

US EPA ARCHIVE DOCUMENT

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

IN THE MATTER OF)	U.S. EPA Docket No.
)	RCRA-9-2010-0003
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 Section 3008 of RCRA, 42 USC § 6928. This Complaint seeks to assess a civil penalty that Respondent must pay for the violation alleged herein and provides notice of 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, 279.¹
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(a) 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. If a Respondent fails to take corrective action within the time specified in a compliance order, Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), authorizes the EPA Administrator to assess a civil penalty of \$37,500 for each day of continued noncompliance.
11. 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.
12. 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.
13. 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 §

¹ The State of California is not authorized for the regulations that are the basis for the violations alleged in the original complaint. Pursuant to 40 C.F.R. section 271.1 Table 2, notification of hazardous waste export is a self-implementing provision of HSWA, so these federal regulations are directly enforceable by EPA. Accordingly, the allegations in this complaint are for violations of federal requirements, rather than requirements of the authorized program.

- 261.24(b)). In addition, CRTs often contain mercury, cadmium, and arsenic. *See* 71 Fed. Reg. 42930 - 42931 (July 28, 2006).
14. 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).
 15. Respondent corporation is a “person” as defined in 40 C.F.R. § 260.10.
 16. Respondent is a “primary exporter” as defined in 40 C.F.R. § 262.51.
 17. On September 3, 2009 EPA issued a Complaint against ZKW Trading Corp. alleging violations of RCRA and its implementing regulations for export and import of hazardous waste found at 40 C.F.R. Sections 262.52 and 262.60 (“first Complaint”).
 18. EPA served the first Complaint via Federal Express. That Complaint package was received by Robert Pang, an employee of ZKW Trading Corp., on September 4, 2009.
 19. EPA also served the first Complaint via USPS certified mail. The certified mail first Complaint package was received by Respondent on September 9, 2009.
 20. The first Complaint was served on Mr. Robert Pang. According to filings with the California Secretary of State, Mr. Robert Pang is the President of and Registered Agent for ZKW Trading Corp.
 21. Mr. Pang contacted EPA in response to receiving the first Complaint. For purposes of enforcing the deadlines in the first Complaint, EPA staff and Mr. Pang agreed to use September 9, 2009 as the effective date of service.
 22. The first Complaint included a Compliance Order, requiring Respondent to perform certain tasks, including managing the electronic waste in the containers appropriately.
 23. On September 28, 2009, Mr. Pang submitted a letter to Mr. Jim Polek, Environmental Engineer, Waste Management Division, EPA Region 9. In the letter Mr. Pang stated: “[w]e hereby inform you that we decide to abandon the captioned containers with immediate effect.”
 24. On or about October 13, 2009, after several discussions between EPA staff and Respondent, Respondent confirmed that it intended to abandon the waste at issue.
 25. In accordance with 40 C.F.R. § 22.37(b), the Complaint states, at Paragraph 48, that the Compliance 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. Respondent did not request a hearing.

26. The Compliance Order became a final order on October 9, 2009, 30 days after the first Complaint was received by Mr. Pang.

C. ALLEGED VIOLATIONS

Count I

Failure to Comply with Compliance Order

27. Paragraphs 1 through 26 above are incorporated herein by this reference as if they were set forth here in their entirety.
28. 40 C.F.R. § 22.37(b) states that a complaint may contain a compliance order issued under section 3008(a), and that any such 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.
29. RCRA Section 3008(c), 42 U.S.C. § 6928(c), states that if a violator fails to take corrective action within the time specified in a compliance order, the Administrator may assess a civil penalty.
30. EPA served the complaint on September 9, 2009. The complaint included a compliance order, requiring Respondent to perform certain tasks, including:
- a. 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, within 30 days of receipt of the order;
 - b. Transport the containers to a secure warehouse for temporary storage under the control of Respondent; and
 - c. 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, within forty-five (45) days of receipt of this Order
31. Respondent failed to comply with the compliance order.
32. Respondent failed to request a hearing.
33. Respondent sent a letter to EPA dated September 28, 2009 stating it intended to abandon the waste at issue in the complaint.

34. The compliance order became a final order on October 9, 2009, 30 days after the first Complaint was received by, and therefore properly served on, Mr. Pang.
35. Therefore, EPA alleges that Respondent is subject to penalties for failing to take corrective action within the time specified in a compliance order, pursuant to RCRA Section 3008(c), 42 U.S.C. § 6928(c).

III. CIVIL PENALTY

36. Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, (61 Fed. Reg. 69360 (Dec. 31, 1996)), and the Civil Monetary Penalty Inflation Adjustment Rule (73 Fed. Reg. 75340 (Dec. 11, 2008), and 74 Fed. Reg. 626 (Jan. 7, 2009)) authorizes 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.
37. The violation addressed in Count I, failure to comply with the compliance order, 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. This violation began on October 9, 2009 and is continuing.
38. In assessing the severity of these violations, EPA has determined that these violations demonstrate substantial noncompliance with the applicable requirements, and resulted in substantial risk to human health and the environment.
39. Therefore, Complainant requests that the Administrator assess a civil penalty against Respondent of up to \$37,500 per day for the violation cited in the above outlined Count.

IV. NOTICE OF RIGHT TO REQUEST A HEARING

A. PUBLIC HEARING

40. 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.
41. 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.
42. 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.
 43. 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.
 44. 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.
 45. 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

46. 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.
47. 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.

- 48. 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.
- 49. 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

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

Date

Name, title:
Receptionist
Office of Regional Counsel
EPA Region IX