

RECEIVED
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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IN THE MATTER OF:)
)
W AND E INTERNATIONAL)
TRADING COMPANY)
1534 Summerfield Drive)
Allen, Texas 75002-1859)
)
MR. ZILIANG ZHU)
a.k.a. "Eric" Zhu)
d.b.a. W and E International)
Trading Company)
1534 Summerfield Drive)
Allen, Texas 75002-1859)
)
SM METALS, L.L.C.)
d.b.a. Better PC Recycle)
1320 134th Street South)
Tacoma, Washington 98444)
)
)
RESPONDENTS)
)
Proceeding under Section 3008(a) of the)
Resource Conservation and Recovery)
Act, 42 U.S.C. § 6928(a))
)
_____)

HEARINGS CLERK
EPA -- REGION 10

EPA Docket No. RCRA-10-2009-0206

**CONSENT AGREEMENT
AND
FINAL ORDER**

I. AUTHORITY

1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Complainant") by Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a) ("RCRA"). The Administrator has delegated the authority to issue the Final Order contained in Section V. of this CAFO to the Regional Administrator of EPA, Region 10, who in turn has re-delegated this authority to the Regional Judicial Officer.

2. This is an action commenced pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), requiring Respondents' compliance with Sections 3002 and 3017 of RCRA, 42 U.S.C. §§ 6922 and 6938, the regulations implementing RCRA at 40 C.F.R. Parts 261 and 262, and the EPA-authorized Washington dangerous waste management regulations set forth in the Washington Administrative Code (WAC) 173-303 *et seq.*

II. PRELIMINARY STATEMENT

3. On July 14, 2009, EPA commenced this proceeding against W and E International Trading Company ("W and E"), Mr. Ziliang Zhu ("Ziliang Zhu"), and SM Metals, L.L.C. ("SM Metals") (collectively "Respondents") with a Complaint and Compliance Order issued pursuant to RCRA Section 3008(a). The Complaint and Compliance Order was amended on August 13, 2009, to add a request for a civil penalty.

4. The Amended Complaint and Compliance Order alleges that Respondents' violations of RCRA and the WAC subject them to civil penalties and actions necessary to correct their violations and to ensure that the hazardous waste at issue in this matter is disposed of properly.

5. The basis for proposing the assessment of a civil penalty is set forth in the Amended Complaint and Compliance Order.

6. Pursuant to Section 3008(a) of RCRA, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties" ("Part 22 Rules"), Complainant and Respondents hereby agree to issuance of the Final Order contained in Section IV. of this CAFO.

7. In accordance with 40 C.F.R. § 22.18(b)(2) and (3), this CAFO concludes this proceeding when the Final Order contained in Section IV. becomes effective.

III. CONSENT AGREEMENT

EPA and Respondents, by their undersigned representatives, hereby stipulate and agree as follows:

8. Respondents stipulate that EPA has jurisdiction over this matter.
9. Respondents neither admit nor deny the specific factual allegations set forth in the Amended Complaint and Compliance Order. Respondent SM Metals further stipulates and agrees that in July 2009 SM Metals changed its name and began doing business as Better PC Recycle.
10. Respondent SM Metals (now doing business as Better PC Recycle) shall apply for an EPA Identification Number and notify the State of Washington of its status as a Dangerous Waste Generator within thirty (30) days of the effective date of the Final Order. Respondent's application and notification shall reflect the name that the business currently operates under.
11. Within ten (10) days of the effective date of the Final Order, Respondents shall examine the contents of shipping container # MSKU4651881 (the "Container") and submit to EPA a detailed inventory of all the items currently in the Container.
12. Within twenty (20) days of the effective date of the Final Order, Respondents shall make a dangerous waste determination regarding each of the non-Cathode Ray Tube ("CRT") containing items in the Container in accordance with the procedures in WAC 173-303-070(3). Respondents shall notify EPA in writing of their determination and provide documentation supporting the adequacy of their determination. Within twenty-five (25) days of the effective date of the Final Order, Respondents shall submit a written Compliance Plan to EPA indicating how the non-CRT containing items in the Container shall be disposed of in

accordance with all applicable laws and regulations. The Compliance Plan shall include deadlines for the completion of each element of the Plan. Respondents shall implement that Compliance Plan immediately after receiving written approval from EPA and in accordance with the schedule established in the approved Compliance Plan.

