



turn back the toxic tide

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RE: Docket ID No. EPA-HQ-RCRA- 2011-1014. Revision to the Export Provisions of the Cathode Ray Tube (CRT) Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

Response of Basel Action Network

The Basel Action Network (BAN) is a charitable non-profit organization working at the nexus of hazardous chemicals, trade, the environment and human rights. We are among the foremost experts on these overlapping subjects and on the Basel Convention on the Control of the Transboundary Movement of Hazardous Wastes and Their Disposal and are often called upon in numerous occasions and venues to provide the latest policy developments as well as actual on-the-ground information about illegal and harmful exports and dumping of toxic wastes such as electronic wastes that currently are exported from developed countries such as the United States to developing countries or countries with economies in transition. BAN seeks to prevent the exploitive externalization of costs and harm to weaker economies in avoidance of proper upstream, job providing, waste management of hazardous wastes at source.

With regard to these comments BAN expects to receive a considered response on *both* the specific proposed rule changes outlined in the Federal Register but more importantly in this case, the rules changes that have *not* been considered. Our comments and concerns do not warrant avoidance of our proposed reforms based on the notion that these were not the questions posed to commenters. As the public *was not* involved at the critical decisions about what kinds of reforms of the CRT rule were/are needed, it is incumbent on the EPA to consider all comments on rule revision in order to understand whether the existing proposals is sufficient to address the underlying problem of environmentally harmful exports, from the United States of CRTs and CRT glass to other countries.

PART I. US CRT Rule as Revised Ignores Basel Convention / Encourages Criminal Trafficking in Hazardous Waste

The proposed rules may appear to be an improvement by providing some more transparency, but added transparency is not at all the issue or the answer to the concerns at hand. The concern at hand is whether the United States is willing to ensure that actions taken under their jurisdiction

will prevent illegal and/or harmful trafficking in what has been defined as hazardous waste under international law. The issue is that the US government despite being fully aware of the Basel Convention rules and how they apply to 178 countries around the world fails to address the fact that the exports for which the government seeks to garner more information about are fundamentally illegal under international law. It is not enough to shed more light on illegal activity if you have not at first recognized it as such and addressed it as such *by prohibiting such exports unless they have the consent of the importing country.*

US should never aid, abet, or knowingly allow illegalities to take place in foreign jurisdictions by its own actions or lack of action in its own jurisdiction. For example even though the United States is as yet not a Party to the Basel Convention, they should nevertheless recognize that the vast majority of their trading partners (179 countries) are Parties and thus obliged to follow Basel rules. It is the height of arrogance to set US its own trade rules such as the CRT rule which flies in the face of international communities established trade rules. By doing so, the US contributes to situations that encourage foreign countries or their citizens to violate those rules. This institutionalized ignorance of the Basel Convention requirements for our trading partners is very hard to comprehend because the United States attends all meeting of the Basel Convention and thus should be fully familiar with that body of law.

Indeed, it was the concern of violating other country's laws, which was one of the founding principles the EPA established with stakeholders at the outset of the R2 (Responsible Recycling) Practices negotiations. In those deliberations the principle was do nothing to violate other country's laws. And yet the CRT rule allows this to happen everyday and will continue to do so even after the supposed improvements are made. For this reason it is imperative that the EPA consider a new set of rules which appropriately apply the Basel Convention norms for trading partners that are Basel Parties.

Basel Rules

- CRTs and CRT glass in all forms except those that are tested prior to export as fully functional and bound for a re-use market is considered as hazardous waste under the Basel Convention. *See (Basel Annex VIII (A2010), Basel's Partnership for Action on Computing Equipment's (PACE) draft Guidance on Transboundary Movement of Computing Equipment).*
- The Basel Convention prohibits most importation of internationally defined hazardous wastes from the United States to other countries. That which is not prohibited is controlled by some form of notification and consent procedure.

The reasons for this are as follows:

- The Basel Convention in Article 4, para. 5, does not allow for the Parties to trade with non-Parties unless a special bilateral or multilateral agreement exists that is consistent with the Basel Convention. The US is a non-Party and only has such an agreement for export with the Organization for Economic Cooperation and Development (OECD) countries collectively and with the OECD countries Canada and Mexico separately.

