UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:	**Administrative Order**
Battery Recycling Company Inc.	**CAA-02-2011-1010**
RESPONDENT	

PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA) Region 2, Director of the Caribbean Environmental Protection Division (CEPD) issues this COMPLIANCE ORDER, pursuant to the Clean Air Act, 42 U.S.C. § 7401 et seq. ("CAA" or "Act"), Sections 113(a) and 114, 42 U.S.C. §§ 7413(a) and 7414, to the Battery Recycling Company Inc. ("BRC" or "Respondent") for violations of the Act at its secondary lead smelting facility (Facility) located on Puerto Rico Road # 2, KM 72.2, Cambalache Ward, Arecibo, Puerto Rico. The authority to find a violation and issue compliance orders in the Commonwealth of Puerto Rico and the US Virgin Islands has been delegated to the Director from the Administrator through the Regional Administrator.

In this Administrative Order, the Director finds Respondent to be in violation of several applicable regulations of the general provisions of the NSPS regulations, 40 C.F.R. Part 60, Subpart A (NSPS General Provisions); the NSPS for Secondary Lead Smelters, 40 C.F.R. Part 60, Subpart L (Secondary Lead Smelter NSPS); the general provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, 40 C.F.R. Part 63, Subpart A (NESHAP General Provisions); and the NESHAP for Secondary Lead Smelting, 40 C.F.R. Part 63, Subpart

X (Secondary Lead Smelting MACT). Therefore, pursuant to Section 113(a)(3) of the Act, the Director issues this Compliance Order.

STATUTORY BACKGROUND

1. Section 111(b)(1)(A) of the Act requires EPA to publish a list of categories of stationary sources of air pollution which, in the judgment of the Administrator, cause or contribute significantly to air pollution, which may reasonably be anticipated to endanger public health or welfare.

2. Section 111(b)(1)(B) requires EPA to promulgate regulations establishing federal standards of performance for "new sources," referred to as New Source Performance Standards (NSPS), within each category or subcategory listed pursuant to Section 111(b)(1)(A).

3. The term "stationary source" is defined by Section 111(a) of the Act to mean "any building, structure, facility or installation which emits or may emit any air pollutant."

4. The term "new source" is defined by Section 111(a) of the Act to mean "any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance" which will be applicable to the source.

5. Section 112(b) of the Act establishes a list of hazardous air pollutants (HAPs).

6. Section 112(c) of the Act directs EPA to publish a list of all categories and subcategories of major sources and area sources of HAPs.

7. Section 112(d) of the Act directs EPA to promulgate regulations establishing emission standards for each category or subcategory of major and area sources of HAPs.

8. Section 112(a)(1) of the Act defines "major source" as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls in the aggregate, ten (10) tons or more of any hazardous air pollutant or twenty-five (25) tons per year or more of any combination of hazardous air pollutants.

9. Section 112(a)(2) of the Act defines "area source" as any stationary source of hazardous air pollutants that is not a major source.

10. Section 113(a)(3) of the Act authorizes issuance of Orders where EPA finds a person violated rules promulgated pursuant to, among other sections of the Act, Sections 111, 112 and 114.

11. Section 112(i)(3) of the Act provides that after the effective date of any emissions standard, limitation or regulation promulgated pursuant to Section 112 and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation.

12. Section 114(a)(1) of the Act authorizes the EPA to require owners or operators of emission sources to submit specific information regarding facilities, establish and maintain records, make reports, sample emission points, and to install,

use and maintain monitoring equipment or methods in order to determine whether any person is in violation of the Act.

13. The term "person" defined in Section 302(e) of the Act, includes corporation.

REGULATORY BACKGROUND

Secondary Lead Smelter NSPS and NSPS General Provisions

14. On March 8, 1974, pursuant to the authority of Sections 111 and 114 of the Act, EPA promulgated the Secondary Lead Smelter NSPS. These regulations are set forth at 40 C.F.R §§ 60.120 – 60.123.

15. The requirements of the Secondary Lead Smelter NSPS apply to the following affected facilities in secondary lead smelters that commence construction or modification after June 11, 2003: pot furnaces of more than 250 kg (550 lb) charging capacity; blast (cupola) furnaces; and reverberatory furnaces. 40 C.F.R. § 60.120.

16. On November 17, 1975, under the authority of Sections 111 and 114 of the Act, EPA promulgated the NSPS General Provisions, set forth at 40 C.F.R. §§ 60.1 – 60.19.

17. The NSPS General Provisions at 40 C.F.R. § 60.1 state that the NSPS General Provisions "apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication in this part of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility."

