

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

AERC.COM, Inc.
30677 Huntwood Avenue
Hayward, California 94544

ID No. (CAD982411993)

Respondent.

Docket HWCA 20177305

CONSENT ORDER

Health and Safety Code
Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and AERC.COM, Inc., a Pennsylvania corporation (Respondent) (collectively the Parties) enter into this Consent Order (Consent Order) and agree as follows:

1.2. Site. Respondent generates, handles, treats, stores, and/or disposes of hazardous waste at the following site: 30677 Huntwood Avenue, Hayward, California (Site).

1.3. Inspection. The Department inspected the Site on January 27, 2016; February 5, 2016; February 18, 2016; March 8, 2016; and January 26, 2017.

1.4. Authorization Status. Respondent is authorized under a Standardized Permit, Series A for storage and treatment of hazardous waste, which includes management of universal waste, storage of lead-acid batteries and reclamation of

mercury from spent fluorescent, high intensity discharge (HID) lamps and other universal waste lamps. Respondent's Standardized Permit Series A was issued by the Department on February 12, 2010 (Permit).

1.5. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and to assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.6. Full Settlement. By their respective signatures below, the Parties, and each of them, agree that this Consent Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. This Consent Order shall constitute full settlement of the violations alleged below. By agreeing to this Consent Order, the Department does not waive any right to take other enforcement actions except as specifically provided in this Consent Order.

1.7. Hearing. Respondent waives any and all rights to a hearing in this matter.

1.8. Admissions. Respondent admits the violations as alleged in Section 2 below.

2. VIOLATIONS ALLEGED

2.1. The Department alleges the following violations:

2.1.1. Respondent violated Health and Safety Code section 25202(a), California Code of Regulations, title 22, sections 66260.200 and 66262.11, and Part V, Special Condition 10 of its Permit in that in or about January 2014 and August 2015, the Respondent failed to make an appropriate hazardous waste determination.

Respondent's Permit requires monthly submission of samples of crushed glass and metal end caps processed by their lamp processing machine to a California State certified analytical laboratory to verify that the samples do not exceed hazardous waste criteria for mercury. The mercury concentration for the monthly samples of metal end caps was 38 milligrams per kilogram (mg/kg) in January 2014 and 69 mg/kg in August 2015. This exceeds the total threshold limit concentration (TTLC) for mercury of 20 mg/kg. The TTLC is a threshold level above which a waste is considered hazardous for exhibiting the characteristics of toxicity as defined in California Code of Regulations, title 22, section 66261.24. Part V, Special Condition 10 of the Permit states: "The Permittee shall manage the outer glass and metal from both the fluorescent and the HID lamp de-manufacturing processes that exceed regulatory thresholds for mercury concentrations as hazardous waste in accordance with the conditions of this Permit." During January 2014 and August 2015, Respondent failed to manage the metal end caps as hazardous waste.

2.1.2. Respondent violated Health and Safety Code section 25203 in that Respondent caused the disposal of hazardous waste to a facility that is not permitted to handle hazardous waste. In or about January 2014 and August 2015, Respondent shipped metal end caps exceeding 20 mg/kg for mercury, the hazardous waste threshold, to metal recyclers. The mercury concentration in the metal end caps was 38 mg/kg in January 2014 and 69 mg/kg in August 2015. The metal recyclers are not authorized to receive hazardous waste.

2.1.3. Respondent violated Health and Safety Code section 25160(b)(1) in that Respondent transported hazardous waste using a bill of lading instead of a manifest. In

or about January 2014 and August 2015, Respondent transported metal end caps exceeding 20 mg/kg for mercury, the hazardous waste threshold, using a bill of lading instead of a hazardous waste manifest.

2.1.4. Respondent violated Health and Safety Code section 25202(a), California Code of Regulations, title 22, section 66270.30(a) and Part IV, Unit#1, Unit-Specific Special Condition 1 of their Permit in that Respondent failed to notify DTSC in August 2015 that samples they collected for their metal fluorescent light end caps exceeded 20 mg/kg for mercury, the hazardous waste threshold.

3. SCHEDULE FOR COMPLIANCE

3.1. Respondent has corrected the violations set forth above.

3.2. Respondent shall comply with the following:

3.2.1. Respondent shall operate hereafter in a manner that shall prevent recurrences of the violations cited herein.

3.2.2. Respondent shall make all payments at the time(s) and in accord with any other conditions set forth in Section 4 (Penalty) below.

4. PENALTY

4.1. Respondent shall pay the Department the total sum of forty- seven thousand and eighty dollars (\$47,080) in administrative penalties.

4.2. Payment of the total sum specified in paragraph 4.1 is due within 30 days from the effective date of this Consent Order.

4.3. Respondent's check(s) shall be made payable to the Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, MS-21A
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check(s) shall be sent to:

Rick Robison
Senior Environmental Scientist (Supervisor)
Enforcement and Emergency Response Division
Department of Toxics Substances Control
700 Heinz Avenue
Berkeley, California 94710

4.4. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code, section 25360.1, and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

5. OTHER PROVISIONS

5.1. Reservation of Authority. DTSC reserves its authority under the Hazardous Waste Control Law to 1) enforce this Consent Order, 2) use the violations alleged in Section 2. (Violations Alleged) above and Respondent's admissions to those violations (Subsection 1.8 above) to seek enhanced penalties in any subsequent administrative or civil action to show a pattern or course of conduct or a history of non-compliance, and 3) use the violations alleged in Section 2. (Violations Alleged) above and Respondent's

admissions to those violations (Subsection 1.8 above) in any DTSC permitting proceeding, decision, and/or process, including, but not limited to, any process arising from Health and Safety Code section 25200.21.

5.2. Liability. Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare or the environment.

5.3. Penalties for Noncompliance. Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

5.4. Parties Bound. This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

5.5. Captions and Headings. Captions and headings used herein are for convenience only and shall not be used in construing this Consent Order.

5.6. Severability. If any provision of this Consent Order is found by a court of competent jurisdiction to be illegal, invalid, unlawful, void or unenforceable, then such provision shall be enforced to the extent that it is not illegal, invalid, unlawful, void, or unenforceable, and the remainder of this Consent Order shall continue in full force and effect.

5.7. Entire Agreement. This Consent Order contains the entire and only understanding between the Parties regarding the subject matter contained herein and shall supersede any and all prior and/or contemporaneous oral or written negotiations, agreements, representations and understandings and may not be amended, supplemented, or modified, except as provided in this Consent Order. The Parties understand and agree that in entering into this Consent Order, the Parties are not relying on any representations not expressly contained in this Consent Order.

5.8. Counterparts. This Consent Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

5.9. Time Periods. "Days" for the purpose of this Consent Order means calendar days.

5.10. Effective Date. The effective date of this Consent Order is the date it is signed by the Department.

6.0. Authorized Signatory: Respondent warrants and guarantees its signatory below has been duly authorized and has full authority to execute this Agreement on behalf of Respondent.

Original signed by Mark Kasper

Dated: 5-15-18

Mark Kasper
Chief Operating Officer
AERC.COM, Inc.
Respondent

Original signed by Rick Robison

Dated: 5-16-18

Rick Robison
Senior Environmental Scientist (Supervisor)
Enforcement and Emergency Response Division
Department of Toxic Substances Control