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2012 SEP 28 PM 3: 25

U.S. EPA, REGION IX
REGIONAL HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of)	U.S. EPA Docket No.
)	RCRA-9-2012-0020
AERC.COM, Inc., dba)	
AERC Recycling Solutions)	
)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
)	40 CFR SECTIONS 22.13 AND
<u>Respondent.</u>)	22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. § 6928(a)(1), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 Code of Federal Regulations ("CFR") Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999). Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is AERC.COM, Inc., dba AERC Recycling Solutions ("AERC" or "Respondent").
2. Respondent is a Pennsylvania corporation which offers full-service recycling, including mercury recycling. AERC also engaged in the export of used electronic equipment and parts.
3. This Consent Agreement and Final Order pursuant to 40 CFR Sections 22.13 and 22.18 ("CA/FO") concludes this proceeding, wherein EPA alleges that Respondent failed to provide notification of its intent to export hazardous waste as required by 40 CFR § 262.53. This is in violation of Section 3001 et seq. of RCRA, 42 U.S.C. § 6921 et seq.

B. JURISDICTION

4. Respondent corporation is a "person" as defined in 40 CFR § 260.10.
5. Respondent is an "exporter" of used cathode ray tubes ("CRTs") for recycling regulated under 40 CFR §§ 261.39 – 261.40 and responsible as a "primary exporter" as defined in 40 CFR § 262.51.
6. In January 2009, the Respondent exported used CRTs to Malaysia.
7. The CRT monitors shipped by the Respondent constitute "solid waste" and "hazardous waste" as defined in 40 CFR §§ 260.10, 261.2 and 261.3, and Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), because the Respondent did not meet one of the required exclusion conditions at 40 CFR §§ 261.39(a)(5) and 261.40 by exporting one shipment of used CRTs for recycling after expiration on December 31, 2008, of the Acknowledgement of Consent which had been in effect for its previous shipments of used CRTs to the same facility in Malaysia.
8. Color computer monitors contain an average of four pounds of lead and studies show that CRTs leach lead at levels considerably above the toxicity characteristic regulatory level used to classify lead-containing wastes as hazardous (40 CFR § 261.24(b)). In addition, CRTs often contain mercury, cadmium, and arsenic.
9. Section 3017 of RCRA, 42 U.S.C. § 6938, authorizes the EPA Administrator to promulgate regulations necessary to prevent the unauthorized export of hazardous waste. Such regulations were promulgated under 40 CFR §§ 262.50-58.
10. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA Administrator to issue orders requiring compliance immediately or within a specified time for violation of any requirement of Subtitle C of RCRA, Section 3001 of RCRA et seq., 42 U.S.C. § 6921, et seq.
11. The Administrator has delegated the authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrator for Region IX, who has redelegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATION

Count I

Unauthorized Exportation of Hazardous Waste

12. Paragraphs 1 through 11 above are incorporated herein by this reference as if they were set forth here in their entirety.
13. 40 CFR § 262.52 prohibits exports of hazardous waste unless (a) notification of the EPA of intent to export in accordance with 40 CFR § 262.53 has been provided, (b) the

receiving country has consented to accept the hazardous waste, (c) a copy of the EPA Acknowledgment of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)), and (d) the hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent ("AOC").

14. 40 CFR §§ 261.39 - 261.40 provide a conditional exclusion from the RCRA requirements for export of hazardous waste when used CRTs are exported for recycling, if certain conditions are met.
15. One of the conditions, for used intact CRTs exported for recycling, is that the notice and consent provisions of 40 CFR § 261.39(a)(5) must be met for the exclusion to apply.
16. 40 CFR § 261.39(a)(5)(i) requires that exporters notify EPA of an intended export before the CRTs are scheduled to leave the United States.
17. 40 CFR §§ 261.39(a)(5)(iv) and (v) state that EPA will notify the receiving country, and that when the receiving country consents in writing to the receipt of the CRTs, EPA will forward an AOC to the exporter.
18. 40 CFR § 261.39(a)(5)(v) also states that export of CRTs is prohibited unless the receiving country consents to the intended export.
19. On January 8, 2009, Respondent shipped used CRTs to Malaysia.
20. Respondent had met the notice and consent provisions set out at 40 CFR § 261.39 for 2008, but the AOC for 2008 expired at the end of that year. Respondent had not received an AOC for 2009.
21. Therefore the CRT shipment on January 8, 2009 was not excluded from RCRA regulation, and the requirements of 40 CFR § 262.53, set out in Paragraphs 13 and 14 above, apply.
22. Respondent did not obtain an AOC to export required by 40 CFR § 262.52.
23. Therefore, EPA alleges that Respondent exported hazardous waste without authorization in violation of 40 CFR § 262.52.

D. CIVIL PENALTY

24. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996 (61 Fed. Reg. 69360 (Dec. 31, 1996)) authorizes a civil penalty of up to \$27,500 per day per violation for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring between January 31, 1997 and March 15, 2004. The Civil Monetary Penalty Inflation Adjustment Rule (69 Fed. Reg. 7121 (Feb. 13, 2004)) authorizes a civil penalty of up to \$32,500 per day per violation for violations occurring

after March 15, 2004 and before January 12, 2009. Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, and any economic benefit accruing to Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed FIVE THOUSAND TWO HUNDRED DOLLARS (\$5,200.00) as the civil penalty for the violation alleged herein. The proposed penalty was calculated in accordance with the "June 2003 RCRA Civil Penalty Policy." Under the penalty policy, EPA uses a penalty assessment matrix to determine a gravity-based penalty. That penalty amount is then adjusted to take into account multi-day violations, for case-specific circumstances, and for the economic benefit gained from non-compliance, where appropriate.

