



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

AUG 25 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7011 0110 0001 3590 6346

Attorney Service Associates, Inc.
3610-2 N. Josey, Suite 223
Carrollton, TX 75007

Subject: Honga Company Limited
Complaint and Notice of Opportunity for Hearing
Docket No. RCRA-06-2011-0962

Dear Sir/Madam:

Enclosed is a Complaint and Notice of Opportunity for Hearing (Complaint) issued to Honga Company Limited (Honga) pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (RCRA), 42 U.S.C. § 6938. In the Complaint, the Environmental Protection Agency, Region 6 is notifying Honga that it violated RCRA. Please note the opportunity for a settlement conference set forth in the Complaint.

If you have any questions, or wish to schedule a meeting, please call Mr. Jeffrey Clay, Associate Regional Counsel. Mr. Clay can be reached at (214) 665-7297.

Sincerely,

A handwritten signature in black ink, appearing to read "John Blevins".

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: Richard A. Hyde, P.E., Deputy Director
Office of Compliance and Enforcement
Texas Commission on Environmental Quality

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TX

FILED
2011 AUG 29 AM 11:15
REGIONAL HEARING CLERK
EPA REGION VI

IN THE MATTER OF:	§	DOCKET NO. RCRA-06-2011-0962
	§	
HONGA COMPANY LIMITED	§	COMPLAINT
CARROLLTON, TEXAS	§	AND
	§	NOTICE OF OPPORTUNITY
	§	FOR HEARING
RESPONDENT	§	
	§	

PRELIMINARY STATEMENT

This Complaint and Notice of Opportunity for Hearing is issued by the United States Environmental Protection Agency (EPA) pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (RCRA), 42 U.S.C. § 6928(a), against Honga Company Limited, Carrollton, Texas (Respondent). The Complainant in this action is the Director, Compliance Assurance and Enforcement Division, EPA Region 6.

NOTICE TO STATE

1. Notice of the commencement of this action has been given to the State of Texas, pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

REGULATORY FRAMEWORK

2. In 1976, Congress enacted RCRA to regulate the generation, transportation, and disposal of solid and hazardous wastes.

3. 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.

4. The EPA has promulgated federal regulations to implement RCRA Subtitle C, which are set forth at 40 C.F.R. Parts 260-270, 273, and 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. A waste is hazardous if it is a solid waste (40 C.F.R. § 261.2), not specifically excluded from RCRA (40 C.F.R. § 261.4), and is either listed (40 C.F.R. § 261.30) or exhibits a characteristic of hazardous waste (40 C.F.R. § 261.20).

8. 40 C.F.R. § 262.52 prohibits exports of hazardous waste unless: (a) notification to EPA of intent to export in accordance with 40 C.F.R. § 252.53 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.

9. Under § 261.4(b)(1), household waste is exempt from the RCRA Subtitle C regulations. The term household waste refers to any garbage, trash, and sanitary waste from septic tanks derived from single and multiple residences, and other residential units such as hotels and motels. In order for household waste to be exempt from regulation, it must meet two criteria: the waste has to be generated by individuals on the premises of a household, and the waste must be composed primarily of materials found in the waste generated by consumers in their homes.
10. Household hazardous waste that is mixed with other, non-household hazardous waste, results in the mixture losing any exemption under the household hazardous waste exemption and simply being considered hazardous waste.
11. 40 C.F.R. § 261.40 provides a conditional exclusion from the definition of solid waste for exported Cathode Ray Tubes (CRTs) for recycling if the exporter meets the notice and consent conditions of 40 C.F.R. § 261.39(a)(5).
12. 40 C.F.R. § 261.41 provides notice and record-keeping requirements that, if followed, provide a conditional exclusion from the definition of solid waste for CRTs being exported for re-use.

FACTUAL ALLEGATIONS

13. Respondent, Honga Company Limited, Carrollton, Denton County, Texas, is a domestic for-profit corporation organized under the laws of the State of Texas.
14. Respondent's address is 3610-2 N. Joscy, Suite 223, Carrollton, Texas 75007 as identified in its corporate filing with the Texas Secretary of State and on shipping documents.

