

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL



In the Matter of:

Zarc International, LLC
26 South Linden Avenue
South San Francisco, California 94080
CEW ID # 103563

(Respondent).

Docket No. HWCA 20114409

CONSENT ORDER

Health and Safety Code
Section 25187

INTRODUCTION

1.1. Parties. The California Department of Toxic Substance Control (Department) and Zarc International, LLC, a California Limited Liability Corporation, (Respondent) enter into this Consent Order and agree as follows.

1.2. Site. Respondent handles, stores, and collects electronic waste at the following site: 26 South Linden Avenue in South San Francisco, California 95408 (Site).

1.3. Inspection. The Department initiated review of Respondent's documents in November 2009, and issued a Summary of Violations on November 9, 2011.

1.4. Authorization Status. Through 2009, Respondent was an electronic waste collector that supplied collection logs supporting transfers of Covered Electronic Wastes (CEWs) to an Electronic Waste Dismantler in exchange for payment. That dismantler in turn submitted Respondent's logs when filing its claim for payment from the California Department of Resources, Recycling, and Recovery.

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. This Consent Order shall constitute full settlement of the violations alleged below, but does not limit the Department from taking appropriate enforcement action concerning other violations. The Parties, and each of them, agree that this Consent Order, and all the terms contained herein, are fair, reasonable, and in the public interest. 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 right to a hearing in this matter.

1.8. Admissions. By entering into this Consent Order, Respondent admits committing the violations alleged in this Consent Order. Respondent had unwittingly committed the violations due to the incorrect assumption that a monitor can replace another monitor if they were both collected from California sources.

VIOLATIONS ALLEGED

2.1. The Department of Toxic Substances Control alleges the following violations of California Health and Safety Code section 25189.2(a) in that Respondent made a total of 1,104 false log entries or representations, namely the incorrect collection dates and incorrect sources of the particular CEWs transferred, on documents used for the purpose of Compliance with Chapter 6.5 of the Health and Safety Code for transfers on the 10 dates listed below. Specifically, Respondent's collection logs supporting transfers of Covered Electronic Wastes (CEWs) listed California sources that were actually from collection events that occurred after the time frame of the transfer receipt.

2.1.1. On or after March 29, 2009, Respondent supported its March 27, 2009 transfer of CEWs to Tung Tai Group (Tung Tai) with collection log information from a collection event held at Kragen Auto Parts on March 29, 2009. DTSC staff found that 239 of the 301 names and addresses of residential and business sources listed in the collection log(s) supporting this March 27, 2009 transfer were obtained two days after the transfer to Tung Tai. In submitting those logs, Respondent made 239 false log entries regarding the collection dates and actual sources of the particular CEWs transferred and violated California Health and Safety Code section 25189.2.

2.1.2. On or after May 24, 2009, Respondent supported its May 6, 2009 transfer of CEWs to Tung Tai with collection log information from a collection event held at Westmoor High School on May 24, 2009. DTSC staff found that 26 of the 46 names and addresses of residential and business sources listed in collection log(s) supporting this May 6, 2009, transfer were obtained 18 days after the transfer to Tung Tai. In submitting those logs. Respondent made 26 false log entries regarding the collection dates and the actual sources of the particular CEWs transferred and violated California Health and Safety Code section 25189.2.

2.1.3. On or after May 24, 2009, Respondent supported its May 11, 2009 transfer of CEWs to Tung Tai with collection log information from a collection event held at Westmoor High School on May 24, 2009. DTSC staff found that 37 of the 75 names and addresses of residential and business sources listed in collection log(s) supporting this May 24, 2009, transfer were obtained 13 days after the transfer to Tung Tai. In submitting those logs, Respondent made 37 false log entries regarding the collection dates and the actual sources of the particular CEWs transferred and violated California Health and Safety Code section 25189.2.