- The Basel Ban Amendment has been adopted by many countries and forbids the export of hazardous wastes from OECD, EU and Liechtenstein (Annex VII countries) to all other countries for any reason.
- Countries (e.g. China) or regions (e.g. Africa) may possess waste trade import prohibitions in law.
- The only exceptions to when used CRTs and CRT glass might not be covered under the Basel Convention are as follows:
 - Cleaned cullet if prepared for direct smelting as a feedstock in a primary CRT smelter could be considered as a non-waste but such a designation would need to first be made by the importing country.
 - Tested functional CRTs, properly packaged and exported to a known re-use market and not subject to recycling or disposal are considered outside of the scope of the Basel Convention.
- In sum, in most cases, the *only* exports of non-functional or untested CRTs and CRT glass from the United States that are legal would be those going to other Basel non-Parties (e.g. Taiwan) or exports that move to the 34 OECD countries and then only for the purposes of recycling and only under the procedures outlined in the OECD Council Decision C(2001)107/FINAL.
- All others moving to the 146 developing countries and countries with economies in transition that are Basel Parties but are not Parties to the OECD decision noted above are illegal. Under the Convention, illegal traffic is considered criminal.

The CRT Rule's distinction between exports for recycling (processed or otherwise) and re-use (if not direct reuse with tested and fully functional devices moving to a direct reuse market), are not legally relevant under the Basel Convention and thus the rules of importing countries. *None* of these forms of used CRTs, for recycling, disposal or further use, processed or not, are seen as commodities under the Basel Convention. They are viewed as hazardous waste. It was therefore inappropriate for the EPA to promulgate its first CRT rule on the basis of these distinctions just as it is inappropriate to perpetuate these distinctions as if US law were the only consideration when trade is involved.

For example, cullet (glass processed by crushing) is not excluded from the Basel Convention. Its presence on Basel Annex VIII means that it is presumed to be hazardous.

Currently, massive amounts of whole CRTs and cullet are exported every day from the United States. Primarily the cullet goes to Korea, India (perhaps via the TDM company in Mexico) or Malaysia for glass-to-glass smelting to make new CRTs. Mostly these move illegally as they lack the designation by the importing country as a non-waste and yet those countries cannot legally trade in hazardous waste with the United States due to our non-Party status.

Likewise exports for repair or refurbishment have been scrutinized at the Mobile Phone Partnership Initiative (MPPI) and the Partnership for Action on Computing Equipment (PACE) under the auspices of the Basel Convention and both have produced guidelines that state that

when exported equipment is sent and the repair involves the discarding of a hazardous part during repair, then that export will in accordance with the provided Decision Tree will be considered as an export of hazardous waste.

The whole CRTs are exported to South East Asia or China and to a lesser degree to Africa and South Asia for the stated purpose of re-use. Even though the US government is unable to collect formalized data on such exports, the flows of these have been demonstrated conclusively by BAN by the techniques of direct observation and container tracking (data available upon request), or by the GAO in their “sting” operations.

Virtually all of these exports described above are illegal in some jurisdiction other than the US. Some of the exporting companies have notified EPA under the current CRT rules and some have not. But even when EPA is notified the two gaping loopholes to avoid “capture” by the law remain:

CRT Rule Loophole Number One

Under the previous and the revised rule, a major loophole is maintained in that "processed CRTs" pursuant to the definition of CRT Processing (i.e., CRT processing means conducting all of the following activities: (1) Receiving broken or intact CRTs; and (2) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and (3) Sorting or otherwise managing glass removed from CRT monitors) is subject only to the speculative accumulation requirements. Exporters of such materials *are not* subject to the export notice requirements of 40 CFR 261.39(a)(5). This is fundamentally contrary to the Basel Convention and consequently the laws of 179 importing countries around the world.

The Basel Convention does not allow that simply crushing and sorting material suddenly very magically makes a hazardous material non-hazardous or a non-waste and it does not allow such glass to be exported without consent from the importing country. Yet under the US CRT revised rule, crushed CRTs could easily be exported without notification, even for dumping purposes or dangerous recycling operations and nobody would be the wiser. Furthermore these US exports are considered to be criminal trafficking in waste as soon as they leave our ports and enter the high seas.

CRT Rule Loophole Number Two

Another way exporters can avoid the law is to simply state that CRT tubes or monitors/TVs are not bound for recycling but for “reuse”. Then it is not necessary for EPA to prior notify and get consent of importing countries before shipment. Yet Basel Parties consider these exports of used CRTs to be hazardous unless the tubes are tested for full functionality and pass that test. They would not allow such imports but nevertheless we exempt these from the Basel norms while knowing full well that the imports are likely illegal. The reforms sought in this revision do little to change the fundamental fact that these exports require strict controls to be legal imports in the recipient countries. EPA buries its head in the sand about this fact.

