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REGIONAL HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of)	U.S. EPA Docket No.
)	RCRA-9-2011-0518
Earth Protection Services, Inc.)	
)	
EPA ID No. AZR000 005 454)	CONSENT AGREEMENT AND
)	FINAL ORDER PURSUANT TO
)	40 C.F.R. SECTIONS 22.13 AND
<u>Respondent.</u>)	22.18

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

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, as revised by 64 Fed. Reg. 141 (July 23, 1999). Complainant is the United States Environmental Protection Agency, Region 9 ("EPA"). Respondent is Earth Protection Services, Inc. (Respondent or "EPSI").
2. Respondent operated a full service recycling facility that transported, consolidated, stored and processed lamps, ballasts, batteries, e-waste and mercury containing devices. The facility closed in 2008. EPSI had a TSCA Approval which allowed for the storage of 300 55-gallon drums and 48 cubic yard boxes of PCB related waste. EPSI also managed e-waste and universal waste. Respondent's facility was located at S. 48th Avenue, Suite 4, in Phoenix, Arizona (the "Facility"). The Facility's EPA Identification Number is AZR000005454.
3. This Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent failed to obtain a permit for storage of hazardous waste, a violation of Arizona Administrative Code ("A.A.C.") R18-8-270.A [see also 40 C.F.R.

§ 270.1], and a violation of Section 3001 *et seq.* of RCRA, 42 U.S.C. § 6921 *et seq.*, and state regulations adopted pursuant thereto.¹

B. JURISDICTION

4. On November 20, 1985, the State of Arizona received authorization to administer the hazardous waste management program in lieu of the federal program pursuant to Section 3006 of RCRA, 42 U.S.C. §6926 and 40 C.F.R. § 271, effective December 4, 1985. The authorized program is established pursuant to the Arizona Laws Relating to Environmental Quality, Title 49, (Arizona Revised Statutes ("A.R.S.") 49-921, *et seq.*), and the regulations promulgated thereunder in the Arizona Administrative Code, Title 18, Chapter 8, Article 2. Effective October 7, 1991, the State of Arizona received authorization for revisions to A.R.S. 49-921, *et seq.* The State of Arizona has been authorized for all the regulations referenced in this CA/FO.
5. Respondent is a "person" as defined in A.R.S. 49-921 and A.A.C. R18-8-260.F [*see also* 40 C.F.R. § 260.10].
6. Respondent was the "operator" of a facility as defined in A.A.C. R18-8-260.C and A.A.C. R18-8-270.A [*see also* 40 C.F.R. § 260.10].
7. Respondent was a "generator" of hazardous waste as defined in A.A.C. R18-8-260.C [40 C.F.R. §§ 260.10].
8. At the Facility, Respondent has generated and accumulated "hazardous waste" as defined in A.R.S. 49-921(5), A.A.C. R18-8-260.C and 261.A [*see also* RCRA § 1004(5), and 40 C.F.R. §§ 260.10 and 261.3]. These hazardous wastes include, but are not limited to, mercury containing waste including broken lamps and cathode ray tubes (CRTs), and phosphorous powder .
9. On March 18, 2008, an unannounced joint RCRA and Toxic Substances Control Act ("TSCA") Compliance Evaluation Inspection ("CEI") was conducted by inspectors from the United States EPA and the Arizona Department of Environmental Quality. Based upon the findings made during the inspection, and additional information obtained subsequent to the inspection, EPA determined that Respondent had violated A.R.S. 49-922, and regulations adopted pursuant thereto, as approved and authorized by the United States.

¹ All citations to the "A.A.C." refer to the Arizona Administrative Code, contained in Title 18, Chapter 8, Department of Environmental Quality Waste Management, Article 2, Hazardous Waste. EPA is enforcing Arizona hazardous waste management program requirements as approved and authorized by the United States on October 7, 1991. 40 C.F.R. §§124, 260 through 266, 268, 270 and 273, or parts thereof, are adopted by reference.

10. Section 3006 of RCRA, 42 U.S.C. § 6926 provides, *inter alia*, that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of law under an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.
11. A violation of Arizona's authorized hazardous waste program, found at A.R.S. 49-921, et seq.), and the regulations promulgated thereunder in the Arizona Administrative Code, Title 18, Chapter 8, Article 2, constitutes a violation of Subchapter III of RCRA.
12. 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 Subchapter III 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 of RCRA to the EPA Regional Administrator for Region 9, who has redelegated this authority to the Director of the Waste Management Division.

