 15, 2001, Respondent treated cyanide-bearing hazardous waste residues from the bottom of electroplating baths without first obtaining the proper permit or grant of authorization from the Department. Hazardous waste residues from electroplating baths do not meet the definition of aqueous waste.

2.2. Respondent violated California Code of Regulations, title 22, section 66265.196, in that on or about August 15, 2001, Respondent failed to immediately remove from service a leaking hazardous waste storage tank system.

2.3. Respondent violated California Code of Regulations, title 22, section 67450.3, subdivision (c)(9) in that on or about August 15, 2001, Respondent failed to remove liquid from the secondary containment for the hazardous waste storage tank system within 24 hours, or in as timely a manner as possible.

2.4. Respondent violated California Code of Regulations, title 22, section 66265.11, in that on or about August 15, 2001, Respondent failed to apply to the Department for a facility identification number for a temporary offsite facility owned and operated by Respondent, located at 2721 Empire Avenue in Burbank, California, where hazardous waste was generated.

2.5. Respondent violated California Code of Regulations, title 22, section 66262.34, subdivision (f)(3)(A & B) in that on or about August 15, 2001, Respondent failed to properly label three 55-gallon waste storage containers used for onsite accumulation of hazardous waste. The containers were not labeled with the hazardous properties, composition and physical state of the waste.

2.6. Respondent violated California Code of Regulations, title 22, section 66261.7, subdivision (f) in that on or about August 15, 2001, Respondent failed to mark thirteen empty containers with the date they were emptied.

2.7. Respondent violated California Code of Regulations, title 22, section 66261.2, subdivision (f)(1) in that on or about August 15, 2001, Respondent failed to adequately label hazardous materials containers. Four 55-gallon hazardous materials containers stored in the 90-day hazardous waste storage and accumulation area were not labeled with information identifying the material held in the containers.

2.8. Respondent violated Health and Safety Code section 25143.9, in that on or about August 15, 2001, Respondent failed to manage recyclable scrap metals as hazardous waste by collecting scrap metals in containers that were not properly labeled.

SCHEDULE FOR COMPLIANCE

3. Respondent submitted a certification of return to compliance dated August 28, 2001, for the violations described in Section 2 of this Order. Correction of all violations and return to compliance was verified by a follow-up inspection that was conducted on September 10, 2001. Respondent has discontinued operation of the "batch treatment unit" that was being used to treat hazardous waste plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process. The findings of the follow-up inspection were included in the inspection report that was issued by the Department to Respondent on September 27, 2001. No additional corrective actions are required at this time.

3.2. Submittals. All submittals from a Respondent pursuant to this Order shall be sent simultaneously to:

Mr. Charles A. McLaughlin, Branch Chief
State Regulatory Programs Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

Mr. Jerry Munoz
Manager of Inspections
Central Inspection Station
Health Hazardous Materials Division
County of Los Angeles Fire Department
5825 Rickenbacker Road
Commerce, California 90040

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

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may:

- a. Modify the document as deemed necessary and approve the document as modified, or
- b. 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.

3.5. 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.

3.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this 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 Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

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

3.8. 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 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 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 Order.

3.9. 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 Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central

depository of the data, reports, and other documents prepared pursuant to this 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 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 Order.

3.10. 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 in carrying out activities pursuant to this 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 Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

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

3.13. 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.

OTHER PROVISIONS

4.1. Additional Enforcement Actions: By issuance of this Order, the Department does not waive the right to take further enforcement actions.

4.2. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to costs, 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 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.

4.4. Time Periods. "Days" for purposes of this Order means calendar days.

4.5. Compliance with Waste Discharge Requirements: Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

PENALTY

5. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondent's penalty at \$49,500. Payment is due within 30 days from the effective date of the Order. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify Respondent and Docket Number, as shown in the heading of this case. Respondent shall deliver the penalty payment to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Mr. Charles A. McLaughlin, Branch Chief
State Regulatory Programs Division
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

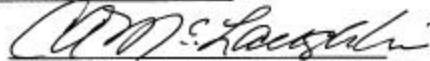
RIGHT TO A HEARING

6. Respondent may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondent.

EFFECTIVE DATE

7. This Order is final and effective twenty days from the date of mailing, which is the date of the cover letter transmitting the Order to you, unless you request a hearing within the twenty-day period.

Date of Issuance 17 June 2002



Charles A. McLaughlin, Branch Chief
State Regulatory Programs Division
Department of Toxic Substances Control