Exporters of such CRTs bound for export are under the revised rule required to "certify under penalty of law that the CRTs described in this notice are fully functioning *or capable of being functional after refurbishment.*" This begins to look like useful language to control exports

because functional equipment that is tested and labeled and shipped as such is not going to be considered a "waste" under Basel Convention rules. However the addition of the phrase "*or capable of being functional after refurbishment,*" means that ANYTHING can be exported because of course any device is capable of being fully functional after refurbishment. However refurbishment may not be economically or physically achievable in the real situation.

Also the law is mute about circuit boards and other devices going along for the ride. While these devices are technically not CRTs, the exports in reality are often other than just a bare tube -- they include the housing and the ancillary devices. The circuit board is very likely to be considered hazardous waste under Basel due to the presence of lead in the board's solder and very often, as in the Semi-Knock-Down market are not reused but are simply discarded in the importing country as toxic waste. This ancillary import of circuitry is likewise illegal from the standpoint of international law and the domestic laws of a Basel Party country. And yet these exports are likewise not required to be notified and receive consent in accordance with the Basel rules.

The CRT rule has been completely ineffectual in serving to stem the tide of illegal traffic. Indeed it is difficult to determine the purpose of the rule. If it were designed to prevent criminal trafficking it would have surely included a provision prohibiting all exports that are forbidden to import from the standpoint of the importing country and it would have provided a list of all of the 146 countries that the US cannot trade with (ie. Basel Parties not members of the OECD).

Not only does that not exist, but the existing rule does not even ask the exporters to declare which country/ies they intend to ship to so US authorities can check on the legality. It is all too clear that the authors of the CRT rule did not want to reveal obvious illegality. For example the most common destination of exports are China, Vietnam, and Malaysia and the import prohibitions of these countries would be made transparent if the truth of the exports by the exporter were required to be reported.

However the revisions completely miss the mark. It is not more information that will prevent criminal trafficking of CRTs around the world; it is prohibiting the illegal behavior that will do so.

To avoid criminal trafficking in CRTs globally, and uphold the principle of not knowingly violate other country's laws the CRT rule must be fundamentally revised now to clarify which countries have prohibited imports from the United States and to ensure that the US behaves as if it were a Basel Party or an OECD Party when exporting others as applicable. Without first doing this, the CRT Rule remains inappropriate and unacceptable. The currently proposed revisions are indeed insignificant in the face of the continuous ongoing facilitation of criminal trafficking in hazardous waste by the government of the United States. The CRT rule is the obvious place to address this problem.

PART II. EPA's Proposed Revisions

While BAN will comment on the changes proposed (in italics), they will be meaningless without addressing the fundamental problem noted above.

A. Definition of "CRT Exporter"

"To eliminate any potential confusion over who is responsible for fulfilling CRT exporter duties, including submitting the export notices required under 40 CFR 261.39(a)(5)(for CRTs exported for recycling) and 40 CFR 261.41(for CRTs exported for reuse), the Agency is today proposing to add a definition of "CRT exporter" to 40 CFR 260.10. The proposed definition states that a CRT exporter is 'any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.'"

In the case of Executive Recycling of Colorado, the owners claimed that they in fact did not intend to export the CRTs, but rather they claimed their buyer did that without their knowledge and yet BAN has evidence that "this mistake" happened dozens of times. It is far too easy for all sellers to the eventual export market to claim that they are not exporters and had no idea the material they sold would be exported and in this way avoid responsibility for the export. The definition proposed does not solve this serious problem and continues to allow the "generator" of the waste to avoid prosecution. In BAN's view, should a sellers equipment be later exported without intermediary further processing or treatment, all of the entities in the disposal chain having held the equipment even for a short time, including the original generator/seller and the final holder prior to export *must all be considered exporters*. We don't understand why the definition does not include exports for final disposal as well. We would propose the following alternate export definition to read as follows:

BAN Revised Language: "CRT Exporter: any person/s in the United States, including the initiator and all subsequent intermediaries or exporters involved in transactions to sell or transfer used CRTs which later are exported outside the United States or its territories for disposal, recycling or reuse, without any intermediary processing or treatment."

