

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

All Metals, Inc., dba ECS Refining  
705 Reed Street  
Santa Clara, California 95050

ID No. CAD003963592

Respondent.

Docket HWCA 20040514

STIPULATION AND ORDER

Health and Safety Code  
Section 25187

The State Department of Toxic Substances Control (Department) and All Metals, Inc., dba ECS Refining (Respondent) enter into this Stipulation and Order (Order) and agree as follows:

1. A dispute exists regarding the Enforcement Order issued by the Department on December 15, 2006. (Attached as Exhibit 1.)
2. The parties wish to avoid the expense of further litigation and to ensure prompt action to achieve the Schedule for Compliance below.
3. Jurisdiction exists pursuant to Health and Safety Code section 25187.
4. Respondent waives any right to a hearing in this matter.
5. This Order shall constitute full settlement of the violations alleged in the Enforcement Order, but does not limit the Department from taking appropriate enforcement action concerning other violations.

SCHEDULE FOR COMPLIANCE

6. The violations have been corrected. No further action is necessary to achieve compliance.

7.1. The Department alleges that:

7.1.1. The Respondent violated California Code of Regulations, title 22, section 66264.147(a) [previously codified and cited as 66264.147(f)], section 66264.147(a)(1)(D) [previously codified and cited as 66264.147(f)(3)(B)], and section 67800.5, in that on or about November 2, 2002 through July 24, 2003, Respondent was not in full compliance with all requirements for liability coverage for operating a Standardized Permit facility. Respondent did at all times have a third party liability policy in place, but the policy was deficient in some respects, including but not limited to the absence of a Liability Certificate of Insurance form DTSC 1160.

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

To: Patricia Barni, Acting Branch Chief  
Northern California Branch  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710-2721

To: Susan J. Laney  
Northern California Branch  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200

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

7.4. 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.

7.5. 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 further actions as are necessary to protect public health or welfare or the environment.

7.6. 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 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 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.

7.7. 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 9.3 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 this Order.

## PAYMENTS

8. Within 30 days of the effective date of this Order, Respondent shall pay the Department a total of \$16,520.00, of which \$4,956.00 dollars are penalty and \$11,564.00 is reimbursement of the Department's costs. Respondent's check shall be made payable to Department of Toxic Substances Control, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street  
Post Office Box 806  
Sacramento, California 95812-0806

A photocopy of the check shall be sent:

To: Patricia Barni, Acting Branch Chief  
Northern California Branch  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710-2721

To: Joan Markoff, Assistant Chief Counsel  
Office of Legal Counsel  
Department of Toxic Substances Control  
1001 I Street  
Post Office Box 806  
Sacramento, California 95812-0806

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

9.1. Additional Enforcement Actions: By agreeing to this Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Order.

9.2. Penalties for Noncompliance: Failure to comply with the terms of this 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.

9.3. Parties Bound: This 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 Order.

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

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

9.6. 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.

Dated: October 26, 2007

Original signed by Kenneth R. Taggart

Kenneth R. Taggart, Vice President  
All Metals Inc., dba ECS Refining

Dated: October 30, 2007

Original signed by Keith Kihara

Keith Kihara  
Supervising Hazardous Substances Scientist I  
Enforcement and Emergency Response Program  
Department of Toxic Substances Control

# EXHIBIT 1

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

All Metals, Inc. dba ECS Refining  
705 Reed Street  
Santa Clara, California 95050

ID No. CAD003963592

Respondent.

Docket Number HWCA 20040514

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 All Metals, Inc., doing business as ECS Refining, a California corporation (Respondent).

1.2. Site. Respondent is a metal recovery facility that stores, treats and transports hazardous wastes at the following site: 705 Reed Street, Santa Clara, California, 95050 (Site).

1.3. Permit Status. The Department authorized Respondent to manage hazardous waste by Standardized Permit, effective December 20, 1997 with an expiration date of December 30, 2007.

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.

1.5. Exhibits. All exhibits attached to this Order are incorporated herein by this reference.

### DETERMINATION OF VIOLATIONS

2. The Department has determined that:

2.1. The Respondent violated California Code of Regulations, title 22, sections 66264.147(f)(1), 66264.146(f)(3)(B), and 67800.5 in that on or about November 2, 2002 through July 24, 2003, Respondent failed to provide required liability coverage for operating a Standardized Permit facility, including but not limited to, a Liability Certificate of Insurance form DTSC 1160.

### SCHEDULE FOR COMPLIANCE

3. Based on the foregoing Determination of Violations, IT IS HEREBY ORDERED THAT:

3.1.1. On July 25, 2003, Respondent returned to compliance after obtaining a new, acceptable insurance policy and after submitting that document along with form DTSC 1160 Liability Certificate of Insurance, to the Department in compliance with California Code of Regulations, title 22. Therefore, no further corrective action is required for this violation.

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

Charlene Williams, Branch Chief  
Northern California Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710-2721

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. 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.

3.5. 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.

3.6. 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.

3.7. Data and Document Availability. Respondent shall permit the Department and its authorized representatives to inspect and copy all data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall maintain a central depository of the data and other documents prepared pursuant to this Order. All such data 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.

3.8. 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.

3.9. Incorporation of Plans and Reports. All documents that require Department approval and are submitted by Respondent pursuant to this Order are incorporated in

this Order upon approval by the Department.

#### 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 Health and Safety Code 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.

#### PENALTY

5. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondent's penalty at \$ 19,520.00. 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 the 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, 21<sup>st</sup> Floor  
P.O. Box 806  
Sacramento, California 95812-0806

A photocopy of the check shall be sent simultaneously to:

Charlene Williams, Branch  
Northern California Branch  
Statewide Compliance Division  
Department of Toxic Substances Control  
700 Heinz Avenue, Suite 200  
Berkeley, California 94710-2721

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 Respondent, unless Respondent requests a hearing within the twenty-day period.

Date of Issuance December 15, 2006

Original signed by Keith Kihara  
Keith Kihara, Chief  
Transportation, Financial Responsibility  
and Program Support Section  
Regulatory and Program Development Division  
Department of Toxic Substances Control