

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

LEROY ENTERPRISES, DBA:
OLD TOWN RECYCLING

2161 HANCOCK STREET
SAN DIEGO, CALIFORNIA 92110

EPA ID Number: CFI000000014

Respondent

Docket HWCA 2011-3909

CONSENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

The State Department of Toxic Substances Control (Department) and Leroy Enterprises, dba: Old Town Recycling (Respondent) enter into this Consent Order (Order) and agree as follows:

1. Respondent is a recycler that accepts aluminum cans, glass, plastic, cardboard, scrap metal and electronic devices, and operates in the City of San Diego, California.

2. On July 20, 2011, the Department conducted a complaint investigation at the Respondent's site. The complaint alleged that Old Town Recycling receives Universal/electronic waste without authorization from the Department. During the July 20, 2011 investigation, the allegations were confirmed; DTSC inspectors observed both whole and dismantled electronic devices at the facility.

3. Based on this inspection, the Department alleges the following violations:

3.1 Respondent violated California Health & Safety Code section 25185(c)(3) in that, on or about July 20, 2011, Respondent failed to provide a written response to the

DTSC documenting the corrective actions taken or the proposed corrective actions which will be taken by Respondent to correct the violations cited in the July 20, 2011 SOV and September 19, 2011 Inspection Report. The respondent was given 30 calendar days to come into compliance and failed to provide a response to the DTSC.

3.2 Respondent violated CCR, title 22, section 66273.32(c)(1), in that, on or about July 20, 2011, Respondent failed to notify DTSC 30 calendar days prior to accepting and accumulating any universal/electronic waste from any off-site source. During the inspection, we observed many computer processing units, both intact and dismantled, at the facility.

3.3. Respondent violated CCR, title 22, section 66273.36(a) by failing to ensure that all personnel who manage universal/electronic waste from offsite sources at the universal waste handler's facility are thoroughly familiar with proper universal waste management and emergency response procedures, relative to those persons' responsibilities, as specified in sections: 66273.36(b), 66273.36(b)(1), 66273.36(b)(2), 66273.36(b)(3), 6273.36(b)(4), 66273.36(c), and 66273.36(d).

3.4 Respondent violated CCR, title 22, section 66273.37(a) and (c) by failing to immediately clean up and place in a structurally sound container all releases of universal/electronic waste and residues from universal/electronic waste, and by failing to repackage residues of leaking, broken, or otherwise damaged universal/electronic waste according to the standards of Section 66273.33 or 66273.33.5. I observed several broken printed circuit boards on the warehouse floor of the facility, among



trash sweepings and debris.

4. A dispute exists regarding the alleged violations.

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 Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

9. Respondent admits the facts alleged above for the purpose of any subsequent action brought pursuant to the Hazardous Waste Control Law, Health and Safety Code section 25100 et seq., within 5 years of the date the violations occurred.

SCHEDULE FOR COMPLIANCE

10. Respondent shall comply with the following:

10.1 Respondent shall immediately cease receiving universal/electronic waste at the Respondent site at Old Town Recycling, and provide records to the Department showing the proper disposal/recycling of universal/electronic waste currently on site. Or, Respondent must immediately notify to the Department the intent to receive and/or dismantle universal/electronic waste received from offsite sources. Pursuant to notification, all universal/electronic waste must be managed according to California Code of Regulations, Title 22 requirements including proper containerization/storage, labeling/signage, and accumulation timelines prior to offsite shipment for recycling.

10.1.2 Respondent shall immediately cease receiving universal/electronic waste at the Respondent site at Old Town Recycling, and provide records to the Department showing the proper disposal/recycling of universal/electronic waste currently on site. Or Respondent must immediately ensure that all personnel who manage universal waste from offsite sources at the universal waste handler's facility are thoroughly familiar with proper universal waste management and emergency response procedures, relative to those persons' responsibilities, as specified in sections: 66273.36(b), 66273.36(b)(1), 66273.36(b)(2), 66273.36(b)(3), 6273.36(b)(4), 66273.36(c), and 66273.36(d).

10.1.3 Respondent shall immediately cease receiving universal/electronic waste at the Respondent site at Old Town Recycling, and provide records to the Department showing the proper disposal/recycling of universal/electronic waste currently on site. Or Respondent must immediately clean up and place in a structurally sound container all releases of universal/electronic waste and residues from universal/electronic waste, and henceforth manage all universal and electronic waste according to California Code of Regulations, Title 22 requirements including proper containerization/storage, labeling/signage, and accumulation timelines prior to offsite shipment for recycling.

10.2 Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent to:

Jose Alfredo Rios, Unit Chief
San Diego Field Office
Enforcement and Emergency Response Program
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123



10.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Unit-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 its obligation to obtain such formal approvals as may be required.

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

10.5. 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.

10.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent 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 for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly



affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.7. 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.

10.8. 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 Consent 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 may 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 Consent 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 Consent Order.

10.9. Sampling, 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 Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. Respondent shall preserve all such data, reports, and other documents for a minimum of six years after the conclusion of all activities under this Consent 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 Consent Order.

10.10. 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 specified in paragraph 12.3, in carrying out activities pursuant to 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 pursuant to this Consent Order.

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

10.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the 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.

10.13. 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.

PAYMENTS:

11. Within 60 days of the effective date of this Order, Respondent shall pay to the Department a total penalty of \$2,500.00 dollars.

11.1. Respondent's check shall be made payable to the Department of Toxic Substances Control, and shall identify the Respondent and Docket Number (HWCA 2011-3909) on the check. Respondent shall transmit the penalty payment 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:

Jose Alfredo Rios, Unit Chief
San Diego Field Office
Enforcement and Emergency Response Program
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

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

12.1. 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.

12.2. 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.

12.3. 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.

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

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



Dated: May 22, 2012

original signed by Joanny Leroy
Mr. Joanny Leroy
Co-Owner
Old Town Recycling

Dated: May 23, 2012

original signed by Alfredo Rios
Jose Alfredo Rios, Unit Chief
San Diego Field Office
Enforcement and Emergency Response Program
Department of Toxic Substances Control