With such a definition, the holder of CRTs will need to conduct their due diligence to know whether their CRTs will be exported or not. If they are, they are culpable for not fulfilling exporter duties under the rule.

B. Proposed changes to the notification required for used CRTs sent for recycling

Many of the exports today going for recycling do not have the consent of the importing country despite the importing country's laws requiring such in accordance with their obligations under the Basel Convention.

While, generally, as noted above, used CRTs are considered hazardous waste under the Convention, it is possible in the view of BAN for Basel Parties to declare the CRT cullet that has been cleaned of phosphors and prepared as a feedstock into a CRT furnace to make new CRTs can be considered to be a non-waste and thus outside of the scope of the Basel Convention. The Basel Competent Authorities of both the exporting and importing countries can only make that determination however. In any case then, exports cannot be allowed by the United States, and still respect the integrity of the laws of importing states without first determining the legality of the import by first notifying and then getting the consent of the importing country. To be legal under the Basel Convention, the countries of transit and import must be notified and give their consent or not on a case-by-case basis prior to transboundary movements. Thus EPA's query based on company reporting on a *yearly basis* is not appropriate with respect to the laws of

importing countries unless those importing countries stipulate that yearly queries/consents are appropriate in a particular case. EPA cannot declare a general consent procedure unilaterally.

The newly proposed yearly reporting requirements (cited below) are not going to provide case-by-case information and thus are not likely to be useful for receiving prior informed consent as required by the Basel Convention (Article 6). Further these reporting requirements are not even applied if the CRTs in question are “processed”. That distinction is not appropriate under the rules of importing countries. It is a fabrication of the US and since we are trying to prevent violations of other country’s laws and not just the US laws in our endeavor with the CRT Rule, this distinction is not appropriate.

“Under today's proposal, the exporter must provide, no later than March 1 of each year, a report summarizing the quantities (in kilograms), frequency of shipment, and ultimate destination(s) (i.e., the facility or facilities where the recycling occurs) of all CRTs exported for recycling during the previous calendar year. Such reports must also include the name, EPA ID number (if applicable), mailing and site address of the CRT exporter, the calendar year covered by the report, and a certification signed by the exporter which states: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

The above formulation must be replaced with the following in accordance with Basel Annex V A in order not to violate the national laws applying Basel in the importing country.

BAN Revised language: “Prior to export the exporter must provide to EPA, a notification stating the reason for export, CRT exporter/s including EPA ID number if applicable, source of CRTs, ultimate destination address and entity, intended carriers and agents, country of import, countries of transit, projected itinerary including points of entry and exit, means of transport, insurance information, description of shipment, type of packaging used, estimated quantity (in kilograms), frequency of shipment if general notification is accepted by all countries concerned, fate or method of disposal, recycling or reuse, copy of contract between exporter and disposer, and finally a certification signed by the exporter which states: "I certify under penalty of law that the used CRTs will be managed in an environmentally sound manner, I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

“Because CRTs are sometimes exported to more than one recycler in the receiving country, we are proposing to replace this language with a requirement that the exporter state the name and address of the recycler or recyclers and the estimated quantity of CRTs to be sent to each facility, as well as the names of any alternate recyclers. In this way, EPA will be able to provide the receiving country with the most accurate information available about the ultimate fate of the CRTs when they reach that country.”

This procedure is not consistent with the Basel process and once again shows that the United States refuses to recognize the rules the rest of the world must abide by. The Basel Convention only allows notifications from one exporter to one consignee, as it should be for proper scrutiny and control. If an exporter does not know whom the consignee is, this should signal a serious problem. This change is not appropriate.

C. Proposed changes to the notification required for used, intact CRTs exported for reuse.

“Since promulgation of this requirement, the Agency has become aware that some CRTs allegedly exported for reuse are actually recycled in the receiving country, sometimes under unsafe conditions.”

Actually BAN had informed the EPA of this fact before promulgation of the standard. In 2005 BAN published the report: “The Digital Dump: Reuse and Abuse in Africa”, and yet the authors of the old CRT Rule chose to ignore this very important information. Once again in the case of this revision, EPA refuses to recognize the serious harm the US policies are perpetuating by intentionally choosing to ignore the Basel Convention and facts on the ground in developing countries.

