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Water Resources Control Board

FILED
MAY - 7 2010
FRESNO COUNTY SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

PEOPLE OF THE STATE OF CALIFORNIA ex rel. THE STATE WATER RESOURCES CONTROL BOARD,

FRANZEN-HILL CORPORATION, DAVID L. MARTIN, and EXEQUIEL SINCO,

Plaintiff,

v.

Defendants.

CASE NO.:

AMC

STIPULATED JUDGMENT AND PERMANENT INJUNCTION

COPY

This Stipulated Judgment and Permanent Injunction (Stipulated Judgment) is entered into by and between Plaintiff People of the State of California ex rel. the State Water Resources

1 Control Board (State Water Board) and Defendants Franzen-Hill Corporation, Mr. David L.
2 Martin, and Mr. Exequiel Sinco (collectively, the Defendants).

3 **RECITALS**

4 **Parties**

5 A. The State Water Board is a public agency of the State of California. The State Water
6 Board's jurisdiction includes the regulation and protection of the waters of the State of California,
7 including its rivers, creeks, and groundwater.

8 B. The Franzen-Hill Corporation is a California corporation, located at 1100 North J
9 Street, Tulare, California. It designs, builds and maintains fueling facilities, including
10 underground storage tanks for petroleum products.

11 C. Mr. David L. Martin is an individual. He is and was at all relevant times an employee
12 of the Franzen-Hill Corporation.

13 D. Mr. Exequiel Sinco is an individual. He is and was at all relevant times an employee
14 of the Franzen-Hill Corporation.

15 **Background**

16 E. Pursuant to Health and Safety Code section 25284.4, subdivision (a), all tank integrity
17 tests shall be performed only by, or under the direct and personal supervision of, a tank tester with
18 a currently valid tank testing license. Furthermore, no person shall engage in the business of tank
19 integrity testing, or act in the capacity of a tank tester, within California without first obtaining a
20 tank testing license from the State Water Board. Any person who violates section 25284.4,
21 subdivision (a), may be subject to civil liability pursuant to section 25284.4, subdivision (g).

22 F. Between 2005 and 2008, employees of the Franzen-Hill Corporation, including Mr.
23 Martin and Mr. Sinco, performed approximately thirty tank integrity tests. These employees did
24 not have a tank testing license from the State Water Board nor were they under the direct and
25 personal supervision of someone with such a license.

26 G. After arms-length negotiations, the State Water Board and the Defendants have
27 reached and entered into this Stipulated Judgment in a good faith effort to avoid the uncertainty
28

1 and expense of protracted litigation, and because the entry of the Stipulated Judgment is fair and
2 in the best interests of the public.

3 **TERMS**

4 THEREFORE, the State Water Board, the Franzen-Hill Corporation, Mr. Martin, and Mr.
5 Sinco stipulate as follows:

6 **Jurisdiction and Venue**

7 1. This Court has jurisdiction over the subject matter of this action and the parties
8 to this Stipulated Judgment.

9 2. This action is venued in Fresno County because Franzen-Hill Corporation has
10 its principal place of business in Tulare County, and the nearest Attorney General's Office is in
11 Fresno County. (Health & Saf. Code, § 25299.03.)

12 **Admission of Liability**

13 3. The Defendants, individually and jointly, admit that, between 2005 and 2008,
14 employees of the Franzen-Hill Corporation, including Mr. Martin and Mr. Sinco, performed
15 approximately thirty tank integrity tests.

16 4. The Defendants, individually and jointly, admit that these Franzen-Hill
17 Corporation employees, including Mr. Martin and Mr. Sinco, were required to each have current
18 tank testing licenses from the State Water Board when they performed such tests.

19 5. The Defendants, individually and jointly, admit that they engaged in the
20 business of tank integrity testing, or acted in the capacity of tank testers, within California,
21 without first obtaining a tank testing license from the State Water Board and that these actions
22 were in violation of Health and Safety Code section 25284.4, subdivision (a).

23 6. These admissions shall be taken into consideration by a court for determining
24 the amount of any civil penalties to impose for any future violations of Health and Safety Code
25 section 25284.4, subdivision (a), by any one or more of the Defendants.

