

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

ECS Refining, LLC
705 Reed Street
Santa Clara, California 95050

ID No. CAD003963592

Respondent.

Docket HWCA 20147109

CONSENT ORDER

Health and Safety Code
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and ECS Refining, LLC (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent is a limited liability company that operates recycling processing facilities in Santa Clara and Stockton, California. Respondent generates, handles, treats, stores, and/or disposes of hazardous waste at its Santa Clara facility located at 705 Reed Street, Santa Clara, California 95050 (Site).

1.3. Inspection. The Department inspected the Site on October 28, 2009, January 24, 25, 26, 31, 2011 and February 2 and 3, 2011.

1.4. Authorization Status. Respondent is authorized under a Standardized Permit Series A for storage and treatment of hazardous waste and recycling of precious metal-bearing waste, electronic scrap, tin/lead solder dross and other wastes from electronic manufacturing, photographic waste with silver at

the Site. Respondent's Standardized Permit Series A was issued by the Department on January 9, 2009 with an expiration date of January 8, 2019 (Permit). Respondent is also a registered hazardous waste transporter.

1.5. Jurisdiction. Health and Safety Code, section 25187, 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.

1.6. Full Settlement. By their respective signatures 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. This Order shall constitute full settlement of the violations alleged below. By agreeing to this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction and involving either the Respondent or the Site, except to the extent provided in this Order. Respondent represents that it has corrected the violations set forth in section 2 and claims that there are no presently known existing statutory, regulatory, or permit violations at the Site.

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

2. VIOLATIONS ALLEGED

2.1. The Department alleges the following violations:

2.1.1. Respondent violated Health and Safety Code section

25202(a) and Part IV and V, item 1 of its Permit in that on or about October 28, 2009, Respondent placed non-hazardous waste into tanks contaminated with silver waste. Analysis of the waste within the tanks exceeded 5 parts per million (ppm), the hazardous waste regulatory threshold for silver. Respondent was not authorized to store waste in Tanks A, B and 3 until secondary containment and tank integrity documents had been received and approved by the Department. At the time of inspection, Tanks A, B and 3 were out of service, removed from the permitted area and contained contaminated silicone fluid with silver at 40 ppm, 20 ppm, and 10 ppm, respectively.

2.1.2. Respondent violated California Code of Regulations, title 22, section 66264.192(b) and Part V, item 14 of its Permit, in that on or about October 28, 2009, Respondent failed to obtain and submit a certified tank system assessment to the Department prior to using tanks to store contaminated silicone fluid waste which exceeded the hazardous waste regulatory thresholds for silver.

2.1.3. Respondent violated California Code of Regulations, title 22, section 66264.196(b), in that on or about October 28, 2009, Respondent failed to remove a leaking unit from service for repair. At the time of inspection, liquid was observed leaking from ancillary equipment associated with Tank B.

2.1.4. Respondent violated Health and Safety Code Section 25189(a) and Section 25189.2(a), California Code of Regulations., title 22, section 66262.23(a)(1), in that on or about October 28, 2009, Respondent failed to accurately report quantities of hazardous waste on manifests. During its review of Respondent's records, the Department observed that Respondent under-reported

volumes by 10 to 40 percent of silver-containing hazardous waste on 64 out of 73 manifests. Instead of entering quantities of hazardous waste based on actual measurements, Respondent repeatedly reported incorrect quantities on manifests during the years of 2007, 2008, and 2009.

2.1.5. Respondent violated California Code of Regulations, title 22, section 66264.16(a)(2), (b) and Pages 2 and 20 of the Part B Permit Application, in that on or about October 28, 2009, Respondent failed to provide initial training and/or annual refresher training to its Environmental Health and Safety Manager. The Department's review of Respondent's records showed that the Environmental Health and Safety Manager had received neither the initial training nor the annual refresher training necessary to ensure Respondent's compliance with the requirements of Respondent's Permit and contingency plan.

2.1.6. Respondent violated California Code of Regulations, title 22, section 66264.15(a), in that on or about October 28, 2009, Respondent failed to inspect its facility or equipment for malfunctions including, but not limited to, failing to note in its inspection logs the presence of a leak on October 28 and 29, 2009, even though the Department clearly observed a leak from ancillary equipment associated with Tank B.

2.1.7. Respondent violated California Code of Regulations, title 22, sections 66264.15(b)(1) and 66264.15(d), in that on or about October 28, 2009, Respondent failed to adequately document its inspections when it failed to record hazardous waste leak inspections for the high level alarm that monitored three hazardous waste storage tanks and the ancillary piping on three occasions.

2.1.8. Respondent violated Health and Safety Code 25202(a), California Code of Regulations, title 22, sections 66270.30(a) and 66270.42.5(d)(1) and Part IV of the Permit, in that on or about October 28, 2009 and in or about January 2011, Respondent failed to comply with permit modification procedures when it removed and disposed of tanks 1, 2, and C and a vacuum evaporator without notifying the Department in advance by way of a permit modification request.

