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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 10

In the Matter of:

METRO METALS CORPORATION
204 Woodbine Avenue
Northport, New York 11768

and

AVISTA RECYCLING, INC.
315 Holcombe Avenue, N.
Litchfield, Minnesota 55355

Respondents

Proceeding under Section 3008(a) of the
Resource Conservation and Recovery
Act, 42 U.S.C. § 6928(a)

Docket No. RCRA-10-2011-0040

**COMPLAINT,
COMPLIANCE ORDER, AND
NOTICE OF OPPORTUNITY
FOR HEARING**

I. PRELIMINARY STATEMENT

1.1 This Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Order”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 3008(a) of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6928(a), and the Consolidated Rules of Practice Governing the

2.5 States, including Minnesota, are not authorized to implement the RCRA hazardous waste export requirements found at 40 C.F.R. Part 262, Subparts E and H because of the federal government's special role in foreign policy matters. Specifically, EPA has retained the authority to transmit export information to foreign countries through the U.S. Department of State and to transmit Acknowledgement of Consent to the exporter. However, Minnesota has incorporated requirements pertaining to the export of hazardous waste into its regulations found at MAR 7045.0302 and requires that the Commissioner of the Minnesota Pollution Control Agency receive prior notification of a person's intent to export a hazardous waste from Minnesota to a foreign destination.

2.6 Regulations promulgated pursuant to HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA carries out HSWA requirements and prohibitions in authorized states until EPA authorizes the state to do so.

2.7 The conditional exclusion from the definition of solid waste for cathode ray tubes ("CRTs") exported in accordance with the requirements of 40 C.F.R. § 261.40 was promulgated pursuant to HSWA authority. EPA has not authorized Minnesota to implement the CRT conditional exclusion in 40 C.F.R. § 261.40.

2.8 Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), if EPA determines that a person has violated any requirement of Subtitle C of RCRA, Sections 3001-3023e of RCRA, 42 U.S.C. §§ 6921-6939e, EPA may issue an order to require compliance immediately or within a specified time.

2.9 Section 3006 of RCRA, 42 U.S.C. § 6926, provides that authorized state hazardous waste programs are carried out under Subtitle C of RCRA. Therefore, a violation of any requirement of an authorized state hazardous waste program is a violation of a requirement of Subtitle C of RCRA.

2.10 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 “hazardous wastes.” These regulations are set forth in 40 C.F.R. Part 261.

2.11 Pursuant to 40 C.F.R. § 261.2, a “solid waste” is any discarded material that is not otherwise excluded by regulation.

2.12 Pursuant to 40 C.F.R. §§ 261.4(a)(22)(ii) and 261.40, used, intact CRTs exported for recycling are solid wastes if they are speculatively accumulated or the exporter fails to notify EPA of an intended export sixty (60) days before the CRTs are scheduled to leave the United States, or the exporter fails to obtain an Acknowledgement of Consent from the receiving country, which must accompany the shipment. Persons who export used, intact CRTs for reuse pursuant to the conditional exclusion from the definition of solid waste must send a one-time notification to EPA documenting the person’s intent to export used, intact CRTs for reuse, and must retain normal business records associated with these activities demonstrating that each shipment will be reused for at least three years from the date of export, pursuant to 40 C.F.R. § 261.41.

2.13 Section 3002 of RCRA, 42 U.S.C. § 6922, requires EPA to establish standards applicable to generators of hazardous wastes. These standards are codified at 40 C.F.R. Part 262 and include requirements such as determining whether a waste is hazardous, managing waste in proper containers, labeling and dating containers, inspecting waste storage areas, training, and planning for emergencies. Minnesota has adopted comparable requirements that are part of its authorized hazardous waste management program and codified at MAR 7045.0025 *et seq.*

2.14 Section 3017 of RCRA, 42 U.S.C. § 6938, authorizes EPA to promulgate regulations necessary to prevent the unauthorized export of hazardous waste. Such regulations are set forth in 40 C.F.R. §§ 262.50-58 and 262.80-89. 40 C.F.R. § 262.52 prohibits exports of hazardous waste without: (a) notification to EPA of intent to export as required under 40 C.F.R. § 262.53; (b) consent of the receiving country; (c) a copy of the EPA Acknowledgment of Consent to the shipment attached to the manifest (or shipping paper for exports by water [bulk shipment]); and (d) the shipment conforming to the terms of the receiving country's consent.

