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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

U.S. EPA REGION IX
REGIONAL HEARING CLERK

In the matter of)	U.S. EPA Docket No.
)	RCRA-9-2008-0014
)	
Jet Ocean Technologies Inc.)	DETERMINATION OF VIOLATION
)	COMPLIANCE ORDER
)	AND
)	NOTICE OF RIGHT TO
<u>Respondent.</u>)	REQUEST A HEARING

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 ("C.F.R.") Part 22. Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Jet Ocean Technology Inc. ("Jet Ocean").
2. Respondent is a California corporation which holds itself out as engaging in the import and export of used electronic equipment and parts.
3. 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 Section 3017 of RCRA, 42 USC § 6938, and the regulations promulgated thereunder at 40 C.F.R. Part 262. This Complaint seeks to assess a civil penalty that Respondent must pay for violations alleged herein.

B. JURISDICTION

4. Respondent corporation is a "person" as defined in 40 C.F.R. § 260.10.
5. Respondent is a "primary exporter" as defined in 40 C.F.R. § 262.51.
6. In January 2008, the Respondent consigned a container containing 441 Cathode Ray Tube ("CRT") monitors to be shipped to Hong Kong. The shipment included color monitors.
7. 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).
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 C.F.R. §§ 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 VIOLATIONS

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 C.F.R. § 262.52 prohibits exports of hazardous waste unless (a) notification of the EPA of intent to export in accordance with 40 C.F.R. § 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.

14. On December 20, 2007, Respondent billed S&D international Trading Company, of Hong Kong for a shipping container of electronic equipment and parts including 441 monitors, to be shipped from Denver, CO. The shipment included color CRTs.
15. On January 10, 2008, Respondent consigned the container to Cyde International Corp for shipment to SD International Trading Company in Hong Kong. The description of the goods given was "mixed metal scrap." A note on the bill of lading indicates, "These commodities, technologies or software were exported from the United States of America in accordance with Export Administration Regulations, diversion contrary to U.S. law is prohibited."
16. On February 10, 2008, the container was shipped from Hong Kong to Long Beach with the Respondent as consignee. The description of the good was "mixed metal scrap" with the note "(return cargo)."
17. Respondent did not provide notification of its intent to export the CRTs as required by 40 C.F.R. § 262.53.
18. Respondent did not provide consent of the receiving country as required by 40 C.F.R. § 262.53.
19. Respondent did not obtain an Acknowledgement of Consent to Export required by 40 C.F.R. § 262.53.
20. No Acknowledgement of Consent to Export was provided by the Respondent in response to the EPA's request, pursuant to 42 U.S.C. § 3007(a), for "copies of shipping papers associated with the CRT shipment."
21. Therefore, EPA alleges that Respondent exported hazardous waste without authorization in violation of 40 C.F.R. § 262.52.

D. CIVIL PENALTY

22. 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 and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, (see 61 Fed. Reg. 69360 (Dec. 31, 1996)), authorizes a civil penalty of up to THIRTY-TWO THOUSAND, FIVE HUNDRED DOLLARS (\$32,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 et seq., occurring after March 15, 2004.
23. 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 C.F.R. § 261.39(a)(5)(iv). This violation began and ended on January 10, 2008.

24. In assessing the severity of these violations, EPA has determined that these violations demonstrate substantial noncompliance with the applicable requirements, and resulted in substantial risk to human health and the environment.
25. Therefore, Complainant requests that the Administrator assess a civil penalty against Respondent of up to \$32,500 for the violation cited in the above outlined Count.

II. NOTICE OF RIGHT TO REQUEST A HEARING

A. PUBLIC HEARING

26. In accordance with Section 3008(b) of RCRA, 42 U.S.C. §6928(b), if Respondent fails to file a written Answer within thirty (30) days of the Effective Date of this Complaint, Respondent may be found in default. Respondent's default will constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing.
27. 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.
28. 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.
29. If Respondent fails to file a written Answer within thirty (30) days of the Effective Date of this Complaint, Respondent may be found in default.

Respondent's default will constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing.

30. 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 C.F.R. 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 C.F.R. 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.
31. Pursuant to 40 C.F.R. § 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

32. 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.
33. 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.
34. 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.
35. EPA encourages all parties against whom a penalty is proposed to explore the possibility of settlement. To request an informal conference, Respondent should contact Ginette Chapman, ORC-3, Assistant Regional Counsel, Office of Regional Counsel, at the above address, telephone number (415) 947-4144.

III. 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 C.F.R. §§ 22.5(b) and 22.7(c).

7/30/08

Date

Jeff Scott

Jeff Scott

Director

Waste Management Division

United States Environmental Protection Agency,

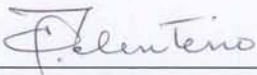
Region IX

CERTIFICATE 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 C.F.R. 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:

Ms. King Tai
Owner
Jet Ocean Technologies, Inc.
4282 Lombardy Street
Chino, CA 91710

7/30/08
Date


Corazon Tolentino, Secretary
Office of Regional Counsel, Region 9