

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Xstrata Recycling, Inc.
fka Noranda Recycling, Inc.
1695 Monterey Highway
San Jose, California 95112

Respondent.

Docket HWCA 20071539

CONSENT ORDER

Health and Safety Code
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and Xstrata Recycling, Inc., formerly known as Noranda Recycling, Inc. (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent generates, handles, treats, stores, and/or disposes of hazardous waste at the following site: 1695 Monterey Highway, San Jose, California 95112 (Site).

1.3. Authorization Status. Respondent is a permitted treatment and storage facility. Respondent processes materials classified as scrap metal, excluded recyclable material, universal waste, hazardous waste and universal waste electronic devices. Respondent routinely accepts hazardous wastes and secondary materials containing recoverable quantities of base and precious metals. Respondent processes RCRA and non-RCRA waste for metal recovery either on-site or transfers the materials for off-site recovery at a primary smelter or other recovery facility. High value materials are

Xstrata Recycling, Inc.

Docket HWCA 20071539
CONSENT ORDER

routinely pre-processed at the San Jose facility and shipped to a smelter in Canada for final metal reclamation.

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

1.5. 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 and the Department fully releases Respondent from any and all liability arising out of these alleged violations, except as provided in this Order. 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(s) or the Site, except to the extent provided in this Order.

1.6. Hearing. Respondent withdraws its Notice of Defense and Supplemental Notice of Defense previously submitted in this matter and withdraws its request for a hearing.

1.7. Admissions. Respondent admits the violations described below.

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Xstrata Recycling, Inc.

Docket HWCA 20071539
CONSENT ORDER

2. VIOLATIONS ALLEGED

2. The Department alleges the following violations:

2.1.1. Respondent violated California Code of Regulations, title 22, section 66264.143, in that during the period from November 10, 2007, to April 17, 2008, Respondent failed to submit a mechanism for financial assurance for closure that was in compliance with the regulation, to wit, the financial test application submitted by Respondent failed to meet the requirements of California Code of Regulations, title 22, section 66264.143, subdivision (f)(3), as follows:

(a) The wording of the Financial Test and the Corporate Guarantee was not identical to that set forth at California Code of Regulations, title 22, section 66264.151(f) as required by California Code of Regulations, title 22, section 66264.143(f)(3)(A); and,

(b) The Financial Test was signed by legal counsel rather than the Chief Financial Officer as required by California Code of Regulations, title 22, section 66264.143(f)(3)(A); and,

(c) The special report failed to include a statement from an independent certified public accountant that "no matters came to the independent certified public accountant's attention which caused that accountant to believe that the specified data should be adjusted" as required by California Code of Regulations, title 22, section 66264.143(f)(3)(C)(2).

2.1.2. Respondent violated California Code of Regulations, title 22, section 66264.147, in that during the period from November 10, 2007, to May 2, 2008, Respondent failed to submit a mechanism for financial assurance for post-closure that

was in compliance with the regulation, to wit, the financial test application submitted by Respondent failed to meet the requirements of California Code of Regulations, title 22, section 66264.147, subdivision (g), as follows:

(a) The wording of the Financial Test and the Corporate Guarantee was not identical to that set forth at California Code of Regulations, title 22, section 66264.151(h)(2) as required by California Code of Regulations, title 22, section 66264.147(g)(1); and,

(b) The Financial Test was signed by legal counsel rather than the Chief Financial Officer as required by California Code of Regulations, title 22, section 66264.143(f)(3)(A), incorporated by California Code of Regulations, title 22, section 66264.147(g)(1); and,

(c) The special report failed to include a statement from an independent certified public accountant that "no matters came to the independent certified public accountant's attention which caused that accountant to believe that the specified data should be adjusted" as required by California Code of Regulations, title 22, section 66264.143(f)(3)(C)(2), incorporated by California Code of Regulations, title 22, section 66264.147(g)(1); and,

(d) The Corporate Guarantee submitted failed to identify a registered agent for service of process in the State of California as required by California Code of Regulations, title 22, section 66264.147(g)(2).

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3. SCHEDULE FOR COMPLIANCE

3. Respondent shall comply with the following:

3.1.1. Respondent corrected the above violations on or about April 17 and May 2, 2008. Respondent shall maintain an acceptable financial assurance mechanism as required by regulation and without interruption.

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

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

Julie Mullins
Associate Governmental Program Analyst
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

3.3. Communications. All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by the appropriate Branch Chief, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department shall relieve Respondent of its obligation to obtain required formal approvals.

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.

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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 Respondent's operations, 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.

3.6. 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, 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.

4. OTHER PROVISIONS

4.1. 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.

4.2. 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, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

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Xstrata Recycling, Inc.

Docket HWCA 20071539
CONSENT ORDER

4.3. Privileges. Nothing in this Agreement shall be construed to require any party to waive any privilege. However, the assertion of any privilege shall not relieve any party of its obligations under this Order.

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

4.5. Captions and Headings. Captions and headings used herein are for convenience only and shall not be used in construing this Consent Order.

4.6. Severability. If any provision of this Consent Order is found by a court of competent jurisdiction to be illegal, invalid, unlawful, void or unenforceable, then such provision shall be enforced to the extent that it is not illegal, invalid, unlawful, void, or unenforceable, and the remainder of this Consent Order shall continue in full force and effect.

4.7. Entire Agreement. This Consent Order contains the entire and only understanding between the Parties regarding the subject matter contained herein and shall supercede any and all prior and/or contemporaneous oral or written negotiations, agreements, representations and understandings and may not be amended, supplemented, or modified, except as provided in this Order. The Parties understand and agree that in entering into this Consent Order, the Parties are not relying on any representations not expressly contained in this Consent Order.

4.8. Counterparts. This Consent Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

4.9. Non-Waiver. The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Contract constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

5. PENALTY

5.1. Respondent shall pay the Department the total sum of \$54,839.00, which includes \$9,839.00 as reimbursement of the Department's costs incurred in connection with this matter.

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

5.3. 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(s) shall be sent to:

Julie Mullins
Associate Governmental Program Analyst
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

James J. Grace
Senior Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

5.4. 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.

6. EFFECTIVE DATE

6. The effective date of this Order is the date it is signed by the Department.

Dated: 3/18/09



Mark TenBrink
General Manager
Xstrata Recycling, Inc.
Respondent

Dated: 3/23/09



Keith Kihara
Supervising Hazardous Substances Scientist I
Department of Toxic Substances Control

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