III. GENERAL AND FACTUAL ALLEGATIONS

3.1 Respondent Metro Metals is a Canadian corporation registered to do business in the state of New York, and doing business in the state of Minnesota.

3.2 Metro Metals is a "person," as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and MAR 7045.0020, Subpart 66.

3.3 Respondent Avista Recycling is a domestic corporation incorporated under the laws of the state of Minnesota, with its principal place of business located at 315 Holcombe Ave. N., Litchfield, Minnesota 55355.

3.4 Avista Recycling operates a facility at 7900 Excelsior Blvd., Suite 700, in Hopkins, Minnesota (the "Avista Facility") where used electronic equipment that has been discarded by the original owners are collected and stored.

3.5 Avista Recycling is a "person," as that term is defined by Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and MAR 7045.0020, Subpart 66.

3.6 Metro Metals engages in the business of arranging for the export of used electronic equipment and parts, including color computer monitors. These computer monitors contain CRTs.

3.7 Between November 22 and November 25, 2010, approximately 913 used color computer monitors that had been collected and stored at the Avista Facility were loaded into shipping container number CMAU5485378 (also identified as ITN# 20101129009304), hereinafter referred to as the "Container."

3.8 The 913 monitors in the Container are of assorted makes and models. All of them contain CRTs. Some of the monitors have broken plastic casings. All of the monitors have severed power cords, and are therefore no longer fit for reuse. The 913 monitors weigh approximately 30,000 pounds (13,607.77 kilograms).

3.9 Metro Metals completed a Customs Shipper's Export Declaration Form for the Container, indicating that arrangements had been made to export the contents from the Port of Seattle, Washington, via ship to Vietnam on December 6, 2010. The contents of the shipment were described on the Export Declaration Form as "plastic scrap."

3.10 Prior to making arrangements for the export of the Container on December 6, 2010, neither Respondent had provided notice to EPA of its intent to export the CRTs to Vietnam in accordance with the provisions of 40 C.F.R. § 261.39(a)(5), nor was the consent of Vietnam to receive the materials provided to EPA.

3.11 The Container was intercepted by U.S. Customs and Border Protection agents for inspection before it could leave the U.S. for its intended destination in Vietnam. EPA inspected the Container on December 10, 2010, at the Port of Seattle, Washington.

3.12 The 913 CRTs in the Container are discarded materials, are waste-like in their character and appearance, and are in fact being managed as scrap material.

3.13 The 913 CRTs in the Container are solid wastes because Respondents did not notify EPA of their intent to export these used intact CRTs sixty (60) days prior to the initial shipment being shipped off-site, and EPA did not receive consent from Vietnam to receive the container, as required by the conditional exclusion at 40 C.F.R. § 261.39(a)(5).

3.14 The 913 CRTs in the Container are solid wastes, as that term is defined by 40 C.F.R. § 261.2(a)(1) and MAR 7035.0300, Subpart 100.

3.15 The CRTs included in the Container constitute “hazardous waste” as defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and 40 C.F.R. §§ 260.10 and 261.3, and “hazardous waste” as defined in MAR 7045.0131 because color computer monitors each 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 C.F.R. § 261.24(b) and MAR 7045.0131, Subpart 8). In addition, CRTs often contain mercury, cadmium, and arsenic.