18. The NSPS General Provisions at 40 C.F.R. § 60.2 define the applicable terms used in this Order as follows:

a) opacity: the degree to which emissions reduce the transmission of light and obscure the view of an object in the background;

b) owner or operator: person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part;

c) affected facility: with reference to a stationary source, any apparatus to which a standard is applicable;

d) construction: fabrication, erection, or installation of an affected facility; and

e) startup: the setting in operation of an affected facility for any purpose.

19. The NSPS General Provisions at 40 C.F.R. § 60.7(a)(1) state that any owner or operator subject to the provisions of NSPS Part 60 shall furnish the Administrator written notification or, if acceptable to both the Administrator and the owner or operator of a source, electronic notification, of the date that construction (or reconstruction as defined under § 60.15) of an affected facility is commenced, which is postmarked no later than 30 days after such date.

20. The NSPS General Provisions at 40 C.F.R. § 60.7(a)(3) state that any owner or operator subject to the provisions of Part 60 shall furnish the Administrator written notification of the actual date of initial startup of an affected facility postmarked within 15 days after such date.

21. The NSPS General Provisions at 40 C.F.R. § 60.8(a) state that within 60 days after achieving the maximum production rate at which the affected facility will be

operated, but not later than 180 days after initial startup of such facility and at such other times as may be required by the Administrator under Section 114 of the Act, the owner or operator of such facility shall conduct performance test(s) and furnish the Administrator a written report of the results of such performance test(s).

22. The NSPS General Provisions at 40 C.F.R. § 60.11(d) state that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

NESHAP General Provisions

23. On March 16, 1994, pursuant to the authority of Sections 112 and 114 of the Act, EPA promulgated the NESHAP General Provisions, set forth at 40 C.F.R §§ 63.1 – 63.16.

24. The NESHAP General Provisions at 40 C.F.R. § 63.1(a)(4) provide that each relevant standard in Part 63 must identify explicitly whether each provision of the NESHAP General Provisions is or is not included in such relevant standard.

25. The NESHAP General Provisions at 40 C.F.R. § 63.2 define "affected source" as the collection of equipment, activities, or both within a single contiguous area and under common control that is included in a Section 112(c) source category or subcategory for which a Section 112(d) standard or other relevant standard is established pursuant to Section 112 of the Act.

26. The NESHAP General Provisions at 40 C.F.R. § 63.4(a)(2) provide that no owner or operator subject to the provisions of this part shall fail to keep records, notify, report, or revise reports as required under this part.

27. The NESHAP General Provisions at 40 C.F.R. § 63.6(b)(2) establish that the owner or operator of a new or reconstructed affected source that has an initial startup after the effective date of a relevant Part 63 standard established pursuant to Section 112(d), (f), or (h) of the Act must comply with such standard upon startup of the source.

28. The NESHAP General Provisions at 40 C.F.R. § 63.6(e)(1)(i) require that the owner or operator of an affected source at all times, including periods of startup, shutdown, and malfunction, must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. During a period of startup, shutdown, or malfunction, this general duty to minimize emissions requires that the owner or operator reduce emissions from the affected source to the greatest extent which is consistent with safety and good air pollution control practices.

29. The NESHAP General Provisions at 40 C.F.R. § 63.6(e)(3)(i) require that the owner or operator of an affected source must develop a written startup, shutdown, and malfunction plan (SSM Plan) that describes, in detail, procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction, and a program of corrective action for malfunctioning process and air pollution control and

monitoring equipment used to comply with the relevant standard. It also stated that this plan must be developed by the owner or operator by the source's compliance date for that relevant standard.

30. The NESHAP General Provisions at 40 C.F.R. § 63.6(e)(3)(i)(A) require that, at all times, the owner or operator operates and maintains each affected source, including associated air pollution control and monitoring equipment, in a manner which satisfies the general duty to minimize emissions established in 40 C.F.R. § 63.6(e)(1)(i).

31. The NESHAP General Provisions at 40 C.F.R. § 63.6(e)(3)(v) state that the owner or operator must maintain at the affected source a current SSM Plan and must make the plan available upon request for inspection and copying by the Administrator.

32. The NESHAP General Provisions at 40 C.F.R. § 63.6(e)(3)(vii) state that based on the results of a determination made under paragraph 40 C.F.R. § 63.6(e)(1)(i), the Administrator may require that an owner or operator of an affected source make changes to the SSM Plan for that source.

