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U.S. EPA REGION IX
REGIONAL HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of)	U.S. EPA Docket No.
)	RCRA- 9-2011- 0013
KMG Electronic Chemicals, Inc.)	
)	
EPA ID No. CAR 000 020 057)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
<u>Respondent.</u>)	22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 Code of Federal Regulations ("C.F.R.") Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999). Complainant is the United States Environmental Protection Agency, Region 9 ("EPA"). Respondent is KMG Electronic Chemicals, Inc. (Respondent or "KMG").
2. Respondent operates a facility located at 2340 Bert Drive, in Hollister, California (95023) (the "Facility"). The Facility's EPA Identification Number is CAR000020057. Respondent is engaged in the manufacture, formulation and distribution of specialty chemicals, including high purity solvents.
3. This Consent Agreement and Final Order, pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent failed to: (1) obtain a permit for storage of hazardous waste that was stored without the appropriate labeling required for a generator without a permit, a violation of 22 California Code of Regulations ("C.C.R.") § 66270.1 [see also 40 C.F.R. § 270.1, 40 C.F.R. § 262.34(2)]; (2) conduct weekly inspections of the areas where containers are stored, a violation of 22 C.C.R. § 66265.174 [see also 40 C.F.R. § 265.174]; (3) maintain adequate aisle space in a hazardous waste storage area, a violation of 22 C.C.R. § 66265.35 [see also 40 C.F.R. § 265.35]; (4) close containers of

hazardous waste, a violation of 22 C.C.R. § 66265.173 [*see also* 40 C.F.R. § 265.173]; and (5) have facility personnel complete required training to ensure compliance with hazardous waste management regulations, a violation of 22 C.C.R. § 66265.16(c) and (d)(1)-(4) [*see also* 40 C.F.R. § 265.16(c) and (d)(1)-(4)]. These allegations would be violations of Section 3001 *et seq.* of RCRA, 42 U.S.C. § 6921 *et seq.*, and state regulations adopted pursuant thereto.¹

B. JURISDICTION

4. On August 1, 1992, the State of California received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. Part 271. The authorized program is established pursuant to the Hazardous Waste Control Law, Chapter 6.5 of Division 20 of the California Health and Safety Code, and the regulations promulgated thereunder at Title 22, Division 4.5 of the California Code of Regulations, 22 C.C.R. §§ 66001 *et seq.* The State of California has been authorized for all the regulations referenced in this CA/FO.
5. Respondent is a "person" as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
6. Respondent is the "operator" of a facility as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
7. Respondent's hazardous waste manifests indicate that, during the period relevant to this CA/FO, Respondent was a "generator" of hazardous waste as defined in 22 C.C.R. § 66260.10 [40 C.F.R. § 260.10].
8. Respondent is or has been engaged in "storage" of hazardous waste as defined in 22 C.C.R. § 66260.10 [*see also* 40 C.F.R. § 260.10].
9. Respondent generates and accumulates, or has generated and accumulated, materials that are "wastes" as defined in 22 C.C.R. §§ 66260.10 and 66261.2 [*see also* 40 C.F.R. §§ 260.10 and 261.2].
10. At the Facility, Respondent generates and accumulates, or has generated and accumulated, "hazardous waste" as defined in California Health & Safety Code ("H&SC") § 25117, and 22 C.C.R. §§ 66260.10 and 66261.3 [*see also* RCRA § 1004(5),

¹ All citations to the "C.C.R." refer to Division 4.5 of Title 22 of the current California Code of Regulations. EPA is enforcing California hazardous waste management program requirements as approved and authorized by the United States on August 1, 1992 (*see* 57 FR 32726, July 23, 1992) and September 26, 2001 (66 FR 49118, September 26, 2001). Corresponding Federal citations are provided in brackets.

and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes include, but are not limited to, waste isopropyl alcohol, acetone and toluene (D001).

