

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.
BEFORE THE ADMINISTRATOR**

In the Matter of:)
)
Jeffrey L. Nixon d/b/a)
)
EarthEcycle®)
EarthEcycle®, LLC)
EarthEcycle, LLP)
AABC Computer and Electronics Recycling)
AABC Computer Company)
Earth Computer and Electronics Recycling)
United Recyclers of America)
)
222 S. 184th East Avenue)
Tulsa, OK 74108)
)
Respondent)

CONSENT AGREEMENT

AND FINAL ORDER

EPA Docket No. RCRA-HQ-2009-0001

CONSENT AGREEMENT

To avoid the disruption of orderly business activities and the expense of litigation, Complainant and Respondent hereby consent to the terms of this Consent Agreement and attached Final Order.

I. PRELIMINARY STATEMENT

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 (2012), the parties to this proceeding enter into this Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b)(2) and (3) to resolve, without further proceedings, the claims asserted by Complainant in the Third Amended Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing filed in this matter on July 1, 2015. Upon execution by the U.S. EPA Environmental Appeals Board, this CAFO concludes the above-captioned matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

II. STATUTORY AND REGULATORY AUTHORITY

This administrative proceeding was instituted pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6928 (such statutes hereinafter referred to collectively as the "Act" or "RCRA"). The EPA has promulgated regulations to implement Subtitle C of RCRA, Sections 3001-3023e, 42 U.S.C. §§ 6921-6939e, set forth at Title 40 of the Code of Federal Regulations ("C.F.R.") Parts 260-270, 273 and 279.

Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, EPA may authorize a state to administer its hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent to the federal program. On January 30, 1986, EPA granted final authorization to the Commonwealth of Pennsylvania to administer its hazardous waste program in lieu of the federal program. 51 Fed. Reg. 1791 (Jan. 15, 1986). EPA granted authorization for revisions to the Commonwealth of Pennsylvania's regulatory program on September 26, 2000, effective November 27, 2000 (65 Fed. Reg. 57,734); on January 20, 2004, effective March 22, 2004 (69 Fed. Reg. 2674); and on April 29, 2009, to be effective June 29, 2009 (74 Fed. Reg. 19,453).

Pursuant to Sections 3006 and 3008(a) of RCRA, 42 U.S.C. §§ 6926, 6928(a), a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C, and EPA may enforce federally-authorized hazardous waste programs by issuing orders requiring compliance immediately or within a specified time for such violations. Therefore, the Commonwealth's authorized hazardous waste provisions set forth at 25 Pa. Code Sections 260a-266a, 266b and 268a-270a, are requirements of RCRA and are enforceable by EPA.

Notice of commencement of this action was given to the Commonwealth of Pennsylvania pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

III. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS

1. Complainant is the Acting Director of the Waste and Chemical Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, U.S. EPA. Complainant has been duly delegated with the authority to commence this proceeding.
2. Respondent, Jeffrey L. Nixon d/b/a EarthCycle®; EarthCycle®, LLC; EarthCycle, LLP; AABC Computer and Electronics Recycling; AABC Computer Company; Earth Computer and Electronics Recycling; and United Recyclers of America, is a sole proprietorship in the State of Oklahoma, located at 222 184th East Avenue, Tulsa, OK 74108.

3. Complainant filed a Third Amended Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing on July 1, 2015 ("Complaint"), which asserted that Respondent violated Sections 3002 and 3017 of RCRA, 42 U.S.C. §§ 6922 and 6938, the hazardous waste regulations at 40 C.F.R. Parts 261 and 262, and certain EPA authorized Pennsylvania hazardous waste management regulations set forth at 25 Pa. Code § 260a *et seq.* by failing to properly manage hazardous wastes.
4. This CAFO incorporates by reference the findings of fact and jurisdictional allegations contained in paragraphs 1 through 79 of the Complaint, and adopts them as Complainant's findings of fact and jurisdictional allegations herein.

IV. CONCLUSIONS OF LAW

5. This CAFO incorporates by reference the conclusions of law contained in paragraphs 1 through 79 of the Complaint, and adopts them as Complainant's conclusions of law herein.
6. Complainant concludes that Respondent violated Sections 3002 and 3017 of RCRA, 42 U.S.C. §§ 6922 and 6938, and is liable to the United States for a civil penalty in accordance with Section 3008 of RCRA, 42 U.S.C. § 6928.

V. GENERAL PROVISIONS

7. For the purposes of this proceeding and in accordance with the specific requirements for settlement set forth in 40 C.F.R. § 22.18(b)(2):
 - a. Respondent admits the jurisdictional allegations of the Complaint and this CAFO;
 - b. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in the Complaint and this CAFO;
 - c. Respondent consents to the assessment of the civil penalty set forth in this CAFO;
 - d. Respondent waives its right to a hearing on any issue of law or fact alleged in this matter and consents to issuance of this CAFO without adjudication; and
 - e. Respondent waives its right to appeal this CAFO.
8. Respondent agrees not to contest Complainant's jurisdiction to issue this CAFO to Respondent and to enforce the terms of this CAFO.
9. Each party to this agreement shall pay its own costs and attorney's fees.