33. The NESHAP General Provisions at 40 C.F.R. § 63.6(e)(3)(viii) require that the owner or operator may periodically revise the SSM Plan for the affected source as necessary to satisfy the requirements of 40 C.F.R. Part 63 or to reflect changes in equipment or procedures at the affected source. Unless the permitting authority provides otherwise, the owner or operator may make such revisions to the SSM Plan without prior approval by the Administrator or the permitting authority. However, each such revision to a SSM Plan must be reported in the semiannual report required by

40 C.F.R. § 63.10(d)(5). If the SSM Plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the SSM Plan at the time the owner or operator developed the plan, the owner or operator must revise the SSM Plan within 45 days after the event to include detailed procedures for operating and maintaining the source during similar malfunction events and a program of corrective action for similar malfunctions of process or air pollution control and monitoring equipment. In the event that the owner or operator makes any revision to the SSM Plan which alters the scope of the activities at the source which are deemed to be a startup, shutdown, or malfunction, or otherwise modifies the applicability of any emission limit, work practice requirement, or other requirement in a standard established under this part, the revised plan shall not take effect until after the owner or operator has provided a written notice describing the revision to the permitting authority.

34. The NESHAP General Provisions at 40 C.F.R. § 63.7(a)(2) establish that if required to do initial performance testing by a relevant standard, the owner or operator of the affected source must perform such tests within 180 days of the compliance date for such source.

35. The NESHAP General Provisions at 40 C.F.R. § 63.7(b)(1) require that the owner or operator of an affected source shall notify the Administrator in writing of his or her intention to conduct a initial performance test at least 60 calendar days before the initial performance test is scheduled to begin to allow the Administrator, upon request, to review and approve the site-specific test plan required under 40 C.F.R. § 63.7(c) and to have an observer present during the test.

36. The NESHAP General Provisions at 40 C.F.R. § 63.8 state that the owner or operator of an affected facility shall conduct required initial performance tests and furnish EPA with a written report of the results within 60 days after achieving the maximum production rate at which it will be operated, but not later than 180 days after the initial startup of such facility.

37. The NESHAP General Provisions at 40 C.F.R. § 63.9 provide the notification requirements for affected sources.

38. The NESHAP General Provisions at 40 C.F.R. § 63.9(a)(4)(ii) state that an the owner or operator of an affected source (in such states with delegated authority) subject to such requirements shall submit notifications to the delegated state authority (which may be the same as the permitting authority). In addition, it states that if the delegated (permitting) authority is the state, the owner or operator shall send a copy of each notification submitted to the state to the appropriate Regional Office of the EPA, as specified in § 63.9(a)(4)(i). It also states that the Regional Office may waive this requirement for any notifications at its discretion.

39. The NESHAP General Provisions at 40 C.F.R. § 63.9(b)(1)(ii) establish that if an affected source increases its emissions of HAPs (or its potential to emit HAPs) such that the source is a major source that is subject to the emission standard or other requirement, such source shall be subject to the notification requirements of 40 C.F.R. § 63.9.

40. The NESHAP General Provisions at 40 C.F.R. § 63.10(b)(2) require, under the recordkeeping and reporting requirements, the owner or operator of an affected source to maintain relevant records for such source, including records of:

a) the occurrence and duration of each startup, shutdown, or malfunction of operation;

b) the occurrence and duration of each malfunction of the required air pollution control and monitoring equipment;

c) all required maintenance performed on the air pollution control and monitoring equipment;

d) actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation) when such actions are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan;

e) all information necessary to demonstrate conformance with the affected source's startup, shutdown, and malfunction plan when all actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) are consistent with the procedures specified in such plan; each period during which a continuous monitoring system (CMS) is malfunctioning or inoperative (including out-of-control periods); and

f) all required measurements needed to demonstrate compliance with a relevant standard (including, but not limited to, 15-minute averages of CMS data, raw performance testing measurements, and raw performance evaluation measurements, that support data that the source is required to report).

41. The NESHAP General Provisions at 40 C.F.R. § 63.10(d)(1) require the owner or operator of an affected source subject to reporting requirements under Part 63 to submit reports to the Administrator in accordance with the reporting requirements in the relevant standard(s).

42. The NESHAP General Provisions at 40 C.F.R. § 63.10(d)(1) require the owner or operator of an affected source shall report the results of the performance test to the Administrator (or the State with an approved permit program) before the close of business on the 60th day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Administrator. It also states that the results of the performance test shall be submitted as part of the notification of compliance status required under 40 C.F.R. § 63.9(h).

