

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the Matter of)
)
Metro Metals Corp. and Avista Recycling, Inc.) **Docket No. RCRA-10-2011-0040**
)
)
Respondents)

**ORDER TERMINATING ALTERNATIVE DISPUTE RESOLUTION PROCESS
AND RETURNING PROCEEDING TO CHIEF JUDGE**

The Complaint in this proceeding under § 3008 of the Solid Waste Disposal Act, as amended (“RCRA”), 42 U.S.C. § 6928, seeks to recover a penalty from Respondents for failing to comply with hazardous waste regulations concerning the export of hazardous waste. The complaint also seeks an order requiring the proper disposition of certain electronic equipment determined to be hazardous waste.

EPA has issued regulations governing the export of hazardous waste (40 C.F.R §§ 262.50-58 and 262.80-89).¹ These regulations prohibit the export of hazardous waste without (a) notification to EPA of intent to export as required by 40 C.F.R § 262.53; (b) consent of the receiving country; (c) a copy of the EPA Acknowledgement of Consent attached to the manifest (or shipping paper for exports by water (bulk shipment) and (d) shipment conforming to the receiving country’s consent.

Metro Metals Corp is a Canadian Corporation authorized to do business in the State of Minnesota. Metro is engaged in the business of arranging for the export of used electronic equipment and parts including color computer monitors, which contain “CRTs” (Cathode ray tubes).

Avista Recycling is a Minnesota Corporation with a place of business in Litchfield, Minnesota. Avista operates a facility in Hopkins, Minnesota where used electronic equipment, which has been discarded by the original owners is collected and stored. Between November 22 and

¹Because of the foreign policy concerns involved, states have not been authorized to administer and implement requirements relating to the export of hazardous waste. The State of Minnesota has, however, required that the Commissioner of the Minnesota Pollution Control Agency receive prior notification of a person’s intent to export hazardous waste from Minnesota to a foreign destination, Minnesota Administrative Regulations (“MAR” 7045.0302.).

November 25, 2010, approximately 913 used color computer monitors were loaded into a shipping container (No. CMAU 548372). The monitors are of assorted makes and models. All contain CRTs and in total weigh approximately 30,000 pounds. The complaint (§ 3.8) alleges, inter alia, that the monitors all have severed power cords and are therefore, no longer “fit for use”. This is intended to highlight the requirements of 40 C.F.R. § 261.41 (2010), which applies to persons who export used CRTs for reuse.

The complaint alleges, inter alia, that Metro Metals completed a Customs Shipper’s Export Declaration Form on December 10, 2010, indicating that arrangements had been made to export the contents of this container referred above to Vietnam via ship on December 6, 2010. The contents of the container are described as “plastic scrap.” Neither Metro Metals nor Avista Recycling have provided notice to EPA of intent to export the CRTs to Vietnam as required by 40 C.F.R. § 261.39(a)(5) nor was the consent of Vietnam to receive the materials provided to EPA. The container was intercepted by U.S. Customs and Border Patrol Agents 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. The 913 CRTs in the container are solid wastes because Respondents did not notify EPA of these used in tact CRTs 60 days prior to the initial shipments being shipped off-site and EPA did not receive consent from Vietnam to receive the container as required by 40 C.F.R. § 261.39(a)(5). The complaint further alleges that the CRTs are hazardous because each contained an average of four pounds of lead which is above the regulatory level used to classify lead containing wastes as hazardous. Moreover, CRTs often contain mercury, cadmium and arsenic.

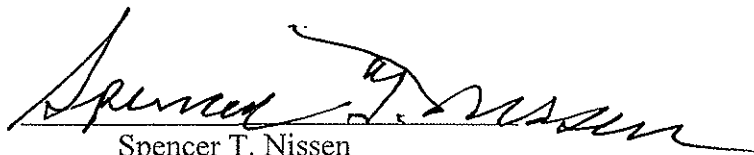
EPA issued the complaint and compliance order at issue herein on February 10, 2011, assessing a penalty of \$31,600 against Respondents and ordering the 913 CRTs to be sent to a permitted hazardous waste treatment storage or disposal facility, or exported in accordance with the requirements of 40 C.F.R Subpart E and F and all applicable state requirements. Avista Recycling, Inc. filed a timely answer and request for hearing, alleging inter alia, that Metro Metals mislead and misrepresented the status of the shipment in question and is the responsible party for any alleged violation of federal or Minnesota law. Metro Metals Corporation failed to file an answer to the complaint.²

In the telecon instituted as part of the ADR process, counsel for Avista Recycling stated that his client was not disposed to take custody of the waste, which for all that appears remains in the container at the Port of Seattle, Washington, and in fact, lacked the financial ability to do so and lacked the financial ability to pay any penalty. Additionally counsel stated that he had been instructed by his client not to incur any further legal expenses.

Although the ADR process expires by its terms on July 1, 2011, no useful purpose would be served by prolonging the ADR period.

²In a telecon with the parties, on June 21, 2011, conducted as part of the ADR process, counsel for complainant stated that the Judicial Officer had issued an order finding Metro Metals in default for failing to file an answer.

Accordingly, the ADR process in this proceeding is terminated and this proceeding is returned to the Chief Judge.



Spencer T. Nissen
Administrative Law Judge

Dated: June 24, 2011
Washington, DC

In the Matter of Metro Metals Corporation and Avista Recycling, Inc., Respondents
Docket No. RCRA-10-2011-0040

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Terminating Alternative Dispute Resolution Process And Returning Proceeding To Chief Judge**, dated June 24, 2011, was sent this day in the following manner to the addressees listed below.



Maria Whiting-Beale
Staff Assistant

Dated: June 24, 2011

Original And One Copy By Pouch to:

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