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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

REGIONAL COUNCIL CLERK

IN THE MATTER OF)	U.S. EPA Docket No.
)	RCRA-9-2009-0017
ZKW TRADING CORP.)	
)	DETERMINATION OF VIOLATION,
)	COMPLIANCE ORDER
218 W. Garvey Ave. Ste I)	AND
Monterey Park, Ca)	NOTICE OF RIGHT TO
)	REQUEST A HEARING
RESPONDENT)	
)	
Proceeding under Section 3008(a) of the)	
Resource Conservation and Recovery)	
Act, 42 U.S.C. § 6928(a))	

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 (2009). Complainant is the United States Environmental Protection Agency, Region IX ("EPA").
2. Respondent is ZKW Trading Corp ("Respondent").
3. Respondent is a California corporation which holds itself out as engaging in the import and export of used electronic equipment and parts.
4. 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 Sections 3002 and 3017 of RCRA, 42 USC §§ 6922 and 6938, and the regulations promulgated thereunder at 40 C.F.R. Parts 261 and 262. This Complaint 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.

B. JURISDICTION

5. RCRA 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.
6. 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.
7. Pursuant to 40 C.F.R. § 261.2, a “solid waste” is any discarded material that is not otherwise excluded by regulation.
8. 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.
9. 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.*
10. 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.
11. In June 2009, the Respondent consigned two containers for shipment to Hong Kong. The shipment included color computer monitors, containing cathode ray tubes (“CRTs”), to be shipped to Hong Kong.
12. 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. *See* 71 Fed. Reg. 42930 - 42931 (July 28, 2006).
13. 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).
14. Respondent corporation is a “person” as defined in 40 C.F.R. § 260.10.
15. Respondent is a “primary exporter” as defined in 40 C.F.R. § 262.51.

C. ALLEGED VIOLATIONS

Count I

Unauthorized Exportation of Hazardous Waste

16. Paragraphs 1 through 15 above are incorporated herein by this reference as if they were set forth here in their entirety.
17. 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.
18. 40 C.F.R. § 261.40 provides a conditional exclusion from the hazardous waste export requirements if the exporter meets the notice and consent conditions of 40 C.F.R. § 261.39(a)(5). That section requires that the exporter must notify EPA of an intended export sixty (60) days before the CRTs are scheduled to leave the United States and the exporter must obtain an "Acknowledgement of Consent" from the receiving country, which must accompany the shipment.
19. Respondent shipped to Hong Kong two containers including color CRTs.
20. The shipment was consigned to Respondent when it was returned from Hong Kong.
21. On June 1, 2009 Respondent billed Kai Sheng International Electronic Co., of Hong Kong for 18 pallets of "plastic scrap." The invoice is for \$1,649.40. The invoice shows the pallets are in shipping container # CCLU6332107.
22. On June 10, 2009, Respondent billed Kai Sheng International Electronic Co., of Hong Kong for 20 pallets of "plastic scrap." The invoice is for \$1,599.98. The invoice shows the pallets are in shipping container # CCLU6586924.
23. According to bills of lading, the two containers were shipped from Los Angeles and Long Beach. The bill of lading for Container # CCLU6332107 shows ZKW Trading Corp as the shipper.

24. The containers identified in Paragraphs 21 and 22 contained electronic equipment and parts including computer monitors, which contain color CRTs.
25. A commercial invoice dated July 10, 2009, shows that Kai Sheng International Electronic Co. sold to Respondent 38 pallets value stated at \$3,298. The invoice states "Return back to USA. Non-commercial Value."
26. The containers referenced in the July 10, 2009 invoice are the same numbers as noted in Paragraphs 21 and 22 above, CCLU6332107 and CCLU6586924.
27. A bill of lading dated July 10, 2009 shows the shipper as Kai Sheng International Electronic Co., and the consignee as ZKW Trading Corp.
28. Respondent did not provide notification of its intent to export the CRTs as required by 40 C.F.R. § 262.53.
29. Respondent did not provide consent of the receiving country as required by 40 C.F.R. § 262.53.
30. Respondent did not obtain an Acknowledgement of Consent to Export required by 40 C.F.R. § 262.53.
31. By failing to meet the notice and consent provisions 40 C.F.R. § 261.39(a)(5), Respondent failed to meet the conditions of the exclusion at 40 C.F.R. § 261.40.
32. Therefore, EPA alleges that Respondent exported hazardous waste without authorization in violation of 40 C.F.R. § 262.52.

