

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Nonferro Incorporated  
15229 Whittram Avenue  
Fontana, California 92335

EPA ID CAL 000225864

Respondent.

Docket TFIS 03-06-940446

ENFORCEMENT ORDER

Health and Safety Code  
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to Nonferro Incorporated (Respondent).

1.2. Site. Respondent generates, handles, treats, stores, and/or disposes of hazardous waste at the following site: 15229 Whittram Avenue, Fontana, California (Site).

1.3. Inspection. The Department inspected the Site on February 26, 2003.

1.4. Authorization Status. Respondent does not have any permit or other authorization to manage hazardous waste.

1.5. Jurisdiction. Health and Safety Code, section 25187, subdivision (a), authorizes the Department to order action necessary to correct violations and to 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.

## 2. DETERMINATION OF VIOLATIONS

2.1. The Department has determined that:

2.1.1. Respondent violated California Health and Safety Code, sections 25189.2, subdivision (c), and 25201, in that from on or before July 11, 2002, until on or about March 18, 2003, Respondent stored or disposed of hazardous waste in waste piles at the Site without authorization by the Department.

2.1.2. Respondent violated California Code of Regulations, title 22, sections 66264.31, and 66264.251, in that from on or before July 11, 2002, until on or about March 18, 2003, Respondent managed hazardous waste in waste piles at the site without containment and without minimizing the possibility of release of hazardous waste or hazardous waste constituents to the air, soil, water, or ground water.

2.1.3. Respondent violated California Code of Regulations, title 22, section 66262.11, in that from on or before July 11, 2002, until on or about March 18, 2003, Respondent failed to determine whether the waste Respondent generated was a hazardous waste.

2.1.4. Respondent violated California Code of Regulations, title 22, section 66262.12, subdivision (a), in that from on or before July 11, 2002, until on or about March 18, 2003, Respondent managed, stored, or disposed of hazardous waste at the Site without obtaining an Identification Number.

## 3. SCHEDULE FOR COMPLIANCE

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

3.1.1. Immediately upon the effective date of this Order, and continuously thereafter, Respondent shall not store any additional hazardous waste at the Site without authorization by the Department.

3.1.2. Immediately upon the effective date of this Order, and continuously thereafter, Respondent shall determine whether any waste generated or held at the Site is a hazardous waste pursuant to Chapter 11, California Code of Regulations, title 22.

3.1.3.1. Interim Measures. Respondent shall immediately take interim measures to limit exposure to the hazardous waste on the Site, including measures:

- a. to prevent public access to the Site, such as locking gates and providing site security in accordance with sections 66264.14 and 66264.31 of Title 22, California Code of Regulations;
- b. to cover the waste piles and other open containers, bins and/or boxes of hazardous waste at the Site in accordance with sections 66264.31 and 66264.251, subdivision (I), of Title 22, California Code of Regulations;
- c. to control rainwater run-on and stormwater runoff at the Site in accordance with sections 66265.31 and 66264.251, subdivisions (f) and (g), of Title 22, California Code of Regulations; and
- d. to place hazardous waste warning signs at each entrance to the Site and at other locations in accordance with section 66264.14, subdivision (c), of Title 22, California Code of Regulations.

3.1.3.2. Respondent shall cover any piles of hazardous waste on the Site with a tarp, and secure the tarp with a device to prevent the hazardous waste piles from

becoming uncovered at any time. The covers shall be maintained at all times by the Respondent to prevent any release of hazardous waste or hazardous waste constituents into the environment through wind dispersion or other means.

3.1.3.3. Respondent shall place around the perimeter of each pile of hazardous waste a berm to prevent water run-on to and runoff from the hazardous waste piles at the Site.

3.1.3.4. Respondent shall perform any other measures necessary to contain present contamination and to prevent any future contamination at the Site.

3.1.3.5. Respondent shall not accept at the Site any hazardous waste from off-site.

3.1.3.6. No hazardous or non-hazardous waste and/or any other items shall be added to the existing piles of hazardous waste on the Site.

3.1.3.7. The Interim Measures implemented at the Site shall be designed to mitigate current or potential threats to human health and/or the environment, and should, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any remedy which may be required at the Site.

3.1.4.1. Removal Action. Within 30 days of the effective date of this Order, Respondent shall submit to the Department for review and approval an adequate Removal Action Workplan ("Workplan") for the Site, and a Schedule for the implementation of the Removal Action Workplan in accordance with the Scope of Removal Action Workplan attached as Attachment A to this Order.

3.1.4.2. Concurrent with the submission of a Removal Action Workplan,

Respondent shall submit to the Department a Health and Safety Plan in accordance with the Scope of Work for a Health and Safety Plan attached as Attachment B to this Order.

3.1.4.3. Respondent shall implement an approved Removal Action Workplan for the Site approved by the Department in accordance with the schedule and provisions contained therein.

3.1.4.4. Respondent shall conduct the removal of the hazardous wastes on the Site in compliance with applicable hazardous waste laws and regulations.

3.1.4.5. Respondent shall complete the removal action at the Site within 90 days from the Effective Date of the Order.

3.1.5. Respondent shall comply with all terms, requirements, and conditions set forth in Section 5 (Penalty) below.

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

Phillip Blum, P.E., Unit Chief  
Task Force Investigations Support  
Department of Toxic Substances Control  
1011 North Grandview Avenue  
Glendale, California 91201

and

Steve Lavinger, Chief  
Tiered Permitting Corrective Action Branch  
Permitting and Corrective Action Division  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630

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3.3. Communications. All approvals and decisions of the Department made regarding such 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 this 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) is 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 paragraph shall be extended by 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 such 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 other agency having jurisdiction. 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. 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.

3.9. Sampling, Data and Document Availability.

3.9.1. Respondent shall permit the Department and/or its authorized representatives to inspect and copy all sampling, testing, monitoring, and/or other data

(including, without limitation, the results of any such sampling, testing and monitoring) generated by Respondent, or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Order.

3.9.2. Respondent shall allow the Department and/or 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.

3.9.3. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either:

- (a) comply with that request,
- (b) deliver the documents to the Department, or
- (c) notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order and permit the Department to copy the documents prior to destruction.

3.10. Government Liabilities. Neither the State of California nor the Department shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties specified in paragraph 4.3, in carrying out activities pursuant to this Order. Neither the State of California nor the Department shall 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 into 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.

#### 4. OTHER PROVISIONS

4.1. Additional Enforcement Actions. By issuance of this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction involving either Respondent(s) or the Site.

4.2. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties, and/or damages 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.

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4.4. Privileges. Nothing in this Consent Agreement 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 Consent Order.

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

## 5. PENALTY

5.1. Based on the foregoing DETERMINATION OF VIOLATIONS, the Department sets the amount of Respondent's penalty at \$213,400.

5.2. Payment is due within 30 days from the effective date of the Order.

5.3. 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:

Phillip Blum, P.E., Unit Chief  
Task Force Investigations Support  
1011 North Grandview Avenue  
Glendale, California 91201

## 6. RIGHT TO A HEARING

6.1. Respondent may request a hearing to challenge the Order. Appeal procedures are described in the attached Statement to Respondent.

7. EFFECTIVE DATE

7.1. 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 submits a written request for a hearing within the twenty-day period.

Date of Issuance: 7/13/06

Department of Toxic Substances Control

Stephen C. Sterling  
Stephen C. Sterling, Branch Chief  
Task Force Investigations Support