“Failure to file the notice required for CRTs sent for recycling deprives the Agency of its ability to notify the receiving country about the CRTs to be imported into that country and obtain its consent. In order to require exporters to submit more complete information about the purported reuse of the exported CRTs over a specific period of time, we are proposing to add items to the reuse notice at 40 CFR 261.41 that are modeled on those required in the notice for CRTs exported for recycling.”

It is not clear if EPA has the authority to exercise the prior informed consent procedure and prevent shipments for reuse should there be no consent, under the CRT rule. In any case if they do possess this authority, they should exercise it in *every* instance because, as mentioned above, under the Basel Convention’s guidance prepared under the MPPI and PACE programs, exports for reuse following repair, are likely to be covered under the Basel Convention if they are not fully functional and tested as such. Thus all such shipments should be subject to notification and consent prior to export. And the exports should first require *all* of the information BAN has listed above with respect to notifications for recycling. That information is consistent with what is required of importing countries under their Basel obligations as listed in Basel Annex V A.

“In addition, today’s proposal would replace the one-time notice provision with a requirement that the notice be submitted periodically, to cover exports for reuse expected over a twelve month or lesser period. EPA believes that this additional information in the notice for reuse would greatly improve tracking, and thus better management, of these CRTS that are claimed to be exported for reuse.”

Again, EPA is unwilling to utilize what importing countries legally require. The assumption under the Basel Convention is that countries require a case-by-case notification and not a general notification every 12 months. Under the Basel Convention, general notifications are only allowed when all Parties agree to it in advance (See Article 6). BAN *does* agree that the notifications must be sent to the EPA federal Office of Enforcement and Compliance Assurance and not to the EPA Regional headquarters.

“The Agency solicits comment on whether the proposed notice could effectively contain fewer items of information, or whether the goal could be accomplished in some other manner. In addition, the Agency requests comment on whether the proposed notice should be sent to the Regional Administrator (as is the case with 40 CFR 261.41) or to EPA Headquarters, where notices for CRTs exported for recycling are currently sent. The Agency believes that sending both types of notices to EPA Headquarters would facilitate retention and effective tracking of such notices, and will also be easier for those exporters who are required to submit notices for both reuse and recycling. However, we solicit comment on whether there are benefits in sending these notices to the EPA Regions.”

BAN reiterates that all such notices include more information and not less and the correct information so that they are consistent with what is required under Basel (Annex V A). All notices should go to federal headquarters, as that is what is expected by Basel Competent Authorities all over the world.

“The Agency also solicits comment on whether to require exporters of CRTs for reuse to accompany all shipments of such CRTs with copies of the notice submitted pursuant to 40 CFR 261.41. If such a requirement were finalized, the Agency would require such exporters to submit a complete notification to EPA before the initial shipment is intended to be shipped off-site (e.g., 60 days before the planned shipment), so that the exporter would have time to submit a copy of the completed notice with the shipment. In this way, if officials of U.S. Customs examined a shipment of used CRTs exported for reuse, they would be able to quickly obtain more information from the exporter or from EPA, if necessary. The Agency solicits comment on the benefits of such a requirement and whether such benefits would outweigh the costs to the exporter.”

As is required in the Basel Convention, all shipments of used CRTs for reuse or recycling, unless tested as being fully functional must be accompanied by a movement document (Basel Annex V B), containing the following information: exporter, generator, disposer/recycler, carriers, date of shipment, signature of each holder en route, means of transport, general description of the material, information on special handling, type and number of packages, quantity in weight and volume, declaration of truth, declaration of no objection from the transit and importing states after pre-notification, certification by disposer/recycler indicating method of disposal/recycling and the appropriate date of disposal/recycling.

“EPA solicits comment on whether to require specific types of documents to be retained, such as contracts, invoices, and/or shipping documents, and, if so, which documents must be retained.”

BAN believes that documents should be retained for 3 years and should include, all invoices with brokers, shippers, forwarding agents, shipping lines, and truck drivers. All Bills of Lading including intermodal shipping container numbers should also be retained as well as copies of insurance.

“We also solicit comment on whether to require persons who export CRTs for reuse to provide a third-party translation of the documents into English if the documents are written in a language other than English and if EPA requests such a translation.”

Copies in English must be made available as described. But this must be done for all shipments and not just those listed for reuse.

“In addition, we request comment on whether to require persons who export CRTs for reuse to provide contact information on an alternative destination facility for used, intact CRTs that are damaged in transit, or whether to require such persons to send the damaged CRTs back to the CRT exporter.”