2.1.4. On or after May 24, 2009, Respondent supported its May 12, 2009 transfer of CEWs to Tung Tai with collection log information from a collection event held at

Westmoor High School on May 24, 2009. DTSC staff found that 32 of the 64 names and addresses of residential and business sources listed in collection log(s) supporting this May 12, 2009 transfer were obtained 12 days after the transfer to Tung Tai. In submitting those logs, Respondent made 32 false log entries regarding the collection dates and the actual sources of the particular CEWs transferred and violated California Health and Safety Code section 25189.2.

2.1.5. On or after May 24, 2009, Respondent supported its May 14, 2009 transfer of CEWs to Tung Tai with collection log information from a collection event held at Westmoor High School on May 24, 2009. DTSC staff found that 36 of the 72 names and addresses of residential and business sources listed in collection log(s) supporting this May 14, 2009, transfer were obtained 10 days after the transfer to Tung Tai. In submitting those logs, Respondent made 36 false log entries regarding the collection dates and the actual sources of the particular CEWs transferred and violated California Health and Safety Code section 25189.2.

2.1.6. On or after May 31, 2009, Respondent supported its May 18, 2009 transfer of CEWs to Tung Tai with collection log information from a collection event held at Fairmount Elementary School on May 31, 2009. DTSC staff found that 21 of the 69 names and addresses of residential and business sources listed in collection log(s) supporting this May 18, 2009, transfer were obtained 13 days after the transfer to Tung Tai. In submitting those logs, Respondent made 21 false log entries regarding the collection dates and the actual sources of the particular CEWs transferred and violated California Health and Safety Code section 25189.2.

2.1.7. On or after October 11, 2009, Respondent supported its August 12, 2009 transfer of CEWs to ECS Refining (ECS) with collection log information from a collection event held at Fairmount Elementary School on October 11, 2009. DTSC staff found that 112 of the

115 names and addresses of residential and business sources listed in collection log(s) supporting this August 12, 2009, transfer were obtained 60 days after the transfer to ECS. In submitting those logs, Respondent made 112 false statements regarding the collection dates and the actual sources of the particular CEWs transferred and violated California Health and Safety Code section 25189.2.

2.1.8. On or after October 11, 2009, Respondent supported its August 26, 2009 transfer of CEWs to ECS Refining (ECS) with collection log information from a collection event held at Fairmount Elementary School on October 11, 2009. DTSC staff found that all of the 131 names and addresses of residential and business sources listed in collection log(s) supporting this August 26, 2009, transfer were obtained 46 days after the transfer to ECS. In submitting those logs, Respondent made 131 false log entries regarding the collection dates and the actual sources of the particular CEWs transferred and violated California Health and Safety Code section 25189.2.

2.1.9. On or after November 1, 2009, Respondent supported its September 15, 2009 transfer to ECS Refining (ECS) with collection log information from a collection event held at the Crocker Amazon Playground on November 1, 2009. DTSC staff found that all of the 144 names and addresses of residential and business sources listed in collection log(s) supporting this September 15, 2009, transfer were obtained 47 days after the transfer to ECS. In submitting those logs, Respondent made 144 false log entries regarding the collection dates and the actual sources of the particular CEWs transferred and violated California Health and Safety Code section 25189.2.

2.1.10. On or after November 15, 2009, Respondent supported its October 12, 2009 transfer of CEWs to ECS Refining (ECS) with collection log information from a collection event held on 30th Avenue between Ortega and Pacheco Streets in San Francisco, California, on November 15, 2009. DTSC staff found that 316 of the 324 names and addresses of

residential and business sources listed in collection log(s) supporting this October 12, 2009, transfer were obtained 34 days after the CEWs were transferred to ECS. In submitting those logs, Respondent made 316 false log entries regarding the collection dates and the actual sources of the particular CEWs transferred and violated California Health and Safety Code section 25189.2.

2.2. The Department of Toxic Substances Control alleges that Respondent violated California Code of Regulations, title 22, section 66273.32(d)(1) in that on or about March 1, 2012, Respondent handled more than 220 pounds of e-waste in 2011, but failed to submit its annual handler notification as required under that section.