2.1.9. Respondent violated California Code of Regulations, title 22, section 66264.115 by failing to submit tank closure certifications for tanks D, E and F within 60 days of completion of closure. Even though closure of the tanks was completed on or about March 13, 2009, Respondent did not submit the closure certificate to the Department until February 2, 2012.

2.1.10. Respondent violated California Code of Regulations, title 22, section 66264.113, in that on or about October 28, 2009 and in or about January 2011, Respondent failed to complete partial closure activities of the vacuum evaporator in accordance with the closure plan and failed to submit a certification for the closure of the vacuum evaporator signed by the owner or operator and by an independent professional engineer.

2.1.11. Respondent violated Health and Safety Code sections 25202(a), 25201(a), California Code of Regulations, title 22, sections 66270.30(a), 66270.42(d)(1) and 66270.42(b) and Part IV of the Permit, in that on or about October 28, 2009 and in or about January 2011, Respondent failed to comply with a permit modification when Respondent removed the vacuum evaporator, a hazardous waste unit, to an unpermitted area of the Facility.

2.1.12. Respondent violated California Code of Regulations, title 22, section 66264.71(a)(1), in that in or about January 2011, Respondent failed to sign and date two uniform hazardous waste manifests (Manifest numbers: 00044620VES and 007680094JJK) to certify that Respondent received the hazardous waste covered by the manifests.

2.1.13. Respondent violated Health and Safety Code section 25162.1, subdivisions (a) and (b), in that beginning on or about February 26, 2010 until 2011, Respondent failed to notify the Department in writing prior to its initial shipment of a recyclable material (precious metals including silver and iron) that was exported to a foreign country.

2.1.14. Respondent violated Health and Safety Code section 25202(a), Unit Specific Condition 2 of the Permit, and California Code of Regulations, title 22, section 66264.171, in that in or about January 2011, Respondent failed to properly maintain drums containing copper sludge. To wit, at least two 55-gallon drums were observed in a permitted hazardous waste storage area and showed signs of rust and leakage.

2.1.15. Respondent violated Health and Safety Code section 25202(a) and California Code of Regulations, title 22, sections 66270.42(d)(4) and 66264.15(b)(1), (4) and (d) and Section VII of the Permit, in that in or about January 2011, Respondent failed to conduct weekly inspections of Unit 10, a permitted storage area; failed to document inspections of Unit 13, a permitted storage area; failed to conduct daily inspections of the permitted tanks A,B and 3,

located in Units IIa and IIb; and failed to conduct daily inspections of the hazardous waste loading/unloading areas of the Facility.

2.1.16. Respondent violated Health and Safety Code section 25201.16, subdivisions (f)(1)(A) and (g) and California Code of Regulations, title 22, section 66262.34(f)(3) by failing to properly contain universal waste aerosol cans in a structurally sound container, failing to properly label four one-gallon containers holding waste paint and thinner and two portable fire extinguishers with information including the composition and physical state of the waste, the hazard property, the name and address of the generator, and the accumulation start date.

2.1.17. Respondent violated Health and Safety Code section 25202(a) and Part IV of the Permit, in that in or about January 2011, Respondent treated 37 to 45 pounds of hazardous waste per hour in the Tray Furnace on at least 10 different days. Respondent was permitted to treat no more than 25 pounds of hazardous waste per hour in the Tray Furnace.

2.1.18. Respondent violated California Code of Regulations, title 22, section 66264.73(b)(1), in that in or about January 2011, Respondent failed to record in its operating record 1 drum containing hazardous waste with lead that was received by ECS.

2.1.19. Respondent violated Health and Safety Code section 25202(a) and California Code of Regulations, title 22, section 66264.74(a) by failing to provide information to the Department upon request. On February 25, 2011, the Department requested that Respondent provide operating records for the Hot Pot Furnace, the 600 Crucible Furnace, the 430 Crucible Furnace and the Tray

Furnace within seven days. The Department did not receive the requested information until June 27, 2011.

2.1.20. Respondent violated California Code of Regulations, title 22, section 66262.34(a), in that in or about January 2011, Respondent stored tray furnace ash, a hazardous waste due to lead concentration, in two drums for more than 90 days in an unpermitted storage area.

2.1.21. Respondent violated California Code of Regulations, title 22, section 66273.33.5(a)(1)(B)(1a), in that on or about October 28, 2009 and in or about January 2011, Respondent failed to contain electronic devices in a manner that prevents breakage and release of hazardous components into the environment. During the 2009 inspection, at least three unlined cardboard Gaylord boxes containing electronic devices were observed to be water-damaged and collapsing. During the 2011 inspection, at least four unlined cardboard Gaylord boxes holding electronic devices were observed to be water-damaged and collapsing. Also during the 2011 inspection, electronic device dismantling activities were observed to have been conducted over open workbenches and on the floor in Building B in a manner that allowed residuals to be released to the floor where they could be tracked outside to the environment.

