



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

AUG 28 2008

Robert A. Mclean, Esq.  
General Counsel  
Farris Bobango Branan, PLLC  
One Commerce Square, Suite 2000  
Memphis, Tennessee, 38103

SUBJ: RCRA CAFO  
Fortune Sky, USA, Inc.  
Docket Number: RCRA -04-2008-4015(b)

Dear Mr. Mclean:

Enclosed is a copy of the fully executed Consent Agreement and Final Order for the above reference case. Should you have any questions, please feel free to contact me at 404-562-9564.

Sincerely,

A handwritten signature in black ink, appearing to read "EUA".

Elisa Roberts  
Associate Regional Counsel

cc: Mike Apple - TDEC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: ) DOCKET NO. RCRA-04-2008-4015(b)  
)  
FORTUNE SKY USA, INC., )  
) PROCEEDING UNDER SECTION  
RESPONDENT ) 3008(a) OF THE RESOURCE  
) CONSERVATION AND  
EPA ID No.: TNR 00-002-6401 ) RECOVERY ACT,  
) 42 U.S.C. § 6928(a)  
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HEARINGS CLERK

**CONSENT AGREEMENT**

**I. NATURE OF THE ACTION**

1. This Consent Agreement is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921 *et seq.* This action is seeking civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for alleged violations of RCRA and the regulations promulgated pursuant thereto, set forth at Title 40 of the Code of Federal Regulations (40 C.F.R.) Parts 260 through 270 and 273.
2. The *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. § 22.13(b) and 22.18(b)(2).
3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

**II. THE PARTIES**

4. Complainant is the Chief, RCRA & OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).

5. Respondent is Fortune Sky USA, Inc. (Fortune Sky), a corporation incorporated under the laws of Tennessee and New Jersey and doing business in the State of Tennessee. The business is located at 1318 Hardwood Trail, Cordova, TN 38016.

### **III. PRELIMINARY STATEMENTS**

6. 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 C.F.R. § 262.50-58.
7. 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.
8. The Administrator has delegated the authority under Section 3008 of RCRA, 42 U.S.C. § 6928, to the EPA Regional Administrator for Region IV, who has redelegated this authority to the Director of the Waste Management Division.
9. Pursuant to 40 C.F.R. § 261.2, a “solid waste” is any discarded material that is not otherwise excluded by regulation.
10. The term “cathode ray tube” (CRT) means a vacuum tube, composed primarily of glass, which is the video or visual display component of an electronic device, such as a television or computer monitor.
11. Pursuant to 40 CFR 261.4(a)(23), CRTs and processed glass removed from CRTs are excluded from the definition of solid waste if they were sent for recycling under certain conditions under 40 CFR 261.39.
12. The monitors shipped by the Respondent constitute “hazardous waste” as defined in 40 C.F.R. §§ 260.10 and 261.3, and Section 1004(5) of RCRA, 42 U.S.C. § 6903(5). 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.
13. 40 CFR 261.39 provides that used, intact CRTs exported for recycling are not solid wastes provided they are not speculatively accumulated and provided the exporter notifies EPA of the export and receives a subsequent written consent from the receiving country allowing the CRTs to be imported for recycling. Used, broken CRTs exported for recycling are not solid wastes provided the exporters comply with the same notification and consent requirements applicable to used, intact CRTs. They must also be packaged and labeled, and they may not be speculatively accumulated. The notification must contain a statement that the notifier plans to export used, intact CRTs for reuse, as well as contact information.

14. 40 C.F.R. § 262.52 prohibits exports of hazardous waste without (a) notification of the EPA of intent to export as required under 40 C.F.R. § 262.53, (b) consent of the receiving country, (c) a copy of the EPA Acknowledgment of Consent to the shipment attached to the manifest [(or shipping paper for exports by water (bulk shipment)], and (d) the shipment conforming with the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent.
15. 40 C.F.R. §§ 261.40 and 261.39(a)(5) provide that used CRTs exported for recycling are not solid wastes and therefore not subject to the restrictions on hazardous wastes (see 40 C.F.R. § 261.3) if the exporter notifies the EPA of an intended export before the CRTs are scheduled to leave the United States and obtains an Acknowledgment of Consent to Export, which must accompany the shipment.

#### **IV. EPA ALLEGATIONS AND DETERMINATIONS**

16. Paragraphs 1 through 13 are incorporated herein by reference as if they were set forth in their entirety.
17. Respondent corporation is a "person" as defined in 40 C.F.R. § 260.10.
18. Respondent is a "primary exporter" as defined in 40 C.F.R. § 262.51. In July and August 2007, the Respondent consigned two containers containing a total of 869 Cathode Ray Tube ("CRT") monitors to be shipped to Hong Kong.
19. Respondent provides consulting and related services for the development, advancement, application, and integration of information technology for businesses. As a part of these services it sells servers, server storage products, and network equipment, as well as software. Most of its hardware sales are wholesale and most of that is new equipment; however, from time to time, Fortune Sky buys and sells used computer equipment including peripherals such as printers, usually for sales abroad.
20. On July 30, 2007 Fortune Sky exported to Hong Kong container # MOEU0604239 containing 478 used monitors, and on August 12, 2007 Fortune Sky exported also to Hong Kong container # MOEU0003644, containing 391 used monitors. Those two containers were returned to the United States, and Fortune Sky still has in storage the CRTs which were in those two containers.
21. Respondent did not provide notification of intent to export and did not obtain an Acknowledgment of Consent to Export required to meet the exemption under 40 C.F.R. § 261.39(a)(5) or satisfy the requirements of 40 C.F.R. § 262.53, therefore, Respondent exported hazardous waste without authorization in violation of 40 C.F.R. § 262.52.