IV. VIOLATIONS

4.1 MAR 7045.0020, Subpart 31, defines a “generator” as any person, by site, whose act or process produces an identified or listed hazardous waste, or whose act first causes a hazardous waste to become subject to regulation.

4.2 MAR 7045.0206, Subpart 2, defines a “large quantity generator” as a generator who, in a calendar month, generates 1,000 kilograms of hazardous waste or more.

4.3 Pursuant to MAR 7045.0205, Subpart 1, generators of hazardous waste in the state of Minnesota are subject to the requirements of MAR 7045.0205 through 7045.0325.

4.4 Respondents’ actions first caused the waste CRTs in the Container to be subject to regulation as a hazardous waste when they collected, prepared, and offered the CRTs for transport and disposal in Vietnam on or around November 25, 2010.

4.5 Respondent Metro Metals is a “generator” as that term is defined by MAR 7045.0020, Subpart 31, and a “large quantity generator” as that term is defined by MAR 7045.0206, Subpart 2. 4.6

4.6 Respondent Avista Recycling is a “generator” as that term is defined by MAR 7045.0020, Subpart 31, and a “large quantity generator” as that term is defined by MAR 7045.0206, Subpart 2.

COUNT 1: Failure to Determine if a Waste is Hazardous.

4.7 MAR 7045.0214 requires any person who produces a waste within the state of Minnesota or any person who produces a waste outside the state of Minnesota that is managed within the state of Minnesota, to evaluate the waste to determine if it is hazardous within 60 days of initially generating the waste.

4.8 Respondents did not, within 60 days of initially generating the 913 waste CRTs on or around November 25, 2010, determine whether the waste was hazardous waste.

4.9 Respondents’ failure to determine if the 913 waste CRTs were hazardous waste is a violation of MAR 7045.0214.

COUNT 2: Failure to Prepare a Hazardous Waste Manifest.

4.10 MAR 7045.0261, Subpart 1 requires a generator who transports or offers hazardous waste for transport for off-site treatment, storage, or disposal to prepare a manifest in accordance with the requirements of the appendix to 40 C.F.R. Part 262 before transporting the waste off-site.

4.11 Respondents offered hazardous waste in the Container for transport on or around November 25, 2010, without preparing a manifest to accompany the shipment.

4.12 Respondents' failure to prepare a manifest for the hazardous waste in the Container is a violation of MAR 7045.0261, Subpart 1.

COUNT 3: Failure to Comply with Pretransport Requirements for Hazardous Waste.

4.13 MAR 7045.0270, Subpart 4 requires a generator, before transporting hazardous waste or offering hazardous waste for transportation off-site, to package the waste in accordance with the applicable requirements of the U.S. Department of Transportation ("DOT") regulations on packaging specified at 49 C.F.R. Parts 173, 178, 179, and 180.

4.14 MAR 7045.0270, Subpart 5 requires a generator, before transporting or offering hazardous waste for transportation off-site, to label each package in accordance with the applicable DOT regulations on hazardous materials specified at 49 C.F.R. Part 172, Subpart E.

4.15 MAR 7045.0270, Subpart 6 requires a generator, before transporting or offering hazardous waste for transportation off-site, to placard or offer the initial transporter the appropriate placards according to DOT regulations for hazardous materials specified at 49 C.F.R. Part 172, Subpart F.

4.16 Respondents offered for transport hazardous waste in the Container without identifying the contents of the Container as hazardous waste. Respondents did not package, label, placard, or offer appropriate placards for, the hazardous waste in accordance with applicable DOT regulations.

4.17 Respondents' failure to properly package, label, and placard the hazardous wastes included in the Container in accordance with the above-referenced DOT regulations is a violation of MAR 7045.0270, Subparts 4 through 6.

COUNT 4: Failure to Notify EPA of Intent to Export a Hazardous Waste.

4.18 40 C.F.R. § 262.51 and MAR 7045.0020, Subpart 72a define the term "primary exporter" as any person who is required to originate the manifest for a shipment of hazardous waste in accordance with 40 C.F.R. Part 262, Subpart B, or equivalent state provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent, and any intermediary arranging for the export.