2.1.22. Respondent violated California Code of Regulations, title 22, section 66273.72(c)(2)(D)(1) and (3) (formerly California Code of Regulations, Title 22, section 66273.72(c)(2)(c)(1) & (3) until October, 2012), in that on or about October 28, 2009 and in or about January 2011, Respondent failed to dismantle electronic devices from CRTs over, on, or in a containment device of sufficient size and

construction to contain the universal waste and prevent release of residuals to the environment. To wit, electronic device dismantling activities was observed over a work table that allowed residuals to be released to the floor. Respondent also failed to immediately clean up and place universal waste in a structurally sound container.

2.1.23. Respondent violated California Code of Regulations, title 22, section 66273.36 subdivisions (a), (b)(3) and (b)(4), in that on or about October 28, 2009, Respondent failed to ensure that employees were properly trained since Respondent did not have adequate training materials. To wit, the Department observed that Respondent's training records did not include the following: written procedures for responding to releases of universal waste items and who (including position titles) is designated to respond to releases; written procedures on how to clean up broken CRT glass or LD and plasma screens and who (including position titles) is designated to clean up those items; written descriptions of how employees ensure that certain items such as batteries and mercury switches are removed from electronic devices or components before shredding; written information directing employees to contain electronic devices in structurally sound containers or stretch filmed on pallets; written information directing employees to store universal waste lamps in closed containers; written information directing employees to track accumulation dates for all universal wastes, including lamps and batteries; and written information directing employees to correctly label CRT monitors/televisions as "universal waste electronic devices," label intact bare CRTs

as "universal waste-CRTS," correctly label broken CRT glass as "universal waste CRT glass," and correctly label waste lamps as "universal waste lamps."

2.1.24. Respondent violated California Code of Regulations, title 22, section 66273.36(b), in that in or about February 3, 2011, Respondent failed to provide initial training to six employees who manage universal waste. All six employees were hired between November 12, 2010 and January 17, 2011.

2.1.25. Respondent violated California Code of Regulations, title 22, section 66273.40(a)(3)(A), in that Respondent failed to comply with federal notification and United States Environmental Protection Agency (U.S. EPA) Acknowledgment of Consent requirements 60 days before Respondent's initial shipment of electronic waste or CRT glass to a foreign destination. In 2008 and 2009, Respondent shipped broken CRT glass to Xstrata Canada Corp. without notifying U.S. EPA 60 days before shipment was intended to be shipped off-site and did not receive an Acknowledgement of Consent for the shipment.

2.1.26. Respondent violated California Code of Regulations, title 22, section 66273.33.5, subdivisions (a), (b), (c) and (d), in that on or about October 28, 2009 and in or about January 2011, Respondent failed to manage electronic devices in a way that prevents releases of universal waste or universal waste components to the environment. To wit, the Department observed during the 2009 inspection that a truckload of electronic devices had been dumped on the paved ground in an area near the conveyor belt that fed to the shredder. The area was not contained to prevent electronic breakage and release of components to the environment. During the 2011 inspection, the Department observed that electronic waste had

been dumped on asphalt covered by a layer of soil, and CRT glass was observed to be leaking from the bottom of a cardboard Gaylord box (identified as containing CRT projector glass) onto the pallet and to the floor.

3. SCHEDULE FOR COMPLIANCE

3.1. Respondent shall comply with the following:

3.1.1. Respondent has corrected the violations set forth above.

3.1.2. Respondent shall operate hereafter in a manner that shall prevent recurrences of the violations cited herein.

3.1.3. Respondent shall make all payments at the time(s) and in accord with any other conditions set forth in Section 4 (Penalty) below.

4. PENALTY

4.1. Respondent shall pay the Department the total sum of \$218,780, of which \$180,419 is a penalty and \$38,361 is reimbursement of the Department's costs.

4.2. Payment of the total sum specified in paragraph 4.1 is due in four installments as follows: Respondent's first payment shall be due within 10 days of the effective date of this Order. Each equal subsequent payment shall be due within 30 days of each successive installment until paid in full. In the event that any payment is not received at the address set forth below on or before the date which it is due, the entire remaining balance shall become due and immediately payable.

4.3. Respondent's check(s) 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: Maria Soria
Enforcement and Emergency Response Program
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, CA 94710

To: Jamie Jefferson
Deputy Attorney General
1515 Clay Street, 20th Floor
Oakland, California 94612

To: Sonia Feldstein
Office of Legal Counsel
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, CA 94710

4.4. 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.

5. OTHER PROVISIONS

5.1. 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.

5.2. 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.

5.3. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil 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 Health and Safety Code section 25188 and other applicable provisions of law.

5.4. 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.

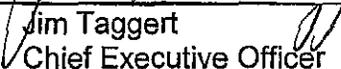
5.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

5.6. Privileges: Nothing in this Order shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney

work-product. However, the assertion of any privilege shall not relieve any party of its obligations under this Order.

5.7. Time Periods: "Days" for the purpose of this Order means calendar days.

5.8. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

Dated: 3/23/15 Original signed by Jim Taggart

Jim Taggart
Chief Executive Officer
Respondent, ECS Refining, LLC.

Dated: 4/8/15 Original signed by Maria Soria

Maria Soria,
Environmental Program Manager
Enforcement and Emergency Response
Division
Department of Toxic Substances Control