UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.II
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REGIONAL HEARING CLERK

In the Matter of:

Battery Recycling Company, Inc.,
Respondent.

Proceeding Under Section 3008 of the Solid Waste Disposal Act, as amended.

CONSENT AGREEMENT AND FINAL ORDER

Docket No. RCRA-02-2012-7101

PRELIMINARY STATEMENT

This administrative proceeding is being instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by various statutes including the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6901 *et seq.* (collectively these statutes referred to as the "Act" or "RCRA"). The United States Environmental Protection Agency ("EPA") has promulgated regulations governing the handling, management and disposal of hazardous waste at 40 C.F.R. Parts 260-279.

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator of EPA to enforce violations of the Act and the regulations promulgated or authorized pursuant to it. Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance ("Complainant") of EPA, Region 2, has been duly delegated the authority to institute this action.

Pursuant to Section 22.13 of the revised Consolidated Rules of Practice, 40 C.F.R. § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

It has been agreed by the parties that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) is an appropriate means of resolving specified claims against Respondent without further litigation. To that end, the parties have met and held several settlement discussions. This CA/FO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No adjudicated findings of fact or conclusions of law, in either an administrative or judicial forum, have been made. The following constitute EPA's findings of fact and conclusions of law based on information of which Complainant was aware as of December 1, 2011, and the recitation below of such

findings and conclusions is not intended, nor is it to be construed, as Respondent either admitting or denying such findings and conclusions.

EPA FINDINGS OF FACT

1. Respondent is the Battery Recycling Company, Inc., the owner and operator of a facility in Arecibo, Puerto Rico, which operates, *inter alia*, as a secondary lead smelter. Respondent has owned and operated the facility (hereinafter the "Facility") since 1996, and it first undertook secondary lead smelting operations at the Facility at the beginning of 2004.

2. Respondent is, and has been since 1996, a corporation organized pursuant to and existing under the laws of the Commonwealth of Puerto Rico. The Facility is located near the north coast of Puerto Rico, on Puerto Rico (PR) Highway 2 at the 72.2 kilometer marker, in the Cambalache Ward of Arecibo, Puerto Rico.

3. On or about October 31, 1996, Respondent formally requested issuance of an EPA Identification Number for hazardous waste activities it intended to conduct at the Facility, and in response thereto EPA issued the Facility EPA Identification Number PRR000004655.

4. Respondent's operations consist in large part of buying and collecting spent lead acid batteries to recover and resell the lead in large part to battery manufacturers.

5. Approximately 90 to120 employees work at the Facility in three shifts, none of whom works on a part-time basis. The Facility operates 24 hours per day, seven days per week.

6. At the Facility, as part of its operations Respondent accepts approximately 3,000 tons of spent lead acid batteries each month.

7. In the course of Respondent's business operations at the Facility, it "reclaims" (as defined in 40 C.F.R. § 261.1(b)(4)) spent lead acid batteries through a process(es) other than re-generation.

8. At the Facility, as part of its operations, Respondent stages the spent lead acid batteries prior to reclaiming them.

9. At the Facility, as part of its operations, Respondent recycles approximately 75,000 gallons of on specification used oil per month in the lead furnaces and refining kettles used to reclaim the spent lead acid batteries.

10. In the course of its operations at the Facility, Respondent has generated (and continues to generate) "solid waste" (as that term has been defined in Section 1004(27) of the Act, 42 U.S.C. § 6903(27),[1] and 40 C.F.R. §261.2), and "hazardous waste" (as that term has been defined in Section 1004(5) of the Act, 42 U.S.C. § 6903(27), and 40 C.F.R. §261.3).

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[1] Any word or words defined with reference to statutory and/or regulatory provisions are subsequently used throughout this document as so defined.

11. The following are included among the aforementioned solid wastes Respondent has generated (and in some cases continues to generate) in the course of conducting the operations of the Facility:

a) dust generated by air pollution control equipment for the furnaces, *i.e.* dust generated through the capture of both emissions from the smelter's furnaces (furnace flue dust) and emissions generated from lead refining taking place in kettles, such capture occurring in flue gas and dust management systems using baghouse operations (hereinafter, the combined furnace flue dust and refining kettle dust referred to as "baghouse dust");

b) baghouse dust mixed with wet lead oxide and damp lead oxide (this is no longer generated);

c) large particle waste generated in the large particle collectors;

d) plastic chips generated from the crushing and breaking of lead acid batteries in a hammermill or in any other battery breaking operation (which may remain or become contaminated by lead under certain conditions);

e) spent fluorescent, spent high intensity light bulbs and any other spent mercury-containing light bulbs (Respondent currently purchases only fluorescent bulbs containing a low level of mercury, and Respondent has instituted a program for the recycling of all fluorescent bulbs); and

f) personal protective equipment (hereinafter "PPE") that had been used by the employees of the Facility and which became, as a consequence of such use, spent (*i.e.* no longer useful for the original intended purpose of such equipment).

12. At the Facility, spent and/or broken fluorescent bulbs and other mercury-containing lamps had been from time to time in the past discarded as part of ordinary trash in a dumpster.

13. Respondent at the Facility generated, *inter alia*, the following hazardous waste:

a) approximately eight to 10 containers of baghouse dust, each such container capable of holding about 187 gallons, generated per day, which is recycled as part of the Facility's manufacturing process; and

b) a number of tons per month of wastewater treatment sludge generated at the Facility, which sludge is generated from the treatment of, *inter alia*, spent battery acid, collected facility wastewater and stormwater, and laboratory wastes.

14. The aforementioned hazardous waste contained, *inter alia*, lead.

15. On each of the following dates, a duly designated representative(s) of EPA conducted an inspection of the Facility to determine its compliance with applicable statutory and regulatory requirements for, *inter alia*, lead smelting operations: (a) February 23, 2010; (b) July 14, 2010; and (3) March 28, 2011. Such inspections were conducted pursuant to the authority given EPA by Section 3007

of the Act, 42 U.S.C. § 6927.

16. Prior to 2010, in an unknown manner, Respondent disposed of spent high intensity light bulbs generated at the Facility.

17. As of each of the inspection dates (and for a period of time prior and subsequent to each such date), Respondent failed to determine in accordance with 40 C.F.R. § 262.11 (or to have a third party determine on its behalf) whether the aforementioned spent high intensity light bulbs constituted a hazardous waste.

18. Prior to 2010, Respondent failed to determine (or to have a third party determine on its behalf) whether spent fluorescent light bulbs stored and accumulated at the Facility constituted hazardous waste.

19. At the time of each of the inspection dates (and for a period of time prior and subsequent to each such date), Respondent was storing the following hazardous waste in open containers, and hazardous waste was neither being added nor removed from such containers, as follows:

a) baghouse dust had been (but no longer is) stored in open containers inside a covered building, each such container capable of holding 187 gallons;

b) mixtures of baghouse dust, wet lead oxide, and damp lead oxide have previously been stored and otherwise managed in open storage bins;

c) spent nickel-cadmium batteries were stored in a number of large, open, wooden bins; and

d) wastewater treatment sludge that had been generated from, including the treatment of, *inter alia*, spent battery acid, wastewater and stormwater collected at the Facility, and laboratory wastes were stored in open, reinforced bags.

20. In the past, on a regular basis, Respondent moved full, but open, containers of baghouse dust from the site of its generation to the lead storage and staging area, thus having potentially exposed the dispersal and escape of such dust.

21. On a regular basis, Respondent, using a front loader, fed into the Facility's furnaces a mixture of, *inter alia*, baghouse dust, scrap lead and lead oxides in a manner exposing such mixtures to the wind.

22. At the time of the July 14, 2010 inspection, the large steel collection tank inside one baghouse storage building was filled and overflowing with baghouse dust, with such dust covering the floor, walls and curtain of the immediate area as well as covering part of the entry/egress ramp, and these circumstances exposed such baghouse dust to release and dispersal.

23. At the time of the March 28, 2011 inspection, in a baghouse storage building behind the lead smelting operations, baghouse dust covered the floor and walls, and extended to the outside of said building, with visible release.

24. On a regular basis, Respondent at the Facility additionally has generated (and continues to generate) dust containing, *inter alia*, lead through a number of activities that are conducted in structures not fully enclosed, including the following:

a) the storage of lead-containing wastes;

b) the cleaning and maintenance of dust collection systems, *e.g.*, baghouse;

c) the rotation of lead and lead oxide waste piles; and

d) the pouring, moving, and dumping of lead smelting slag and lead refining dross.

25 On a regular basis, other procedures and practices at the Facility have generated dust containing, *inter alia*, lead, including the following:

a) the handling of laundry;

b) the handling and storage of PPE; and

c) the evaporation of washwater and stormwater runoff through open air conveyance pathways (*i.e.* asphalt roadway) and open, flooded soil and earthen pits.

26. Additional methods and means by which dust containing, *inter alia*, lead generated at the Facility from its numerous lead-containing waste and product management operations presented a risk of off-site dispersal and dissemination have included:

a) direct conveyance in stormwater and wastewater off-site releases;

b) wind-blown dust and other fugitive emissions (on-site construction activities may contribute);

c) vehicle movement on and off-site (*e.g.*, dust on tires); and

d) employee transfer of lead dust on personal use items such as clothing, footwear and work boots, both directly and through contamination of personal vehicles.

27. Each of the aforementioned circumstances presented a risk of off-site transport, dispersal, release, escape and dissemination of dust containing, *inter alia*, lead into the environment, including the air and water.

28. The aforementioned processes involved materials that constituted, in whole or in part, hazardous waste or "hazardous waste constituents" (as defined in 40 C.F.R. § 260.10).

29. Wastewater generated in the course of operations at the Facility and treated at the Facility's wastewater treatment plant consisted of (and still consists of), in whole or in part, water that was used and contaminated during the course of the following processes and procedures, or otherwise resulted from:

a) lead-contaminated spent battery acid;

b) the laundering of worker clothing;

c) the washing of PPE, *e.g.*, respirators, hard hats, boots wash station, gloves;

d) the disposal of small quantities of waste chemicals from the on-site laboratory;

e) workers washing their hands at sinks whose effluent is directed to the wastewater treatment plant;

f) workers showering in facilities whose effluent is directed to the wastewater treatment plant;

g) cleaner solvent that had been used for vehicles and equipment in the maintenance area, which solvent consequently became spent;

h) water used to wash into the wastewater treatment system spills of diesel fuel and used oil from, *inter alia*, vehicles and equipment being serviced in the Facility's maintenance area;

i) the washing, cleaning and suppressing of the dust resulting from battery loading, conveyor belt and hammermill operations (including water leaking from such operations), and battery acid conveyance; and

j) water used to wash down, clean and/or suppress dust from various processes, including combined furnace flue and refining kettle dust collection (*i.e.* baghouses), the not fully enclosed lead oxide piles; the not fully enclosed storage and management of the following: wastewater treatment sludge; coke; and residual slag and dross.

30. Prior to at least March 28, 2011, stormwater at the Facility included stormwater from at least the following: a) used oil receiving and storage areas; b) baghouses; and c) the not fully enclosed storage and management of each of wastewater treatment sludge, coke, and slag and dross.

31. Through at least March 28, 2011, wastewater and stormwater runoff from the lead smelting operations at the Facility was discharged to its wastewater treatment plant through stormwater drainage control that was directed into a complex consisting of an open, below-grade sump, collection basin and pump systems.

32. At the time of the February 23, 2010 inspection:

a) the eastern sump/collection basin/pump system was overflowing and releasing wastewater and stormwater; and

b) stormwater and wastewater run-off from around the Facility's smelting furnaces was not being conveyed to the facility's wastewater treatment system but was going directly onto the area soil behind the furnace control room.

33. At the time of the July 14, 2010 inspection, the southern sump/collection basin/pump system was overflowing and releasing wastewater and stormwater.

34. Each of the circumstances alleged above facilitated and promoted the release of stormwater and wastewater into the environment.

35. The aforementioned stormwater and wastewater contained and carried hazardous waste and/or hazardous waste constituents.

36. As a result of the operations at the Facility, Respondent generated a number of tons per month of wastewater treatment sludge as a product of the treatment of, *inter alia*, spent battery acid, collected facility wastewater and stormwater and sundry laboratory wastestreams.

37. The aforementioned wastewater treatment sludge was a hazardous waste containing, *inter alia*, lead and cadmium.

38. At the time of the March 28, 2011 inspection, Respondent was using heavy construction equipment to transfer wastewater treatment sludge out of a holding basin and into a paved area, with said operation occurring in the open and with visible sludge spillage.

39. The aforementioned transfer of wastewater treatment sludge was conducted in such a manner as to risk the escape and dissemination of such sludge into the environment.

40. Respondent accumulated at the Facility the following hazardous wastes: a) baghouse dust; b) mixtures of baghouse dust, wet lead oxide and damp lead oxide; c) spent nickel-cadmium batteries; c) large, industrial, lead-acid batteries; and d) wastewater treatment sludge.

41. The accumulation of the aforementioned hazardous waste occurred without any indication of when the accumulation of such respective waste had begun.

42. The accumulation of the aforementioned hazardous waste occurred without the container or tank (or other type of object holding such waste) being clearly marked or labeled with the words hazardous waste.

43. Respondent accumulated at the Facility hazardous waste, *i.e.* wastewater treatment sludge, for more than 90 days during the period commencing no later than February 1, 2011 and running through (at least) May 12, 2011.

44. Respondent was never granted an exemption to accumulate the aforementioned wastewater treatment sludge for more than 90 days.