4.19 40 C.F.R. § 262.52 prohibits exports of hazardous waste from the U.S. without: (a) notification to EPA of intent to export as required under 40 C.F.R. § 262.53; (b) consent of the receiving country; (c) a copy of the EPA Acknowledgment of Consent to the shipment attached to the manifest (or shipping paper for exports by water [bulk shipment]); and (d) the shipment conforming to the terms of the receiving country's consent.

4.20 MAR 7045.0302 prohibits exports of hazardous waste to a foreign country from Minnesota unless the export complies with the notification and consent requirements specified at MAR 7045.0302, Subpart 2.

4.21 Metro Metals is a "primary exporter" as that term is defined in 40 C.F.R. § 262.51 and MAR 7045.0020, Subpart 72a.

4.22 Avista Recycling is a “primary exporter” as that term is defined in 40 C.F.R. § 262.51 and by MAR 7045.0020, Subpart 72a.

4.23 Respondents failed to notify EPA of their intent to export the hazardous waste in the Container prior to their attempted export to Vietnam scheduled for December 6, 2010.

4.24 Respondents failed to notify the Commissioner of the Minnesota Pollution Control Agency of their intent to export the hazardous waste in the Container prior to their attempted export to Vietnam scheduled for December 6, 2010.

4.25 Respondents’ failure to provide notice to EPA of their intention to export a hazardous waste at least 60 days prior to the export, in accordance with the procedures established in 40 C.F.R. § 262.53(a) and (b), is a violation of 40 C.F.R. § 262.53.

V. COMPLIANCE ORDER AND PENALTY

5.1 Based on the foregoing findings, Respondents are hereby ordered to:

a. Within ten (10) days of the date this Order becomes a Final Order, Respondents shall notify the Commissioner of the Minnesota Pollution Control Agency that the Avista Facility located at 7900 Excelsior Blvd., Suite 700, in Hopkins, Minnesota, is a large quantity generator of hazardous waste.

b. Within ninety (90) days of the date this Order becomes a Final Order, Respondents shall either: (1) send the 913 CRTs in the Container to a permitted hazardous waste treatment, storage, or disposal facility that has legal authority to accept such hazardous wastes; or (2) export the 913 CRTs in the Container in compliance with the requirements of

40 C.F.R. Part 262, Subparts E and F, and all applicable state requirements, to a receiving facility in a foreign country that has legal authority to accept such hazardous wastes from the U.S., and expresses its consent to receive the hazardous waste in accordance with the procedures identified in those regulations.

c. Respondents shall notify EPA within one (1) day in writing or via electronic mail whenever the Container or any of the 913 CRTs are moved to a new location until they have all been remediated in accordance with the terms of Paragraph 5.1(b) of this Order. Respondents shall specify the address where the Container or the monitors are being stored, and provide the name and contact information of the owner or operator of the property. Respondents shall make the Container available for inspection by EPA at any time prior to the completion of the work described in Paragraph 5.1(b) of this Order.

d. Within five (5) days of completion of the remedial actions required by this Order, Respondents shall submit to EPA a Completion Report which details the final disposition of the 913 CRTs in the Container, and provide copies of all documentation necessary to demonstrate the successful completion of the remedial actions.

5.2 The information requested in this Order is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.*

5.3 Respondent shall submit any information required by this Order to:

Xiangyu Chu, Compliance Officer
U.S. Environmental Protection Agency Region 10
Office of Compliance and Enforcement
1200 Sixth Avenue, Suite 900
Mail Stop: OCE-127
Seattle, Washington 98101
chu.xiangyu@epa.gov

5.4 Complainant requests an assessment of penalties for violations of the requirements cited in Section IV of this Order, as provided by Section 3008 of RCRA, 42 U.S.C. § 6928, in an amount of **thirty-one thousand six-hundred dollars (\$31,600)**.