## **V. TERMS OF AGREEMENT**

Based on the foregoing Allegations and Determinations, the parties agree to the following:

22. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in the above paragraphs pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928.
23. The Respondent neither admits nor denies the factual allegations and determinations set out in this CA/FO.
24. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.
25. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act.
26. Respondent waives any right it may have pursuant to 40 CFR § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CA/FO.
27. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.
28. The parties agree that compliance with the terms of this CA/FO shall resolve all of Respondent's liability for the violations of RCRA alleged in this CA/FO.
29. Each party will pay its own costs and attorney's fees.

## **VI. PAYMENT OF CIVIL PENALTY**

30. Respondent consents to the payment of a civil penalty in the amount of TEN THOUSAND DOLLARS (\$10,000.00) within thirty (30) calendar days of the effective date of this CA/FO.
31. Payment shall be made by cashier's check, certified check, or other payment acceptable to EPA, payable to: Treasurer, United States of America. The facility name and the docket number for this matter shall be referenced on the face of the check and in a cover letter transmitting the check. Payment shall be tendered to:

United States Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

32. Respondent shall submit a copy of the payment to the following addressees:

Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

And to:

Doug McCurry, Chief  
North Section  
RCRA & OPA Enforcement and Compliance Branch  
RCRA Division  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8909

33. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30 calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

(a) Interest. Any unpaid portion of a civil penalty or stipulated penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).

(b) Monthly Handling Charge. Respondent must pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar-day period over which an unpaid balance remains.

(c) Non-Payment Penalty. On any portion of a civil penalty or a stipulated penalty more than ninety (90) calendar days past due, Respondent must pay a non-payment penalty of six percent (6%) per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

34. Penalties paid pursuant to this CA/FO are not deductible for federal tax purposes under 28 U.S.C. § 162(f).

## **VII. PARTIES BOUND**

35. This CA/FO shall be binding on Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents, and all persons, including independent contractors, contractors, and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.
36. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
37. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

## **VIII. RESERVATION OF RIGHTS**

38. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health or the environment.
39. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.
40. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action, or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.
41. This CA/FO may be amended or modified only by written agreement executed by both the EPA and Respondent.

## **IX. OTHER APPLICABLE LAWS**

42. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

**X. SERVICE OF DOCUMENTS**

43. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Elisa Roberts, Esq.  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8909

A copy of any documents that Complainant files in this action shall be sent to the following attorney who represents Respondent in this matter and who is authorized to receive service for Respondent in the proceedings:

Robert A. McLean, Esq.  
Farris Bobango Brannan, PLC  
One Commerce Square, Suite 2000  
40 South Main  
Memphis, TN 38103

**XI. SEVERABILITY**

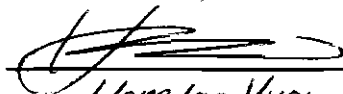
44. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

**XII. EFFECTIVE DATE**

45. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

**AGREED AND CONSENTED TO:**

**FORTUNE SKY USA, INC.**

By:   
Name: Hongtao Yuan  
Title: OPERATIONS MANAGER

Dated: 8/12/08  
(Typed or Printed)  
(Typed or Printed)



**U.S. Environmental Protection Agency**

By: Caroline Y. F. Robinson Dated: 8/29/08  
Caroline Y. F. Robinson, Chief  
RCRA and OPA Enforcement and Compliance Branch  
RCRA Division

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of Fortune Sky USA, Inc., Docket Number: RCRA-04-2008-4015(b), on AUG 28 2008 2008, and on AUG 28 2008 2008 served the parties listed below in the manner indicated:

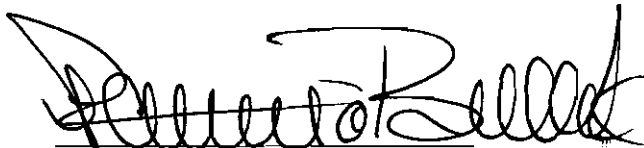
Elisa Roberts  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-8909

(Via EPA's internal mail)

Robert A. McLean  
Farris Bobango Branan PLLC  
One Commerce Square, Suite 2000  
Memphis, TN 38103  
901-259-7100

(Via Certified Mail - Return Receipt Requested)

Date: 8-28-08



Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA - Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511