15. Respondent engages in the exportation of used electronic equipment, including color computer monitors.
16. Computer monitors and televisions contain CRTs.
17. CRTs contain an average of four pounds of lead and other hazardous constituents.
18. Studies have shown that CRTs leach lead at levels considerably above the toxicity characteristic regulatory level used to classify lead-containing wastes as characteristic hazardous wastes (40 C.F.R. § 261.24(b)).
19. The maximum concentration of lead allowed by the toxicity characteristic of the TCLP characteristic test is 5 mg/l.
20. The average concentration of lead in a CRT monitor is 22 mg/l.
21. CRTs often contain mercury, cadmium, and arsenic.
22. When disposed, CRTs are considered hazardous waste.
23. Respondent exported one shipping container from the Port of New York to Haiphong, Vietnam by way of Hong Kong during the month of October 2009.
24. The container was identified as # DVRU0624226.
25. Container # DVRU0624226 was shipped by water.
26. No CRT related paperwork from EPA, Hong Kong, or Vietnam accompanied the container.
27. No labels or other identifying information accompanied the container indicating that CRTs were present in the container.

28. The contents of # DVRU0624226 were described (in shipping documents) by the Respondent as metal scrap and office equipment (1,000 pieces).
29. The container was subject to a custom's inspection in Hong Kong on November 25, 2009. The container was found to contain CRTs and the container was returned to the United States in December 2009.
30. The container # DVRU0624226 was again exported by Respondent to Vietnam by way of Hong Kong in January 2010 from the Port of Long Beach, California. The container was described (in shipping documents) as containing metal scrap and office equipment (1,000 pieces).
31. Hong Kong rejected the container and it was again returned to the United States in March 2010 to the Port of Long Beach, California.
32. The container # DVRU0624226 was again exported to Vietnam by way of Hong Kong by Respondent in April 2010. The container was described (in shipping documents) as containing metal scrap and office equipment (1,000 pieces).
33. Hong Kong rejected the container and it was returned to United States in May 2010 to Long Beach, California. The cargo was described as "Waste CRT Computer Monitors."
34. From June 21 until June 23, 2010, an inspection and inventory of container # DVRU0624226 was conducted in Carlson, California by the U.S. Bureau of Customs and Border Protection (CBP).
35. The inspection revealed that the container contained used computer monitors, including CRTs.

36. The CRTs were stacked on pallets and shrink wrapped.
37. Many of the computer monitors had cut power cords and/or cracked housing.
38. The CRT containing computer monitors were of different sizes, brands, models, and condition.
39. Many of the computer monitors also had indicia of prior business or corporate ownership, such as identifying tags and stickers.
40. The CRTs had been discarded by their owners.
41. The CRTs were not "household hazardous waste" as defined at 40 C.F.R. § 261.4(b)(1).
42. Respondent shipped container # HJCU9057360 to Vietnam, by way of Hong Kong, in March or April of 2010 from the Port of Long Beach, California.
43. Container # HJCU9057360 was shipped by water.
44. No CRT related paperwork from EPA, Hong Kong, or Vietnam accompanied the container.
45. No labels or other identifying information accompanied the container indicating that CRTs were present in the container.
46. The contents of container # HJCU9057360 were identified by Respondent as used computers.
47. The container # HJCU9057360 was returned to the United States in May 2010 with documentation describing the contents as "Waste CRT Computer Monitors."
48. An inspection of the container revealed mixed computers components, including CRTs.
49. The CRTs were stacked on pallets and shrink wrapped.

50. The CRTs had been discarded by their owners.
51. The CRTs were not "household hazardous waste."
52. The containers were not labeled as containing CRTs.
53. Respondent did not notify EPA of an intended export sixty (60) days before the CRTs were scheduled to leave the United States as required by 40 C.F.R. § 261.39(a)(5)(i).
54. Respondent did not obtain from EPA an "Acknowledgement of Consent to Export CRTs" which must accompany the shipment, as required by 40 C.F.R. § 261.39(a)(5).
55. Respondent did not notify EPA of an intended export of used intact CRTs for reuse as required by 40 C.F.R. § 261.41.

CONCLUSIONS OF LAW

56. Respondent is a "person" as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
57. The Respondent exported CRTs on the two occasions without Acknowledgement of Consent by EPA (in the case that Respondent was recycling the CRTs) or without notice to EPA (in the case that Respondent was re-using the CRTs).
58. The CRTs have been discarded by their original owners.
59. The color computer monitors, containing CRTs, shipped to Vietnam by way of Hong Kong by Respondent are "solid waste" as that term is defined in 40 C.F.R. § 261.2.
60. The color computer monitors, containing CRTs, shipped to Vietnam by way of Hong Kong 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).

61. The CRTs are not household hazardous waste.
62. Even if some of the CRTs could be considered household hazardous waste, by mixing with non-household hazardous waste, the Respondent has nullified the household hazardous waste exemption.
63. The conditional exemption to the definition of CRTs as solid waste (40 C.F.R. § 261.40 and 40 C.F.R. § 261.41) does not apply in a situation where the conditions are not met.
64. The Respondent did not provide EPA with advance notice to export CRTs for re-use, as required by 40 C.F.R. § 261.41, and therefore did not meet the exemption at 40 C.F.R. § 261.41.
65. The Respondent did not provide EPA notice, and receive the permission of the receiving country, to export CRTs for recycling, as required by 40 C.F.R. § 261.39, and therefore did not meet the exemption at 40 C.F.R. § 261.40.
66. The Respondent exported CRTs without notification to EPA, and, or, without the approval of the receiving country.
67. The Respondent has violated RCRA.

