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September 29, 2010

Tina Artemis
Office of Regional Counsel
U.S. EPA REGION 8 OFFICE
1595 Wynkoop Street
Denver, CO 90202-1129

VIA FEDERAL EXPRESS

Re: *In the Matter of: Metal Management West, Inc.*; EPA Docket No. CAA-08-2010-0017

Dear Ms. Artemis:

Enclosed are an original and one copy of Metal Management West, Inc.'s Answer in the above-referenced matter. Per our conversation on September 29, 2010, in lieu of mailing us a file-stamped copy, please send via e-mail a PDF copy of the file-stamped Answer to the following people:

Barton D. Day – bdav@polsinelli.com
Michael C. Ford – mford@polsinelli.com

Maribeth M. Klein – mklein@polsinelli.com
Teresa Simons – tsimons@polsinelli.com

Thank you for your assistance in this matter.

Sincerely,

POLSINELLI SHUGHART PC

Teresa "Terry" Simons
Legal Assistant to Maribeth M. Klein

/ts
Enclosures

cc: Metal Management West, Inc. (w/enclosure)

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Attorneys for Metal Management West, Inc.

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

<hr/>)	
IN THE MATTER OF:)	
)	
METAL MANAGEMENT WEST, INC.)	Docket No. CAA-08-2010-0017)	
3260 WEST 500 SOUTH)	
SALT LAKE CITY, UT 84104,	ANSWER)	
)	
Respondent.)	
<hr/>)	

COMES NOW Respondent, Metal Management West, Inc., by and through its counsel, and in Answer to the Administrative Complaint states as follows:

INTRODUCTION (JURISDICTION)

1. Respondent admits the truth of the allegations made in Paragraph 1 of the Complaint.
2. Respondent lacks sufficient knowledge to either admit or deny the truth of the allegations made in Paragraph 2 of the Complaint.
3. Respondent lacks sufficient knowledge to either admit or deny the truth of the allegations made in Paragraph 3 of the Complaint.

4. Respondent denies the truth of the allegations made in Paragraph 4 of the Complaint as set forth in Paragraphs 13 through 19 below. Respondent admits that EPA is alleging that Respondent violated rules promulgated under subchapter IV, Stratospheric Ozone Protection of the Clean Air Act (CAA) and that the rules codified at 40 C.F.R. Part 82, Subpart F are authorized by Section 608 of the CAA.

5. Respondent denies the truth of the allegations made in Paragraph 5 of the Complaint as set forth in Paragraphs 20 through 29 below. Respondent admits that EPA is alleging that Respondent violated the CAA by failing to meet “required practices” with respect to the disposal of appliances and small appliances by either performing or verifying prior refrigerant recovery from such appliances and small appliances and admits that the CAA authorizes the assessment of a civil penalty for violations of subchapter VI of the CAA and any rule promulgated under subchapter VI.

6. Respondent does not believe that Paragraphs 6 through 9 of the Complaint constitute allegations requiring a response.

7. Respondent does not believe that Paragraph 10 constitutes allegations requiring a response and further avers that the Federal Regulations cited in Paragraph 10 speak for themselves.

GENERAL ALLEGATIONS

8. Respondent admits the truth of the allegations made in Paragraph 11 of the Complaint.

9. Respondent admits the truth of the allegations made in Paragraph 12 of the Complaint.

10. Respondent admits the truth of the allegations made in Paragraph 13 of the Complaint.

11. Respondent admits the truth of the allegations made in Paragraph 14 of the Complaint.

12. Regarding Paragraph 15, Respondent admits that on September 13, 2006, EPA sent a CAA § 114 Request for Information to Respondent but has no knowledge regarding when EPA received Respondent's Response. Respondent responded to EPA's September 13, 2006 request on October 19, 2006. Respondent admits that EPA sent a Second Request on November 16, 2006 but has no knowledge regarding when EPA received Respondent's Second Response. Respondent responded to EPA's Second Request on January 11, 2007. Respondent admits that EPA sent a Third Request on April 10, 2007 but has no knowledge regarding when EPA received Respondent's Third Response. Respondent responded to EPA's Third Request on May 23, 2007.