13. Respondents agree that the CRT-containing items in the Container shall be dismantled and destroyed at a facility selected by Respondents that is permitted to manage CRT wastes. Within ten (10) days of the effective date of the Final Order Respondents shall notify EPA of the name and address of the permitted facility that shall conduct those activities on their behalf. Unless EPA objects in writing to Respondents' selected permitted facility, within twenty (20) days of the effective date of the Final Order Respondents shall transfer custody of the all of the CRTs in the Container to the designated facility for dismantling and destruction. No later than sixty (60) days from the effective date of the Final Order, all of the CRTs shall be dismantled and destroyed. The components of the CRTs shall be recycled by the designated facility in accordance with all applicable legal requirements.

14. At least ten (10) days prior to the dismantling and destruction of the CRTs in the Container, Respondents shall provide written notice to EPA of the date and time when these activities will commence and the anticipated duration of these activities so that EPA staff may observe the activities and verify that the conditions of this CAFO are being met.

15. Respondents shall obtain documentary and photographic evidence to demonstrate that all of the CRTs in the Container have been dismantled and destroyed in the manner described in this CAFO. Within fourteen (14) days following the completion of the dismantling and destruction of the CRTs, Respondents shall submit this documentary and photographic evidence to EPA.

16. Under no circumstances shall Respondents export the contents of the Container from the United States to any other country.

17. Within fourteen (14) days following the completion of the dismantling and destruction of the CRTs or the last action required under the approved Compliance Plan described in Paragraph 12, whichever occurs later, Respondents shall submit to EPA a Completion Report which details the actual disposition of each item listed on the Container inventory required pursuant to Paragraph 11 of this CAFO, and provide copies of supporting documentation demonstrating full completion of the activities described in Paragraphs 10-15 of this CAFO. The Completion Report shall also include a detailed summary of the actual cost of Respondents' performance of the actions described in Paragraphs 10-15 of this CAFO, and shall include copies of all invoices and receipts necessary to corroborate the detailed summary.

18. Respondent shall submit any information, reports, and/or notices required by this CAFO to:

Xiangyu Chu, Compliance Officer
U.S. Environmental Protection Agency, Region 10
Office of Compliance and Enforcement
1200 Sixth Avenue, Suite 900
Mail Stop: OCE-127
Seattle, Washington 98101

19. Upon consideration of the factors in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and in accordance with the RCRA Civil Penalty Policy, EPA has determined and Respondents consent to the issuance of the Final Order set forth herein and to payment of a civil penalty of TWENTY-ONE THOUSAND SIX HUNDRED AND FIFTY DOLLARS (\$21,650.00) within 30 days of the effective date of the Final Order.

20. In the event that Respondents should fail to complete any of the corrective actions described in Paragraphs 10-17 to the satisfaction of EPA and in accordance with the

schedule established in this CAFO, Respondents shall be liable for stipulated penalties of \$250 per day per violation of this CAFO. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of satisfactory completion of the activity.

21. Respondents shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by EPA for such penalties. Payment shall be made in accordance with the provisions of Paragraph 22. Interest and late charges shall be paid as stated in Paragraph 24.

22. Payment under the CAFO shall be made by cashier's or certified check or money order, made payable to the order of "United States Treasury" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondents shall note on the payment Respondents' name and address, the case name, and the docket number of the case, and shall submit a photocopy of the payment to:

Region 10 Hearing Clerk
U.S. EPA Region 10, Suite 900
1200 Sixth Avenue, ORC-158
Seattle, Washington 98101

and:

Office of Compliance and Enforcement
U.S. EPA Region 10, Suite 900
1200 Sixth Avenue, OCE-127
Seattle, Washington 98101
Attn: Xiangyu Chu

23. Respondents shall be jointly and severally liable for the full payment of the penalty amount specified in Paragraph 19 of this CAFO. Should Respondents fail to pay the penalty assessed by this CAFO in full by its due date, the entire unpaid balance of the penalty and accrued interest assessed against Respondents by this CAFO shall become immediately due and owing. Should such a failure to pay occur, Respondents may be subject to a civil action pursuant to Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), to collect the assessed amount. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

24. Should Respondents fail to pay the penalties assessed by this CAFO in full by their due date, Respondents shall also be responsible for payment of the following amounts:

- a. Interest. Any unpaid portion of the of the assessed penalty shall bear interest at the rate established pursuant to 26 U.S.C. § 6621(a)(2) from the effective date of the Final Order, provided, however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.
- b. Attorney Fees, Collection Costs, Nonpayment Penalty. Pursuant to 42 U.S.C. § 7413(d)(5), should Respondents fail to pay on a timely basis the penalty and interest assessed against Respondents, Respondents shall also be required to pay the United States' enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be ten percent of the aggregate

amount of Respondents' outstanding penalties and nonpayment penalties accrued from the beginning of such quarter.

