

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. CAD 003 963 592

Respondent.

Docket HWCA20061137

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 ECS Refining (Respondent).

1.2. Site. Respondent generates, handles, treats, and stores hazardous waste at the following site: 705 Reed Street, Santa Clara, California 95050 (Site).

1.3. Permit/Interim Status. The Department authorized Respondent to manage hazardous waste by the issuance of a Standardized Hazardous Waste Facility Permit which took effect on December 30, 1997.

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.

DETERMINATION OF VIOLATIONS

2. The Department has determined that:

2.1. The Respondent violated Health and Safety Code 25202 (a), California Code of Regulations, title 22, section 66270.30 (a), and the special conditions of HWFP, Part I item 6(b), Part II item 1, in that Respondent accepted hazardous wastes not specifically authorized in the HWFP, to wit:

- a. On or about July 14, 2003, 165 gallons of potassium iodide with gold, manifest no. 22364471;
- b. On or about August 8, 2003, 110 gallons of potassium iodide with gold, manifest no. 22364552;
- c. On or about September 22, 2003, 220 gallons of potassium iodide with gold, manifest no. 22368671;
- d. On or about October 20, 2003, 110 gallons of potassium iodide solution with gold, manifest no. 22366843;
- e. On or about November 7, 2003, 1,600 pounds of waste cyanide inorganic, solids (gold recovery sludge), manifest no. 98117945;
- f. On or about December 10, 2003, 220 gallons of potassium iodide solution with gold, manifest no. 22367004;
- g. On or about January 12, 2004, 5 gallons of potassium iodide solution with gold, manifest no. 20672399;
- h. On or about January 21, 2004, 220 gallons of potassium iodide solution with gold, manifest no. 22367168;
- i. On or about February 19, 2004, 1,414 pounds of potassium iodide solution with gold, manifest no. 22368907;
- j. On or about March 9, 2004, 945 pounds of potassium iodide solution with gold, manifest no. 22368940;
- k. On or about April 2, 2004, 1,384 pounds of potassium iodide solution with gold, manifest no. 22368993;
- l. On or about April 26, 2004, 1,893 pounds of potassium iodide solution with gold, manifest no. 22369086;
- m. On or about June 1, 2004, 1,884 pounds of potassium iodide solution with gold, manifest no. 22365230;
- n. On or about July 2, 2004, 1,837 pounds of potassium iodide solution with gold, manifest no. 22365312;
- o. On or about July 30, 2004, 1,878 pounds of potassium iodide solution with gold, manifest no.22365379;

p. On or about August 5, 2004, 55 gallons of waste cyanide solution (D003, F007, 711) accompanied by manifest no. manifest 22368703. The waste was shipped to an off-site facility on September 16, 2004. Also see violation 2.3.

q. On or about August 20, 2004, 1,808 pounds of potassium iodide solution with gold, manifest no. 22365416;

r. On or about August 12, 2004, 55 gallons of hazardous liquid with nickel, manifest no. 21631551;

s. On or about September 21, 2004, 220 gallons of hazardous waste potassium iodide solution with gold, manifest no. 22365511;

t. On or about October 15, 2004, 1,773 pounds of hazardous waste potassium iodide solution with gold, manifest no. 22364855;

u. On or about November 29, 2004, 2,579 pounds of hazardous waste potassium iodide solution with gold, manifest no. 22364938;

v. On or about December 29, 2004, 2,434 pounds of hazardous waste potassium iodide solution with gold, manifest no. 22365099;

w. On or about March 11, 2005, 420 pounds of hazardous waste solid, liquid crystal chips, manifest no. 23751967;

x. On or about July 13, 2005, 929 pounds of ion exchange resins and filters with gold cyanide (D003) accompanied by manifest 24455652.

2.2. The Respondent violated Health and Safety Code 25202 (a), California Code of Regulations, title 22, section 66270.30 (a), and the special conditions of Hazardous Waste Facility Permit (HWFP) Part I item 6(b), Part II item 1, and Part II item 70, in that Respondent treated hazardous wastes not authorized in the HWFP, to wit:

a. On or about August 18, 2003, Respondent treated 165 gallons of waste cyanide solution with gold by processing the waste through steel wool columns and melting the recovered gold in a Hot Pot Furnace (metal recovery);

b. On or about August 18, 2003, Respondent treated 110 gallons of potassium iodide solution with gold by metal recovery;

c. On or about October 31, 2003, Respondent treated 220 gallons of potassium iodide solution with gold by metal recovery;