Count II

Unauthorized Import of Hazardous Waste

33. Paragraphs 1 through 32 above are incorporated herein by this reference as if they were set forth here in their entirety.
34. 40 C.F.R. § 262.60 states that any person who imports hazardous waste must meet the requirements of 40 C.F.R. § 262.20(a), which requires completion of a manifest form for transport of hazardous waste.
35. As noted above in paragraph 25, a commercial invoice dated July 10, 2009, shows that Kai Sheng International Electronic Co. sold to Respondent 38 pallets value stated at \$3,298. The invoice states "Return back to USA. Non-commercial Value."
36. The containers referenced in the July 10, 2009 invoice are the same numbers as noted in Paragraphs 21 and 22 above, CCLU6332107 and CCLU6586924. These

containers held electronic equipment and parts including computer monitors, which contain color CRTs.

37. A bill of lading dated July 10, 2009 shows the shipper as Kai Sheng International Electronic Co., and the consignee as ZKW Trading Corp.
38. Respondent failed to meet the requirements of 40 C.F.R. § 262.20(a) regarding completing a hazardous waste manifest.
39. Therefore EPA alleges that Respondent imported hazardous waste without authorization in violation of 40 C.F.R. § 262.60.

II. COMPLIANCE ORDER

40. 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 (including but not limited to container numbers CCLU6332107 and CCLU6586924) and remove them from the Port of Long Beach;
 - b. Respondent shall transport the containers to a secure warehouse for temporary storage under the control of Respondent; and
 - c. 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.
41. The Respondent shall not remove any items from the storage facility without EPA approval.
42. Respondent shall remove all items from storage within twenty (20) days of EPA's approval of the plan described in Paragraph 40.
43. To further ensure compliance with the requirements cited in Paragraphs 40-42, Respondent shall submit the following report to EPA within thirty (30) days of EPA's approval of the plan described in Paragraph 40: 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:

- i. a statement containing an inventory of all items and the actual disposition of each item listed on the inventory; and
 - ii. the total cost of returning to compliance.
44. The information requested in this Order is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 *et seq.*
45. Respondent shall submit the copies of any information, reports, and/or notices required by this Order to:

Jim Polek, Environmental Engineer
Waste Management Division
U.S. Environmental Protection Agency, WST-3
75 Hawthorne Street
San Francisco, Ca 94105

46. 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.
47. This Order shall become effective immediately upon receipt by Respondent.
48. 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.

III. ASSESSMENT OF PENALTIES

49. 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.

IV. NOTICE OF RIGHT TO REQUEST A HEARING

A. PUBLIC HEARING

50. 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.

51. 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.
52. 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.
53. 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.
54. 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.
55. 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

56. 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.

57. 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.
58. 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.
59. EPA encourages all parties against whom a penalty is proposed to explore the possibility of settlement. To request an informal conference, Respondent should contact Rebecca Sugerman, ORC-3, Assistant Regional Counsel, Office of Regional Counsel, at the above address, telephone number (415) 972-3893.

V. 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).

Date

9/3/09

Jeff Scott

Director

Waste Management Division

United States Environmental Protection Agency,
Region IX

CERTIFICATION 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:

Robert Pang
ZKW Trading Corp
218 W. Garvey Ave. Suite I
Monterey Park, CA 91754

9/3/09
Date

Dan Del Monte ORC Receptionist
Name, title:
Hazardous Waste Management Division