

FILED

2008 NOV 12 AM 10:24

REGIONAL HEARING CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the matter of)	U.S. EPA Docket No.
)	RCRA-9-2008-0014
Jet Ocean Technologies Inc.)	
)	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 IX ("EPA"). Respondent is Jet Ocean Technology Inc. ("Jet Ocean").
2. Respondent is a California corporation which holds itself out as engaging in the import and export of used electronic equipment and parts.
3. The violation addressed herein, unauthorized exportation of hazardous waste, poses a substantial risk of exposure to humans or other environmental receptors to the hazardous materials such as lead, cadmium, and mercury found in CRTs, and failure to notify the EPA of the export has a substantial adverse effect rendering enforcement of the CRT rule impossible as well as threatening international cooperation by preventing the EPA from notifying the recipient country in compliance with 40 C.F.R. § 261.39(a)(5)(iv).
4. This Consent Agreement and Final Order pursuant to 40 C.F.R. Sections 22.13 and 22.18 ("CA/FO"), concludes this proceeding, wherein EPA alleges that Respondent failed to provide notification of its intent to export hazardous waste as required by 40 C.F.R. § 262.53. This is in violation of Section 3001 et seq. of RCRA, 42 U.S.C. § 6921 et seq.

B. JURISDICTION

5. Respondent corporation is a "person" as defined in 40 C.F.R. § 260.10.
6. Respondent is a "primary exporter" as defined in 40 C.F.R. § 262.51.
7. In January 2008, the Respondent consigned a container containing 441 monitors, including color monitors, containing cathode ray tubes ("CRTs") to be shipped to Hong Kong.
8. 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).
9. 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.
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 under 40 C.F.R. §§ 262.50-58.
11. 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 Subtitle C of RCRA, Section 3001 of RCRA et seq., 42 U.S.C. § 6921, et seq.
12. 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.

C. ALLEGED VIOLATIONS

Count I

Unauthorized Exportation of Hazardous Waste

13. Paragraphs 1 through 12 above are incorporated herein by this reference as if they were set forth here in their entirety.
14. 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.

15. On December 20, 2007, Respondent billed S&D international Trading Company of Hong Kong for a shipping container of electronic equipment and parts including 441 monitors, to be shipped from Denver, CO. The shipment included color CRTs.
16. On January 10, 2008, Respondent consigned the container to Cyde International Corp for shipment to SD International Trading Company in Hong Kong. The description of the goods given was "mixed metal scrap." A note on the bill of lading indicates, "These commodities, technologies or software were exported from the United States of America in accordance with Export Administration Regulations, diversion contrary to U.S. law is prohibited."
17. On February 10, 2008, the container was shipped from Hong Kong to Long Beach with the Respondent as consignee. The description of the good was "mixed metal scrap" with the note "(return cargo)."
18. Respondent did not provide notification of its intent to export the CRTs as required by 40 C.F.R. § 262.53.
19. Respondent did not provide consent of the receiving country as required by 40 C.F.R. § 262.53.
20. Respondent did not obtain an Acknowledgement of Consent to Export required by 40 C.F.R. § 262.53.
21. No Acknowledgement of Consent to Export was provided by the Respondent in response to the EPA's request, pursuant to 42 U.S.C. § 3007(a), for "copies of shipping papers associated with the CRT shipment."
22. Therefore, EPA alleges that Respondent exported hazardous waste without authorization in violation of 40 C.F.R. § 262.52.

D. CIVIL PENALTY

23. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, (see 61 Fed. Reg. 69360 (Dec. 31, 1996)), authorizes a civil penalty of up to THIRTY-TWO THOUSAND, FIVE HUNDRED DOLLARS (\$32,500) per day for violations of Subtitle C of RCRA, 42 U.S.C. § 6921 et seq., occurring after March 15, 2004. 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 TEN THOUSAND THREE HUNDRED DOLLARS (\$10,300.00) as the civil penalty for the violation alleged herein. The proposed penalty was 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, for case-specific circumstances, and for the economic benefit gained from non-compliance, where appropriate.

E. ADMISSIONS AND WAIVERS OF RIGHTS

24. For the purposes of this proceeding, Respondent admits to the jurisdictional allegations set forth in Section B of this CA/FO. Respondent consents to 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.
25. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. 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

26. 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 of the violations alleged herein.
27. 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.
28. 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

29. Respondent consents to the assessment of and agrees to pay a civil penalty of TEN THOUSAND THREE HUNDRED DOLLARS (\$10,300.00) in full settlement of the federal civil penalty claims set forth in this CA/FO.
30. Respondent shall submit payment of the penalty in two installments. A total of ONE HUNDRED AND SIXTEEN DOLLARS (\$116.00) interest will be assessed to account for payment beyond 30 days, for a total payment of TEN THOUSAND FOUR HUNDRED AND SIXTEEN DOLLARS (\$10,416.00). FIVE THOUSAND TWO

HUNDRED AND EIGHT DOLLARS (\$5,208) is due within ninety (90) calendar days of the Effective Date of this CA/FO. The remaining FIVE THOUSAND TWO HUNDRED AND EIGHT DOLLARS (\$5,208) is due within one hundred and eighty (180) 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, 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" and sent to:

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

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

Danielle Carr
Regional Hearing Clerk (RC-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.

31. 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

32. 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.

33. 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.
34. 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 30.
35. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.
36. 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

37. 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. 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, 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.
38. 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.
39. 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.

40. 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

41. Nothing in this CA/FO shall constitute or be construed as a release from 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

42. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

43. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

44. 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.

8-28-08

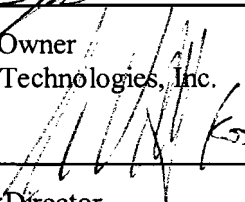
Date

7/10/08

Date



King Tai, Owner
Jet Ocean Technologies, Inc.



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-9-2008-0014) be entered and that Jet Ocean Technologies, Inc. pay a civil penalty of TEN THOUSAND THREE HUNDRED DOLLARS (\$10,300.00) as set out in Section G of the Consent Agreement.

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

November 12, 2008

Date



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

CERTIFICATE OF SERVICE

I hereby certify that on the date below, the original copy of the foregoing Complaint, Consent Agreement and Final Order, was filed with the Regional Hearing Clerk, Region IX, and that copies were sent by certified mail, return receipt requested, to:

Ms. King Tai
Owner
Jet Ocean Technologies, Inc.
4282 Lombardy Street
Chino, CA 91710

Nov. 12, 2008

Danielle E. Carr

Date

Danielle Carr
Regional Hearing Clerk
Office of Regional Counsel, Region IX