- d. On or about October 31, 2003, Respondent treated 110 gallons of potassium iodide solution with gold by metal recovery;
- e. On or about November 10, 2003, Respondent treated 1,600 pounds of waste cyanide inorganic solids (gold recovery sludge) by drying in the ovens and pulverizing in the ball mill to yield a “pulp” that was shipped off-site for recovery of the metal;
- f. On or about December 31, 2003, Respondent treated 220 gallons of potassium iodide solution with gold by metal recovery;
- g. On or about January 30, 2004, Respondent treated 5 gallons of potassium iodide solution with gold by metal recovery;
- h. On or about January 30, 2004, Respondent treated 220 gallons of potassium iodide solution with gold by metal recovery;
- i. On or about March 17, 2004, Respondent treated 1,414 pounds of potassium iodide solution with gold by metal recovery;
- j. On or about March 17, 2004, Respondent treated 945 pounds of potassium iodide solution with gold by metal recovery;
- k. On or about April 20, 2004, Respondent treated 1,384 pounds of potassium iodide solution with gold by metal recovery;
- l. On or about June 11, 2004, Respondent treated 1,893 pounds of potassium iodide solution with gold by metal recovery;
- m. On or about June 11, 2004, Respondent treated 1,884 pounds of potassium iodide solution with gold by metal recovery;
- n. On or about July 19, 2004, Respondent treated 1,837 pounds of potassium iodide solution with gold by metal recovery;
- o. On or about August 16, 2004, Respondent treated 1,878 pounds of potassium iodide solution with gold by metal recovery;
- p. On or about August 30, 2004, Respondent treated 1,808 pounds of potassium iodide solution with gold by metal recovery;
- q. On or about August 19, 2004, Respondent treated 55 gallons of hazardous liquid with nickel by metal recovery;

- r. On or about September 30, 2004, Respondent treated 220 gallons of potassium iodide solution with gold by metal recovery;
- s. On or about January 3, 2005, Respondent treated 1,773 pounds of potassium iodide solution with gold by metal recovery;
- t. On or about January 3, 2005, Respondent treated 2,579 pounds of potassium iodide solution with gold by metal recovery;
- u. On or about January 5, 2005, Respondent treated 2,434 pounds of potassium iodide solution with gold by metal recovery;
- v. On or about March 11, 2005, Respondent treated 420 pounds of liquid crystal computer chips (with thin layer of organic material), by shredding and sending to a smelter.
- w. On or about July 21, August 1, and August 3, 2005, Respondent treated 929 pounds of waste ion exchange resins and filters with gold cyanide by processing the wastes in a tray furnace to produce a metal-rich ash, then recovering the gold using a Hot Pot furnace.

2.3. The Respondent violated California Health and Safety Code 25189.2 (a) in that Respondent made false representation on its record. On or about August 19, 2004, Respondent recorded a hazardous waste gold cyanide solution accompanied by manifest no. 22368703 as having been processed in their Lot Processing Details Log, when Respondent could not locate the wastes after conducting an on-site inventory. The 55-gallon gold cyanide waste solution was actually shipped off-site to an authorized storage/treatment facility under manifest no. 22365499 on September 16, 2004. This information was not noted in the Respondent's computer tracking system.

2.4. The Respondent violated California Code of Regulations, section 66264.15 (b)(1), and 66264.174, and the Respondent's inspection plan, Part 1.1., in that the Respondent failed to conduct weekly inspections of the copper baghouse from on or about the following dates: October 31- November 4, 2005; November 7-11, 2005; November 21-25, 2005; and November 28-December 2, 2005.

2.5. The Respondent violated California Code of Regulations, title 22, section 66264.16 (d)(4) in that on or about January 31, 2006, Respondent failed to record and

maintain the weekly safety meeting topics covered, suggestions given, and attendees, as specified in Section III of Respondent's Training Plan.

2.6. The Respondent violated California Code of Regulations, title 22, section 66264.71(a)(1) in that Respondent failed to sign and date manifest upon arrival at the facility to wit: On or about September 26, 2006, Respondent failed to sign and date manifest no. 001394670JJK upon arrival at the facility. The waste was observed in Storage Area IV.