10. This CAFO does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state, and local law.
11. Respondent shall not enter into any contracts, arrangements, collections or accept any used electronic equipment (including parts, equipment with cathode ray tubes and other used electronics or electronic waste) that would require Respondent to engage in electronic recycling of any kind until Respondent is in full compliance with all applicable RCRA requirements.
12. Respondent shall not transport any used electronic equipment, or export any used electronic equipment of any kind, until Respondent is in full compliance with all applicable RCRA requirements.
13. If Respondent engages in any used electronics recycling business for export, Respondent shall comply with all RCRA requirements. In addition to complying with RCRA requirements for cathode ray tubes recycling and export, Respondent shall provide a Notification of Export to EPA for each shipment of used electronic equipment. As provided in the RCRA regulations (40 CFR 261.39 or 40 CFR 261.41), notifications should be submitted to:

By mail:

Office of Enforcement and Compliance Assurance,
Office of Federal Activities
International Compliance Assurance Division (Mail Code 2254A)
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington DC 20460

By hand delivery:

Office of Enforcement and Compliance Assurance,
Office of Federal Activities
International Compliance Assurance Division (Mail Code 2254A)
Environmental Protection Agency
William Jefferson Clinton Building
Room 6144
1200 Pennsylvania Ave., NW
Washington DC 20460

All submissions must prominently display on the front of the envelope: "Attention: Notification of Intent to Export CRTs."

14. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO or one or more of its terms and conditions is held invalid, is not executed by all of the signatories in identical form, or is not approved in such identical form by the Environmental Appeals Board, then the entire CAFO shall be null and void.
15. The provisions of this CAFO shall be binding upon Respondent, its officers, principals, directors, employees, successors, and assigns.
16. The undersigned representative of Respondent certifies that he is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
17. The parties agree that settlement of this matter is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
18. Pursuant to 40 C.F.R. §§ 22.18(b)(2) and 22.31(b), the executed Consent Agreement shall become effective and binding when the Final Order is issued by the Environmental Appeals Board (such date henceforth referred to as the "Effective Date").

VI. PENALTY

19. Respondent consents to the assessment of a civil penalty in the amount of five thousand dollars (\$5,000) in full and complete settlement of the claims set forth in the Complaint.
20. The civil penalty specified herein shall represent civil penalties assessed by Complainant and shall not be deductible for Federal tax purposes.

VII. PAYMENT TERMS

21. Pursuant to this Consent Agreement, the Respondent's five thousand dollars (\$5,000) civil penalty shall become due and payable within 30 calendar days after the Effective Date; however, Respondent may pay such civil penalty amount in five (5) installment payments, in the following amounts and according to the following schedule:

Payment	Payment Amount Due	Principal	Interest	Total Amount
1	Within 30 calendar days after the Effective Date	\$1,000.00	\$0.00	\$1,000.00
2	Within 60 calendar days after the Effective Date	\$1,000.00	\$3.27	\$1,003.27
3	Within 90 calendar days after the Effective Date	\$1,000.00	\$2.45	\$1,002.45
4	Within 120 calendar days after the Effective Date	\$1,000.00	\$1.64	\$1,001.64
5	Within 150 calendar days after the Effective Date	\$1,000.00	\$0.82	\$1,000.82
Total:		\$5,000.00	\$8.18	\$5,008.18

22. If Respondent chooses to pay in installments, interest of one percent (1%) per annum on the outstanding principal will also be assessed.
23. If Respondent chooses to pay the civil penalty in accordance with the installment payment provisions of paragraph 21, Respondent may pay the entire five thousand dollars (\$5,000) civil penalty within 30 calendar days after the Effective Date and, thereby, avoid the incurrence and payment of interest pursuant to 40 C.F.R. § 13.11(a)(1), as described in paragraph 27, below.
24. Each payment made by Respondent shall reference "Jeffrey L. Nixon, Civil Penalty Docket No. RCRA-HQ-2009-0001." Payments shall be made by one of the following methods:
- a. Payment by check made payable to "United States Treasury";
 - i. If sent via first-class mail, to:

U.S. Environmental Protection Agency Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
 - ii. If sent via UPS, Federal Express, or Overnight Delivery, to:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
(314) 418-1028

b. Via wire transfer, sent to:

Federal Reserve Bank of New York
ABA= 021030004
Account No= 68010727
SWIFT address= FRNYUS33
33 Liberty Street
New York, NY 10045
Attn: "D 68010727 Environmental Protection Agency"

c. Via Automated Clearinghouse (ACH), a/k/a Remittance Express (REX), to:

US Treasury REX / Cashlink ACH Receiver
ABA= 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 Checking