C. ALLEGED VIOLATION

COUNT I

Failure to Obtain a Permit for Storage of Hazardous Waste

14. Paragraphs 1 through 13 above are incorporated herein by this reference as if they were set forth here in their entirety.
15. A.A.C. R18-8-270.A [*see also* 40 C.F.R. § 270.1(c)] and A.R.S. 49-922 [*see also* RCRA Section 3005(e) (42 U.S.C. § 6925(e))] require that each person owning or operating a facility where hazardous waste is treated, stored, or disposed must have a permit. At the time of the inspection, Respondent did not have a permit or grant of interim status to store hazardous waste.
16. Hazardous waste regulations provide exemptions to the requirement to obtain a permit, when certain conditions are met. One such exemption relates to cathode ray tubes ("CRTs"). A.A.C. R18-8-261.A, by incorporating 40 C.F.R. § 261.39 by reference, provides that used, broken CRTs are not solid waste, and therefore not subject to hazardous waste requirements, if the container in which a used, broken CRT is contained is labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s) – contains leaded glass;" "Leaded glass from televisions or computers;" or "Do not mix with other glass materials" [*see also* 40 C.F.R. § 261.39(a)(2)]. Generators who fail to meet the conditions of the exemption fail to meet the requirements of A.A.C. R18-8-261.A, and are subject to the permitting requirements of A.A.C. R18-8-270.A [*see also* 40 C.F.R. § 270.1].
17. At the time of the CEI, the EPA inspector observed that containers with broken CRTs

were not labeled.

18. A second exemption from the permit requirement relates to onsite accumulation of hazardous waste. A.A.C. R18-8-262.A, by incorporating 40 C.F.R. § 262.34 by reference, provides that a generator of hazardous waste may accumulate hazardous waste on-site without a permit or grant of interim status provided the generator meets certain conditions, including that generators label containers with the words "hazardous waste" and with the date accumulation of the waste begins, and that containers of hazardous waste remain closed except when waste is being added or removed. Generators who fail to label containers of hazardous waste or fail to keep containers closed are subject to the permitting requirements of A.A.C. R18-8-270.A [*see also* 40 C.F.R. § 270.1].
19. During the CEI, the EPA inspector observed that Respondent stored broken mercury-containing lamps (D009 waste) in two open 55-gallon drums. The drums were not labeled with the words "hazardous waste."
20. During the CEI, the EPA inspector observed that Respondent stored spent mercury-containing lamps (D009 waste) in cardboard boxes. Nine of the cardboard boxes were open, and five boxes contained broken bulbs. None of the boxes were labeled with the words "hazardous waste."
21. Respondent's failure to meet the requirements set forth or referenced by A.A.C. R18-8-261 and A.A.C. R18-8-262.A subject it to the permit requirements of A.A.C. R18-8-270.A [*see also* 40 C.F.R. §§ 262.34 and 270.1].
22. Therefore, EPA alleges that Respondent violated A.A.C. R18-8-270.A [*see also* 40 C.F.R. § 270.1(c)].

D. CIVIL PENALTY

21. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Debt Collection Improvement Act of 1996 (61 Fed. Reg. 69360 (Dec. 31, 1996)) authorizes a civil penalty of up to \$27,500 per day per violation for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 *et seq.*, occurring between January 31, 1997 and March 15, 2004. The Civil Monetary Penalty Inflation Adjustment Rule (69 Fed. Reg. 7121 (Feb. 13, 2004)) authorizes a civil penalty of up to \$32,500 per day per violation for violations occurring after March 15, 2004 and 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. Based upon the facts alleged herein and upon those factors which EPA must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), and the RCRA Civil Penalty Policy, including the seriousness of the violations, any good faith efforts by Respondent to comply with applicable requirements, and any economic benefit accruing to Respondent, as well as such other matters as justice may require, EPA proposes that Respondent be assessed FIVE THOUSAND EIGHT HUNDRED DOLLARS (\$5,800.00) as the civil penalty for

the violations alleged herein. The proposed penalties were calculated in accordance with the "June 2003 RCRA Civil Penalty Policy." Under the penalty policy, EPA uses a penalty assessment matrix to determine a gravity-based penalty. That penalty amount is then adjusted to take into account multi-day violations, the economic benefit gained from non-compliance, where appropriate, and case-specific circumstances.

E. ADMISSIONS AND WAIVERS OF RIGHTS

22. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.
23. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO, and this CA/FO and Respondent's compliance with it shall not be construed as an admission by Respondent of any wrongdoing or liability. Notwithstanding the foregoing, Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

F. PARTIES BOUND

24. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns, until such time as the civil penalty required under Sections D and G has been paid in accordance with Section G, and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement and satisfaction of the violations alleged herein.
25. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.
26. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

27. Respondent consents to the assessment of and agrees to pay a civil penalty of FIVE THOUSAND EIGHT HUNDRED DOLLARS (\$5,800.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
28. Respondent shall submit payment of the FIVE THOUSAND EIGHT HUNDRED DOLLARS (\$5,800.00) within thirty (30) calendar days of the Effective Date of this CA/FO. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. All payments shall indicate the name of the Facility, EPA identification number of the Facility, the Respondent's name and address, and the EPA docket number of this action. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:
Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW

Washington, DC 20074
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter “sfo1.1” in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

At the time payment is made, a notice of payment shall be sent to:

Regional Hearing Clerk (ORC-1)
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105

and

Jim Polek (WST-3)
Waste Management Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.

29. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), each payment must be received by the due date set forth in this CA/FO to avoid additional charges. If payment is not received by the due date, interest will accrue from the Effective Date of this CA/FO at the current rate published by the United States Treasury as described at 40 C.F.R. § 13.11. A late penalty charge of \$15.00 will be imposed after thirty (30) calendar days with an additional \$15.00 charge for each subsequent 30-day period. A 6% per annum penalty will further apply on any principal amount not paid within ninety (90) calendar days of its due date. Respondent further will be liable for stipulated penalties as set forth below for any payment not received by its due date.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

30. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below:
For failure to submit a payment to EPA by the time required in this CA/FO: ONE HUNDRED DOLLARS (\$100) per day for first to fifteenth day of delay, FIVE HUNDRED DOLLARS (\$500) per day for sixteenth to thirtieth day of delay, and ONE THOUSAND DOLLARS (\$1,000) per day for each day of delay thereafter.
31. All penalties owed to EPA under this Section shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance and shall indicate the amount of penalties due. Interest at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11, shall begin to accrue on the unpaid balance at the end of the thirty-day period.
32. All penalties shall be made payable by certified or cashier's check to "Treasurer of the United States" and shall be remitted as described in Paragraph 28.
33. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
34. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

I. RESERVATION OF RIGHTS AND LIMITED COVENANT NOT TO SUE

35. This CA/FO resolves Respondent's civil penalty liability for the violations and facts specifically alleged in the CA/FO. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO, except as to those civil penalties for the violations and facts alleged herein. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 3008(c) of RCRA, 42 U.S.C. § 6928(c). This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under RCRA (except as to those civil penalties for the violations and facts alleged herein); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); or any other statutory, regulatory or common law enforcement authority of the United States.

36. Respondent reserves its right to object to, or defend, any action to enforce the terms of the CA/FO, or to defend against matters that are not resolved by this CA/FO.
37. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with RCRA or any other applicable local, State or federal laws and regulations.
38. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section C of this CA/FO.
39. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

J. OTHER CLAIMS

40. Nothing in this CA/FO shall constitute or be construed as a release from nor an admission by Respondent of any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

K. MISCELLANEOUS

41. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.
42. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

43. The Effective Date of this CA/FO is the date the Final Order, signed by the Regional Judicial Officer, is filed by the Regional Hearing Clerk.

IT IS SO AGREED.

August 26, 2011
Date

9/15/11
Date

John M. Chilcott
Name, Title: JOHN M CHILCOTT, PRESIDENT
Earth Protection Services, Inc.

Jeff Scott
Jeff Scott, Director
Waste Management Division
U.S. Environmental Protection Agency, Region 9

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 (U.S. EPA Docket No. RCRA-9 -2011-~~0018~~) be entered and that Earth Protection Services, Inc pay a civil penalty of FIVE THOUSAND EIGHT HUNDRED DOLLARS (\$5,800.00) due in accordance with Section G of the Consent Agreement.

This Final Order shall be effective upon filing by the Regional Hearing Clerk.

09/20/11

Date


Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region 9

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order against **Earth Protection Services, Inc. (Docket #: RCRA-09-2011-0018)** was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

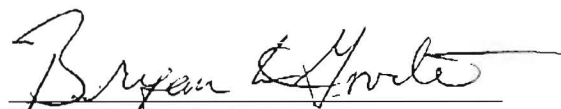
A copy was mailed via CERTIFIED MAIL to:

Mr. John Chilcott
President, VJ2C, Inc.
(former President of Earth Protection Services, Inc.)
2737 E. Arizona Biltmore Circle, #4
Phoenix, AZ 85018

CERTIFIED MAIL NUMBER: 7003-3110-0006-1998-1878

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Rebecca Sugarman
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

9/21/11
Date



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

CERTIFIED MAIL NO: 7003-3110-0006-1998-1878
RETURN RECEIPT REQUESTED

SEP 21 2011

John Chilcott
President, VJ2C, Inc.
(former President of Earth Protection Services, Inc.)
2737 E. Arizona Biltmore Circle #4
Phoenix, AZ 85018

Re: In the matter of Earth Protection Services, Inc.

Dear Mr. Chilcott:

Enclosed is a copy of the fully executed Consent Agreement and Final Order ("CA/FO") that contains the terms of the settlement that Earth Protection Services, Inc. ("EPSI") reached with the United States Environmental Protection Agency ("U.S. EPA").

This CA/FO sets out the terms for resolution of the Resource Conservation and Recovery Act (RCRA) administrative civil penalty action against EPSI for alleged violations at the EPSI facility in Phoenix, Arizona. As described in the terms of the enclosed CA/FO, payment by EPSI of the penalty identified in Section G of the enclosed CA/FO is necessary to conclude this matter.

EPSI's full compliance with the payment terms of this CA/FO will close this case. If you have any questions regarding the RCRA requirements and regulations governing your operations, or the rules which govern the proceedings terminated by the enclosed document, please contact James Polek of my staff at (415) 972-3185, or Rebecca Sugerman, in the Office of Regional Counsel, at (415) 972-3893.

Sincerely,

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

Jeff Scott, Director
Waste Management Division

Enclosures

cc: Rebecca Sugerman, EPA ORC-3
James Polek, EPA WST-3