

Brownfields Program  
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23

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North Carolina Department of Environment and Natural Resources  
Division of Waste Management

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Director

Dee Freeman  
Secretary

August 5, 2011

**CERTIFIED MAIL**

Mr. Norwood Thompson  
Walthom Group, LLC  
442 1/2 East Main Street  
Clayton, NC 27520

Subject: Notice of Noncompliance, N.C.G.S. §130A-310.35(f)  
Annual Land Use Restrictions Update  
MidCal Aluminum  
4933 Brookshire Boulevard, Mecklenburg County  
Project Number: 10053-06-60

Dear Mr. Thompson:

Pursuant to the land use restrictions listed in the Notice of Brownfields Property recorded at the Mecklenburg County Register of Deeds, all owners of the brownfields properties are required to submit an annual certification to maintain liability protection granted by the Brownfields Agreement for the subject property. Our records indicate that Walthom Group, LLC is a current owner of at least part of the subject brownfields property and that an annual certification from this company has not been received.

To minimize the chance of an assessment and/or cleanup order, and/or civil penalties, Walthom Group, LLC or its authorized agent should immediately complete, sign, notarize, and submit the attached Land Use Restrictions Update ("LURU") form to the following address:

NC Brownfields Program  
Mail Service Center 1646  
Raleigh, NC 27699-1646

Please retain a copy of the attached form for future LURU submittals or you may request an electronic version by e-mailing me at [David.Peacock@ncdenr.gov](mailto:David.Peacock@ncdenr.gov). Should you have any questions or have information showing that you have not owned any part of the brownfields property since the Notice of Brownfields Property was recorded, please contact me by telephone at (910) 796-7401 or by e-mail.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Peacock', written in a cursive style.

David Peacock  
Brownfields Compliance Coordinator

W/Enclosures

Cc: Central Files  
Ec: Bruce Nicholson, NCDENR  
Rob Gelblum, Special Deputy Atty. General

**Brownfields Project #:** 10053-06-60

**Brownfields Property:** Midcal Aluminum, 4933 Brookshire Boulevard

**Property Owner (In whole or part):** Walthom Group, LLC

**LAND USE RESTRICTIONS (“LUR”) UPDATE**

LUR 1: No use may be made of the Brownfields Property other than for recycling or other industrial purposes, and/or, with prior written Department of Environment and Natural Resources (“DENR”) approval, any commercial purpose that DENR determines will not put public health or the environment at undue risk, all as limited by the other Land Use Restrictions below. Within the meaning of this Land Use Restriction, the following definitions apply:

- i. “Recycling” refers to the derivation of useable materials, or materials suitable for reuse, from the treatment or processing of used or waste materials.
  
- ii. “Industrial” refers to:
  - A. the assembly, fabrication, processing, storage, transportation and/or distribution of goods and materials using processes that may have greater than average (though legal) impacts on the environment, and may have significant (though legal) impacts on the use and enjoyment of adjacent Brownfields Property that relate to noise, smoke, fumes, odors, glare, or health and safety hazards; or
  
  - B. any assembly, fabrication or processing of goods and materials where the area occupied by outdoor storage of goods and material used in the assembly, fabrication or processing exceeds 25 percent of the floor area of all buildings on the Brownfields Property.
  
- iii. “Commercial” refers to an enterprise carried on for profit by the owner, lessee or licensee.

In compliance \_\_\_\_\_ Out of compliance \_\_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 2: No building designed for human use may be constructed on the Brownfields Property until DENR has been consulted regarding the proximity of the planned building to the Brownfields Property's volatile contaminant plume. If DENR determines, based on criteria that shall include the most recent Brownfields Property-related environmental sampling results reasonably available to DENR, that the footprint of a building proposed to be constructed on the Brownfields Property would fall within 100 feet of said plume, it may not be constructed without:

- i. a vapor barrier system and/or mechanical or passive vapor barrier mitigation system, or other effective vapor mitigation system DENR approves in writing in advance based on the above-referenced criteria; or
- ii. an assessment of the risk posed by soil gas which demonstrates to DENR's written satisfaction that neither a vapor barrier nor mitigation system is required. If a vapor barrier and/or mitigation system is installed, within 30 days following installation DENR shall be provided certification of proper installation under the seal of a professional engineer licensed in North Carolina, as well as photographs illustrating the installation and a brief narrative describing it. With DENR's prior written approval, investigation activities performed to DENR's written satisfaction, including, without limitation, soil gas samples, may be conducted, and installation of a mitigation system possibly excused by DENR, so long as the proponent makes a written commitment to install a mitigation system if DENR so requires based on review of a report of the investigation activities. No building as to which DENR is not consulted pursuant to this paragraph may be put to human use.

In compliance \_\_\_\_\_ Out of compliance \_\_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 3: Underground water at the Brownfields Property may not be used for any purpose without the prior written approval of DENR.

In compliance \_\_\_\_\_ Out of compliance \_\_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 4: No mining may be conducted on or under the Brownfields Property, including, without limitation, extraction of coal, oil, gas or any other minerals or non-mineral substances.

In compliance \_\_\_\_ Out of compliance \_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 5: No basements may be constructed on the Brownfields Property unless they are, as determined in writing by DENR, vented in conformance with applicable building codes.