Contact Remittance Express (REX): 866-234-5681
Finance Center Contacts:
Craig Steffen: 513-487-2091; steffen.craig@epa.gov
Molly Williams: 513-487-2076; williams.molly@epa.gov

d. Via on-line payment:

WWW.PAY.GOV/PAYGOV
Enter sfo 1.1 in the search field. Open and complete the form.

e. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

25. Concurrent with each payment, Respondent shall forward a copy of the check or documentation of a wire transfer or other receipt of payment to the following address:

U.S. Environmental Protection Agency
Office of Civil Enforcement
Waste and Chemical Enforcement Division (2249A)
Attn: James Miles
1200 Pennsylvania Ave., NW
Washington, DC 20460
Phone: (202) 564-5161
E-mail: Miles.James@epa.gov

26. If Respondent elects to pay the civil penalty in accordance with the installment payment procedure described in paragraph 21, above, but fails to make any installment payment in accordance with the requirements and schedule set forth in paragraph 21, the entire unpaid balance of the penalty and all accrued interest shall become due immediately upon such failure, and Respondent immediately shall pay the entire remaining principal balance of the civil penalty along with any interest that has accrued up to the time of such payment. In addition, Respondent shall be liable for and shall pay administrative handling charges and late payment penalty charges as described in paragraph 27 below, in the event of any such failure or default.
27. In the event that Respondent fails to pay any portion of the civil penalty as directed, the following interest and late charges will accrue:
- a. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as required herein or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
 - b. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, Complainant will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which it is due.
 - c. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives- Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each such subsequent thirty (30) calendar days the penalty remains unpaid.
 - d. A penalty charge, not to exceed six percent per year, will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
28. Failure of Respondent to remit the civil penalties provided herein will result in this matter being forwarded to the United States Department of Justice for collection of the amount

due plus interest at the statutory judgment rate provided in 28 U.S.C. § 1961. This Settlement shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. 3001 – 3308, and other applicable authority. The United States shall be deemed a judgment creditor for purposes of collection of unpaid amounts of the civil penalties and interest. Respondent shall be liable for attorney's fees and costs incurred by the United States to collect any amounts due under, or enforce and provision(s) of this Settlement.

VIII. RESERVATION OF RIGHTS AND COVENANT NOT TO SUE

29. Entry of this CAFO is a final settlement of all violations alleged in the Complaint. Complainant reserves the right to commence an action against any person, including Respondent, in response to any condition that Complainant determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c).
30. Complainant reserves the right to institute a new and/or separate action should Respondent fail to comply with the terms of this CAFO. That right shall be in addition to all other rights and causes of action, civil or criminal, Complainant may have under law or equity in such event.
31. By his signature below, Respondent certifies that the information submitted to EPA regarding Respondent's ability to pay civil penalties and regarding any other matter at issue in this proceeding is accurate. Respondent is aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability. Complainant reserves the right to seek and obtain appropriate relief, including but not limited to the right to institute a new and separate action to recover additional civil penalties for the claims made in the Complaint, if Complainant obtains evidence that the information provided and/or representations made by Respondent to Complainant regarding Respondent's claim of inability to pay, or regarding any other matter herein at issue, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, that Complainant may have under law or equity in such event.
32. Respondent releases, forever discharges, and holds harmless (i) the United States of America, (ii) its agencies and departments, and (iii) its current and former representatives, officers, agents, attorneys, contractors, and employees, from any and all actions, causes of action, suits, proceedings, debts, judgments, damages, claims or demands whatsoever in law or equity which Respondent, its heirs, successors or

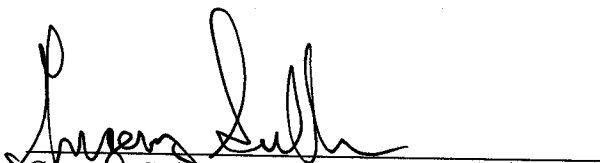
assignees ever had, now have or may have, whether known or unknown, relating to or arising from all violations alleged in the Complaint.

33. Nothing in this CAFO is intended to, nor shall be construed to operate in any way to resolve any criminal liability of Respondent.

WE HEREBY AGREE TO THIS:

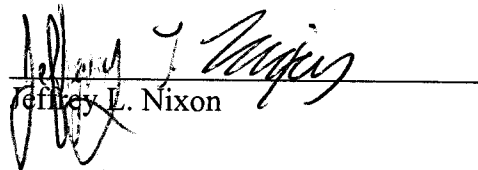
For Complainant:

For Respondent:



Gregory Sullivan
Acting Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

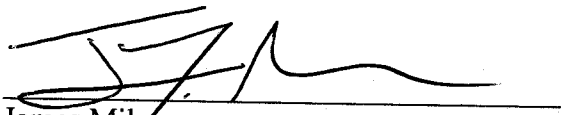
Date: 2/8/16



Jeffrey L. Nixon

Date: 1/4/16

JM on behalf of JN



James Miles
Attorney
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

Date: 2/8/16