45. The accumulation of the wastewater treatment sludge did not indicate when such accumulation began, nor was there any indication where such sludge was held that the contents constituted hazardous waste.

46. Respondent has accumulated large, heavy industrial, lead-acid batteries on the floor of the Facility (under the conveyor system and in the old industrial battery area) prior to Respondent reclaiming them, with no indication of when such accumulation began or the length of such accumulation.

47. Respondent operates at the Facility a wastewater treatment system that conducts acid neutralization (as defined in 40 C.F.R. § 260.10).

48. The aforementioned wastewater treatment system consists, in part, of detention and sedimentation basins and tanks, a sump and pump basins, an acid neutralization portion, a lead precipitation process, a filtration system, a wastewater treatment sludge recovery and removal process, and battery acid accumulation systems and conveyance systems together with ancillary equipment.

49. The treated wastewater is reused for operations at the Facility.

50. The wastewater treatment system at the Facility receives and treats hazardous waste.

51. The wastewater treatment system at the Facility is not an exempt system.

52. Respondent has never met the applicable requirements of Section 3005 of the Act, 42 U.S.C. § 6925, or 40 C.F.R. § 270.1.

53. As of March 28, 2011, Respondent had failed to provide facility personnel responsible for hazardous waste management with classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the Facility's compliance with hazardous waste management regulations mandated by 40 C.F.R. Part 264, nor had Respondent provided the facility personnel with training or instruction on how to effectively respond to emergencies involving hazardous waste.

54. As of March 28, 2011, Respondent had failed to provide an annual review of the training set forth in paragraph 53 of this section, above.

55. As of February 23, 2010, Respondent failed to have prepared a complete contingency plan for the Facility in that none of the plans Respondent had developed up until that time sufficiently incorporated the applicable hazardous waste management requirements and provisions, including the failure to list the home addresses of designated emergency coordinators.

56. In the course of operations at the Facility, Respondent treated lead-contaminated spent battery acid generated at the Facility at the Facility's wastewater treatment plant.

57. As of March 28, 2011, Respondent failed to complete and consequently to put in the Facility's file the Land Disposal Restriction (LDR) notice and certification specified by 40 C.F.R. §§ 268.9(d) and/or 268.7(a)(7) for the aforementioned lead-contaminated spent battery acid.

58. At times prior to January 2011, Respondent disposed of wastewater treatment sludge generated at the Facility from the treatment of, *inter alia*, spent battery acid, at a non-hazardous waste solid waste disposal facility, the Ponce Landfill in Puerto Rico. Respondent had previously done characterizations that showed such waste to be non-hazardous.

59. For the initial shipment to the Ponce Landfill, Respondent failed to provide the LDR notice specified by 40 C.F.R. § 268.7(a)(2).

60. As of March 28, 2011, the wastewater treatment sludge referenced in paragraph 58, above, exceeded the applicable land disposal restriction standard set forth in Table 1 of 40 C.F.R. § 268.40 (*i.e.* 0.75 mg/L).

61. As a consequence of the aforementioned, Respondent sent off-site for land disposal wastewater treatment sludge without such waste having first met the treatment standards set forth in 40 C.F.R. § 268.40(e).

EPA CONCLUSIONS OF LAW

1. This is an action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), to assess a civil penalty against Respondent for past violations of the requirements of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e, and to require future compliance with said requirements.

2. Pursuant to Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), whenever any person has violated or is in violation of a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e, the Administrator of EPA, *inter alia*, "may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both."

3. Respondent is a "person" within the meaning of Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.

4. Respondent has been (and continues to be) a "generator" (as defined in 40 C.F.R. § 260.10) of hazardous waste as more specifically set forth in the "EPA Findings of Fact" section, above.

5. The Facility constitutes a "facility" (as defined in 40 C.F.R. § 260.10).

6. The Facility constitutes a "new hazardous waste management facility" (as defined in 40 C.F.R. § 260.10).

7. Parts of the Facility include one or more "hazardous waste management unit[s]" (as defined in 40 C.F.R. § 260.10 and 40 C.F.R. § 270.2).

8. In the course of Respondent's business operations at the Facility, it "reclaims" (as defined in 40 C.F.R. § 261.1(b)(4)) spent lead acid batteries.

9. The aforementioned spent lead acid batteries accepted by the Facility are solid wastes because:

a) they are "abandoned" (as defined in 40 C.F.R. § 261.2(b)(1)) by virtue of their being disposed at the Facility; and/or

b) they are being reclaimed within the meaning of 40 C.F.R. § 261.2(a)(3).

10. In relevant part, 40 C.F.R. § 266.80(a) provides that a person who reclaims lead acid batteries and who stores such batteries is subject to the requirements of, *inter alia*, 40 C.F.R. § 266.80(b); 40 C.F.R. § 262.11; 40 C.F.R. Part 268; the applicable provisions of 40 C.F.R. Part 265, Subpart B, C, D and I; and 40 C.F.R. Part 270.

11. Pursuant to 40 C.F.R. § 262.11, any "person who generates a solid waste, as defined in 40 CFR § 261.2, must determine if that waste is a hazardous waste" using the method specified therein.

12. Prior to 2010, Respondent failed to make the hazardous waste determination (or to have a third party make the determination on its behalf) for the solid wastes referenced in paragraphs 16, 17 and 18 of the "EPA Findings of Fact," above, with each such failure constituting a violation of 40 C.F.R. § 262.11, a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

13. Pursuant to 40 C.F.R. § 264.173(a), "[a] container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."

14. Respondent's storage of hazardous waste in open containers, as noted in paragraph 19 of the "EPA Findings of Fact," above, constituted a violation of 40 C.F.R. § 264.173(a), a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

15. Pursuant to 40 C.F.R. § 264.31, "[f]acilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment."

16. Each of Respondent's practices, as alleged in paragraphs 20 through 39 of the "EPA Findings of Fact," above, constituted a failure by Respondent to maintain and operate the Facility so as to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment, a violation of 40 C.F.R. § 264.31, a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

17. In order to treat, store or dispose of hazardous waste, the owner or operator of a hazardous waste management unit must comply with the applicable requirements of Section 3005 of RCRA, 42

U.S.C. § 6925, and 40 C.F.R. § 270.1.

18. Pursuant to 40 C.F.R. § 262.34(a), in relevant part, a generator may accumulate hazardous waste on-site for 90 days or fewer without having to meet the requirements set forth in paragraph 17 of this section, above, provided that, *inter alia*:

a) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and

b) while the waste is being accumulated on-site, each container or tank holding the hazardous waste is labeled or marked clearly with the words, "Hazardous Waste."

19. In relevant part, 40 C.F.R. § 262.34(b) provides that a generator of hazardous waste who accumulates hazardous waste for more than 90 days is deemed an operator of a storage facility and is subject to the requirements of 40 C.F.R. Parts 264 and 265, and is also subject to the requirements of 40 C.F.R. Part 270.

20. Respondent's aforementioned accumulation of hazardous waste without meeting conditions allowing such storage as set forth in 40 C.F.R. 262.34(a), constitutes a violation of each of:

a) Section 3005 of RCRA, 42 U.S.C. 6925, a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e; and

b) 40 C.F.R. § 270.1, a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

21. Respondent's aforementioned accumulation of hazardous waste for over 90 days did not comply with all requirements of 40 C.F.R. Part 264, nor did it comply with the applicable requirements of Section 3005 of RCRA, 42 U.S.C. 6925, and 40 C.F.R. Part 270.

22. As a consequence of Respondent's accumulation of hazardous waste at the Facility for over 90 days, Respondent violated each of:

a) Section 3005 of RCRA, 42 U.S.C. 6925, a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e; and

b) 40 C.F.R. 270.1, a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

23. Pursuant to each of the following provisions, a person may not treat or dispose of hazardous waste unless that person has first complied with the applicable requirements set forth in paragraph 17 of this section, above.

24. Respondent's failure to comply with the requirements set forth in paragraph 17 of this section, above, constitutes a violation of each of the following provisions, each of which is a

requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e:

a) Section 3005 of RCRA, 42 U.S.C. § 6925; and

b) 40 C.F.R. § 270.1

25. Pursuant to 40 C.F.R. § 264.16(a), at a facility that treats, stores or disposes of hazardous waste, employees of such a facility involved in hazardous waste management must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their employment duties in such a way that ensures the facility's compliance with the requirements of 40 C.F.R. Part 264, and any such program must include the elements described in 40 C.F.R. § 264.16(d)(3).

26. Pursuant to 40 C.F.R. § 264.16(b), the personnel employed at a facility that treats, stores or disposes of hazardous waste must, in relevant part, successfully complete the program specified in 40 C.F.R. § 264.16(a) within six months after the commencement of their employment at or assignment to the facility.

27. Pursuant to 40 C.F.R. § 264.16(c), facility personnel must participate in an annual review of the training mandated by 40 C.F.R. § 264.16(a).

28. The failure of Respondent to ensure that the personnel employed at or assigned to the Facility and who are responsible for hazardous waste management received the required training within six months of their employment or assignment to the Facility in order that they be able to perform their duties in a way that ensures the facility's compliance with hazardous waste management regulations constitutes a violation of:

a) 40 C.F.R. § 264.16(a), a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e; and

b) 40 C.F.R. § 264.16(b), a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

29. Respondent's failure to ensure that facility personnel at the Facility responsible for hazardous waste management receive the annual review of the initial training constitutes a violation of 40 C.F.R. § 264.16(c), a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

30. Pursuant to 40 C.F.R. § 264.51(a), the owner or operator of a hazardous waste facility (such as the Facility) must have a contingency plan for the facility that is designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water.

31. Pursuant to 40 C.F.R. § 264.51(b), the provisions of a facility's contingency plan must be carried out immediately whenever there occurs a fire, explosion, or release of hazardous waste or hazardous waste constituents that could threaten human health or the environment.

32. Pursuant to 40 C.F.R. § 264.52(b), if the owner or operator of a hazardous waste facility already has in place a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 C.F.R. Part 112, or some other emergency or contingency plan, said owner or operator need only amend the existing SPCC plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of 40 C.F.R. Part 264.

33. Forty C.F.R. § 264.52(b) additionally provides that the owner or operator of a hazardous waste facility may develop a single contingency plan that meets all regulatory requirements.

34. Pursuant to 40 C.F.R. § 264.52(d), the contingency plan(s) for a hazardous waste facility must list the names, addresses and phone numbers (both office and home) of all persons qualified to act as emergency coordinators (in accordance with 40 C.F.R. § 264.55, and such list must be kept up-to-date.

35. Pursuant to 40 C.F.R. § 264.53(b), a copy of the requisite contingency plan for a hazardous waste facility must be submitted to all local police and fire departments, hospitals, and State (Commonwealth) and local emergency response teams that might be called upon to provide emergency services.

36. The plans Respondent had prepared by February 23, 2010 failed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water, a violation of 40 C.F.R. § 264.51(a).

37. The plans Respondent had prepared by February 23, 2010 failed to list the home addresses of the designated emergency coordinator(s), a violation of 40 C.F.R. § 264.52(d).

38. Each of the following is a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e: a) 40 C.F.R. § 264.51(a), and b) 40 C.F.R. § 264.52(d).

39. Pursuant to 40 C.F.R. § 268.7(a), generators of hazardous waste have to determine whether the waste has to be treated before it can be land disposed.

40. Pursuant to 40 C.F.R. § 268.9(d), wastes that exhibit a characteristic are also subject to 40 C.F.R. § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator's or treater's on-site files. The notification and certification must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes.

41. Pursuant to 40 C.F.R. § 268.7(a)(2), if a hazardous waste does not meet the treatment standards in 40 C.F.R. §§ 268.40, 268.45 or 268.49, or if the generator chooses not to make the determination whether the waste generated at its facility must be treated, with the initial shipment to each treatment or storage facility, the generator must send a one-time written notice (a "Land Disposal Restriction Notice" or "LDR notice") to each treatment or storage facility receiving the waste.

42. The aforementioned LDR Notice must comply with the "268.7(a)(2)" column in 40 C.F.R. § 268.7(a)(4).

43. Pursuant to 40 C.F.R. § 268.40(a), a hazardous waste otherwise prohibited from land disposal may in fact be land disposed provided it meets the requirements set forth in the table in said section, and, for each waste, the table identifies one of three types of treatment standard requirements, as follows:

a) All hazardous constituents in the waste or in the treatment residue must be at or below the values found in the table for that waste;

b) The hazardous constituents in the extract of the waste or in the extract of the treatment residue must be at or below the values found in the table; or

c) The waste must be treated using the technology specified in the table, which are described in fuller detail in Table 1 of 40 C.F.R. § 268.42.

44. Respondent's failure to complete and put into the Facility's files a one-time notification and certification, as alleged in paragraph 57 of the "EPA Findings of Fact," above, constitutes a violation of 40 C.F.R. §§ 268.7(a)(7) and/or 268.9(d), each a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

45. Respondent's failure to provide a written LDR notice to the Ponce Landfill in Puerto Rico, as alleged in paragraph 59 of the "EPA Findings of Fact," above, constitutes a violation of 40 C.F.R. 268.7(a)(2), a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

46. Respondent's failure to meet the treatment standards for the wastewater treatment sludge, as alleged in paragraphs 60 and 61 of the "EPA Findings of Fact," above, constitutes a violation of 40 C.F.R. § 268.40(e), a requirement of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e.

