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COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING

RESPONDENT.

Proceeding under Section 3008(a) of the
Resource Conservation and Recovery
Act, 42 U.S.C. § 6928(a)

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hazardous wastes. EPA also provides notice of compliance measures that must be undertaken by Respondent to address these violations as well as Respondent's opportunity to request a hearing.

II. NATURE OF ACTION

2. This action is commenced pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), ordering Respondent to come into compliance with the hazardous waste regulations promulgated pursuant to RCRA.
3. Notice of commencement of this action has been given to the Commonwealth of Pennsylvania ("Pennsylvania") pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

III. STATUTORY AND REGULATORY FRAMEWORK

4. In 1976, Congress enacted RCRA, amending the Solid Waste Disposal Act, to regulate hazardous waste management. RCRA Subtitle C, 42 U.S.C. §§ 6921 *et seq.*, 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 C.F.R. Parts 260-270, 273, 279.
5. 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 C.F.R. Part 261.
6. Pursuant to 40 C.F.R. § 261.2, a "solid waste" is any discarded material that is not otherwise excluded by regulation.

7. Pursuant to 40 C.F.R. §§ 261.4(a)(22)(ii) and 261.40, used, intact Cathode Ray Tubes (“CRTs”) exported for recycling are solid wastes if they are speculatively accumulated or the exporter fails to notify EPA of an intended export sixty (60) days before the CRTs are scheduled to leave the United States or the exporter fails to obtain an “Acknowledgement of Consent” from the receiving country, which must accompany the shipment.
8. Pursuant to 40 C.F.R. §§ 261.4(a)(22)(iii) and 261.39, used, broken CRTs are solid wastes if any one of the following conditions exist: (1) the CRTs are not properly stored in accordance with the regulations; (2) the CRTs are not properly labeled; (3) the CRTs are not transported in proper containers; (4) the CRTs are speculatively accumulated or used in a manner constituting disposal; and (5) if the CRTs are exported for recycling, the exporter fails to notify EPA of an intended export sixty (60) days before the CRTs are scheduled to leave the United States and the exporter fails to obtain an “Acknowledgement of Consent” from the receiving country, which must accompany the shipment.
9. Section 3002 of RCRA, 42 U.S.C. § 6922, requires EPA to establish standards applicable to generators of hazardous wastes. These standards are codified at 40 C.F.R. Part 262 and include requirements such as determining whether a waste is hazardous, managing waste in proper containers, labeling and dating containers, inspecting waste storage areas, training, and planning for emergencies.
10. 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 C.F.R. §§ 262.50-58; 262.80-89. 40 C.F.R. § 262.52 prohibits exports of hazardous waste without: (a) notification to 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.

11. Pursuant to 40 C.F.R. § 261.41, persons who export used, intact CRTs for reuse must send a one-time notification to the EPA documenting the persons’ intent to export used, intact CRTs for reuse.
12. 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.*
13. The Administrator has delegated the authority under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to the Assistant Administrator of the Office of Enforcement and Compliance Assurance, who has re-delegated this authority to the Director of the Waste and Chemical Enforcement Division.
14. 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.
15. 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. *See* 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).

24. From March 29-April 6, 2009, Respondent partnered with the Allegheny County and the Western Pennsylvania Humane Society to conduct a free electronic waste collection event.
25. At these events, Respondent helped collect various electronic wastes, including monitors containing CRTs, and transported those materials to two warehouses at 408 N. Braddock Avenue, Pittsburgh, Pennsylvania and 4876 Old William Penn Highway, Monroeville, Pennsylvania.
26. Materials at these warehouses were observed being loaded, unpackaged, into sea-going 40-foot shipping containers with the following container numbers: MSKU8745931, TCNU9268324, TCNU9546549, MSKU1380560, MSKU1381714, MSCU7870035, and CBHU8239396.
27. On March 26, 2009, Respondent exported three containers to Hong Kong, numbers TCNU9546549, MSKU8745931 and TCNU9268324, containing 3584 used monitors, via the Port of Newark, New Jersey, also identified as ITN# X20090326034993.
28. On April 1, 2009, Respondent exported four containers to Hong Kong, numbers MRKU0511806, MSKU1381714, MSKU1380560 and MSKU0183540, containing sixty-nine used monitors, two of which were containers from the warehouses in Pennsylvania, also identified as ITN# X20090402027369.
29. Both shipments of containers described in Paragraphs 27-28 were consigned to Multi-trans Shipping Agency LTD in Hong Kong and contained the description "used electronic goods."
30. On May 13, 2009, a shipment containing three containers (numbered TCNU9546549, MSKU8745931 and TCNU9268324) was shipped from Hong Kong to Newark, New Jersey. The description of the goods was "used electronic goods" with the note "Return Cargo."