SCHEDULE FOR COMPLIANCE

3.1 Respondent has returned to compliance with respect to the violations noted above, and shall continue to comply with the following:

3.1.1 Prior to any further transfer of CEWs intended for inclusion in the Electronic Waste Recycling Program, Respondent shall implement procedures and practices designed to ensure the collection logs contain the names of the California Sources actually discarding the CEWs, and confirm that the source is a California address, and that the logged California address is current. On its own initiative, Respondent has already implemented its newly designed and developed software and improved tracking process (on file at DTSC) for all CRTs and televisions, and CEWs. Respondent has also carefully avoided transferring CEWs to vendors who would be seeking reimbursement from the State while this matter has been pending.

3.1.2 As of the Effective Date of this Order, Respondent shall operate in a manner that prevents recurrences of the violations alleged herein.

3.1.3 Respondent shall submit its annual and other required reports or copies timely as required under California Code of Regulations, title 22, section 66273.32(d)(1).

3.1.4 Respondent shall pay a total of \$50,000 as an administrative penalty at the times and as specified in Section 4 (Payments) of this Consent Order.

3.2. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Enrique Baeza
Office of Criminal Investigations, MS-23A
Department of Toxic Substances Control
1001 I Street
P. O. Box 806
Sacramento, California 95812-0806

3.3. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

3.4. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

3.7. 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 further actions as are necessary to protect public health or welfare or the environment.

3.8. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

3.9. Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all monitoring, and other data generated by

Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

3.10. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph (Parties Bound) in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

3.11. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

3.12. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS

4.1. The Department has reviewed Respondent's financial information in support of its claimed inability to pay the full penalty assessed, and based on that review, has agreed to the reduced penalty figure in this Consent Order. By signing below, Respondent certifies that it is presently unable to pay the full penalty assessed of over \$83,000, because it sustained losses of over \$70,000 associated with the transfers and collection events related to these violations. Because of the length of the payment schedule under this Consent Order, Respondent will be able to return to normal daily operations.

4.2. By July 31, 2012, Respondent shall pay the Department the first monthly installment to be applied to the total of \$50,000 in administrative penalties as follows: For July and August of 2012, a monthly installment of \$1000 shall be due on the last day of each month. From September 2012 forward, through and including August 2014, a monthly installment of \$2000 shall be due on the last day of each month until the total penalty is paid in full. Prepayments are acceptable and encouraged.

4.2.1. Respondent's check shall be made payable to Department of Toxic Substances Control, shall be annotated "Docket No. HWCA 20114409", and shall be delivered together with the attached Payment Voucher to:

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

4.2.2. A photocopy or PDF copy of the check shall be sent both:

To: Enrique Baeza
Office of Criminal Investigations, MS-23A
Department of Toxic Substances Control
1001 I Street
P. O. Box 806
Sacramento, California 95812-0806
Enrique.Baeza@dtsc.ca.gov and

To: Vivian Murai
Office of Legal Counsel, MS-23A
Department of Toxic Substances Control
1001 I Street
P. O. Box 806
Sacramento, California 95812-0806
Vivian.Murai@dtsc.ca.gov

4.2.3. If Respondent fails to make any 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.

OTHER PROVISIONS

5.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

5.2. 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.

5.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, 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.

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

5.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

AGREED:

Dated: 7/26/2012



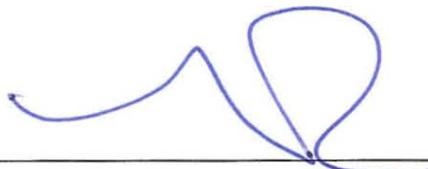
Signature of Respondent's Representative
Zarc International, LLC

RANDY LY, MANAGING PARTNER

Typed/Printed **Name** and **Title** of Respondent's
Representative

AGREED AND ORDERED:

Dated: July 30, 2012



Enrique Baeza
Supervising Criminal Investigator II
Office Criminal Investigations
Department of Toxic Substances Control

Payment Voucher