AGREEMENT ON CONSENT

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between Complainant, and voluntarily accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations set forth herein; (b) neither admits nor denies the non-jurisdictional allegations set forth herein; (c) neither admits nor denies the "EPA Findings of Fact" or "EPA Conclusions of Law" set forth herein; (d) consents to the assessment of the civil penalty as set forth below; (e) consents to the issuance of the Final Order accompanying this Consent Agreement; (f) waives its right to seek or obtain judicial review of, or otherwise contest, said Final Order; (g) consents to perform and complete the Supplemental Environmental Projects as set forth herein and in accordance with the schedule set forth herein; and (h) consents to the payment of any stipulated penalty(ies) in accordance with the terms and conditions as set forth herein.

Pursuant to 40 C.F.R. § 22.31(b), the executed CA/FO shall become effective and binding when it is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2 (such date henceforth referred to as the "effective date").

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall pay a civil penalty to EPA in the amount of **ONE HUNDRED TWELVE THOUSAND FIVE HUNDRED ($112,500.00) DOLLARS,** to be paid in accordance with the terms and schedule set forth in paragraph 2, below. Payment in accordance with the provision set forth below shall be made by cashier's checks, certified checks or by electronic fund transfers (EFT). If payment is made by cashier's checks or by certified checks, such checks shall be made payable to the **"Treasurer, United States of America,"** and shall be identified with a notation thereon listing the following: ***In the Matter of Battery Recycling Company, Inc., Docket Number RCRA-02-2012-7101***. Checks making payment shall be mailed to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Alternatively, if Respondent chooses to make each installment payment by EFT, Respondent shall then provide the following information to its remitter bank:

a. Amount of Payment

b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**

c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**

d. Federal Reserve Bank of New York ABA routing number: **021030004**

e. Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency**

f. Name of Respondent: **Battery Recycling Company, Inc.**

g. Case docket number: **RCRA-02-2012-7101**

2. Payment shall be received (if made by checks) or effected (if implemented by EFT) as follows:

a) The first installment of TWENTY-EIGHT THOUSAND ONE HUNDRED

TWENTY-FIVE ($ 28,125.00) DOLLARS is to be received within 90 days of the effective date of this CA/FO (such date when this first installment payment is due henceforth referred to as the "due date");

b) The second installment of TWENTY-EIGHT THOUSAND ONE HUNDRED TWENTY-FIVE ($ 28,125.00) DOLLARS is to be received within one hundred eighty (180) days after the due date;

c) The third installment of TWENTY-EIGHT THOUSAND ONE HUNDRED TWENTY-FIVE ($ 28,125.00) DOLLARS is be received two hundred seventy (270) days after the due date; and

d) The fourth installment of TWENTY-EIGHT THOUSAND ONE HUNDRED TWENTY-FIVE ($ 28,125.00) DOLLARS is to be received three hundred sixty five (365) days after the due date.

Payment shall be made in accordance with the instructions set forth in paragraph 1 of this section, above. If Respondent makes payments by cashier's check or certified check, then such checks shall be *received* at the above-listed address on or before the date specified. If Respondent makes payment by the EFT method, then each EFT shall be *received* on or before the date specified.

3. Whether Respondent makes payments by cashier's checks, certified checks or by the EFT method, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, and such proof shall be furnished to each of:

Lee A. Spielmann
Assistant Regional Counsel
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

4. Failure to pay the amount in full (for each installment and for the total amount) within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

5. Furthermore, if each payment is not made on or before the date when such payment is made due under the terms of this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was to have been made through the date said payment has been received. In addition, a late payment handling charge of $15.00 will be assessed for each 30 day period or any

portion thereof, following the date such payment was to have been made, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within 90 days of the date for which each such payment was required hereto to have been made.

6. The civil penalty provided for in this section, any charge that accrues as a result of untimely payment(s) of the civil penalty by Respondent, any stipulated penalty(ies) to be paid in accordance with the terms and conditions of this CA/FO and any other penalty for failure to successful complete any of the Supplemental Environmental Projects as set forth below constitute a penalty within the meaning of 26 U.S.C. § 162(f).

7. With respect to any costs or expenditures incurred in performing and completing any Supplemental Environmental Project(s) as set forth below, for income tax purposes, Respondent agrees that it shall neither capitalize into inventory or basis nor deduct any such costs or expenditures.

8. As of the effective date of this CA/FO, Respondent (or some third party acting on behalf of Respondent) shall in accordance with 40 C.F.R. § 262.11, make the determination whether solid wastes generated at or by the Facility in the course of its operations constitute hazardous waste, and any such determinations shall be made at least once per year (unless a different schedule is set forth in a sub-paragraph of this paragraph, below, or is later approved by EPA pursuant to paragraph 98 of this section, below), and whenever a material or process change(s) at the Facility may affect a hazardous waste characterization. Respondent shall maintain records on how any such determinations were made whether such solid wastes constitute (or do not constitute) a listed or characteristic hazardous waste. Such solid wastes shall include but are not necessarily limited to the following wastes generated at or by the Facility:

a) plastic chips generated from the crushing and breaking of lead acid batteries in a hammermill or in any other battery breaking operation;

b) spent high intensity light bulbs and any other spent light bulbs potentially subject to RCRA regulation as hazardous waste; [2]

c) personal protective equipment that had been used by the employees of the Facility and which became, as a consequence of such use, spent (*i.e.* no longer useful for the original intended purpose of such equipment);

d) waste generated from the clean-up of lead and/or dust containing other "RCRA constituents" (for purposes of this order, the term "RCRA constituents" shall mean any hazardous constituent listed in Appendix VIII of 40 C.F.R. Part 261), including, *e.g.*,

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[2] Regarding spent light bulbs, Respondent shall make a new determination for each model of light bulb purchased for use at the Facility, as such new model would constitute, for purposes of this CA/FO, a material or process change. In making such determinations, Respondent may rely upon the manufacturer's own determinations for that model to the extent these state (or have information relevant to) whether the bulbs, when spent, would be a hazardous waste. (The manufacturer's own determinations are often included with the Material Safety Data Sheets [MSDS].)

vacuum cleaner bags, dust filters and washwater; and

e) wastewater treatment sludge and smelting furnace slag (such determinations shall be made at least once per calendar year quarter [*i.e.* every three months] and whenever a material or process change(s) at the Facility may affect a hazardous waste characterization).

9. As of the effective date of this CA/FO, to the extent not already done, whenever Respondent stores hazardous waste in containers at the Facility, whether such waste has been generated by or at the Facility or otherwise is present (including but not limited to any of the following hazardous waste listed below), such waste shall be stored in closed containers that are properly labeled (including the requirement that the label include the words "Hazardous Waste" and other words identifying the contents, and that the label indicate when the period of accumulation of such waste(s) began), and such containers must be kept closed at all times except when it is necessary to add or remove waste:

a) baghouse dust from the Facility's air pollution control system;

b) mixtures of baghouse dust, wet lead oxide, and damp lead oxide (except as allowed in charge mixing for immediate smelting);

c) large particle waste collected in the Facility's air pollution control system;

d) spent nickel-cadmium batteries;

e) acid from spent lead acid batteries; and

f) wastewater treatment sludge (to the extent such waste is classified as hazardous waste).

For any container(s) Respondent uses at the Facility to store hazardous waste, such container(s) must not be opened, stored, handled or stored in a manner that might rupture or otherwise compromise the physical integrity of the container or cause it to leak or otherwise allow the stored waste to escape.

10. Respondent shall manage baghouse dust and large particle waste on-site as hazardous waste.

11. Upon the effective date of this CA/FO, Respondent shall comply with applicable Land Disposal Restriction requirements and prohibitions set forth in 40 C.F.R. Part 268 for hazardous waste, including but not limited to hazardous waste sent off-site for treatment or disposal and hazardous waste treated or disposed on-site (*e.g.*, spent battery acid). To the extent Respondent has already complied with said requirements and prohibitions, it shall continue to do so. Regarding wastewater treatment sludge, if Respondent determines such sludge to be neither a listed nor characteristic hazardous waste, Respondent shall then:

a) Dispose of said sludge in a lined landfill cell that is permitted to receive industrial waste;

b) Provide all relevant information on the types and expected quantities of the hazardous constituents in said sludge to the recycling or disposal facility in order to facilitate protective management, and, if necessary, further treat the lead and other hazardous constituents; and

c) Respondent shall maintain records of any determination it makes whether such wastewater treatment sludge constitutes (or does not constitute) a listed or characteristic hazardous waste.

12. Upon the effective date of this CA/FO, with regard to the following activities, processes and operations that occur at the Facility, Respondent shall perform, conduct and/or carry them out in such a way and in such manner so as to eliminate or otherwise minimize to the fullest extent possible the release to air, soil or surface water of lead and/or dust containing other RCRA constituents:

a) the storage of lead-containing wastes in open-air bins;

b) the cleaning, waste removal and maintenance of dust collection systems, *e.g.*, baghouses;

c) charge mixing;

d) the rotation of lead and lead oxide waste piles;

e) the various phases of battery processing operations, including but not limited to the loading of batteries on conveyor belts and the crushing of batteries through hammermill operations;

f) the pouring, moving and dumping of lead smelting slag, and lead refining dross;

g) the handling of laundry;

h) the handling and storage of PPE;

i) on-site construction activities that disturb soil;

j) the evaporation of washwater and stormwater runoff through open-air conveyance pathways (*e.g.*, asphalt roadways) and open, flooded soil and earthen pits;

k) direct conveyance in stormwater and wastewater off-site releases;

l) wind-blown fugitive emissions, including but not necessarily limited to lead and/or dust containing other RCRA constituents;

m) vehicle movement on- and off-site (*e.g.*, dust on tires); and

n) employee transfer of lead and/or dust containing other RCRA constituents on personal-use items such as clothing, footwear and work boots, both directly and through contamination of personal vehicles.

13. Upon the effective date of this CA/FO, Respondent shall take all necessary measures to prevent, or at least minimize to the fullest extent possible, the release of lead and/or dust containing other RCRA constituents resulting from evaporation that occurs during or in the course of wastewater and stormwater runoff from the lead smelting operations at the Facility discharged to its wastewater treatment plant through stormwater drainage control directed into a complex consisting of an open, below-grade sump, collection basin and pump systems.

14. Upon the effective date of this CA/FO, Respondent shall institute, to the extent not already done, and shall thereafter maintain practices and procedures, including but not necessarily limited to purchasing and maintaining equipment therefore, that eliminate or significantly reduce to the fullest extent possible the off-site release (*i.e.* from the Facility to land and water outside the boundaries of the Facility) of lead and/or dust containing other RCRA constituents generated or otherwise spread in the course of the following activities, processes and operations occurring at the Facility:

a) the movement of vehicles such as trucks and automobiles to and from the Facility (including truck wash station(s)): Measures to be taken in connection herewith shall include washing each vehicle on the Facility grounds (except those vehicles that have accessed only the employee and/or visitor parking areas) as it approaches any exit to the Facility; further, in connection herewith:

i) Such washing shall at a minimum include the washing of tires, the undercarriage of the vehicle(s) and the exterior surface of any such vehicle(s);

ii) Following such washing but prior to the vehicle(s) exiting the Facility, Respondent shall, through properly trained personnel, inspect any such vehicle(s) to ensure there are no visible signs of contamination by lead and/or dust containing other RCRA constituents, and, where there are visible signs of such contamination, Respondent shall re-wash any such vehicle(s) to ensure that there are no visible signs of such contamination; and

iii) Respondent shall collect all water used in the aforementioned washing(s) of any vehicle as it approaches an exit to the Facility; and send same to the Facility's wastewater treatment plant.

b) the movement of vehicles such as trucks and automobiles within the Facility: Measures to be taken in connection herewith shall include paving all areas of the Facility subject to vehicle traffic (*e.g.,* trucks, automobiles), but Respondent need not do so for limited access and limited use roadways, such as unpaved roads to remote locations on the property of the Facility, that are used for no more than one round trip per day. Respondent shall clean the pavement at least two times a day, except

Respondent need not clean the pavement at least two times a day when natural precipitation makes cleaning unnecessary; and

c) the dissemination or transfer of lead and/or dust containing other RCRA constituents by employees in the course of such practices as changing clothing and footwear, removing personal protective equipment, washing and associated activities following the completion of employees' work shifts: Measures to be taken in connection herewith shall include a clear delineation of clean areas (*i.e.* areas of minimal lead dust contamination) of the Facility from dirty areas (*i.e.* areas of likely lead dust contamination), and such measures shall include Respondent providing, maintaining and ensuring the use of separate clean side and dirty side employee locker rooms separated by a sufficient number of showering facilities for employee use following completion of a work shift.

15. Respondent shall immediately institute, to the extent not already done, and shall thereafter maintain practices and procedures that result in Respondent eliminating or minimizing to the fullest extent possible off-site releases of lead-contaminated stormwater and wastewater, including but not necessarily limited to off-site releases of such lead-contaminated water resulting from overflows at sumps, collection basins and the pump system.

16. Respondent shall immediately institute, to the extent not already done, and shall thereafter maintain practices and procedures that result in Respondent eliminating all mixing operations of baghouse dust with wet lead oxide and damp lead oxide except when such mixing occurs for charge preparations.