5.5 After this Order becomes a Final Order, if Respondents fail comply with the requirements of the Final Order within the time specified in Paragraph 5.1 above or to pay any penalty assessed in the Final Order, EPA may seek an assessment 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, in accordance with Section 3008(a) or 3008(c) of RCRA, 42 U.S.C. § 6928(a) or (c).

5.6 This Order shall be effective on the date that a Final Order is issued or the date that this Order becomes a Final Order by default pursuant to RCRA § 3008(b), 42 U.S.C. § 6928(b).

VI. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

6.1 Under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b), and 40 C.F.R. § 22.15, Respondents have a right to request a hearing on the issues raised in this Order. Any such

hearing would be conducted in accordance with 40 C.F.R. Part 22. **A request for a hearing must be incorporated in a written answer filed with the Hearing Clerk within thirty (30) days of service of this Order. In their answer(s), Respondents may contest any material fact contained in the Order.** The answer shall directly admit, deny, or explain each of the factual allegations contained in the Order and shall state: (1) the circumstances or arguments alleged to constitute the grounds of defense; (2) the facts that Respondents intend to place at issue; and (3) whether a hearing is requested. Where Respondents have no knowledge as to a particular factual allegation and so state, the allegation is deemed denied. Any failure of Respondent to admit, deny, or explain any material fact contained in the Order will constitute an admission of that allegation.

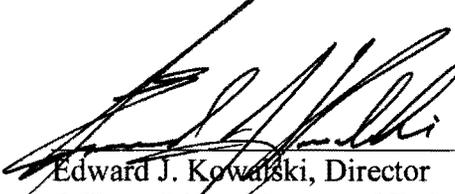
Respondents' answer(s) must be sent to:

Carol Kennedy, Regional Hearing Clerk
EPA Region 10
1200 Sixth Ave., Suite 900
Mail Stop: ORC-158
Seattle, WA 98101
Tel: 206-553-0242

6.2 Pursuant to 40 C.F.R. § 22.37(b) this Order, including the assessment of a civil penalty of \$31,600, shall automatically become a Final Order unless, no later than

thirty (30) days after the Order is served, the Respondent requests a hearing pursuant to 40 C.F.R. § 22.15.

FOR COMPLAINANT U.S. ENVIRONMENTAL PROTECTION AGENCY:



Edward J. Kowalski, Director
Office of Compliance and Enforcement
EPA Region 10

Dated: 2/10/2011

PARTY DESIGNATED TO RECEIVE SERVICE ON BEHALF OF THE COMPLAINANT:

Shirin Venus, Assistant Regional Counsel
EPA Region 10
1200 Sixth Ave., Suite 900
Mail Stop: ORC-158
Seattle, WA 98101
Tel: 206-553-4194

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING **In the Matter of: Metro Metals Corporation and Avista Recycling, Inc., DOCKET NO.: RCRA-10-2011-0040** was filed with the EPA Region 10 Regional Hearing Clerk on February 10, 2011.

On February 10, 2011 the undersigned certifies that a true and correct copy of the document was hand delivered to:

Shirin Venus, Esquire
Office of Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document, as well as a copy of the Consolidated Rules of Practice, was sent on February 10, 2011, by means of United Parcel Service (UPS) express delivery with delivery confirmation requested, to:

Mr. Nat Levine, Registered Agent
Metro Metals Corporation
204 Woodbine Ave.
Northport, NY 11768

Ms. Clara Chan
Metro Metals Corporation
2343 Brimely Road Suite 823
Toronto, Ontario M1S 3L6 CANADA

Mr. John Nordwall
Avista Recycling, Inc.
315 Holcombe Ave., N.
Litchfield, MN 55355

DATED this 10 day of February 2011.



Signature

Print Name: MELBA I. WELLS

EPA Region 10