COUNT I - UNAUTHORIZED EXPORTATION OF HAZARDOUS WASTE
(CONTAINER # DVRU0624226)

68. Paragraphs 1 through 67 above are re-alleged and incorporated by reference.
69. By failing to meet the notice and consent provisions of 40 C.F.R. § 261.39(a)(5), Respondent failed to meet the conditions of the exclusion at 40 C.F.R. §§ 261.39 and 261.40.
70. By failing to meet the notice requirements of 40 C.F.R. § 261.41, Respondent failed to meet the conditions of exclusion of 40 C.F.R. § 261.41.

71. Therefore, EPA alleges that Respondent exported hazardous waste without the authorization of EPA or without notice to EPA in violation of 40 C.F.R. § 262.52.

COUNT II - UNAUTHORIZED EXPORTATION OF HAZARDOUS WASTE
(CONTAINER # HJCU9057360)

72. Paragraphs 1 through 71 above are re-alleged and incorporated by reference.

73. By failing to meet the notice and consent provisions of 40 C.F.R. § 261.39(a)(5), Respondent failed to meet the conditions of the exclusion at 40 C.F.R. §§ 261.39 and 261.40.

74. By failing to meet the notice requirements of 40 C.F.R. § 261.41, Respondent failed to meet the conditions of exclusion of 40 C.F.R. § 261.41.

75. Therefore, EPA alleges that Respondent exported hazardous waste without the authorization of EPA or without notice to EPA in violation of 40 C.F.R. § 262.52.

PROPOSED CIVIL PENALTY

The Complainant is unsure whether the Respondent exported the CRTs for the purpose of re-use or recycling. Complainant believes they were exported for the purpose of recycling. However, it is conceivable that the CRTs were exported for re-use purposes. In either case the Respondent failed to give notice before exportation of CRTs. Complainant has calculated a penalty consistent with either a recycling or re-use scenario.

The proposed civil penalty has been determined in accordance with Section 3008(a)(3) of the Act, 42 U.S.C. § 6928(a)(3). For purposes of determining the amount of any penalty assessed, Section 3008(a)(3) requires EPA “to take into account the seriousness of the violation

and any good faith efforts to comply with applicable requirements.” To develop the proposed penalty in this complaint, the Complainant has taken into account the particular facts and circumstances of this case and used the guidance of EPA’s 2003 RCRA Civil Penalty Policy, a copy of which is available upon request or can be found on the Internet at the following address: <http://www.epa.gov/compliance/resources/policies/civil/rcra/rcpp2003-fnl.pdf>.

Based on the RCRA Civil Penalty Policy dated October 1990, the Potential for Harm is determined to be “Moderate” and the Extent of Deviation is determined to be “Major.” Potential for Harm is “Moderate” as the export of CRTs without notification to EPA is considered to have a significant adverse effect on the implementation of RCRA. Extent of Deviation is “Major” as the Respondent’s failure to notify EPA of its CRT exports is considered a total deviation of the RCRA requirements resulting in substantial noncompliance.

The penalty amounts in the RCRA Civil Penalty Policy have been amended to reflect inflation adjustment. These adjustments were made pursuant to the following: the September 21, 2004, document entitled, “Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Rule (pursuant to the Debt Collection Inflation Act of 1996), effective October 1, 2004);” the January 11, 2005 document entitled, “Revised Penalty Matrices for the RCRA Civil Penalty Policy;” and the December 29, 2008 document entitled, “Amendments to EPA’s Civil Penalty Policies to Implement the 2008 Civil Penalty Monetary Penalty Inflation Adjustment Rule (effective January 12, 2009).” The RCRA Civil Penalty Policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors to particular cases.

The Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 note), required EPA to adjust its penalties for inflation on a periodic basis. The maximum civil penalty amount obtainable under Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), was amended as follows: for violations occurring from March 15, 2004 through January 12, 2009, \$32,500 per day for each violation; for violations after January 12, 2009, \$37,500 per day for each violation.