17. Upon the effective date of this CA/FO, Respondent shall institute, to the extent not already done, and shall thereafter maintain practices and procedures that ensure that, except as noted below, all lead acid batteries received for reclamation are processed within 24 hours of receipt:[3]

a) Receipt of batteries shall, for purposes of this CA/FO, commence upon the unpacking or off-loading of the batteries from the transporting vehicle or trailer. Batteries remaining within a transporting vehicle or trailer must remain labeled and within containers packed in accordance with applicable Department of Transportation regulations, provided, however, that such pre-receipt, temporary storage shall not exceed 10 days without Respondent meeting the applicable requirements of 40 C.F.R. Parts 264, 266 and 270;

b) Respondent may request an extension of time to allow temporary storage of received batteries if such extension is necessary because of temporary, and either unforeseen or uncontrollable, circumstances. To request such an extension or for any other unforeseen circumstances that might arise, Respondent shall contact EPA's Project Manager (identified below). With regard to a request for an extension, EPA may grant same in the exercise of its discretion. Where Respondent receives such an extension, Respondent shall inspect battery storage areas at least two times each week. After an extension

[3] Limited amounts of industrial lead acid batteries, consisting of steel battery cases with individual lead acid battery cells, may be staged in the process area awaiting removal of lead acid cells for further processing. Such limited, staged industrial lead acid batteries will be considered "in process" rather than "stored."

terminates, unless an additional one has been granted in accordance herewith, Respondent shall comply with the applicable requirements of 40 C.F.R. Part 264 if the storage of the received batteries continues; further, upon discovering any broken or damaged batteries, Respondent shall immediately move such batteries to be processed and Respondent shall immediately clean residue from such broken or damaged batteries; and

c) Notwithstanding any provision in this paragraph, no such temporary storage as permitted in accordance with this paragraph shall occur unless the batteries are stored within containers that comply with the requirements of 40 C.F.R. Part 264, Subpart I; within tanks that comply with the requirements of 40 C.F.R. Part 264, Subpart J; within containment buildings that comply with the requirements of 40 C.F.R. Part 264, Subpart DD; or within indoor waste piles that comply with the requirements of 40 C.F.R. § 264.250(c).

18. Upon the effective date of this CA/FO, Respondent shall implement, to the extent not already done, and shall thereafter maintain Facility-wide programs for the following purposes:

a) to clean to the extent reasonably possible areas of the Facility that have been or are being exposed to lead and/or dust containing other RCRA constituents;

b) to institute a dust monitoring, cleaning and maintenance program to ensure that all areas of the Facility (other than those areas in which the processing of lead-containing materials occurs) remain clean to the extent reasonably possible of lead and/or dust containing other RCRA constituents; and

c) to ensure employee health and safety protection.

19. Respondent shall submit to EPA within 10 days of the effective date of this CA/FO: a) documentation attesting to Respondent's compliance with the requirements of paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of this section, above, and b) a "standard operating procedure" manual (hereinafter "SOP manual") that will set forth in complete, precise and specific detail the measures and means by which Respondent intends successfully to permanently implement the requirements set forth in paragraphs 12, 13, 14, 15, 16, 17 and 18 of this section, above (and which manual shall incorporate the provisions set forth in the Baseline Elements document attached to this CA/FO as Appendix 1, and any other information or guidance necessary for the SOP manual to effect the purposes, as herein stated, for such manual), and to attain, within 90 days of its aforementioned submission, the objectives set forth in said paragraphs. The SOP manual shall include a timetable for implementation of its provisions. Once submitted to EPA, the SOP manual shall be subject to EPA review and approval, including the timetable of implementation. EPA approval, however, shall not be unreasonably withheld.

20. In developing the SOP, Respondent may consult with EPA. If, after EPA review and/or consultation, EPA deems any measure or means proposed in the SOP manual inadequate, insufficient or incomplete to attain requisite compliance with applicable RCRA requirements and prohibitions, Respondent shall include in the SOP manual such additional reasonable measures and means as EPA

directs it to include, including any timetable or schedule for compliance or implementation.

21. The SOP manual shall include a listing of those measures and means (*e.g.*, change in Facility processes or procedures, purchase of new equipment, replacing old equipment, training programs, inspection schedules) by which EPA (or a designated third-party) will be able to verify Respondent's good faith efforts to implement the provisions described above in paragraph 19 of this section and to attain compliance with applicable RCRA requirements and prohibitions in Respondent's operation of the Facility.

22. At a minimum, the SOP manual shall, establish a level of protection as set forth in the Baseline Elements document. The SOP manual shall be prepared by suitable and competent professionals, including a certified industrial hygienist with relevant experience in the operation and maintenance of secondary lead smelters, and a responsible official of Respondent shall certify Respondent's intent to carry out the provisions thereof.

23. Once approved by EPA, the SOP manual shall be incorporated by reference into this CA/FO. A violation of a provision of the SOP manual shall be deemed a violation of this CA/FO, and any relief or remedy available to EPA (or the United States on behalf of EPA) under applicable law for a violation(s) of this CA/FO shall be available to EPA (or the United States on behalf of EPA) for any violation(s) of the SOP manual.

24. Nothing herein is intended or is to be construed as precluding Respondent from undertaking any additional measures and means it deems appropriate to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water that could threaten human health or the environment or otherwise to attain compliance with applicable RCRA requirements and prohibitions in the operation of the Facility, provided, however, that any such additional measures or means do not result in Respondent's efforts to attain compliance with said RCRA requirements and prohibitions falling below the level mandated by the approved SOP manual and paragraphs 12, 13, 14, 15, 16, 17 and 18 of this section, above.

25. After incorporation of the SOP manual into this CA/FO, it may be amended or modified if both parties agree in writing to do so, and such writing shall specify with particularity the provisions of the SOP manual to be amended or modified. As so amended or modified, the SOP manual will continue to be incorporated as part of this CA/FO, and the provisions of paragraph 23 of this section, above, regarding a violation of the SOP manual shall apply to the amended or modified SOP manual.

26. Notwithstanding any other provision herein, within four hundred twenty-five (425) days of the effective date of this CA/FO, Respondent shall have completed (or have a third-party complete on its behalf) the total enclosure at the Facility for: a) the structure(s) containing the processes and/or sources identified in paragraph 1 of the attached Baseline Elements document (hereinafter in this paragraph and the following paragraph referred to as the "main production area"), and b) the baghouse. To meet the deadline set forth herein, Respondent shall take the interim measures set forth below in accordance with the following schedule:

a) Award equipment purchase orders within 90 days of the effective date;

b) Secure the design plans (vendor drawings) and ensure same are in place within 120 days of the effective date;

c) Begin the "mobilization" and construction work on said total enclosures within 180 days of the effective date;

d) Complete the Baghouse (including duct work and control system) fabrication and installation within 345 days of the effective date;

e) Commissioning of the Baghouse and startup within 365 days of the effective date; and

f) Complete the total enclosure of the main production area within 425 days of the effective date.

27. Within 30 days after total enclosure has been completed in accordance with the previous paragraph, and also within 30 days after each of the interim steps identified in the previous paragraph has been effected, Respondent shall, in writing, certify to EPA that it successfully implemented the designated event, and such submission(s) shall include appropriate and relevant documentation attesting to the truth and accuracy of the certification. Such certification shall be made by a responsible corporate official of Respondent.

28. For failure to comply with the requirements set forth in paragraphs 19 through 22 of this section, above, or the requirements set forth in paragraph 26, of this section, above,[4] Respondent shall pay stipulated penalties that shall accrue per violation per day for each violation:

Penalty per Violation per Day	Period of Noncompliance
$100	1st through 30th day
$500	31st through 60th day
$1000	61st through 90th day
$3,000	Every day thereafter

29. Stipulated penalties above shall begin to accrue on the day when, pursuant to this CA/FO, a designated event(s) is scheduled to have been completed but has not been completed, and shall continue to accrue until performance is satisfactorily completed. Stipulated penalties shall accrue simultaneously for separate violations of the requirements set forth in paragraphs 19 through 22 of this section, above

[4] References in this paragraph, as well as in paragraphs 29, 31 and 33 of this section, below, to "paragraph 19" do not include that portion of paragraph 19 pertaining to "documentation attesting to Respondent's compliance with the requirements of paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of this section, above."

and/or the requirements set forth in paragraph 26, of this section, above. Unless Respondent provides EPA with a writing pursuant to the paragraph below, all stipulated penalties shall be due and payable within 30 days of Respondent's receipt from EPA of a written demand for payment of the penalties. The method of payment shall be in accordance with the provisions of paragraph "1" of this section, above. Interest and a late payment handling charge will be assessed in the same manner and in the same amounts as specified in paragraph "5" of this section, above. Penalties shall accrue as provided above without regard to whether EPA has notified Respondent of the violation or made a demand for payment.

30. After receipt from EPA of a demand for payment of stipulated penalties pursuant to paragraph "29" of this section, above, Respondent shall have 20 days in which to provide Complainant with a written explanation of why it believes that a stipulated penalty is not due and owing or appropriate for the cited violation(s) of this Consent Agreement (including any technical, financial or other information that Respondent deems relevant).

31. EPA may, in the exercise of its sole discretion, reduce or waive any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for its failure to comply with any of the requirements set forth in paragraphs 19 through 22 of this section, above and/or with any of the requirements of paragraph 26 of this section, above. If, after review of Respondent's submission pursuant to the preceding paragraph, EPA denies same, EPA will notify Respondent in writing of its determination that Respondent has failed to comply with any of the requirements set forth in paragraphs 19 through 22 of this section, above and/or with any of the requirements of paragraph 26 of this section, above, and said notification will inform Respondent that it shall pay either the full amount of the stipulated penalty(ies) or a reduced amount of the stipulated penalty(ies). Respondent shall pay the stipulated penalty(ies) amount indicated in EPA's notice within 30 days of receipt.

32. Failure of Respondent to pay any stipulated penalty demanded by EPA pursuant to this CA/FO may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

33. The stipulated penalty(ies) provided in this CA/FO for any failure(s) by Respondent to comply with the requirements set forth in paragraphs 19 through 22 of this section, above , and/or with any of the requirements of paragraph 26 of this section, above, shall be in addition to any other rights, remedies or sanctions available to EPA (or the United States on behalf of EPA) provided for by applicable law. Nothing herein is intended or is to be construed as waiving, pre-empting or otherwise affecting the availability of any such right, remedy or sanction for any such violation(s) under applicable law.

34. Notwithstanding any provision above, nothing herein is intended or is to be construed as exempting Respondent from fully complying with applicable RCRA requirements or prohibitions in Respondent's operation of the Facility, nor is anything herein intended or to be construed as immunizing Respondent from legal liability for any violation(s) of any applicable law.

35. Following EPA's approval of the SOP manual, for a period of three years, Respondent shall continue to provide quarterly written reports (or through other means agreeable to EPA) to EPA on its ongoing efforts, as well as the successes and failure of, its efforts to minimize the possibility of fire,

explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents. After one year, Respondent may request EPA to modify the reporting schedule, and any decision to do so shall be made at the discretion of EPA. To the extent EPA deems such efforts unsatisfactory, EPA shall communicate in writing its concerns and identify problems with such efforts, and the parties shall from time to time consult on Respondent's efforts to ensure that Respondent successfully has minimized the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents. If, after such consultation, EPA deems Respondent has failed to attain ongoing compliance with applicable RCRA requirements and prohibitions for the operation of the Facility, Respondent shall further carry out those reasonable measures and activities as it is directed to implement by EPA and in accordance with the schedule EPA has established after consultation with Respondent, in order to attain such compliance.

36. The aforementioned reports set forth in paragraph 35, above, shall also include, if changes are made in the process(es) conducted at the Facility or if there are changes in the nature of the waste(s) generated by the Facility, documentation attesting to the hazardous waste determinations conducted pursuant to paragraph 8 of this section, above, and such reports shall detail the method relied upon.

37. Respondent shall not store or accumulate hazardous waste at the Facility for more than 90 days, and, to the extent Respondent stores hazardous waste at the Facility for under 90 days, it shall comply with the provisions specified in 40 C.F.R. § 262.34(a), including, but not limited to, the following:

a) sub-paragraph (a)(1), specifying where such waste is to be placed and the provisions of 40 C.F.R. Part 265 with which Respondent shall comply;

b) sub-paragraph (a)(2), requiring that the date upon which each period of storage or accumulation of the hazardous waste begins is clearly marked and visible for inspection; and

c) sub-paragraph (a)(3), requiring that, while such hazardous waste is stored or accumulated on-site, each container and/or tank holding such waste be labeled or marked clearly with the words, "Hazardous Waste" and other words identifying the contents.

38. To the extent Respondent treats hazardous waste in its wastewater treatment plant at the Facility, such treatment shall be consistent with any applicable requirements of RCRA and the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.* (hereinafter referred to as the "Clean Water Act"), including:

a) Section 3005 of RCRA, 42 U.S.C. § 6925, and the applicable regulations EPA has promulgated under the authority of Subchapter III of RCRA, 42 U.S.C. §§ 6921 - 6939e, including Subpart J of 40 C.F.R. Part 264; and

b) Section 402 or 307(b) of the Clean Water Act, 33 U.S.C. §§ 1342 or 1317(b), respectively, including any applicable regulations EPA has promulgated pursuant to such authority.

39. Respondent shall file any required application to comply with paragraph 38 of this section, above, within 30 days of the effective date of this CA/FO. Within 30 days of having done so, Respondent shall in writing certify to EPA that it has filed such application, specifying to whom/to which entity it has made such application and when such application has been made, and such submission shall contain a copy of such application (in whole, or in relevant part). Such certification shall be made by a responsible corporate official of Respondent.

