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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION IX  
US EPA - REGION IX HEARING CLERK

IN THE MATTER OF	)	U.S. EPA Docket No.
	)	RCRA-9-2013-0001
<b>EIKI WORLD INC.</b>	)	
	)	DETERMINATION OF VIOLATION,
	)	COMPLIANCE ORDER
	)	AND
	)	NOTICE OF RIGHT TO
	)	REQUEST A HEARING
RESPONDENT	)	
	)	
Proceeding under Section 3008(a) of the	)	
Resource Conservation and Recovery	)	
Act, 42 U.S.C. § 6928(a)	)	

I. DETERMINATION OF VIOLATION

A. INTRODUCTION

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 (2011). Complainant is the United States Environmental Protection Agency, Region IX ("EPA").
2. Respondent is Eiki World, Inc. ("Eiki World" or "Respondent").
3. Respondent is a California corporation which holds itself out as engaging in the import and export of used electronic equipment and parts. The Eiki World office is located in Los Angeles, California.
4. This Determination of Violation, Compliance Order and Notice of Right to Request a Hearing ("Complaint") serves as notice that EPA, on the basis of information available to it, has determined that Respondent violated Sections 3002 and 3017 of RCRA, 42 USC §§ 6922 and 6938, and the regulations promulgated thereunder at 40 CFR Parts 261 and 262. This Complaint provides notice of Respondent's opportunity to request a hearing.

B. JURISDICTION

5. RCRA empowers EPA to identify and list hazardous wastes. It also authorizes EPA to regulate hazardous waste generators, transporters, and the owners and operators of hazardous waste treatment, storage, and disposal facilities. EPA has promulgated federal regulations to implement RCRA Subtitle C, which are set forth at 40 CFR Parts 260-270, 273, 279.
6. Pursuant to Section 3001 of RCRA, 42 U.S.C. § 6921, EPA promulgated regulations to define what materials are "solid wastes," and of these solid wastes, what wastes are regulated as "hazardous wastes." These regulations are set forth at 40 CFR Part 261.
7. Pursuant to 40 CFR § 261.2, a "solid waste" is any discarded material that is not otherwise excluded by regulation.
8. 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 at 40 CFR §§ 262.50-58; 262.80-89.
9. Section 3008 of RCRA, 42 U.S.C. § 6928(a), 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.*
10. 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.
11. In 2009 and 2010, the Respondent consigned containers containing computer monitors, including color monitors, containing cathode ray tubes ("CRTs") to be shipped to Mong Cai City, Vietnam and to Jakarta Utara, Indonesia.
12. 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. The monitors shipped by the Respondent constitute "hazardous waste" as defined in 40 CFR §§ 260.10 and 261.3, and Section 1004(5) of RCRA, 42 U.S.C. § 6903(5).
14. Respondent corporation is a "person" as defined in 40 CFR § 260.10.
15. Respondent is a "primary exporter" as defined in 40 CFR § 262.51.

C. ALLEGED VIOLATIONS

Count I

Unauthorized Exportation of Hazardous Waste

16. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
17. 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.
18. 40 CFR § 261.40 provides a conditional exclusion from the hazardous waste export requirements if the exporter meets the notice and consent conditions of 40 CFR § 261.39(a)(5). That section requires that the exporter must notify EPA of an intended export sixty (60) days before the CRTs are scheduled to leave the United States and the exporter must obtain an "Acknowledgement of Consent" from the receiving country, which must accompany the shipment.
19. In addition, 40 CFR § 261.41 states that persons who export used, intact CRTs for reuse must send a one-time notification to the Regional Administrator, and maintain certain records.
20. On or about November 28, 2009, Respondent consigned to Vietnam two 40 foot shipping containers containing approximately 1,807 used CRT monitors to be shipped from Long Beach Port, California.
21. On or about February 11, 2010, Respondent shipped one 40-foot container containing approximately 881 used CRT monitors to Jakarta, Indonesia.
22. On or about June 4, 2010 Respondent shipped one 40-foot container containing approximately 1,016 monitors to Quang Ninh Province, S.R. Vietnam.
23. On or about August 7, 2010, Respondent shipped a 40-foot container containing approximately 1,117 CRT monitors to Quang Ninh Province, S.R. Vietnam.
24. Respondent failed to meet the notice and consent provisions 40 CFR § 261.39(a)(5), and therefore Respondent failed to meet the conditions of the exclusion at 40 CFR § 261.40. Accordingly Respondent was subject to the export requirements at 40 CFR § 262.53.