2.7. The Respondent violated Health and Safety Code 25202 subdivision (a), California Code of Regulations, title 22, sections 66270.30 subdivision (a), and 66264.35, and Hazardous Waste Facility Permit (HWFP) II.21, Comments and Special Conditions for Storage Area IV, in that on or about September 26, 2008, Respondent failed to maintain a minimum of 2 feet aisle space in Storage Area IV to allow for movement of emergency equipment and personnel. (9/26) corrected

2.8. The Respondent violated California Code of Regulations, title 22, section 66274.73 (b) (2) in that, on or about September 26, 2006, Respondent failed to record in its operating record, container PU038657-000001-002 containing hazardous waste solid with lead, manifest 23428283, received on May 12, 2005.

2.9. The Respondent violated California Code of Regulations, title 22, section 66264.16 (c) in that ECS failed to have personnel take part in an annual review of initial training required for two employees, Noel Morales and Jose Reyes. The two employees have been provided annual refresher trainings on January 27, 2006 and September 2, 2007.

2.10. The Respondent violated California Code of Regulations, title 22, section 66273.83(d) in that on or about September 27, 2006, Respondent failed submit to DTSC by certified mail, an adjusted closure cost estimate for closure pursuant to section 66265.142, thirty (30) days prior to recycling or treating CRT materials using a newly installed CRT crusher. The crusher was installed on or about the middle of August 2006.

2.11. The Respondent violated California Code of Regulations, title 2, section 66265.142 (b) in that on or about November 29, 2006, Respondent failed to adjust the

closure cost estimate for inflation 60 days prior to the anniversary date of the establishment of the financial instrument.

Respondent's failure to increase the electronic waste closure cost estimate upon the addition of a new CRT crusher and to adjust the closure cost for inflation caused the Certificate of Deposit for the Electronic Waste Processing to be underfunded by \$ 679.79. Respondent has returned to compliance on violations 2.10. and 2.11 in that on October 5, 2006, the Respondent's Certificate of Deposit for Electronic Waste Processing was increased to cover the cost of closure for 2006.

2.12. The Respondent violated California Code of Regulations, title 22, section 66273.83(d) in that on or about May 1, 2008, Respondent failed to submit to the Department, documentation demonstrating financial assurance for closure pursuant to section 66265.143. The amount of funds available for combined hazardous waste and universal waste closure cost estimates was underfunded by seventy-two thousand nine hundred ninety five dollars and four cents (\$ 72,995.04).

Respondent has returned to compliance in that on May 21, 2008, a Certificate of Deposit payment of seventy- three thousand dollars (\$ 73,000) was made to cover the cost of closure.

SCHEDULE FOR COMPLIANCE

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

3.1.1. Respondent has returned to compliance on violations 2.6., 2.7., 2.8. 2.9., 2.10., 2.11., and 2.12.

3.1.2. Respondent shall only accept, store and treat hazardous wastes that are authorized in the HWFP.

Within 30 days of the effective date of this Order, Respondent shall submit to the Department, steps that had been taken by the Respondent to familiarize its employees of their permit requirements, terms and conditions, and to prevent the acceptance, storage and processing of unauthorized hazardous waste at the facility.

3.1.3. Within 30 days of the effective date of this Order, Respondent shall maintain accurate information/record on the acceptance, storage, treatment, and final

disposition of each hazardous waste handled at the facility.

3.1.4. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, documentation to demonstrate that weekly inspections of the copper baghouse are being conducted.

3.1.5. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, a copy of the latest record on weekly safety meetings that includes topics covered, suggestions given, and name of attendees, as specified in the Training Plan.

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

Luz T. Castillo
Enforcement and Emergency Response Program
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710

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

a. Modify the document as deemed necessary and approve the document as modified, or

b. 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.

3.5. 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.

3.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this 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 of this Order for such period of time as needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended for the term of the Stop Work Order.

3.7. 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.

3.8. 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 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.

3.9. 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 Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, 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.

3.10. 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 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.

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

3.12. Extension Request: If Respondent is unable to perform any activity or submit any document within the time required under this 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.

3.13. 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.

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 \$ 65,500. 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, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Luz T. Castillo
Enforcement and Emergency Response Program
Department of Toxic Substances Control
700 Heinz Avenue
Berkeley, California 94710

James Grace
Office of Legal Affairs
Department of Toxic Substances Control

8800 Cal Center Drive
Sacramento, California 95826

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: January 7, 2009

Original signed by Patricia Barni
Patricia Barni
State Oversight and Enforcement Branch
Enforcement and Emergency Response Program
Department of Toxic Substances Control