40. Except as may otherwise be specifically provided in 40 C.F.R. Part 266, Subpart G, for any hazardous waste (including but not limited to wastewater treatment sludge that would be classified pursuant to RCRA as either a listed hazardous waste or a characteristic hazardous waste) stored or accumulated at the Facility as of the effective date of this CA/FO, Respondent shall send such waste off-site for treatment or disposal in accordance with applicable RCRA requirements by no later than 90 days after such date. Subsequent thereto, Respondent shall not store hazardous waste on-site for more than 90 days.

41. For failure to comply with the application requirement set forth in paragraph 39 of this section, above, and/or the requirements set forth in paragraph 40 of this section, above, Respondent shall pay stipulated penalties that shall accrue per violation per day for each violation:

Penalty per Violation per Day	Period of Noncompliance
$100	1st through 30th day
$500	31st through 60th day
$1000	61st through 90th day
$3,000	Every day thereafter

42. The procedural provisions regarding the assessment of stipulated penalties as set forth in paragraphs 29 through 32, and the provisions of paragraph 33 of this section, above, are hereby incorporated by reference into this paragraph with the same force and effect as if fully set forth, and said provisions shall apply to any violation(s) by Respondent of the requirements set forth in paragraphs 39 and 40 of this section, above.

43. Upon the effective date of this CA/FO Respondent shall institute (to the extent not already done) and shall thereafter maintain a Facility-wide training program that meets the standards and objectives of 40 C.F.R. § 264.16 for workers employed at the Facility as of the effective date of this CA/FO. With regard to employees hired after the effective date of this CA/FO, Respondent shall institute and continue personnel training as required by 40 C.F.R. § 264.16(a), *i.e.* personnel at the Facility responsible for hazardous waste management must be given and must successfully complete within six months of employment at the Facility classroom instruction or on-the-job training to ensure the Facility's compliance with hazardous waste management regulations, and such training shall include not only hazardous waste management procedures but should also ensure that Facility personnel are able effectively to respond to hazardous waste emergencies.

44. Respondent shall, in compliance with 40 C.F.R. § 264.16(c), ensure that facility personnel participate in an annual review of the training mandated by 40 C.F.R. § 264.16(a).

45. As part of Respondent's obligation to comply with 40 C.F.R. § 264.16, Respondent shall institute and from time to time, as necessary, update a program for the education and training of all Facility personnel to perform their duties in such a way that ensures they are doing so in a manner that protects employee health and safety, complies with all applicable hazardous waste regulation and eliminates or significantly reduces to the fullest extent possible the off-site release (*i.e.* from the Facility to land and water outside its boundaries) of lead and/or dust containing other RCRA constituents.

46. To the extent applicable, Respondent shall amend any contingency plan it has for the Facility to incorporate provisions addressing the requirements of 40 C.F.R. §§ 264.51, 264.52 and 264.53, including but not necessarily limited to incorporating hazardous waste management provisions to ensure Facility compliance with the requirements of 40 C.F.R. Part 264 and listing the home addresses of each designated emergency coordinator.

47. To the extent not already set forth herein and not inconsistent with any prior provision herein, Respondent shall implement any reasonable additional measures and activities EPA determines, after consultation with Respondent, to be necessary for the Facility to attain and maintain compliance with applicable RCRA requirements and prohibitions.

48. As part of the settlement of this matter, Respondent agrees to, and shall accordance with the terms and conditions of this CA/FO, implement three separate Supplemental Environmental Projects (SEPs) in accordance with the "EPA Supplemental Environmental Projects Policy" ("SEP Policy"), which became effective May 1, 1998. These SEPs, to be more fully described below, are the "Plant Roadways Vacuum Sweeper Vehicle Project" (hereinafter the "Vacuum Sweeper SEP"), the "Pelletizer Units Project" (hereinafter the "Pelletizer SEP") and the "High School Outreach Project" (hereinafter the "Outreach SEP").

<u>The Plant Roadways Vacuum Sweeper Vehicle SEP</u>

49. Respondent agrees to, and shall accordance with the terms and conditions of this CA/FO, implement and perform a SEP that consists of the identification, acquisition, operation, and maintenance of a Vacuum Sweeper Vehicle to clean Facility roadways of lead and/or dust containing other RCRA constituents for a minimum of three years. To implement this SEP, Respondent shall expend at least ONE HUNDRED EIGHTY THOUSAND ($180,000.00) DOLLARS. Respondent shall purchase the Vacuum Sweeper Vehicle, and have same on the premises of the Facility, within 90 days of the effective date of this CA/FO.

50. The Vacuum Sweeper Vehicle purchased by Respondent must be designed, constructed, operated, and maintained to comply, at a minimum, with the following requirements:

a) If the vacuum sweeper vehicle uses water flushing followed by sweeping, the water flush must employ a minimum application of 0.48 gallons of water per square yard of

pavement cleaned; or

b) The vacuum sweeper vehicle must be equipped with a filter rated to attain a capture efficiency of 99.97 for 0.3 micron particles.

51. After 12 months but within 15 months of operation of the Vacuum Sweeper Vehicle, Respondent shall submit to EPA a SEP Operational Report which shall:

a) Review and detail all actions taken to implement the Vacuum Sweeper SEP;

b) Review and detail the effectiveness of and Respondent's operational experience with the Vacuum Sweeper Vehicle sufficient to inform EPA how the equipment is being used and how well it is achieving the objectives for which it has been obtained;

c) Summarize all periods when the Vacuum Sweeper Vehicle was not in use, the reasons for such disuse (*e.g.*, mechanical failure, routine maintenance) and Respondent's efforts to remedy this/these situation(s);

d) Detail all SEP-related expenditures, which shall include an acquisition cost report certified as accurate under penalty of perjury by a responsible corporate official that the sum of at least $180,000 was spent by the Respondent in the purchase of the Vacuum Sweeper Vehicle (except to the extent a lesser expenditure has been approved by EPA pursuant to the provisions of this CA/FO); and

e) Provide documentation attesting to the costs and expenditures Respondent has incurred in its implementation of the Vacuum Sweeper SEP.

52. Following receipt of the SEP Operational Report described in the paragraph above, EPA will either (a) accept the SEP Operational Report or (b) reject the SEP Operational Report, notify the Respondent, in writing, of questions EPA has and/or deficiencies therein and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (15 days at a minimum), in which to answer EPA's inquiries and/or to correct any deficiencies in the SEP Operational Report.

53. After 36 months (3 years) but within 39 months (3 years, 3 months) of operation of the Vacuum Sweeper Vehicle, Respondent shall submit to EPA a Final SEP Operational Report which shall:

a) Review and detail all actions taken to implement the Vacuum Sweeper SEP;

b) Review and detail the effectiveness of and Respondent's operational experience with the Vacuum Sweeper Vehicle sufficient to inform EPA about Respondent's experience with the equipment and how well it is achieving the objectives for which it has been obtained;

c) Summarize all periods when the Vacuum Sweeper Vehicle was not in use, the reasons for such disuse (*e.g.*, mechanical failure, routine maintenance) and Respondent's efforts to remedy this/these situation(s); and

d) Detail all additional Vacuum Sweeper SEP-related expenditures; and

e) Provide documentation attesting to all additional Vacuum Sweeper SEP-related expenditures.

54. Following receipt of the Final SEP Operational Report described in the paragraph above, EPA will either (i) accept the Final SEP Operational Report and issue a Notice of Accomplishment, or (ii) reject the Final SEP Operational Report, notify the Respondent, in writing, of questions EPA has and/or deficiencies therein and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (15 days at a minimum), in which to respond to EPA's inquiries and/or to correct any deficiencies in the Final SEP Operational Report.

The Pelletizer Units SEP

55. Respondent agrees to implement and perform a SEP that consists of the identification, design, acquisition, installation, operation, and maintenance of Pelletizer Units at each of the dust collector storage bins for the purpose of minimizing dust generation and potential releases during fine baghouse dust handling and reclamation procedures at the Facility. These units, or successor units, shall be operated and maintained for the life of the Facility's baghouse dust collection activities. To implement this SEP, Respondent shall expend at least ONE HUNDRED FIFTY THOUSAND ($150,000.00) DOLLARS. Respondent shall purchase, install and have operational the Pelletizer Units within 90 days of the effective date of this CA/FO.

56. The Pelletizer Units shall form the mass of fine dust particles into a pellet, ball or granule in the presence of moisture added during the pelletizing process. If required for increased product hardness or process considerations, a solid or liquid binder will be added before or during pelletizing. As dust particles are moistened and pellets formed in the pelletizing apparatus, pellets of the proper size and shape will be discharged into a container to be transported to the Facility's production area.

57. The Pelletizer Units shall be designed and operated to minimize the release of fine material from the agglomerated pellet (*i.e.* dust formation). The SOP manual shall be supplemented with a section that sets forth in complete, precise and specific detail the measures and means by which Respondent intends to ensure successful operation of the Pelletizer Units and minimize dust formation. At a minimum, the SOP supplement shall incorporate, and the Pelletizer Units must be operated and maintained according to, the manufacturer's specifications. The supplement to the SOP must include regular testing of pellet formation and subsequent system modification as needed, to meet the goal of minimizing dust formation. Regular testing must include an attrition loss test. Unless an alternative test and standard are deemed by EPA to be agreeable, the testing of pelletizer units and the performance standard for the units shall consist of the following:

a) Samples: A minimum of one series of at least 10 pellets shall be run from each Pelletizer

Unit, and pellets shall be randomly selected and be representative of the individual Pelletizer Unit's output;

b) Compression/ crush test: (i) The compressive strength will be determined by placing a single pellet (individually) between two steel plates and evenly applying pressure until fracture occurs. The value is measured in pounds of pressure applied; and (ii) the standard shall be 90% of tested pellets exceeding 10.0 pounds of compression without fracture;

c) Impact or drop test: (i) The impact strength of a pellet shall be determined by repeated dropping of a pellet onto an iron surface from a height of 18 inches until the pellet fractures or chips, with the impact resistance being measured by the number of drops the pellet survived; and (ii) the standard shall be 90% of tested pellets exceeding 10 drops before fractures or chips; and

d) Attrition loss test: (i) The attrition test is determined by placing 10 pellets (one series) on a 20-mesh sieve and vibrating with a common sieve shaker for five minutes, with the amount of material passing the 20-mesh screen measured as the attrition loss percentage, by weight; and (ii) the standard shall be less than 5% attrition loss, by weight.

58. After 12 months but within 15 months of the start of operation of the Pelletizer Units, Respondent shall submit to EPA a SEP Operational Report which shall include:

a) Review and detail all actions taken to implement the Pelletizer SEP;

b) Review and detail effectiveness of and Respondent's operational experience with the Pelletizer Units sufficient to inform EPA about Respondent's experience with the equipment and how well they are achieving the objectives for which they were obtained;

c) Summarize all periods when the Pelletizer Units were not in use, the reasons for such disuse (*e.g.*, mechanical failure, routine maintenance) and Respondent's efforts to remedy this/these situation(s);

d) Detail all SEP-related expenditures. This must include an acquisition cost report certified as accurate under penalty of perjury by a responsible corporate official that the sum of at least $150,000 was spent by Respondent in the purchase and installation of the Pelletizer Units (except to the extent a lesser expenditure has been approved by EPA pursuant to the provisions of this CA/FO); and

e) Provide documentation attesting to the costs and expenditures Respondent has incurred in its implementation of the Pelletizer SEP.

59. Following receipt of the SEP Operational Report described in the paragraph above, EPA will either (i) accept the SEP Operational Report or (ii) reject the SEP Operational Report, notify the Respondent, in writing, of questions EPA has and/or deficiencies therein and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (15 days at a minimum), in which to respond to EPA's inquiries and/or to correct any deficiencies in the

SEP Operational Report.

60. After 36 months (3 years) but within 39 months (3 years, 3 months) of commencement of the operation of the Pelletizer Units, Respondent shall submit to EPA a Final SEP Operational Report which shall:

a) Review and detail all actions taken to implement the Pelletizer SEP;

b) Review and detail the effectiveness of and Respondent's operational experience with the Pelletizer Units sufficient to inform EPA about Respondent's experience with the equipment and how well they are achieving the objectives for which they were obtained;

c) Summarize all periods when the Pelletizer Units were not in use, the reasons for such disuse (*e.g.*, mechanical failure, routine maintenance) and Respondent's efforts to remedy this/these situation(s); and

d) Detail all additional Pelletizer SEP-related expenditures; and

e) Provide documentation attesting to all additional Pelletizer SEP-related expenditures.

61. Following receipt of the Final SEP Operational Report described in the paragraph above, EPA will either (i) accept the Final SEP Operational Report or (ii) reject the Final SEP Operational Report, notify the Respondent, in writing, of questions EPA has and/or deficiencies therein and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (at a minimum 15 days), in which to respond to EPA's inquiries and/or to correct any deficiencies in the Final SEP Operational Report.

The Outreach SEP

62. Respondent agrees to implement and perform a multi-component SEP that consists of providing assistance to local high schools in Puerto Rico and their governing districts through a series of assessments, reports, mentoring and outreach training seminars designed to improve environmental regulatory compliance and to reduce risks associated with chemical storage and usage and other facility practices that could impact children's health. To implement this SEP, Respondent shall expend at least ONE HUNDRED FIFTY THOUSAND ($150,000) DOLLARS.