11. On February 11, 2011, an unannounced RCRA Compliance Evaluation Inspection ("CEI") was conducted at the Facility by an inspector from the United States EPA. Based on the findings EPA made during the CEI, and additional information obtained subsequent to the CEI, EPA determined that Respondent had violated California Health & Safety Code § 25100 *et seq.* and the regulations adopted pursuant thereto, as approved and authorized by the United States. Nothing in the Inspection Report or subsequent documents related to this case, including this CA/FO, is meant to suggest that Respondent's actions or omissions had or have caused releases to the environment.
12. Section 3006 of RCRA, 42 U.S.C. § 6926 provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
13. A violation of California's authorized hazardous waste program, found at H&SC § 25100 *et seq.*, constitutes a violation of Subtitle C of RCRA and, therefore, a person who violates California's authorized hazardous waste program is subject to the powers vested in the EPA Administrator by Section 3008 of RCRA, 42 U.S.C. § 6928.
14. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA *et seq.*, 42 U.S.C. § 6921 *et seq.*
15. The Administrator has delegated the authority under Section 3008 of RCRA to the EPA Regional Administrator for Region 9, who has redelegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATIONS

COUNT I

Failure to Maintain Adequate Aisle Space in Hazardous Waste Storage Area

16. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
17. 22 C.C.R. § 66265.35 requires that owners or operators maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of the Facility operation in an emergency, unless it can be demonstrated that aisle space is not needed for any of these purposes. [See also 40 C.F.R. § 265.35.]

18. The EPA Inspector during the CEI observed that the lack of aisle space in the hazardous waste storage area of the Facility limited the inspection, as labels and containers were inaccessible and unobservable.
19. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66265.35 [*see also* 40 C.F.R. § 262.35].

COUNT II

Failure to Conduct Weekly Inspections

20. Paragraphs 1 through 19 above are incorporated herein by this reference as if they were set forth here in their entirety.
21. 22 C.C.R. § 66265.174 requires that owners or operators conduct at least weekly inspections of areas where containers are stored to look for leaking containers and for deterioration of containers caused by corrosion or other factors. [*See also* 40 C.F.R. § 265.174.]
22. The EPA Inspector during the CEI confirmed that Facility personnel had not conducted weekly inspections.
23. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66265.174 [*see also* 40 C.F.R. § 262.174].

COUNT III

Failure to Conduct Personnel Training

24. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.
25. 22 C.C.R. § 66265.16(c) and (d)(1)-(4) provide that Facility personnel must take part in an annual review of hazardous waste management training, and maintain appropriate documentation of the training. [*see also* 40 C.F.R. § 265.16(c) and (d)(1)-(4)].
26. The EPA Inspector during the CEI confirmed that Facility personnel could not provide documentation of receiving annual refresher training.
27. Therefore, EPA alleges that Respondent has violated 22 C.C.R. § 66262.11 [*see also* 40 C.F.R. § 262.11].

COUNT IV

Failure to Close Containers of Hazardous Waste

28. Paragraphs 1 through 27 above are incorporated herein by this reference as if they were set forth here in their entirety.
29. 22 C.C.R. § 66265.173(a) requires that a container holding hazardous waste shall always be closed during transfer and storage, except when it is necessary to add or remove waste. [See also 40 C.F.R. § 265.173(a).]
30. The EPA Inspector during the CEI observed containers marked to contain hazardous waste that were not closed and were not in the process of having waste added or removed. These unclosed containers included one overpack drum that had no lid, one 55 gallon container of spent solvent with a cracked lid, and one 1-gallon container of spent solvent that was insufficiently sealed where a tube entered the lid.
31. Therefore, EPA alleges that Respondent stored hazardous waste in a container holding hazardous waste that was not closed during transfer and storage, a violation of 22 C.C.R. § 66265.173(a) [see also 40 C.F.R. § 265.173(a)].