In compliance \_\_\_\_ Out of compliance \_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 6: None of the contaminants known to be present in the environmental media at the Brownfields Property, including those listed in Table A of the Notice of Brownfields Property ("Notice"), may be used or stored at the Brownfields Property without the prior written approval of DENR, except in *de minimis* amounts for cleaning and other routine housekeeping activities.

In compliance \_\_\_\_ Out of compliance \_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 7: The Brownfields Property may not be used as a park or for sports of any kind, including, but not limited to, golf, football, soccer and baseball, without the prior written approval of DENR.

In compliance \_\_\_\_ Out of compliance \_\_\_\_

Remarks: \_\_\_\_\_

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LUR 8: The Brownfields Property may not be used for agriculture, grazing, timbering or timber production.

In compliance \_\_\_\_ Out of compliance \_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 9: The Brownfields Property may not be used as a playground, or for child care centers or schools.

In compliance \_\_\_\_ Out of compliance \_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 10: The Brownfields Property may not be used for kennels, private animal pens or horse-riding.

In compliance \_\_\_\_ Out of compliance \_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 11: No party conducting environmental assessment or remediation at the Brownfields Property at the direction of, or pursuant to a permit or order issued by, DENR may be denied access to the Brownfields Property for purposes of conducting such assessment or remediation, provided that DENR attempts to provide written notice of the access (which may be via e-mail) and a summary of the activities to be conducted

on the Brownfields Property to at least one owner of the Brownfields Property, and that a reasonable attempt is made to minimize any disturbance caused by the activities.

In compliance \_\_\_\_ Out of compliance \_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LUR 12: During January of each year after the year in which the Notice is recorded, the then current owner of any part of the Brownfields Property shall submit a notarized Land Use Restrictions Update to DENR certifying that:

- i. the Notice remains recorded at the Mecklenburg County Register of Deeds office;
- ii. the Land Use Restrictions are being complied with; and
- iii. any vapor barrier and/or mitigation systems installed pursuant to Land Use Restriction 2 above are performing the function for which they were installed, and the uses of the ground floors of any buildings containing such vapor barrier and/or mitigation systems have not changed (unless they have changed, in which case a certified update of uses shall be submitted).

In compliance \_\_\_\_ Out of compliance \_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notarized signing and submittal of this Land Use Restrictions Update constitutes certification that the Notice remains recorded at the Mecklenburg County Register of Deeds office and that the Land Use Restrictions are being complied with.

This Land Use Restrictions Update is certified by \_\_\_\_\_,  
owner of at least part of the Brownfields Property.

Name typed or printed of party making certification: \_\_\_\_\_

**[Insert notary block from among the following that is pertinent to type of party submitting LURU: corporation, LLC, partnership or individual.]**  
**[use for corporations]**

[Insert Name of Corporation]

By: \_\_\_\_\_  
Name typed or printed:  
Title typed or printed:

ATTEST:

\_\_\_\_\_  
Name typed or printed:  
Secretary, \_\_\_\_\_ (corporation name)

NORTH CAROLINA  
\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, a Notary Public of the county and state aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he/she is the Secretary of \_\_\_\_\_ (corporation name), a \_\_\_\_\_ (state) corporation, and that by authority duly given and as the act of the corporation, the foregoing Land Use Restriction Update was signed in its name by its \_\_\_\_\_ and attested by him/her as its Secretary.

WITNESS my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name:  
Notary Public

My Commission expires: \_\_\_\_\_

[Stamp/Seal]

[use for LLCs]

[Insert Name of LLC]

By: \_\_\_\_\_  
Name typed or printed:  
Member/Manager

NORTH CAROLINA  
\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, a Notary Public of the county and state aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he/she is a Member of \_\_\_\_\_, LLC, a \_\_\_\_\_ (state) limited liability company, and its Manager, and that by authority duly given and as the act of the company, the foregoing Land Use Restriction Update was signed in its name by him/her.

WITNESS my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name typed or printed:  
Notary Public

My Commission expires: \_\_\_\_\_

[Stamp/Seal]

**[use for Partnerships]**

[Insert Name of Owner]

By: \_\_\_\_\_  
Name typed or printed:  
General Partner

NORTH CAROLINA  
\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, a Notary Public of the county and state aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he/she is a General Partner of \_\_\_\_\_, a \_\_\_\_\_ (state) partnership, and that by authority duly given and as the act of the partnership, the foregoing Land Use Restriction Update was signed in its name by him/her.

WITNESS my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name typed or printed:  
Notary Public

My Commission expires: \_\_\_\_\_

[Stamp/Seal]

[use for individuals]

[Insert Name of Owner]

By: \_\_\_\_\_  
Name typed or printed:

NORTH CAROLINA  
\_\_\_\_\_ COUNTY

I, \_\_\_\_\_, a Notary Public of the county and state aforesaid, certify that \_\_\_\_\_ personally came before me this day, demonstrated her/his identity, and signed the foregoing Land Use Restriction Update.

WITNESS my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name typed or printed:  
Notary Public

My Commission expires: \_\_\_\_\_

[Stamp/Seal]

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Sent To  
Mr. Norwood Thompson  
Walthom Group, LLC  
Street, Apt. or PO Box  
442 1/2 East Main Street  
City, State  
Clayton, NC 27520