63. Respondent shall arrange for and contract with certified expert trainers, consultants, and/or academics in environmental safety, industrial hygiene, or other recognized, appropriate fields (the "Outreach and Assessment Team") within 90 days of the effective date of this CA/FO. Unless otherwise approved by EPA, the selected Outreach and Assessment Team must be a Puerto-Rico university-based party, have a known expertise in environmental outreach, compliance training and legacy chemical identification and removal in the K-12 sector, and the selection must be approved by EPA.

64. Respondent shall ensure that the Outreach and Assessment Team will conduct assessments of

high school facilities with school district officials to assist school district officials in: a) determining which Commonwealth and federal regulatory requirements apply and b) developing waste disposal, pollution prevention, waste minimization, and product substitution plans based, at least in part, on the regulatory and best management practices detailed in the following:

a) *Environmental Compliance and Best Management Practices: Guidance Manual for K-12 Schools*;

b) *Environmental Health & Safety in the Arts: A Guide for K-12 Schools, Colleges and Artisans* ("Guidance Manuals"); and

c) Other material, including presentations, to be provided by EPA (the items identified in sub-paragraphs "a," "b" and "c" of this paragraph shall hereinafter be collectively referred to as "Guidance Material").

65. Respondent shall ensure that, as part of the assessments process identified in paragraph 64 of this section, above, the Outreach and Assessment Team provides to each school administrator a report detailing regulatory compliance issues and provides a tailored plan covering suggested compliance fixes, which may include recommendations concerning chemical usages and inventories and a pollution prevention/waste minimization chemical management plan tailored to the assessed facility. The Outreach and Assessment Team will offer training for school and district staff on applicable Commonwealth and federal environmental regulatory requirements and on means of implementing waste disposal, pollution prevention, waste minimization, and product substitution plans.

66. Respondent shall also ensure that the Outreach and Assessment Team will offer assessed facilities assistance in a mentoring role with development of a surplus/legacy waste chemical action and disposal plan. Where the Outreach and Assessment Team has formed the opinion that a risk to the safety of the students and others may be presented by conditions at an assessed school, the Outreach and Assessment Team shall immediately report conditions to school administrators and to EPA and make available to them, at Respondent's expense, the Outreach and Assessment Team's expertise for technical training, and assistance. The Outreach and Assessment Team will also take such action to notify local authorities and EPA (whether required by law or otherwise) if the serious safety risk is not timely and appropriately addressed by the school administrators. The Outreach and Assessment Team may assume responsibility for a one-time clean out and disposal of high risk waste chemicals that are discovered at public high schools. Having determined that a one-time cleanup is necessary, the Outreach and Assessment Team will immediately then also notify EPA of the nature of that risk The Outreach and Assessment Team shall have no other or further responsibility for addressing the safety risk and is under no obligation to actually assume responsibility for one-time clean outs. If the Outreach and Assessment Team or its representatives undertake a one-time clean out, management and disposal expenditures associated with the clean out may, upon approval by EPA, be credited toward the required minimum expenditure for the Outreach SEP.

67. At least 90 days prior to the date of the first outreach and assessment effort, Respondent shall provide to EPA a work plan in English detailing project scope, implementation plan, participants, and outline of the presentation and a copy of any planned audiovisual materials or handouts. EPA shall have

the right to provide feedback and input on the work plan. Once EPA has given Respondent feedback (or otherwise informs it that it has no feedback), Respondent shall instruct the Outreach and Assessment Team to initiate the High School Outreach and Assessment Project.

68. Within 30 days after the final high school outreach and assessment effort, Respondent shall provide EPA with a copy of all materials (including the electronic version, where feasible), such as handouts, visual aids, power point presentations, and agenda (talking points) that Respondent through Outreach and Assessment Team has distributed or otherwise used in said presentations. Such materials shall be provided to EPA in Spanish.

69. Within 90 days after completion of all final high school outreach and assessment efforts, Respondent shall submit to EPA a completion report in English detailing the following: (a) the actions taken to implement the High School Outreach and Assessment Project, including the expenditures Respondent has made (and include therewith copies of invoices, purchase orders and other documentation to demonstrate such expenditures or obligations incurred), (b) the experiences of Respondent and the Outreach and Assessment Team in organizing and implementing the Outreach SEP, (c) any problems encountered in organizing and implementing the Outreach SEP (and concomitantly, how such problems were resolved), (d) the dates and locations of the outreach and assessments, (e) the feedback Respondent and the Outreach and Assessment Team received from the assessed schools, and (f) any other information Respondent and the Outreach and Assessment Team deem relevant to a report on the Outreach SEP. This report shall also contain any suggestions as to future compliance assistance and outreach activities. This report shall be certified by an appropriate official of both the Respondent and the Outreach and Assessment Team and shall evidence completion of the High School Outreach and Assessment Project and document all expenditures related thereto.

70. Following receipt of the completion report described in the paragraph above, EPA will either (i) accept the completion report and issue a Notice of Completion, or (ii) reject the completion report, notify the Respondent, in writing, of questions EPA has and/or deficiencies therein and grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (15 days at a minimum), in which to respond to EPA's inquiries and/or to correct any deficiencies in the completion report.

71. Any public statement, oral or written, made by Respondent with regard to the development of the training, assessment and outreach component, including any made at, during and/or in a compliance assistance presentation, meeting, lecture, seminar, mailing or other outreach effort, shall include the following language, in both Spanish and English: "This compliance assistance project was undertaken in connection with a Consent Agreement and Final Order entered into between the United States Environmental Protection Agency and The Battery Recycling Company."

Provisions Applicable To All Three SEPs

72. Whether Respondent has complied with the terms of this CA/FO with regard to the successful and satisfactory implementation and/or operation of any of the three SEPs as herein required, including whether Respondent has made good faith and timely efforts to effect same, and whether costs expended are creditable to each of the SEP as herein required shall be solely determined by EPA.

Should EPA have any concerns about the satisfactory completion of any of the SEPs, EPA will communicate those concerns in writing to Respondent and provide it with an opportunity to respond, and/or correct any of the deficiency(ies). If EPA makes a determination that an SEP(s) has been satisfactorily completed, it will provide Respondent with written confirmation of the determination within a reasonable amount of time.

73. Respondent agrees that EPA (including authorized representatives of EPA) may inspect the Facility during reasonable business hours in order to confirm that the SEPs (either individually or collectively) are being implemented properly and in conformity with the terms and conditions set forth in this CA/FO, provided, however, this paragraph is not intended or is to be construed to deny, limit or waive any right of EPA pursuant to applicable law, including the provisions of RCRA, to conduct an inspection of the Facility for any purpose prescribed by any applicable law.

74. Respondent shall maintain in one central location legible copies of documentation concerning the development, implementation and financing of the SEPs, and documentation supporting information in the reports required to be submitted to EPA pursuant to this CA/FO. Respondent shall grant EPA (including authorized representatives of EPA) access to such documentation and shall provide copies of such documentation to EPA within 20 days of Respondent's receipt of a request by EPA for such information or within such additional time as approved by EPA, in writing. The provisions of this paragraph shall remain in effect for five years from the effective date of this CA/FO, or two years after the completion of the SEPs, whichever date is later.

75. Each of the SEPs to be implemented by Respondent pursuant to this CA/FO has been accepted by EPA solely for purposes of settlement of this administrative proceeding. Nothing in this CA/FO is intended or is to be construed as a ruling on or determination of any issue related to any federal, Commonwealth of Puerto Rico or local permit.

76. Respondent hereby certifies that, as of the date of its authorized signature on this Consent Agreement, it is not required to implement or complete any of the aforementioned SEPs pursuant to any federal, Commonwealth of Puerto or local law, or other requirement including federal or Commonwealth of Puerto Rico rules. Respondent further certifies that, with the exception of this Consent Agreement, Respondent is not required to implement or complete any of the SEPs set forth in this Consent Agreement by any agreement, grant, or as injunctive relief in this or any other suit, action or proceeding in any jurisdiction, and that Respondent had not instituted before December 1, 2011 any of the work that is part of these SEPs.

77. Respondent certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for any of the aforementioned SEPs (with the exception of a SEP comparable to the Outreach SEP in a proceeding involving alleged violations of Section 313 of the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11023) and that Respondent in good faith believes that the SEPs are in accordance with the provisions of EPA's 1998 Final Supplemental Environmental Projects policy set forth at 63 *Federal Register* 24796 (May 5, 1998).

78. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as any of the SEPs. Respondent further

certifies, to the best of its knowledge and belief after reasonable and diligent inquiry, there is no such open federal financial transaction that constitutes funding or could be used to fund the same activity as any of the SEPs, nor has the same activity as any of the SEPs been described in an unsuccessful federal financial assistance transaction submitted to EPA within two years of the date of the execution of this settlement (unless the project(s) was barred from funding as statutorily ineligible). For the purpose of the certifications to be made pursuant to this paragraph, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

79. Respondent shall not use or expend any money received from the United States government, as a grant or otherwise, directly to finance, implement, perform and/or operate any aspect or any portion of any of the aforementioned SEPs.

80. EPA may, in the exercise of its discretion, grant an extension of the date(s) of performance established in this CA/FO with regard to any of the SEPs, if good cause exists for such extension(s). If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and be submitted to EPA no later than 14 days prior to any due date set forth in this CA/FO, or other deadline established pursuant to this CA/FO. Such extension, if any, shall be approved in writing and shall not be unreasonably denied, withheld or delayed.

81. Respondent shall be liable for stipulated penalties in the event Respondent fails to comply with the terms and conditions regarding the performance, implementation, completion and operation of the SEPs as set forth below in this paragraph:

a) If the Vacuum Sweeper SEP is not undertaken, Respondent shall pay a stipulated penalty of NINETY THOUSAND ($90,000.00) DOLLARS;

b) If the Pelletizer SEP is not undertaken, Respondent shall pay a stipulated penalty of ONE HUNDRED TWENTY THOUSAND ($120,000.00) DOLLARS;

c) If the Outreach SEP is not undertaken, Respondent shall pay a stipulated penalty of ONE HUNDRED TWENTY THOUSAND ($120,000.00) DOLLARS;

d) If EPA determines that each of the SEPs is satisfactorily completed, and Respondent has spent at least 90 percent of the total amount of money that it was required to expend for said SEPs on expenditures that EPA determines are creditable toward the SEPs (*i.e.* Respondent has spent therefore $432,000.00, provided EPA has determined said amount is creditable toward the SEPs), Respondent shall not pay stipulated penalty for not having spent the full amount specified herein for each SEP.

e) If EPA determines that the Vacuum Sweeper SEP is satisfactorily completed and implemented but Respondent has spent less than 90 percent of the amount of money required to be spent for said SEP pursuant to this CA/FO, Respondent shall pay a stipulated penalty equal to 50 percent of the difference between the required amount to be spent ($180,000.00) and the amount Respondent actually spent on expenditures that EPA

determines are creditable toward said SEP;

f) If EPA determines that the Pelletizer SEP is satisfactorily completed and implemented but Respondent has spent less than 90 percent of the amount of money required to be spent for said SEP pursuant to this CA/FO, Respondent shall pay a stipulated penalty equal to 80 percent of the difference between the required amount to be spent ($150,000.00) and the amount Respondent actually spent on expenditures that EPA determines are creditable toward said SEP;

g) If EPA determines that the Outreach SEP is satisfactorily completed and implemented but Respondent has spent less than 90 percent of the amount of money required to be spent for said SEP pursuant to this CA/FO, Respondent shall pay a stipulated penalty equal to 80 percent of the difference between the required amount to be spent ($150,000.00) and the amount Respondent actually spent on expenditures that EPA determines are creditable toward said SEP;

h) For any failure timely to submit any report required for any SEP, or timely to submit any other report required by this CA/FO, Respondent shall pay a stipulated penalty in the amount of $150.00 for each day any such report is late up to the 30th day, and Respondent shall pay a stipulated penalty in the amount of $500 for each day any such report is thereafter late, and such penalty(ies) shall continue to accrue from the first date such report(s) is untimely until said report(s) is submitted to EPA.

82. Unless Respondent provides EPA with a writing pursuant to paragraph "83," below, all stipulated penalties are due and payable within 30 days of Respondent's receipt of EPA's written demand for payment of the penalty(ies). The method of payment shall be in accordance with the provisions of paragraph "1" of this section, above. Interest and a late payment handling charge will be assessed in the same manner and in the same amounts as specified in paragraph "5" of this section, above. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondent of the violation or made a demand for payment, but need only be paid upon demand.

83. After receipt of a demand from EPA for stipulated penalty(ies) pursuant to the above paragraph, Respondent shall have twenty (20) days in which to provide EPA with a written explanation of why it believes that a stipulated penalty(ies) is not due and owing, or is not appropriate, for the cited violation(s) of the terms and conditions of this CA/FO (including any technical, financial or other information that Respondent deems relevant).

84. EPA may, in the exercise of its sole discretion, waive or reduce any stipulated penalty due if Respondent has in writing demonstrated to EPA's satisfaction good cause for such action. If, after review of Respondent's submission pursuant to the preceding paragraph, EPA determines that Respondent has failed to comply with the terms and conditions of this CA/FO and concludes that the demanded stipulated penalty(ies) is due and owing, and further EPA has not waived or reduced the demanded stipulated penalty(ies), EPA will notify Respondent, in writing, of its decision regarding the stipulated penalty(ies). EPA will also notify the Respondent if the stipulated penalties are being waived or reduced. Respondent shall then, within 30 days of receipt thereof, pay the stipulated penalty

amount(s) indicated in EPA's notice.