31. On May 15, 2009, Mr. Gary Tam of the Hong Kong Environmental Protection Department notified EPA that the Hong Kong government had intercepted a shipment of three containers (numbered TCNU9546549, MSKU8745931 and TCNU9268324) containing hazardous waste and had returned them to the original port of dispatch, Newark, New Jersey.
32. On May 18, 2009, Mr. Gary Tam of the Hong Kong Environmental Protection Department notified EPA that the Hong Kong government had intercepted a shipment of four containers (numbered MRKU0511806, MSKU1381714, MSKU1380560 and MSKU0183540) containing hazardous waste and had returned them to the original port of dispatch, Newark, New Jersey.
33. Respondent failed to prepare a manifest to ship the containers of CRTs from Pennsylvania to New Jersey as required by 40 C.F.R. § 262.20 and 25 PA. CODE § 262a.20.
34. Respondent did not provide notification of its intent to export the CRTs as required by 40 C.F.R. § 262.53.
35. Respondent did not provide consent of the receiving country as required by 40 C.F.R. § 262.53.
36. Respondent did not obtain an "Acknowledgment of Consent" to Export as required by 40 C.F.R. § 262.53.

V. VIOLATIONS

COUNT I: Failure to Make a Hazardous Determination

37. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth in their entirety.
38. 40 C.F.R. § 262.11 and 25 PA. CODE § 262a.11 require a person who generates a solid waste to determine if that waste is a hazardous waste.

39. Color CRT monitors are typically hazardous waste because they contain enough lead to fail the RCRA Toxic Characteristic Leaching Procedure.
40. Respondent's failure to test any of the material collected to determine if it is a hazardous waste is a violation of 40 C.F.R. § 262.11 and 25 PA. CODE § 262a.11.

COUNT 2: Failure to Prepare a Hazardous Waste Manifest

41. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth in their entirety.
42. 40 C.F.R. § 262.20 and 25 PA. CODE § 262a.20 require any generator who transports or offers for transport hazardous waste to prepare a manifest.
43. Respondents' failure to prepare a manifest for each shipment is a violation of 40 C.F.R. § 262.20 and 25 PA. CODE § 262a.20.

COUNT 3: Unauthorized Export of Hazardous Waste

44. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth in their entirety.
45. Respondent did not provide notification of intent to export for these shipments and did not obtain an "Acknowledgment of Consent" 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.

COUNT 4: Failure to Provide Notice to the Regional Administrator of an Intent to Export

CRTs for Reuse

46. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth in their entirety.

47. Pursuant to 40 C.F.R. § 261.41, persons who export used, intact CRTs for reuse must send a one-time notification to the Regional Administrator documenting their intent to export used, intact CRTs for reuse.
48. Respondent did not submit a notice to the Regional Administrator documenting its intent to export CRTs for reuse, therefore, the Respondent violated 40 C.F.R. § 261.41.

COUNT 5: Failure to Package

49. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth in their entirety.
50. 40 C.F.R. § 262.30 and 25 PA. CODE § 262a.30 requires any generator, before transporting hazardous waste or offering hazardous waste for transport, to package the waste in accordance with the applicable Department of Transportation ("DOT") regulations on packaging under 49 C.F.R. Parts 173, 178, and 179.
51. Respondent's failure to package the waste according to DOT regulations constitutes a violation of 40 C.F.R. § 262.30 and 25 PA. CODE § 262a.30.

COUNT 6: Failure to Label

52. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth in their entirety.
53. 40 C.F.R. § 262.31 and 25 PA. CODE § 262a.31 requires any generator who transports or offers for transport hazardous waste to label each package in accordance with the applicable DOT regulations on hazardous materials under 49 C.F.R. Part 172.
54. Respondents' failure to label the shipment of CRTs according to DOT regulations constitutes a violation of 40 C.F.R. § 262.31 and 25 PA. CODE § 262a.31

COUNT 7: Failure to Mark

55. Paragraphs 1 through 36 above are incorporated herein by this reference as if they were set forth in their entirety.
56. 40 C.F.R. § 262.32 and 25 PA. CODE § 262a.32 requires any generator, before transporting hazardous waste or offering hazardous waste for transport, to mark each package of hazardous waste in accordance with the applicable DOT regulations on hazardous materials under 49 C.F.R. Part 172.
57. Respondents' failure to mark each package of hazardous waste in accordance with applicable DOT regulations constitutes a violation of 40 C.F.R. § 262.32 and 25 PA. CODE § 262a.32.

VI. COMPLIANCE ORDER

58. Based on the foregoing findings, Respondent is hereby ordered to achieve and maintain compliance with all applicable requirements of RCRA. Specifically:
- a. Within thirty (30) days of receipt of this Order, Respondent shall take possession of all of the containers that are returned to the United States (container numbers TCNU9546549, MSKU8745931, TCNU9268324, MSKU0183530, MSKU1380560, MSKU1381714, MRKU0511806) and remove them from the Port of Newark.
- Respondent shall transport the containers to a secure warehouse for temporary storage under the control of Respondent; and
- b. Within forty-five (45) days of receipt of this Order, Respondent shall submit a plan for EPA approval detailing how the Respondent will manage each item in each container (*i.e.*, for reuse, recycle, or discard) in accordance with RCRA and any other applicable state or federal laws and regulations.