In BAN’s view broken equipment should be returned to the sender. This will ensure EPA can have jurisdiction over the final disposal/recycling operation after something has already gone wrong, this is warranted.

“Finally, the Agency also solicits comment on whether to add a requirement to submit annual reports for exporters of used, intact CRTs for reuse. These reports could be identical to the reports proposed for CRTs exported for recycling. They would enable EPA to learn the actual number of CRTs exported for reuse, which may be different from the number estimated in Page 18 of 34 the original notice required under 40 CFR 261.41. EPA requests comment on whether this information would provide benefits which might outweigh the costs of submitting the report.

Annual reports will not be necessary if all of the reporting as described above is done as BAN has described and in accordance with the Basel Convention. EPA computers will be able to process those numbers and produce all manner of comprehensive reports.

D. Other Issues

"Bare" CRTs

“The current definition of "used, intact CRT" in 40 CFR 260.10 means a CRT whose vacuum has not been released. As we stated in the preamble to the 2006 final rule (71 FR 42942), this definition would encompass intact CRTs that are removed from the monitor with the vacuum still intact, even though the plastic housing or casing has been broken and removed. In that preamble, EPA stated that these materials resembled products more than wastes, and therefore should not be considered solid wastes unless disposed. If such "bare" CRTs are exported for reuse (i.e., placement into CRT monitors), they would not be subject to the export requirements of 40 CFR 261.39(a)(5), but would instead be subject to the reuse requirements of proposed 40 CFR 261.41. However, if exported for recycling, (presumably for glass or lead recovery), they would not be eligible for the exclusion in 40 CFR 261.39(c) for processed glass sent to a lead smelter or glass manufacturer because the CRTs have not been processed pursuant to the definition of "CRT processing" in 40 CFR 260.10.”

Once again, EPA is inappropriately applying its own national definitions to exports that impact the international legal landscape, yet are not shared by any other country. This approach is not conducive to legal movements of waste globally and in fact will contribute to criminal activity. The Basel Convention does not make any distinctions between tubes with or without a vacuum. Only material that is fully functional following testing and guaranteed to go to a reuse market are exempt from the Basel Convention. This rule must do likewise for all exports to Basel Parties.

“EPA solicits comment on whether “bare” CRTs removed from the monitor whose vacuum has not been released are likely to be exported for recycling rather than used and whether the regulation needs to be modified to reflect this situation.”

Export of bare tubes for which the vacuum has been released is likely to be only used for recycling. However tubes, bare or otherwise, whose vacuum has not been released and are intact can very well be exported directly to developing countries for recycling as well. There is still a robust market for the plastic housings and the copper yokes for example.

PART III: Enforcement

According to the GAO report of 2008 entitled “EPA Needs to Better Control Harmful U.S. Exports through Stronger Enforcement and More Comprehensive Regulation” the following is stated:

“In recent years, however, irresponsible practices have come to light, prompting EPA to implement notification requirements for any company exporting CRTs. To date, the agency has established no enforcement targets, done no monitoring, conducted only preliminary follow-up of suspected violations, and taken only one enforcement action. Not only do EPA’s present enforcement efforts fall short, but the agency also apparently has no tangible plans to develop more effective ones. Until an enforcement mechanism is developed and effectively implemented, consumers and businesses aiming to be environmentally responsible with their used electronics—particularly CRT monitors and televisions—should be skeptical of some companies that claim to responsibly recycle these devices.”

“We recommend that the Administrator, EPA, identify a timetable for developing and implementing a systematic plan to enforce the CRT rule. This plan should include the basic elements of effective enforcement, such as enforcement targets, monitoring, follow-up of suspected violations, and prosecution.”

The response by EPA to this critique of the GAO has been an appalling disappointment. To our knowledge EPA only has one enforcer assigned to the CRT Rule and that person is only assigned to the matter part-time. Three high-profile cases have been revealed in recent years and not one has led to a prosecution, let alone penalties. These cases involve Executive Recycling in Colorado (2008), Earth e-Cycle in Pennsylvania (2009), and Intercon Solutions in Illinois (2011) all with substantial proof of illegal exports provided to EPA. This is hardly surprising with the lack of resources dedicated to the cause of enforcing the law even when the evidence is handed to EPA by outside sources.

The CRT rule should not be revised unless EPA intends to follow the GAO’s advice and enforce the revised rule. In many ways an unenforced law is worse than no law at all. It instills a lack of respect for all laws and authority.

END