26 **Penalties and Cost Reimbursement**

27 7. The Defendants shall be liable to the State Water Board for a total of \$40,000.
28 This liability shall be allocated as follows:

1 a. Penalties: The Defendants are liable to the State Water Board for a total
2 of \$31,400 in civil penalties. Of this amount, \$10,000 shall be stayed pursuant to the provisions
3 of paragraph 11, below. The Defendants shall pay \$21,400 to the State Water Resources Control
4 Board's Underground Storage Tank Tester Account.

5 b. Costs of Investigation and Enforcement: The Defendants shall reimburse
6 the entities listed below for their costs of investigation and enforcement of this matter in the total
7 amount of \$8,600, which shall be allocated as follows:

- 8 i. \$2,600 to the Kern County Environmental Health Department;
- 9 ii. \$2,000 to the Tulare County Environmental Health Department;
- 10 iii. \$2,000 to the Western States Project;
- 11 iv. \$1,000 to the Kings County Environmental Health Department; and
- 12 v. \$1,000 to the Merced County Environmental Health Department.

13 8. The Defendants shall satisfy their liability under paragraph 7, above, with cashiers or
14 certified checks. Each check shall bear on its face the case name and the Court's case number.
15 Each check shall be tendered to:

16 Mayumi Okamoto
17 State Water Resources Control Board
18 1001 "I" Street
19 P.O.Box 100
 Sacramento, California 95812-0100

20 A photocopy of each check shall be sent to:

21 Nicholas Stern
22 Deputy Attorney General
23 1300 I Street, Suite 125
24 P.O. Box 944255
25 Sacramento, CA 94244-2550

1 9. The Defendants shall satisfy their liability and payment of costs of investigation
2 and enforcement under paragraph 7 by making four payments, each totaling \$7,500, on or before
3 the following dates, with the checks payable to the designated payees:

4 a. April 30, 2010:

5 i. \$4,900 to State Water Resources Control Board – Underground
6 Storage Tank Tester Account; and

7 ii. \$2,600 to the Kern County Environmental Health Department.

8 b. May 31, 2010:

9 i. \$5,500 to State Water Resources Control Board – Underground
10 Storage Tank Tester Account; and

11 ii. \$2,000 to the Tulare County Environmental Health Department.

12 c. June 30, 2010:

13 i. \$5,500 to State Water Resources Control Board – Underground
14 Storage Tank Tester Account; and

15 ii. \$2,000 to the Western States Project.

16 d. July 31, 2010:

17 i. \$5,500 to State Water Resources Control Board – Underground
18 Storage Tank Tester Account;

19 ii. \$1,000 to the Kings County Environmental Health Department; and

20 iii. \$1,000 to the Merced County Environmental Health Department.

21 10. If, for any reason, the Court has not entered this Stipulated Judgment by the
22 date that one or more of these installment payments would have been due, then the installment
23 payments shall instead be made according to the following schedule:

24 a. The first installment payment shall become due within 30 days of when the
25 Court does enter this Stipulated Judgment;

26 b. The second installment payment shall become due within 60 days of when
27 the Court does enter this Stipulated Judgment;

28

- 1 c. The third installment payment shall become due within 90 days of when
2 the Court does enter this Stipulated Judgment; and
3 d. The fourth installment payment shall become due within 120 days of when
4 the Court does enter this Stipulated Judgment.

5 11. Of the \$31,400 in penalties described in paragraph 7(a), \$10,000 shall be stayed
6 for a period of three years from the date that this Stipulated Judgment is entered by this Court.

7 a. If a final decision of any court or the State Water Board finds that any of
8 the Defendants have again violated Health and Safety Code section 25284.4, subdivision (a), by
9 engaging in the business of tank integrity testing or by acting in the capacity of a tank tester
10 within California without first obtaining a tank testing license from the State Water Board during
11 the three-year stay (regardless of when the final decision of that court is made), the \$10,000
12 stayed penalty will immediately become due from the Defendants. In addition, this \$10,000
13 stayed penalty shall not be a basis for decreasing or offsetting the penalty for any future violation.
14 The collection of the suspended penalty is in addition to, and does not bar, any other remedies or
15 sanctions that may be available for any such violations of Chapter 6.7 of the Health and Safety
16 Code. Payment of the suspended penalty shall be to the State Water Resources Control Board's
17 Underground Storage Tank Tester Account.