- i. If the Respondent proposes to export certain items for reuse, the plan must include test results that demonstrate the functionality for each item and a description of the testing method used for each item.
59. The Respondent shall not remove any items from the storage facility without EPA approval.
60. Respondent shall remove all items from storage within twenty (20) days of EPA's approval of the plan described in Paragraph 58.
61. To further ensure compliance with the requirements cited in Paragraphs 58-60, Respondent shall submit the following report to EPA within thirty (30) days of EPA's approval of the plan described in Paragraph 58: A written confirmation of compliance (accompanied by a copy of any appropriate supporting documentation). This statement shall specify all actions taken by Respondent to comply with the plan as approved by EPA and all other terms of this Order and include:
 - a. a statement containing an inventory of all items and the actual disposition of each item listed on the inventory; and
 - b. the total cost of returning to compliance.
62. The information requested in this Order is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 *et seq.*
63. Respondent shall submit the copies of any information, reports, and/or notices required by this Order to:

Ann Stephanos. Attorney-Advisor
U.S. Environmental Protection Agency
Office of Civil Enforcement (2249A)
1200 Pennsylvania Ave., N.W.
Washington, DC 20460
Telephone: (202) 564-4006
Fax: (202) 564-0022

64. If Respondent fails to comply with the requirements of this Order within the time specified, Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), provides for further enforcement action in which EPA may seek the imposition of penalties of up to \$37,500 for each day of continued noncompliance, in addition to any other penalties that may be assessed for past or ongoing violations.
65. This Order shall become effective immediately upon receipt by Respondent.
66. In accordance with 40 C.F.R. § 22.37(b), this Order shall automatically become a final order unless, no later than thirty (30) days after the Order is served, Respondent requests a hearing pursuant to 40 C.F.R. § 22.15.

VII. ASSESSMENT OF PENALTIES

67. 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.

VIII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

68. As provided by Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and in accordance with 40 C.F.R. § 22.15, Respondent has a right to request a hearing on the issues raised in this Order. Any such hearing would be conducted in accordance with 40 C.F.R. Part 22. **A request for a hearing must be incorporated in a written answer filed with the Hearing Clerk within thirty (30) days of service of this Order. In its answer, Respondent may contest any material fact contained in the Order.** The answer shall directly admit, deny, or explain each of the factual allegations contained in the Order and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts that Respondent intends to place at issue; and (3) whether a hearing is requested. Where Respondent has no knowledge as

to a particular factual allegation and so states, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Order constitutes an admission of that allegation.

IX. DEFAULT ORDER

69. If Respondent fails to file a timely answer to the Order, Respondent may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondent constitutes an admission of all facts alleged in the Order and a waiver of Respondent's right to a hearing on such factual allegations under Section 3008 of RCRA, 42 U.S.C. § 6928. In addition, default will preclude Respondent from thereafter obtaining adjudicative review of any of the provisions contained in the Order.

X. SETTLEMENT CONFERENCE

70. Whether or not a hearing is requested upon filing an answer, Respondent may confer informally with the EPA concerning the alleged violations. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. Any settlement shall be made final by the signing of a Consent Agreement and Final Order by the Presiding Officer. Please note that a request for an informal settlement conference does not extend the thirty (30) day period within which a written answer must be submitted in order to avoid default. To explore the possibility of settlement in this matter, Respondent should contact Ann Stephanos, Attorney-Advisor, Office of Civil Enforcement, at (202) 564-4006. Ms. Stephanos is also designated to receive service on behalf of Complainant, at the address in Paragraph 63.

For Complainant:

Rosemarie A. Kelley

Rosemarie A. Kelley

Director, Waste and Chemical Enforcement Division

Office of Civil Enforcement

U.S. Environmental Protection Agency

June 4, 2009

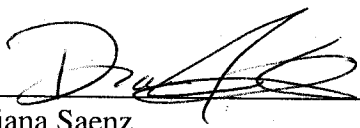
Date

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of June, 2009, the original and one copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing, In the Matter of EarthEcycle LLC, Docket No. RCRA-HQ-2009-0001, was filed with the Headquarters Hearing Clerk, and that a copy of the signed original, together with a copy of the Consolidated Rules of Practice, were sent accordingly:

by first class mail, with return receipt requested, to:

Jeffrey L. Nixon
EarthEcycle, LLC
18420 E. Admiral Place
Tulsa, OK 74015



Diana Saenz
United States Environmental Protection Agency
Waste and Chemicals Enforcement Division (2245A)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
(202) 564-4209

Jun 5 2009
Date