Complainant proposes Respondent be assessed the civil penalty as set out below for the violations alleged in this Complaint. In view of the above-cited violations, and pursuant to the authority of Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), Complainant proposes the assessment of a civil penalty in the total amount of **TWENTY-SIX THOUSAND NINE HUNDRED AND TEN DOLLARS (\$26,910)** against Respondent as follows:

Count 1 – Unauthorized Exportation of Hazardous Waste (Container # DVRU0624226)
\$13,455

Count 2 – Unauthorized Exportation of Hazardous Waste (Container # HJCU9057360)
\$13,455

OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

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 Complaint and Notice of Opportunity for Hearing (Complaint). Any such hearing would be conducted in accordance with 40 C.F.R. Part 22. A request for a hearing must be in writing and must be filed with the Regional Hearing Clerk (6RC-D), U.S Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Wells Fargo Bank Tower, Dallas, TX 75202-2733, within thirty (30) days of service of this Complaint.

Whether or not Respondent intends to request a formal hearing, if Respondent wishes to contest any material fact(s) set forth in this Complaint, contends that the amount of the penalty proposed in this Complaint is inappropriate, or feels that it is entitled to a judgment as a matter of law, it must file a written Answer to this Complaint with the Regional Hearing Clerk at the above address within thirty (30) days after service of this Complaint. A copy of the Answer shall also be sent to Mr. Jeffrey Clay, Associate Regional Counsel (6RC-ER) at the same address.

Pursuant to 40 C.F.R. Part 22, Respondent's Answer should clearly and directly admit, deny, or explain each factual allegation contained in this Complaint with regard to which Respondent has any knowledge. The Answer should state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) a concise statement of the fact(s) which Respondent intends to place at issue in the hearing; and (3) whether a formal hearing is requested. Where Respondent has no knowledge as to a particular factual allegation and so states, the allegation is deemed denied. Failure of Respondent to admit, deny, or explain any material fact contained in the Complaint constitutes an admission of that allegation.

DEFAULT ORDER

If Respondent fails to file a timely Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days after service of this Complaint, 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 Complaint 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 Complaint. The proposed penalty shall become due and payable by Respondent without further proceedings sixty (60) days after a Final Order is issued upon default.

Respondent is further informed that the Consolidated Rules of Practice prohibit ex parte (unilateral) discussion of the merits of this action with the Regional Administrator, Regional Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after the Complaint is filed.

SETTLEMENT CONFERENCE

The EPA encourages all parties against whom civil penalties are proposed to pursue the possibilities of settlement as a result of informal conference. Therefore, whether or not a hearing is requested upon filing an answer, Respondent may confer informally with the EPA concerning the alleged violations or the amount of the proposed penalty. Such conference provides Respondent with an opportunity to provide whatever additional information may be relevant to the disposition of this matter. You may wish to appear at the conference yourself or be represented by counsel. If a settlement is reached, it shall be finalized by the issuance of a written Consent Agreement and Consent Order by the Regional Administrator, EPA Region 6.

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 Mr. Jeffrey Clay, Associate Regional Counsel, Office of Regional Counsel, EPA Region 6, at (214) 665-7297.

PAYMENT OF PENALTY

Instead of filing an Answer and/or requesting a hearing or informal settlement conference, you may choose to pay the proposed penalty. To do so, Respondent shall submit a cashier's or certified check, payable to the order of the "Treasurer, United States of America," in the amount of Twenty-Six Thousand Nine Hundred and Ten Dollars (\$26,910), to:

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

For overnight mail (non-U.S. Postal Service, e.g., FedEx, Airborne, UPS), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

The Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."

PLEASE NOTE: Docket No. RCRA-06-2011-0962 shall be clearly typed on the check to ensure proper credit. The check shall also be accompanied by a transmittal letter and shall reference Respondent's name and address, the case name, and docket number of the administrative Complaint. Respondent's adherence to this request will ensure proper credit is given to the appropriate Region. Respondent shall also send a simultaneous notice of such payment including a copy of the cashier's or certified check, and transmittal letter to the following:

Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

and

Ms. Lou Roberts (6EN-HM)
Multimedia Enforcement Section
Hazardous Waste Enforcement Branch
Compliance Assurance & Enforcement Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Adherence to this request will ensure proper credit is given when payment is received.

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of August, 2011, the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing (Complaint) was hand delivered to the Regional Hearing Clerk, U.S. EPA Region 6, 1445 Ross Avenue, Wells Fargo Bank Tower, Dallas, Texas 75202-2733, and that a true and correct copy of the Complaint, Docket No. RCRA-06-2011-0962, the RCRA enforcement response policy, 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; Final Rule (40 C.F.R. Part 22) were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Attorney Service Associates, Inc.
3610-2 N. Josey, Suite 223
Carrollton, TX 75007

Return Receipt Number:

7011 0110 0001 3590 6346

Lou Roberts
Lou Roberts
Environmental Protection Specialist