**COUNTS 1-20
(REFRIGERANT DISPOSAL WITHOUT
PRIOR RECOVERY OF REFRIGERANT OR
WITHOUT VERIFYING PRIOR RECOVERY)**

13. Respondent denies the truth of the allegations made in Paragraph 16 of the Complaint as explained in Paragraphs 18 and 19 below.

14. Respondent denies the truth of the allegations made in Paragraph 17 of the Complaint as explained in Paragraphs 18 and 19 below.

15. Respondent denies the truth of the allegations made in Paragraph 18 of the Complaint as explained in Paragraphs 18 and 19 below.

16. Respondent denies the truth of the allegations made in Paragraph 19 of the Complaint as explained in Paragraphs 18 and 19 below.

17. Respondent denies the truth of the allegations made in Paragraph 20 of the Complaint as explained in Paragraphs 18 and 19 below.

18. Respondent disputes that there is sufficient, reliable evidence to establish that Respondent actually received “approximately 32 relatively undamaged household or commercial refrigerators from Wasatch Integrated Waste Management District (Wasatch)” as alleged in Paragraphs 16 through 20 of the Complaint. Any appliances allegedly received by Respondent were likely substantially damaged at the time of delivery such that they did not constitute appliances subject to verification requirements.

19. In accordance with 40 C.F.R. § 82.156(f)(2), Respondent had a contract with Wasatch that required Wasatch to recover, prior to delivery, all refrigerant that had not leaked previously in accordance with EPA regulations.

**COUNTS 21-180
(FAILURE TO PROPERLY VERIFY REFRIGERANT
EVACUATION FROM APPLIANCES AND
MVACS DISPOSED OF BETWEEN
SEPTEMBER 14, 2005, AND SEPTEMBER 14, 2006)**

20. Respondent admits the truth of the allegations made in Paragraph 21 of the Complaint.

21. Respondent denies the truth of the allegations made in Paragraph 22 of the Complaint. The required verification referenced in

Paragraph 21 of the Complaint “must include a signed statement from the person from whom the appliance or shipment of appliances is obtained that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with paragraph (g) or (h) of this section, as applicable. This statement must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered *or a contract that refrigerant will be removed prior to delivery.*” 40 C.F.R. § 156(f)(2) (emphasis added).

22. Respondent lacks sufficient knowledge to either admit or deny the truth of the allegations made in Paragraph 23 of the Complaint as the Complaint fails to define what is meant by or included in the term “Purchase Records.” Respondent admits that during the time period between September 14, 2005 and September 14, 2006, Respondent relied, in part, on documents of the type submitted as Attachment 5 to Respondent’s October 19, 2005 Response to EPA’s September 13, 2006 Request for Information (Attachment 5) to comply with the requirements of 40 C.F.R. § 82.156(f).

23. Respondent lacks sufficient knowledge to either admit or deny the truth of the allegations made in Paragraph 24 of the Complaint as the Complaint fails to define what is meant by or included in the term “Purchase Records.” Respondent admits that the document contained in Attachment 5 does not include the name and address of the person who performed the refrigerant removal and the date such removal was performed.

24. Respondent admits the truth of the allegations made in Paragraph 25 of the Complaint except denies any inference that the estimate

represents the number of appliances actually delivered with refrigerant containing components intact or containing refrigerants.

25. Respondent admits the truth of the allegations made in Paragraph 26 of the Complaint.

26. Respondent denies the truth of the allegations made in Paragraph 27 of the Complaint except Respondent admits that it estimated that approximately 2% of Respondent's customers for the period September 14, 2005 to September 14, 2006 were one-time customers who would have used or executed a document similar to the one in Attachment 5.