COUNT V

Storage of Hazardous Waste Without a Permit

32. Paragraphs 1 through 31 above are incorporated herein by this reference as if they were set forth here in their entirety.
33. 22 C.C.R. § 66270.1(c) requires that, except as described immediately below, each person owning or operating a facility where hazardous waste is transferred, treated, stored, or disposed must have a permit. At the time of the CEI, Respondent did not have a permit or grant of interim status to store hazardous waste under 22 C.C.R. § 66270.1(c) [see also 40 C.F.R. § 270.1(c)].
34. 22 C.C.R. § 66262.34(d) provides that a generator may accumulate hazardous waste on-site for 90 days or less without a permit or grant of interim status provided the generator meets certain conditions. 22 C.C.R. § 66262.34(f) requires that generators label containers with the words "hazardous waste" and with the date accumulation of the waste begins, and the label must be visible for inspection [see also 40 C.F.R. § 262.34(f)]. Generators that accumulate waste longer than 90 days or fail to label containers of hazardous waste appropriately fail to meet the requirements of 22 C.C.R. § 66262.34, and are subject to the permitting requirements of 22 C.C.R. § 66270.1 [see also 40 C.F.R. § 270.1].
35. The EPA Inspector during the CEI observed six 55 gallon containers storing hazardous wastes in the hazardous waste storage area of the Facility that, based on the accumulation

start dates noted on the respective labels, Respondent had stored at the Facility for more than 90 days. Review of manifests indicates that the contents of the containers may not have been held more than 90 days, but the containers were nonetheless incorrectly labelled with the incorrect accumulation start dates. Approximately 19 additional containers in the Facility, including in the hazardous waste storage area and in the satellite accumulation area, either lacked labels or the labels lacked notation of an accumulation start date.

36. Respondent's failure to meet the applicable requirements set forth or referenced above from 22 C.C.R. § 66262.34 subject it to the permit requirements of 22 C.C.R. § 66270.1 [see also 40 C.F.R. §§ 262.34 and 270.1]. Therefore, EPA alleges that Respondent stored hazardous waste without a permit, a violation of 22 C.C.R. § 66270.1(c) [see also 40 C.F.R. § 270.1(c)].

D. CIVIL PENALTY

37. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996 (61 Fed. Reg. 69360 (Dec. 31, 1996)) authorizes a civil penalty of up to \$27,500 per day per violation for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring between January 31, 1997 and March 15, 2004. The Civil Monetary Penalty Inflation Adjustment Rule (73 Fed. Reg. 75340 (December 10, 2008)) authorizes a civil penalty of up to \$32,500 per day per violation for violations occurring after March 15, 2004 and a civil penalty of up to THIRTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$37,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring after January 12, 2009. Based on the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, and any economic benefit accruing to Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed TWENTY THOUSAND DOLLARS (\$20,000.00) as the civil penalty for the violations alleged herein. The proposed penalties were calculated in accordance with EPA's "June 2003 RCRA Civil Penalty Policy," as updated. Under the penalty policy, EPA uses a penalty assessment matrix to determine a gravity-based penalty. That penalty amount is then adjusted to take into account multi-day violations, the economic benefit gained from non-compliance, where appropriate, and case-specific circumstances.

E. ADMISSIONS AND WAIVERS OF RIGHTS

38. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

39. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO, and this CA/FO and Respondent's compliance with it shall not be construed as an admission by Respondent of any wrongdoing or liability. Notwithstanding the foregoing, Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

40. This CA/FO shall apply to and be binding on Respondent and its agents, successors and assigns, until such time as the civil penalty required under Sections D and G has been paid in accordance with Section G, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
41. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
42. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

43. Respondent consents to the assessment of and agrees to pay a civil penalty of TWENTY THOUSAND DOLLARS (\$20,000.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
44. Respondent shall submit payment of the TWENTY THOUSAND DOLLARS (\$20,000.00) in accordance with the payment schedule specified in Paragraph 45 of this CA/FO. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center

PO Box 979077
St. Louis, MO 63197-9000.

Alternatively, payment may be made by wire transfer to Federal Reserve Bank of New York, using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message to read "D 68010727 Environmental Protection Agency."

At the time payment is made, a copy of the check or wire confirmation shall be sent to:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

Clint Seiter (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.