18 b. If none of the Defendants violate Health and Safety Code section
19 25284.4, subdivision (a), by engaging in the business of tank integrity testing or by acting in the
20 capacity of a tank tester within California without first obtaining a tank testing license from the
21 State Water Board during the three-year stay, the suspension of the \$10,000 penalty shall be
22 permanent.

23 **Injunction**

24 12. The Franzen-Hill Corporation shall not engage in the business of tank integrity
25 testing or allow any employee to act in the capacity of a tank tester unless those tests are
26 performed by (or under the direct and personal supervision of) testers with currently valid tank
27 testing licenses from the State Water Board, in accordance with Health and Safety Code section
28 25284.4, subdivision (a). Additionally, Franzen-Hill Corporation shall not engage in the business

1 of tank integrity testing or allow any employee to act in the capacity of a tank tester unless the
2 employee has also completed training from a manufacturer for each test method used prior to
3 using any test methods, in accordance with California Code of Regulations, Title 23, section
4 2771, subdivision (c).

5 13. Mr. Martin shall not engage in the business of tank integrity testing or act in the
6 capacity of a tank tester unless he has a currently valid tank testing license from the State Water
7 Board, in accordance with Health and Safety Code section 25284.4, subdivision (a).

8 Additionally, Mr. Martin shall not engage in the business of tank integrity testing or act in the
9 capacity of a tank tester unless he has also completed training from a manufacturer for each test
10 method used prior to using any test methods, in accordance with California Code of Regulations,
11 Title 23, section 2771, subdivision (c).

12 14. Mr. Sinco shall not engage in the business of tank integrity testing or act in the
13 capacity of a tank tester unless he has a currently valid tank testing license from the State Water
14 Board, in accordance with Health and Safety Code section 25284.4, subdivision (a).

15 Additionally, Mr. Sinco shall not engage in the business of tank integrity testing or act in the
16 capacity of a tank tester unless he has also completed training from a manufacturer for each test
17 method used prior to using any test methods, in accordance with California Code of Regulations,
18 Title 23, section 2771, subdivision (c).

19 **The Defendants' Release of the State Water Board and the State of California**

20 15. Upon the effective date of this Stipulated Judgment, the Defendants,
21 individually and jointly, shall and do release, discharge and covenant not to sue the State Water
22 Board or the State of California, including each and every constituent agency, board, department,
23 office, commission, fund or other entity thereof, and successors and assigns of each and every
24 constituent of the State of California, for any and all claims or causes of action, of every kind and
25 nature whatsoever, in law and in equity, whether known or unknown, suspected or unsuspected,
26 foreseen or unforeseen, which arise out of or are related to this law suit or the administrative
27 actions that preceded it.

28

1 **Matters Covered by this Stipulated Judgment**

2 16. This Stipulated Judgment is a final and binding resolution and settlement of all
3 claims, violations or causes of action alleged by the State Water Board in the Complaint, and of
4 all claims, violations or causes of action which could have been asserted by the State Water Board
5 based on the facts that are the subject of the Complaint, against the Defendants. The matters
6 described in the previous sentence are "Covered Matters." The Parties reserve the right to pursue
7 any claim that is not a Covered Matter (Reserved Claim) and to defend against any Reserved
8 Claim.

9 **Jurisdiction, Interpretation**

10 17. This Court shall retain jurisdiction to interpret, modify, and enforce the terms
11 and conditions of this Stipulated Judgment. This Stipulated Judgment shall be governed by and
12 construed in accordance with the laws of the State of California.

13 **Integration**

14 18. This Stipulated Judgment contains all of the terms and conditions agreed upon
15 by the parties relating to the matters covered by this Stipulated Judgment, and supersedes any and
16 all prior and contemporaneous agreements, negotiations, correspondence, understandings, and
17 communications of the parties, whether oral or written, respecting the matters covered by this
18 Stipulated Judgment. This Stipulated Judgment may be amended or modified only by a writing
19 signed by the parties or their authorized representatives, and then by order of the Court.