E. ADMISSIONS AND WAIVERS OF RIGHTS

25. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
26. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

27. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until such time as the civil penalty required under Sections D and G has been paid in accordance with Section G, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.
28. No change in ownership or corporate, partnership or legal status relating to the Respondent will in any way alter Respondent's obligations and responsibilities under this CA/FO.

29. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

30. Respondent consents to the assessment of and agrees to pay a civil penalty of FIVE THOUSAND TWO HUNDRED DOLLARS (\$5,200.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
31. Respondent shall submit payment of FIVE THOUSAND TWO HUNDRED DOLLARS (\$5,200.00) within thirty (30) calendar days after the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the Respondent's name and address, and the EPA docket number of this action. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States," or be paid by one of the other methods listed below, and sent as follows:

Regular Mail:

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

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Overnight Mail:

U.S. Bank

1005 Convention Plaza

Mail Station SL-MO-C2GL

ATTN Box 979077

St. Louis, MO 63101

Contact: Natalie Pearson (314-418-4087)

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact - Jesse White (301-887-6548)

A8A = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 31006

CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter "sfo1.1" in the search field

Open form and complete required fields

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

Bryan K. Goodwin
Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Jim Polek (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region IX
75 Hawthorne Street
San Francisco, CA 94105.

32. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 CFR § 13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal

amount not paid within ninety (90) calendar days of its due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

33. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below:

For failure to submit a payment to EPA by the time required in this CA/FO: ONE HUNDRED DOLLARS (\$100) per day for first to fifteenth day of delay, FIVE HUNDRED DOLLARS (\$500) per day for sixteenth to thirtieth day of delay, and ONE THOUSAND DOLLARS (\$1,000) per day for each day of delay thereafter.

34. All penalties owed to EPA under this Section shall be due within thirty (30) days after receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 CFR § 13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
35. All penalties shall be made payable by certified or cashier's check to "Treasurer of the United States" and shall be remitted as described in Paragraph 31.
36. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
37. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

I. RESERVATION OF RIGHTS

38. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any other statutory, regulatory or common law enforcement authority of the United States.

- 39. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
- 40. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.
- 41. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

J. OTHER CLAIMS

- 42. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants.

K. MISCELLANEOUS

- 43. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
- 44. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
- 45. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed by the Regional Hearing Clerk.


IT IS SO AGREED.

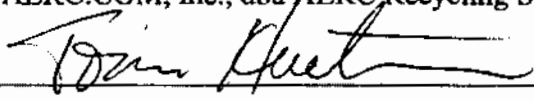
x 9-27-12

Date

9/28/12

Date

x 
 Name, Title: MARK C. KASPER VP OPERATIONS
 AERC.COM, Inc., dba AERC Recycling Solutions


 for Jeff Scott, Director
 Waste Management Division
 U.S. Environmental Protection Agency, Region 9

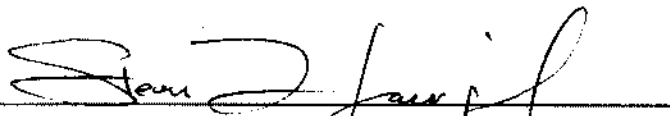
FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 CFR Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-9-2012-0020) be entered and that AERC Recycling pay a civil penalty of FIVE THOUSAND TWO HUNDRED DOLLARS (\$5,200.00) as set out in Section G of the Consent Agreement.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

09/28/12

Date



Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of **AERC.COM, Inc., dba AERC Recycling Solutions (Docket #: RCRA-09-2012-0020)** was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

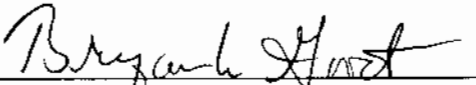
A copy was mailed via CERTIFIED MAIL to:

Mark C. Kasper
Vice President, Operations
AERC Recycling Solutions/Com-Cycle
2330 SW 26th Street
Allentown, PA 18103

CERTIFIED MAIL NUMBER: 7003 3110 0006 1998 2202

And additional copy was hand-delivered to the following U.S. EPA case attorney:

Rebecca Sugerman, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

Date 7/28/12



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX
75 Hawthorne Street
San Francisco, CA 94105
Phone: (415) 972-3000
<http://www.epa.gov/region9>

CERTIFIED MAIL NO. 7003 3110 0006 1998 2202
RETURN RECEIPT REQUESTED

SEP 23 2012

Mark C. Kasper
Vice President, Operations
AERC Recycling Solutions/Com-Cycle
2330 SW 26th Street
Allentown, PA 18103

Re: In the matter of AERC.com, Inc. dba AERC Recycling Solutions - U.S. EPA Docket No. RCRA-09-2012-0020

Dear Mr. Kasper,

Enclosed is a copy of the fully executed Consent Agreement and Final Order which contains the terms of the settlement reached with the United States Environmental Protection Agency (EPA).

When the EPA receives the final payment of the penalty identified in the Consent Agreement and Final Order this case will be closed. If you have any questions regarding the rules, regulations and statutes which govern the proceedings terminated by the enclosed Consent Agreement and Final Order, please contact Rebecca Sugerman at (415) 972-3893 or sugerman.rebecca@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Scott", written over a horizontal line.

for Jeff Scott, Director
Waste Management Division

Enclosures

cc: Charles McLaughlin, State Regulatory Program Division, DTSC