27. Respondent denies the truth of the allegations made in Paragraph 28 of the Complaint. Respondent admits that it made the estimates referenced in Paragraphs 22 and 24 above but denies any inference that the estimates represent the number of appliances actually delivered with refrigerant containing components intact or containing refrigerants.

28. Respondent denies the truth of the allegations made in Paragraph 29 of the Complaint. Respondent disputes that there is sufficient evidence to establish that Respondent actually received and/or picked up approximately 160 appliances or small appliances from one-time customers for the period between September 14, 2005 and September 14, 2006 that were in a condition at the time of delivery or pickup such that they constituted appliances subject to verification requirements.

29. Respondent denies the truth of the allegations made in Paragraph 30 of the Complaint. In accordance with 40 C.F.R. § 82.156(f)(2), Respondent had a contract with the alleged one-time customers referred to in

Paragraphs 27 through 30 of the Complaint to recover, prior to delivery, all refrigerant that had not leaked previously in accordance with EPA regulations.

PROPOSED CIVIL PENALTY ASSESSMENT

30. Respondent denies the truth of the allegations made in Paragraph 31 of the Complaint, and denies that the proposed civil penalty has been properly determined as alleged in the preamble to Paragraph 31 of the Complaint. Respondent avers that the text of Section 113 of the CAA, 42 U.S.C. § 7413 and 40 C.F.R. Part 19 speaks for itself. Assuming, *arguendo*, that EPA can establish that Respondent committed any violations of the Clean Air Act as alleged in Paragraphs 16 through 30 of the Complaint, Respondent avers that EPA did not properly apply the factors and criteria mandated by the Clean Air Act and the General Penalty Policy, including Appendix X. For example, EPA failed to consider Respondent's cooperation, good faith efforts to comply, and the litigation risk, and drastically over-estimated the seriousness of the alleged violations, including the potential environmental harm and extent of deviation from EPA's interpretation of the regulatory requirements.

DEFENSES

Counts 1 through 20

1. As explained in Paragraph 18 above, there is insufficient reliable evidence to establish that Respondent actually received 32 appliances subject to verification requirements.

2. Respondent complied with the requirements of 40 C.F.R. § 82.156(f)(2). As explained in Paragraph 19 above, Respondent had a contract

with Wasatch that required Wasatch to recover, prior to delivery, all refrigerant that had not leaked previously in accordance with EPA regulations.

Counts 21 through 180

3. As explained in Paragraph 28 above, there is insufficient evidence to establish that Respondent actually received and/or picked up approximately 160 appliances or small appliances that were subject to verification requirements.

4. Respondent complied with the requirements of 40 C.F.R. § 82.156(f)(2). As stated in Paragraph 29 above, Respondent had a contract with the alleged one-time customers referred to in Paragraphs 27 through 30 of the Complaint to recover, prior to delivery, all refrigerant that had not leaked previously in accordance with EPA regulations.

REQUEST FOR HEARING

Respondent hereby requests a hearing on this matter.

Respondent reserves the right to add additional factual explanations or defenses as additional facts are developed and/or disclosed regarding the allegations in the Complaint.

POLSINELLI SHUGHART PC

By: 

Barton D. Day
Michael C. Ford
Maribeth M. Klein
One East Washington, Suite 1200
Phoenix, AZ 85003

Attorneys for Metal Management West, Inc.

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing were served on September 29, 2010, in the following manner:

Original and one copy by Federal Express to:

Tina Artemis
Regional Hearing Clerk
U. S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Copy by U. S. First Class Mail to Attorneys for Complainant:

Andrew Michael Gaydosh
Assistant Regional Administrator
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
Region 8, Office of Enforcement,
Compliance and Environmental Justice
1595 Wynkoop Street (ENF-L)
Denver, CO 80202-1129
Complainant

Dana J. Stotsky
Senior Enforcement Attorney
Legal Enforcement Program
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
Region 8, Office of Enforcement,
Compliance and Environmental Justice
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Denver, CO 80202-1129

By: 