85. Failure of Respondent to pay any stipulated penalty(ies) demanded by EPA pursuant to this CA/FO may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection or other action provided by applicable law.

General Provisions

86. Any responses, documentation, and evidence Respondent is required to provide to EPA in accordance with the terms and conditions of this Consent Agreement should be sent to EPA's Project Coordinator:

Carl F. Plössl, Environmental Engineer
Hazardous Waste Compliance Section
RCRA Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st floor
New York, New York 10007-1866

87. Notwithstanding any of the above, any act, work, measure or undertaking Respondent performs in compliance with the terms and conditions of this Consent Agreement (or has some third-party perform on its behalf) in order to achieve and maintain compliance with applicable RCRA requirements and prohibitions for the operation of the Facility shall not be inconsistent with and shall not relieve Respondent of its obligation to comply with applicable requirements and prohibitions under the Clean Air Act, the Clean Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Occupational Safety and Health Act, and each such act's implementing regulations; nor shall any such act, work or measure or undertaking be inconsistent with or otherwise relieve Respondent of its obligation to comply with any order Respondent has received from or entered into with EPA pursuant to any such applicable legal authority.

88. Notwithstanding any provision that is to the contrary or inconsistent, Respondent agrees to perform all requirements of this CA/FO within the time limits established hereunder, unless the performance is delayed by a *force majeure*. "*Force majeure*," for purposes of this CA/FO, is defined as any event arising from causes beyond the control of Respondent and of any entity controlling, controlled by, or under common control with Respondent, including any contractors and subcontractors, that delays the timely performance of any requirement set forth under this CA/FO notwithstanding Respondent's best efforts to avoid the delay. The requirement that Respondent exercise "best efforts to avoid the delay" includes using best efforts to anticipate any possible *force majeure* event and best efforts to address the effects of any possible *force majeure* event: (a) as it is occurring; and (b) following the possible *force majeure* event, to ensure that the delay is minimized to the greatest extent practicable. Examples of events that are not *force majeure* events include, but are not limited to, increased costs or expenses of any work required to be performed under this CA/FO or the financial difficulty of Respondent to perform such work.

89. If any event occurs or has occurred that may delay the performance of any requirement under this CA/FO, whether or not caused by a *force majeure* event, Respondent shall notify by telephone EPA within 48 hours of when Respondent knew or should have known that the event might cause a delay. In addition, Respondent shall notify EPA in writing within seven days after the date when Respondent first become aware or should have become aware of the circumstances that may delay or prevent performance. Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondent's rationale for interpreting such circumstances as being beyond its control (should that be Respondent's claim); (b) the actions (including pertinent dates) that Respondent has taken and/or plans to take to minimize any delay; and (c) the date by which or the time period within which Respondent proposes to complete the delayed activities. Such notification shall not relieve Respondent of any of its requirements under this CA/FO. Respondent's failure to timely and properly notify EPA as required by this paragraph shall constitute a waiver of Respondent's right to claim an event of *force majeure*. Respondent shall bear the burden of proving that an event constituting a *force majeure* has occurred.

90. If EPA determines that a delay in performance of a requirement under this CA/FO is or was attributable to a *force majeure*, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not relieve Respondent of any requirement to perform or complete other tasks required by this CA/FO that are not directly affected by the *force majeure*. Respondent shall use best efforts to avoid or minimize any delay or prevention of performance of their obligations under this CA/FO.

91. EPA shall mail to Respondent (to the representative designated below) a copy of the fully executed CA/FO:

Carlos E. Colón Franceschi, Esq.
Toto, Colon, Mullet, Rivera & Sifre, P.S.C.
416 Ponce de León Avenue
Union Plaza, Suite 311
San Juan, Puerto Rico 00918

Such mailing shall constitute service upon Respondent.

92. Respondent has read this CA/FO, understands its terms, and consents to making full payment of the civil penalty in accordance with the terms and conditions as set forth herein (and any additional payments because of late payment of the civil penalty), consents to perform and complete the Supplemental Environmental Projects in accordance with the terms and conditions as set forth herein and in accordance with the schedule set forth herein, consents to the payment of any stipulated penalty(ies) in accordance with the terms and conditions as set forth herein, consents to taking the necessary steps in the operation of the Facility (including those directed by EPA) to achieve and maintain compliance in accordance with the terms and conditions of this CA/FO for such operation, and consents to the issuance of the Final Order accompanying and incorporating the provisions of this Consent Agreement.

93. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with any other applicable federal, Commonwealth of Puerto Rico and local law and regulations governing the generation, handling, management, treatment, storage, transport and/or disposal (hereinafter, "handling and managing") of hazardous waste at the premises of and/or from the Facility.

94. This Consent Agreement is being voluntarily and knowingly entered into by the parties in settlement of the civil liability that might have attached pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, as a result of the violations described in the "EPA Findings of Fact" and the "EPA Conclusions of Law," above, through December 1, 2011. Respondent's payment of the full civil penalty in accordance with the terms and conditions set forth above (including any charge that accrues as a result of an untimely payment of any installment of the civil penalty) and its attainment of compliance with the terms and conditions of this CA/FO, including the requirement that Respondent successfully complete and implement the three Supplemental Environmental Projects as specified herein, shall resolve such liability, except to the extent expressly provided in paragraph 98 of this Section, below.

95. In all documents or reports Respondent submits to EPA pursuant to the terms and conditions of this CA/FO, Respondent shall, by an appropriate official sign and submit to EPA a certification under penalty of law that the information contained in such document or report is true, accurate and correct by signing the following statement:

> I certify that, to the best of my knowledge and belief, the information contained in or accompanying this document is true, accurate, and complete. In making this statement, I have relied in good faith on information furnished to me by employees or contractors of The Battery Recycling Company and/or upon my inquiry of the person or persons directly responsible for gathering the information. I am aware that there are significant penalties for intentionally submitting false information, including the possibility of fines and imprisonment for knowing violations.

96. If EPA determines that if any of Respondent's certifications made pursuant to paragraphs 27, 51, 53, 58, 60 or 69 of this section, above, is or has been falsely made, or that any document submitted in compliance with the terms and conditions of this CA/FO contains material misrepresentations of fact, Respondent shall then pay, upon written demand of EPA, a stipulated penalty in the amount of TWENTY-FIVE THOUSAND ($25,000) DOLLARS. Payment shall be made and transmitted as set forth in paragraph 1 of this section, above.

97. Nothing in this document is intended or is to be construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent if it is later determined that Respondent has violated a term or condition set forth in paragraph 96 of this section, above. If any certification made pursuant to paragraphs 27, 51, 53, 58, 60 or 69 of this section, above, were deemed by EPA to constitute a willful misrepresentation or a willful concealment of material fact with respect to Respondent's compliance with the terms and conditions of this CA/FO, EPA may initiate (or refer the matter to the Department of

Justice for) a separate criminal investigation pursuant to 18 U.S.C. § 1001 *et seq.*, or pursuant to other applicable law.

98. With regard to any reporting deadlines set forth in this CA/FO or any requirement concerning the frequency for making hazardous waste determinations undertaken pursuant to 40 C.F.R. § 262.11 (as set forth in paragraph 8 of this section, above), the requirements in this CA/FO may be modified and/or amended by EPA in its discretion in response to Respondent's written request. Any such request shall be in writing and contain justification therefore, and any such modification or amendment shall become effective upon written approval of the EPA project coordinator (as identified in paragraph 86 of this section, above).

99. Respondent's full payment of the civil penalty in accordance with the terms and conditions set forth above (including any charge that accrues as a result of an untimely payment of any installment of the civil penalty) and any action taken by Respondent in compliance with or otherwise in connection with the terms and conditions set forth herein shall not affect or prejudice the right of EPA (or the United States on behalf of EPA) to pursue appropriate injunctive relief or otherwise seek equitable relief or criminal sanctions for any violation(s) of law resulting or arising from Respondent's handling and management of solid waste and/or hazardous waste in connection with its operation of the Facility.

100. Respondent hereby waives its right to seek or to obtain a hearing on, or any other judicial review of, this CA/FO, or any part thereof, the including the Final Order accompanying the Consent Agreement and further including any right to contest any of the "EPA Findings of Fact," and/or "EPA Conclusions of Law" set forth herein.

101. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action, suit or proceeding, except in an action, suit or proceeding commenced by the United States, EPA or any successor agency to enforce this CA/FO or any of its terms and conditions.

102. Respondent voluntarily waives any right or remedy it might have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Administrator of EPA, Region 2, or the Deputy Regional Administrator of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this CA/FO and issue the Final Order accompanying the parties' Consent Agreement.

103. Respondent consents to service of a copy of the executed CA/FO by an EPA employee other than the Regional Hearing Clerk of EPA, Region 2.

104. The terms and conditions of this CA/FO shall be binding upon Respondent, its officials, authorized representatives, and successors or assigns.

105. Notwithstanding any provision herein, nothing herein is intended or is to be construed to waive, prejudice or otherwise affect the right of EPA (or the United States on behalf of EPA) from prosecuting any appropriate action permitted by law against Respondent and/or its responsible officials

for any material misrepresentations or false information provided to EPA in any document or report submitted or to be submitted pursuant to the terms and conditions of this Consent Agreement.

106. Each party shall bear its own costs and fees in connection with this proceeding.

107. Each undersigned signatory to this Consent Agreement certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms and conditions of this Consent Agreement.

In re Battery Recycling Company, Inc.,
Docket Number RCRA-02-2012-7101

FOR RESPONDENT:

BY: _____
Authorized Signature

NAME: Luis R. Figueroa Neves

TITLE: Presidente

DATE: 2/13/12

FOR COMPLAINANT:

BY: _____
Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection Agency-Region 2

DATE: FEBRUARY 21, 2012

In re Battery Recycling Company, Inc.,
Docket Number RCRA-02-2012-7101

FINAL ORDER

The Regional Administrator of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of Battery Recycling Company, Inc.,* bearing Docket Number RCRA-02-2012-7101. Said Consent Agreement, having been duly accepted and entered into by the parties, is hereby ratified and incorporated into this Final Order, which is hereby issued and shall take effect when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b) (3) and shall constitute an order issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

DATED: February 21, 2012
New York, New York

Judith A. Enck

JUDITH A. ENCK
Regional Administrator
United States Environmental Protection Agency- Region 2

Appendix 1: BASELINE ELEMENTS TO BE INCLUDED IN THE STANDARD OPERATING PROCEDURE MANUAL FOR RCRA-MANDATED COMPLIANCE

Options for Limiting Fugitive Dust Emissions: Total Enclosure[1]

1. Respondent shall contain fugitive dust emissions[2] generated in the course of operations at the Facility from the following sources and/or processes within a structure(s) that is totally enclosed[3] and in which negative air pressure is maintained at all times:

a) Smelting furnaces;

b) Smelting furnace charging areas;

c) Lead taps, slag taps, and molds during tapping;

d) Battery breakers;

e) Charge mixing areas;

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[1] The parties agree on the modification of the Facility towards total enclosure of its main production area listed in the text below, as established in the amendments to the National Emissions Standards for Hazardous Air Pollutants for Secondary Lead Smelting, 77 Fed. Reg. 556 (January 5, 2012) (40 CFR Part 63 Subpart X Amendments).

[2] The term "fugitive dust emissions" as used herein consist, in whole or in large part, of lead and/or dust containing other "RCRA constituents" (as has been defined in paragraph 8(d) of the "Agreement on Consent" section in the CA/FO).

[3] "Total enclosure" means a roofed and walled structure with limited openings to allow ingress and egress for people and vehicles, with such structure meeting the requirements as set forth below:

a) 40 C.F.R. § 265.1101(a)(1): "complete[] enclose[ure] with a floor, walls, and a roof to prevent exposure to the elements (*e.g.*, precipitations, wind, run-on) and to assure containment of managed wastes";

b) 40 C.F.R. § 265.1101(a)(2)(i): the floor and containment walls "provide an effective barrier against fugitive dust emissions" such that, as per 40 C.F.R. § 265.1101(c)(1)(iv), "measures [must be taken] to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions. In addition, all associated particulate collection devices (*e.g.*, fabric filter, electrostatic precipitator) must be operated and maintained with sound air pollution control practices. This state of no visible emissions must be maintained effectively at all times during normal operating conditions, including when vehicles and personnel are entering and exiting the unit"; and

c) 40 C.F.R. § 265.1101(c)(1)(i): "controls and practices [must be used] to ensure containment of the hazardous waste within the unit; and, at a minimum...the primary barrier [must be maintained]...free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier...."

f) Refining kettles and casting areas;

g) Material handling areas for any lead-bearing materials;[4] and

h) Areas in which facility personnel handle or process lead and/or dust containing other RCRA constituents-(as defined in paragraph 8(d) of the "Agreement on Consent" section of the CA/FO) from fabric filters, sweepings or used fabric filters;

i) Dryers; and

j) Agglomerating furnaces and agglomerating furnace caps.

Respondent shall submit to EPA a time frame to expeditiously effect, not inconsistent with requirements of paragraph 19 of the "Agreement on Consent" section of the CA/FO, the provisions of this paragraph, and such schedule may include, subject to EPA approval, an excepted time frame for ancillary non-process areas.