20 **Authority to Execute**

21 19. Each party to this Stipulated Judgment represents and warrants that the person
22 who has signed this Stipulated Judgment on its behalf is duly authorized to enter into this
23 Stipulated Judgment, and to bind that party to the terms and conditions of this Stipulated
24 Judgment.

25 **Parties to Bear Their Own Costs and Attorneys Fees**

26 20. Except as otherwise provided in Paragraph 9, each party to this Stipulated
27 Judgment shall bear its own respective costs and attorney fees in connection with this matter.
28

1 **Counterparts**

2 21. This Stipulated Judgment may be executed by the parties in counterpart
3 originals with the same force and effect as if fully and simultaneously executed as a single,
4 original document.

5 **Waiver of Appeal Right; Reservation of Right to Appeal Collateral Orders**

6 22. The parties agree to waive their right to appeal from this Stipulated Judgment.
7 Nothing in this Stipulated Judgment shall be construed as a waiver of any party's right to appeal
8 from an order that arises from an action to enforce the terms of this Stipulated Judgment.

9 **Effective Date**

10 23. The effective date of this Stipulated Judgment shall be the date that it is entered
11 by a Judge of the Superior Court.

12 **No Third Party Benefits**

13 24. This Stipulated Judgment is made for the sole benefit of the parties, and no
14 other person or entity shall have any rights or remedies under or by reason of this Stipulated
15 Judgment, unless otherwise expressly provided for herein.

16 **Procedure**

17 25. If necessary, the Defendants shall cooperate and join with the State Water
18 Board in filing a motion for entry of judgment, under Code of Civil Procedure section 664.6.

19 **Interpretation**

20 This Stipulated Judgment was drafted equally by all parties. The parties agree that the rule
21 of construction holding that ambiguity is construed against the drafting party shall not apply to
22 the interpretation of this Stipulated Judgment.

23 **Future Regulatory Changes**

24 Nothing in this Stipulated Judgment shall excuse the Defendants from meeting any more
25 stringent requirements that may be imposed by changes in Chapter 6.7 of Division 20 of the
26 Health and Safety Code and the regulations promulgated under this Chapter.

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IT IS SO STIPULATED.

FRANZEN-HILL CORPORATION

Dated: April 14th



BOB HILL
Chief Executive Officer and President of
Franzen-Hill Corporation

DAVID L. MARTIN

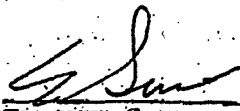
Dated: 4/15/10



DAVID L. MARTIN

EXEQUIEL SINCO

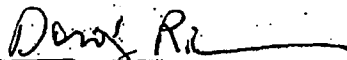
Dated: 4-16-2010



EXEQUIEL SINCO

STATE WATER RESOURCES CONTROL BOARD

Dated: 5.4.2010



DOROTHY RICE
Executive Director
State Water Resources Control Board

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Attorneys for Plaintiff
People of the State of California ex rel. The State
Water Resources Control Board

FILED

MAY 07 2010

FRESNO SUPERIOR COURT

By _____ DEPT. 97A - DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

PEOPLE OF THE STATE OF CALIFORNIA ex rel. THE STATE WATER RESOURCES CONTROL BOARD,

Plaintiff,

v.

FRANZEN-HILL CORPORATION, DAVID L. MARTIN, and EXEQUIEL SINCO,

Defendants.

CASE NO.: **10CECG01636**

AMC
[PROPOSED] ORDER *AMC*

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Good cause appearing,

IT IS ORDERED, that judgment be entered in favor of Plaintiff People of The State of California ex rel. the State Water Resources Control Board and against Defendants Franzen-Hill Corporation, Mr. David L. Martin, and Mr. Exequiel Sinco in accordance with the terms of the Stipulated Judgment and Permanent Injunction, attached.

Dated: May 7, 2010

ADOLFO M. CORONA

Judge of the Superior Court