25. Respondent failed to provide notification of its intent to export the used CRTs, as required by 40 CFR § 262.53, for any of the four shipments described above.
26. Respondent failed to provide consent of the receiving country, as required by 40 CFR § 262.53, for any of the four shipments described above.
27. Respondent failed to obtain an Acknowledgement of Consent to Export, as required by 40 CFR § 262.53, for any of the four shipments described above.
28. Therefore, EPA alleges that Respondent exported hazardous waste without authorization in violation of 40 CFR § 262.52 on four separate occasions.

## II. CIVIL PENALTY

29. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, (see 61 Fed. Reg. 69360 (Dec. 31, 1996)), and the Civil Monetary Penalty Inflation Rule (73 Fed. Reg. 75,340), authorizes a civil penalty of up to thirty-seven thousand, five hundred dollars (\$37,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 et seq., occurring after January 12, 2009.
30. The violation addressed in Count I, unauthorized exportation of hazardous waste, poses a substantial risk of exposure to humans or other environmental receptors to the hazardous materials such as lead, cadmium, and mercury found in CRTs, and failure to notify the EPA of the export has a substantial adverse effect rendering enforcement of the CRT rule impossible as well as threatening international cooperation by preventing the EPA from notifying the recipient country in compliance with 40 CFR § 261.39(a)(5)(iv). This violation occurred multiple times beginning in November 2009 and ending in August 2010.
31. In assessing the severity of this violation, EPA has determined that this violation demonstrates substantial noncompliance with the applicable requirements, and resulted in substantial risk to human health and the environment.
32. Therefore, Complainant requests that the Administrator assess a civil penalty against Respondent of \$13,500 for each shipment outlined in Count I, for a total penalty of \$54,000.
33. EPA reserves its right to assess penalties and/or seek other injunctive relief for violations of the requirements cited above, as provided by Section 3008 of RCRA, 42 U.S.C. § 6928.

### III. NOTICE OF RIGHT TO REQUEST A HEARING

#### A. PUBLIC HEARING

34. Pursuant to Section 3008(b) of RCRA, 42 U.S.C. §6928(b), if Respondent fails to respond within thirty (30) days of the Effective Date of this Complaint, the penalty order in this complaint shall become final.
35. Pursuant to 40 CFR § 22.17, Respondent may be found in default for failure to file a timely Answer. Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing.
36. The Answer and request for public hearing must be submitted in writing no later than thirty (30) days after the Effective Date of this Complaint with the Regional Hearing Clerk, United States Environmental Protection Agency, Region IX, 75 Hawthorne St., San Francisco, California 94105. A copy of the Answer and request for hearing and copies of all other documents relating to these proceedings filed with the Regional Hearing Clerk should be sent to Rebecca Sugerman (ORC-3), Assistant Regional Counsel at the same address.
37. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. A failure to admit, deny or explain any material fact or allegation contained in this Complaint will constitute an admission of the allegation. Where the Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The Answer must also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense, (2) the facts which Respondent intends to place at issue, (3) the basis for opposing any proposed relief, and (4) whether a hearing is requested.
38. If Respondent requests a public hearing, it will be held in a location determined in accordance with 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 CFR Part 22, a copy of which accompanies the Complaint. The hearing will be conducted in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. § 552 et seq., and 40 CFR Part 22. Respondent may request a hearing on any material fact alleged in the Complaint, or on the appropriateness of any proposed penalty, compliance or corrective action order.
39. Pursuant to 40 CFR § 22.7(c) of the Consolidated Rules of Practice, where a pleading or document is served by first class mail or commercial delivery service, but not by overnight or same-day service, five (5) days shall be added to the time allowed by these rules for the filing of a responsive pleading or document.