2. Respondent shall (to the extent not already done so) construct and shall thereafter operate the aforementioned (paragraph 1, above) totally-enclosed structure(s) in accordance with the following sub-paragraphs of this paragraph:

a) Each such structure shall be continuously ventilated to ensure negative pressure values of at least 0.013 millimeters (mm) of mercury (equivalent to 0.007 inches of water); and

b) Respondent shall maintain in each such structure an inward flow of air through all natural draft openings; and

c) Respondent shall ensure that each such structure is vented to a control device designed to capture lead and/or dust containing other RCRA constituents.

3. Respondent shall inspect such structure (paragraph 1, above; including any enclosure for such structure) at least once per month. For any gaps, breaks, separations, leak points or other possible routes for emissions or releases of lead and/or dust containing other RCRA constituents to the environment:

a) Respondent shall make repairs to eliminate or fix such gap, break, separation, leak point or other possible route for the emission or release of lead to the environment within one week of identification; and

[4] For purposes of this sub-paragraph (sub-¶ "g" of ¶ 1) and for purposes of paragraph 3, below, neither unbroken lead acid batteries nor finished lead products constitute or are deemed "lead-bearing materials/wastes."

b) for any such required repairs that Respondent is unable to make within one week of identification, Respondent shall notify EPA of such delay, the reason(s) for such delay, and the time Respondent deems it will need to make any such necessary repair(s).

4. Until such time as Respondent has satisfied and fully complied with the total enclosure provisions as set forth in paragraphs 1, 2 and 3, above, Respondent shall, in order to limit and control fugitive dust emissions, maintain full compliance with each of the following process control provisions:

a) For the area in which battery breaking operations occur, Respondent shall:

1) Partially enclose the storage piles;[5]

2) Apply wet suppression to such storage piles with sufficient frequency and quantity to prevent the formation of dust; and

3) Clean the pavement of such area at least two times per day.

b) For the furnace area, Respondent shall partially enclose such area and clean the pavement at least two times per day.

c) For the refining and casting area, Respondent shall partially enclose such area and clean the pavement at least two times per day.

d) For the slag- and sludge-handling and storage areas, Respondent shall partially enclose any piles located in such areas and apply wet suppression to storage piles with sufficient frequency and quantity to prevent the formation of dust.

Additional Responsive Measures to Limit Fugitive Dust Emissions

5. In addition to, and to the extent not inconsistent with, the provisions set forth above, Respondent shall at a minimum control fugitive dust emissions from the following sources by complying with the requirements set forth in paragraph 6, below:

a) Facility roadways;
b) Facility building interiors;
c) Facility building exteriors;
d) Accidental releases occurring at or on the property of the Facility;
e) The battery storage area of the Facility;

[5] "Partial enclosure" means a structure that consists of walls or partitions on at least three sides or three-quarters of the perimeter surrounding stored materials or process equipment sufficient to prevent the entrainment of particulate matter into the air.

f) Equipment maintenance areas of the Facility;
g) Material storage areas of the Facility; and
h) Material handling areas of the Facility.

6. In accordance with paragraph 5, above, Respondent shall comply with the following requirements set forth in sub-paragraphs "a" through "f" of this paragraph, as set forth below:

a) To the extent not already done so, Respondent shall clean all areas reasonably expected to be accessed by employees and/or visitors (other than "lead management areas," as such term is defined in the margin below),[6] and whenever Respondent undertakes any such required cleaning, Respondent shall do so by wet wash or by a vacuum equipped with a filter rated by its manufacturer to attain a 99.97% capture efficiency for 0.3 micron particles in a manner that does not generate fugitive lead and/or dust containing other RCRA constituents;

b) After detection of any accidental release of lead dust (containing 100 pounds or more of lead, in accordance with the CERCLA reportable quantity), Respondent shall initiate the cleaning of the area(s) so affected within one hour after such accidental release of lead dust has occurred, and Respondent shall develop reasonable protocols and standards for determining the success of such cleaning and include same in the SOP manual;

c) To the extent not already done, Respondent shall pave all areas of the Facility subject to vehicle traffic (*e.g.*, trucks, automobiles), but Respondent need not do so for limited access and limited use roadways, such as unpaved roads to remote locations on the property of the Facility, that are used for no more than one round trip per day. Respondent shall clean the pavement at least two times a day, except Respondent need not clean the pavement at least two times a day when natural precipitation makes cleaning unnecessary.

d) Respondent shall wash each vehicle on the grounds of the Facility (except those vehicles that have only accessed the employee and/or visitor parking areas) as it approaches any exit to the Facility, and in connection therewith:

1) Such washing shall at a minimum include the washing of tires, the undercarriage of the vehicle(s) and the exterior surface of any such vehicle(s);

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[6] "Lead management areas" include the following: smelting furnaces; smelting furnace charging areas; lead taps, slag taps, and molds during tapping; battery breakers; charge mixing areas; refining kettles and casting areas; any area handling, *inter alia*, lead-bearing materials/wastes (*e.g.*, drosses, slag, lead and lead oxide waste piles, wastewater treatment sludges, and other raw materials); and areas in which facility personnel handle or process lead and/or dust containing other RCRA constituents from fabric filters, sweepings or used fabric filters.

2) Following such washing but prior to the vehicle(s) exiting the Facility, Respondent shall, through properly trained personnel, inspect any such vehicle(s) to ensure there are no visible signs of contamination by lead and/or dust containing other RCRA constituents, and, where there are visible signs of such contamination, Respondent shall re-wash any such vehicle(s) to ensure that there are no visible signs of such contamination;

3) Respondent shall collect all water used in the aforementioned washing(s) of any vehicle as it approaches an exit to the Facility; and send same to the Facility's wastewater treatment plant.

e) Respondent shall perform all Facility maintenance activities that might generate lead and/or dust containing other RCRA constituents in a manner that minimizes emissions of same. To comply herewith, Respondent shall:

1) Perform maintenance: (i) inside a total permanent enclosure maintained at negative pressure; (ii) inside a temporary enclosure in conjunction with a vacuum system either equipped with a filter rated by the manufacturer to achieve a capture efficiency of 99.97 percent for 0.3 micron particles or routed to an existing control device permitted for this activity; or (iii) inside a partial enclosure in conjunction with wet suppression sufficient to prevent dust formation;

2) Decontaminate equipment prior to removal from an enclosure;

3) Repair immediately ductwork or structure leaks without an enclosure if the time to construct a temporary enclosure would exceed the time to make a temporary or permanent repair, or if construction of an enclosure would cause a higher level of emissions than if an enclosure were not constructed; and

4) Place used fabric filters in sealed plastic bags or containers immediately upon removal from a baghouse prior to such filters being transported.[7]

f) Respondent shall collect and transport dust containing lead and/or dust containing other RCRA constituents within closed conveyor systems or within sealed, leak-proof containers unless the collection and transport activities are wholly contained within total enclosure. All other lead-bearing materials must be contained, covered and/or otherwise transported in a manner that prevents spillage or dust formation.

[7] Respondent is not required to conduct inside of total enclosures activities required for inspection of fabric filters and maintenance of filters that are in need of removal and replacement.

7. Respondent shall maintain records for a period of five (5) years documenting all pavement cleaning, vehicle washing, wet suppression, exterior building cleaning and battery storage inspection activities performed at the Facility to control fugitive dust emissions, and such records shall be made available to EPA upon request (either on the day of the request if such request is made during an on-site EPA inspection of the Facility, or within five days if such request is conveyed in a written communication, such as in a letter or in an e-mail), or as otherwise provided by applicable law.

8. To the extent not inconsistent with the provisions of sub-paragraph "c" of paragraph 6, above, Respondent shall pave all grounds, or plant groundcover, on the Facility sufficient to prevent wind-blown dust. On unpaved areas of the Facility that do not support a groundcover, such as steep slopes or roadway shoulders, Respondent may use dust suppressants to prevent wind-blown dust.

Health and Safety Measures for Employee Protection

9. Respondent shall, at a minimum, provide each employee (for each shift) who is involved in the reclamation of spent lead acid batteries or who otherwise works, in whole or in part, in lead management areas (hereinafter such employees referred to as "process employees") with the following equipment:

a) Clean and dry coveralls or similar full-body work clothing sufficient to protect against exposure to lead and/or dust containing other RCRA constituents and/or other hazardous waste;

b) Gloves, hats (including, as appropriate, hard hats) and shoes (or disposable coverings for shoes); and

c) Appropriate respirators and cartridges (more fully described in paragraph 15(a), below).

10. Respondent shall ensure that each process employee (for each shift):

a) is informed of the need to utilize (*i.e.* wear) the aforementioned (¶ 9, above) protective items of clothing and equipment during each shift; and

b) utilizes (*i.e.* wears) the aforementioned (¶ 9, above) and appropriate (*i.e.* necessary to protect the health and safety of such employee) protective items of clothing and equipment during each shift.

11. Respondent shall ensure that each process employee showers at the completion of such employee's daily work shift.

12. To handle and maintain employee protective clothing and/or equipment so as to, *inter alia*, maintain their integrity and ensure such clothing and equipment properly function for the purpose(s) for which they are intended, Respondent shall do the following:

a) Clean and launder protective clothing and equipment;

b) Repair or replace protective clothing and equipment to maintain the intended level of protection, safety and/or effectiveness;

c) For contaminated protective clothing or equipment which is to be disposed of because it is no longer able to provide the intended level of protection, safety and/or effectiveness, handle and manage same as hazardous waste;

d) For contaminated clothing or equipment to be cleaned, laundered or disposed of, place same in a closed, labeled container in the changing area (discussed below); and

e) For non-contaminated protective clothing or equipment which is no longer able to provide the intended level of protection, safety and/or effectiveness, dispose of same properly.

13. Respondent shall set aside at least one room to accommodate its process employees changing their clothing before the start of each working shift and after the completion of each working shift. In accordance therewith:

a) Respondent shall ensure that each employee removes his protective clothing and equipment at the end of each work shift in the designated changing room(s);

b) Respondent shall ensure that each changing room is equipped with separate storage facilities for the protective clothing and equipment for each process employee;

c) Respondent shall ensure that each changing room is equipped with separate storage facilities for the street (*i.e.* non-work) clothes of each process employee; and

d) Respondent shall ensure that no process employee leaves his working area wearing any clothing or equipment that had been worn during the employee's work shift.

14. Respondent shall provide a lunchroom facility(ies) for its process employees. In accordance therewith:

a) Respondent shall ensure that such a designated facility(ies) are temperature-controlled, and have positive pressure and a filtered-air supply;

b) Respondent shall ensure that no process employee wearing potentially contaminated protective work clothing or equipment enters any lunchroom facility(ies) unless any surface dust carried by such employee has been removed, by vacuuming, by down draft booth or some other cleaning method that removes said dust;

c) Respondent shall undertake to require process employees to wash their hands prior to eating, drinking and/or applying cosmetics; and

d) Respondent shall continue its present ban on smoking on Facility grounds.

15. Respondent shall ensure that entry to lead management areas be limited to those employees, contractors, and authorized visitors equipped with and wearing appropriate respiratory protection that is properly operational and in full compliance with current regulations of the United States Occupational Safety and Health Administration ("OSHA"), with the presumption that exposures within the processing building are in excess of the permissible exposure limit ("PEL") for the time-weighted average ("TWA") (as per 29 C.F.R. §§ 1910.1025(c)(1)). Further, in accordance therewith:

a) Respondent must ensure that respirator selection, filter cartridge selection, medical surveillance and respiratory training are consistent with current OSHA regulations, provided, however, that filtering facepiece respirators shall not be deemed acceptable and shall not be utilized;[8] and

b) Respondent shall ensure that all respirators must be certified by the National Institute for Occupational Safety and Health (NIOSH).[9]

16. Respondent shall ensure that, in addition to the respiratory protection described above in paragraph 15, authorized visitors to lead management areas for short "visits," of up to 30 minutes, also are provided with and wear appropriate "employee" protective equipment including shoe/boot coverings, hardhat, safety glasses, and hearing protection (as required). All such visitors must also be offered, but are not required to wear, for clothing protection the following: long (washable) covering coat, Tyvek covering, or change clothing (either washable or disposable). Respondent shall further ensure that authorized visitors to the Facility shed, prior to exiting there from, contaminated equipment (for cleaning and/or disposal), and either go through a more limited decontamination procedure (*e.g.*, boot and hand wash) or go through the full employee shower and changing procedure.

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[8] A filtering facepiece respirator is a particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium (*e.g.*, dust mask).

[9] The NIOSH certified equipment list is found on the Internet at the following URL: http://www.cdc.gov/niosh/npptl/topics/respirators/cel/

17. Notwithstanding any other provision herein, Respondent shall ensure that employees in other areas of the Facility engaged in cleaning and other management of lead and/or dust containing other RCRA constituents are equipped, trained, and undergo medical surveillance set forth in paragraph 15, above.

18. Respondent shall establish and maintain a housekeeping program to ensure that airborne and surface levels of lead and/or dust containing other RCRA constituents are kept as low as feasibly possible. In connection therewith, Respondent shall ensure that:

a) Employee locker rooms, lunchrooms, shower facilities, employee entry and egress areas, respirator storage areas and areas for the handling and management of contaminated protective clothing and other equipment shall be cleaned once per shift in order to maintain all floor and counter surfaces as free as practicable of accumulations of lead and/or dust containing other RCRA constituents; and

b) The cleaning required by sub-paragraph "a" of this paragraph shall be by a wet wash or by a vacuum equipped with a filter rated by its manufacturer to attain a 99.97% capture efficiency of 0.3 micron particles in a manner that does not generate fugitive lead and/or dust containing other RCRA constituents.