45. The payment of \$20,000 is due within 30 days of the effective date of this CA/FO.
46. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), the payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. A late penalty charge of \$15.00 will be imposed after 60 calendar days with an additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within 120 calendar days of its due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

47. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below:
For failure to submit a payment to EPA by the time required in this CA/FO: ONE HUNDRED DOLLARS (\$100) per day for first to fifteenth day of delay, FIVE HUNDRED DOLLARS (\$500) per day for sixteenth to thirtieth day of delay, and ONE THOUSAND DOLLARS (\$1,000) per day for each day of delay thereafter.
48. All penalties owed to EPA under this Section shall be due within 30 days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
49. All penalties shall be made payable by certified or cashier's check to "Treasurer of the United States" and shall be remitted as described in Paragraph 44.
50. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
51. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

J. RESERVATION OF RIGHTS

52. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO, except as to those civil penalties for the violations and facts alleged herein. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA (except as to those civil penalties for the violations and facts alleged herein); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); or any other statutory, regulatory or common law enforcement authority of the United States.
53. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.

The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.

54. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state or federal permits.

K. OTHER CLAIMS

Nothing in this CA/FO shall constitute or be construed as a release from nor an admission by Respondent of any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

L. MISCELLANEOUS

55. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
56. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
57. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed by the Regional Hearing Clerk.

IT IS SO AGREED.

7/6/11
Date

Mark Panger
Mark Panger
KMG Electrical Chemicals, Inc.

7/29/11
Date

Jeff Scott
Jeff Scott, Director
Waste Management Division
U.S. Environmental Protection Agency, Region 9

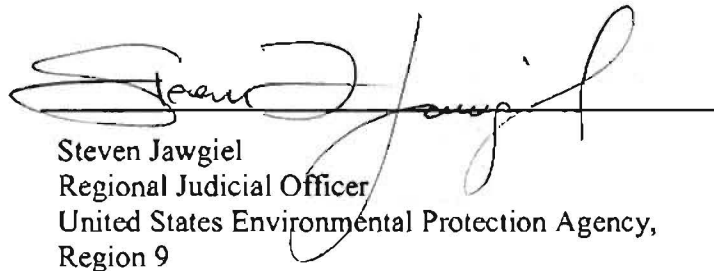
FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-9 -2011- 0013) be entered and that KMG Electrical Chemicals, Inc. pay a civil penalty of \$20,000.00 due in accordance with the payment schedule specified in Paragraph 45 of this Consent Agreement and Final Order. Payment must be made pursuant to Section G of the Consent Agreement.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

07/26/11

Date

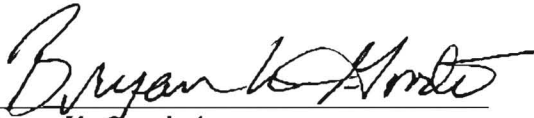

Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order (Docket No. RCRA-09-2011-0013) against KMG Electronic Chemicals, Inc, was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

CERTIFIED MAIL NUMBER: 7007-2560-0001-7660-8508

Mr. Mark Panger
Managzer
KMG Electronic Chemicals, Inc.
2340 Bert Drive
Hollister, CA 95023



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX



Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

JUL 26 2011

CERTIFIED MAIL NO. 7007-2560-0001-7660-8508
RETURN RECEIPT REQUESTED

Mark Panger
Plant Manager
KMG Electronic Chemicals, Inc.
2340 Bert Drive
Hollister, CA 95023
EPA Identification Number: CAR000020057

Re: In the matter of KMG Electronic Chemicals, Inc.

-- U.S. EPA Docket No. RCRA-09-2011- 0013

Dear Mr. Panger:

Enclosed is a copy of the fully executed Consent Agreement and Final Order, which contains the terms of the settlement reached with the United States Environmental Protection Agency.

Your payment of the penalty will close this case. If you have any questions regarding the rules, regulations and statutes which govern the proceedings terminated by the enclosed Consent Agreement and Final Order, please contact Andrew Helmlinger at (415) 972-3904.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Scott".

Jeff Scott, Director
Waste Management Division

Enclosure

cc: Charles McLaughlin, DTSC
Raymond Stevenson, San Benito County CUPA