B. INFORMAL SETTLEMENT

40. Whether or not Respondent requests a hearing, Respondent may confer informally with EPA to discuss the alleged facts, violations and amount of the penalty. An informal conference does not, however, affect Respondent's obligation to file a written Answer within thirty (30) days of the Effective Date of the Complaint. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.
41. In addition to the compliance schedule set forth in the Order above, any settlement reached as a result of an informal conference will be embodied in a written Consent Agreement and Final Order. The issuance of the Consent Agreement and Final Order will constitute waiver of Respondent's right to a hearing on any matter to which Respondent has stipulated.
42. If a settlement cannot be reached through an informal conference, the filing of a written Answer within thirty (30) days of the Effective Date of this Complaint will preserve Respondent's right to a hearing.
43. EPA encourages all parties against whom a penalty is proposed to explore the possibility of settlement. To request an informal conference, Respondent should contact Rebecca Sugerman, ORC-3, Assistant Regional Counsel, Office of Regional Counsel, at the above address, or telephone number (415) 972-3893.

IV. EFFECTIVE DATE

The "Effective Date" of this Complaint is the date of Service. Service is complete when the return mail receipt is signed by the Respondent or a duly authorized representative of the Respondent, in accordance with the provisions of 40 CFR §§ 22.5(b) and 22.7(c).

11/9/12  
Date

  
\_\_\_\_\_  
Jeff Scott  
Director  
Waste Management Division  
United States Environmental Protection Agency,  
Region IX

CERTIFICATION OF SERVICE

I hereby certify that the original of the foregoing Determination of Violation, Compliance Order, and Notice of Right to Request a Hearing was filed with the Regional Hearing Clerk, Region IX, and that a copy was sent, along with a copy of 40 CFR Part 22 Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, certified mail, return receipt requested, to:


Shizue Nakayama  
Eiki World, Inc.  
123 Onizuka Street, Suite 310  
Los Angeles, CA 90012

And

Kenneth I. Gross, Esq.  
Kenneth I. Gross & Associates  
849 S. Broadway, Suite 504  
Los Angeles, CA 90014

Date

11/06/2012

  
\_\_\_\_\_  
John Blais, Legal Technician  
Office of Regional Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

CERTIFIED MAIL NO. 70033110000619982080  
RETURN RECEIPT REQUESTED

In reply, refer to:  
Eiki World Inc.

Shizue Nakayama  
Eiki World, Inc.  
123 Onizuka Street, Suite 310  
Los Angeles, CA 90012

Re: Determination of Violation, Compliance Order, and Notice of Right to Request a Hearing, U.S. EPA Docket No. RCRA-09-2013-0001

Dear Mr. Nakayama:

Enclosed is a Determination of Violation, Compliance Order, and Notice of Right to Request a Hearing (hereinafter Complaint) concerning a violation of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. Section 6991e(a)(1) by Eiki World, Inc ("Respondent"). EPA is seeking \$54,000 for the violations described in the Complaint.

The Complaint and the Rules of Practice, 40 C.F.R. Part 22, set forth the alternatives available to you in responding to the alleged facts, violations, proposed penalties, and opportunity for a hearing. It should be emphasized that if you wish to request a hearing and avoid being found in default, you must file a written answer within thirty (30) days of receipt of the Complaint. Please address the submittal to:

Regional Hearing Clerk  
Mail Code: ORC-1  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne St.  
San Francisco, CA 94105

Rebecca Sugerman  
Mail Code: ORC-3  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105.



The EPA is interested in resolving the violations listed in the Complaint. Whether or not you choose to request a hearing, You or if you are represented, your counsel, may explore the possibility of settlement by contacting Rebecca Sugerman (ORC-3, Regional Counsel) at (415) 972-3893.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Scott", with a long horizontal stroke extending to the right.

Jeff Scott, Director  
Waste Management Division

cc: Kenneth I. Gross, Esq.  
Certified Mail No. 70033110000619982073

Enclosures