25. Respondents agree not to claim or attempt to claim a federal or state income tax deduction or credit covering all or any part of the penalty paid to the United States Treasury under this CAFO.

26. Each Respondent represents that it is duly authorized to execute this CAFO and that the party signing this CAFO on its behalf is duly authorized to bind Respondent to the terms of this CAFO.

27. The provisions of this CAFO shall bind Respondents and their officers, directors, agents, servants, employees, successors, and assigns.

28. Respondents explicitly waive their rights to contest the allegations contained in this CAFO and to appeal the Final Order contained herein.

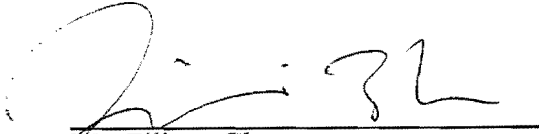
29. Except as described in Paragraph 24, each party to this action shall bear its own costs in bringing or defending this action.

30. This CAFO shall not relieve Respondents of their obligation to comply

with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

STIPULATED AND AGREED BY:

FOR
RESPONDENTS



Mr. Ziliang Zhu
W AND E INTERNATIONAL TRADING CO.

12/1/09
Date

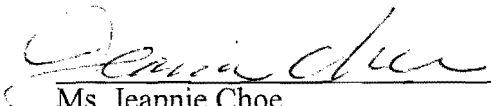


Mr. Ziliang Zhu

12/1/09
Date

STIPULATED AND AGREED BY:

FOR
RESPONDENTS

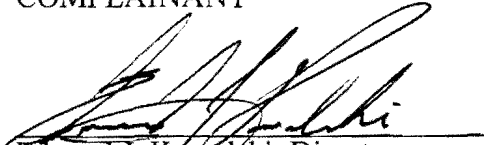


Ms. Jeannie Choe
SM METALS, L.L.C.
d.b.a. BETTER PC RECYCLE

12/1/09
Date

STIPULATED AND AGREED BY:

FOR
COMPLAINANT



Edward J. Kowalski, Director
Office of Compliance and Enforcement
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10

12/3/09
Date

IV. FINAL ORDER

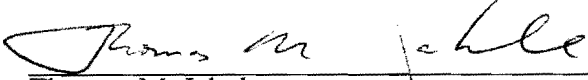
31. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondents are hereby ordered to comply with the foregoing terms of settlement.

32. This CAFO constitutes a release and settlement by EPA of all claims for civil penalties pursuant to RCRA for the particular violations alleged in the Amended Complaint and Compliance Order. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondents' obligations to comply with all applicable provisions of RCRA, the WAC, and regulations and permits issued thereunder or with any other applicable legal requirement.

33. Respondents shall pay a civil penalty in the amount of TWENTY-ONE THOUSAND SIX HUNDRED AND FIFTY DOLLARS (\$21,650.00) as provided in Section III. above.

34. This Final Order shall become effective upon filing.

SO ORDERED this 4th day of December 2009.



Thomas M. Jahnke
Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: W AND E INTERNATIONAL TRADING COMPANY AND MR. ZILLANG ZHU, a.k.a. "ERIC" ZHU, d.b.a. W and E International Trading Company and SM METALS, L.L.C., d.b.a. Better PC Recycle, DOCKET NO.: RCRA-10-2009-0206** was filed with the Regional Hearing Clerk on December 8, 2009.

On December 8, 2009, the undersigned certifies that a true and correct copy of the document was delivered to:

Shirin Venus, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on December 8, 2009, to:

W and E International Trading Company
1534 Summerfield Drive
Allen, TX 75002-1859

Mr. Ziliang Zhu
1534 Summerfield Drive
Allen, TX 75002-1859

SM Metals, L.L.C.
1320 134th Street South
Tacoma, WA 98444

DATED this 8th day of December 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10