43. The NESHAP General Provisions at 40 C.F.R. § 63.10(e)(3)(i) require, under the excess emissions and CMS performance report and summary report requirements, the owner or operator of an affected source required to install a CMS by a relevant standard to submit an excess emissions and CMS performance report and/or a summary report to the Administrator semiannually except when, among other things, the Administrator determines on a case-by-case basis that more frequent reporting is necessary to accurately assess the compliance status of the source.

Secondary Lead Smelting MACT

44. On June 23, 1995, under the authority of Sections 112 and 114 of the Act, EPA promulgated the Secondary Lead Smelting MACT, set forth at 40 C.F.R. §§ 63.541 - 63.551. The regulations became effective upon promulgation and were subsequently amended on several dates.

45. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.541(a) provides that it applies to the following affected sources at all secondary lead smelters: blast,

reverberatory, rotary, and electric smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources.

46. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.541(b) provides a table in which it indicates 40 C.F.R. §§ 63.1, 63.2, 63.3, 63.4, 63.5, 63.6(a)-(c), (e), (f), (g), (i) and (j), 63.6(d) and (h), 63.7, 63.8, 63.9(a)-(e), (g), (h)(1)-(3), (h)(5-6), and (j), 63.9(f) and (h)(4), 63.10, 63.11, 63.12 to 63.15 are applicable to owners and operators of secondary lead smelters subject to the Secondary Lead Smelting MACT.

47. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.542 provides the definition for terms applicable in the Secondary Lead Smelting MACT. Among the terms, it defines:

a) "battery breaking area" as the plant location at which lead-acid batteries are broken, crushed, or disassembled and separated into components;

b) "bag leak detection system" as systems that include, but are not limited to, devices using triboelectric, light scattering, and other effects to monitor relative or absolute particulate matter emissions;

c) "fugitive dust source" as a stationary source of hazardous air pollutant emissions at a secondary lead smelter that is not associated with a specific process or process fugitive vent or stack;

d) "process fugitive emission source" as a source of hazardous air pollutant emissions at a secondary lead smelter that is associated with lead smelting or refining but is not the primary exhaust stream from a smelting furnace and is not a fugitive dust source. The definition also states that the process fugitive sources include, but are not limited to, smelting furnace charging points, smelting furnace lead and slag taps, refining kettles, agglomerating furnaces, and drying kiln transition pieces;

e) "reverberatory furnace" as a refractory-lined furnace that uses one or more flames to heat the walls and roof of the furnace and lead-bearing scrap to such a temperature (greater than 980°C) that lead compounds are chemically reduced to elemental lead metal;

f) "secondary lead smelter" as any facility at which lead-bearing scrap material, primarily, but not limited to, lead-acid batteries, is recycled into elemental lead or lead alloys by smelting; and

g) "smelting" as the chemical reduction of lead compounds to lead metal in high-temperature furnaces including, but not limited to, blast furnaces, reverberatory furnaces, rotary furnaces, and electric furnaces.

48. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.543(a) states that no owner or operator of a secondary lead smelter shall discharge or cause to be discharged into the atmosphere from any existing, new, or reconstructed blast, reverberatory, rotary, or electric smelting furnace any gases that contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains of lead per dry standard cubic foot).

49. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.543(h) requires annual compliance testing for lead compounds no later than 12 months following performance of the initial performance test required to demonstrate compliance with 40 C.F.R. § 63.543(a).

50. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.544 requires each owner or operator of a secondary lead smelter to control the process fugitive emission sources in accordance with the Secondary Lead Smelter MACT.

51. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.544(b)(1) and (2) requires each owner or operator to control all process fugitive emission sources using an enclosure hood. Section 63.544(b)(1) requires all process fugitive enclosure hoods, except those specified for refining kettles and dryer transition pieces to be ventilated to maintain a face velocity of at least 90 meters per minute (300 feet per minute) at all

hood openings. Section 63.544(b)(2) requires all process fugitive enclosure hoods required for refining kettles in § 63.544(a) to be ventilated to maintain a face velocity of at least 75 meters per minute (250 feet per minute).

52. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.544(c) requires all enclosure hoods to be ventilated to a control device that shall not discharge to the atmosphere any gases that contain lead compounds in excess of 2.0 milligrams of lead per dry standard cubic meter (0.00087 grains of lead per dry standard cubic foot).

53. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.545(a) and (b) establish standards for fugitive dust sources.

54. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.545(a) requires each owner or operator of a secondary lead smelter to prepare and at all times operate according to a standard operating procedures manual that describes in detail the measures that will be put in place to control fugitive dust emission sources (Fugitive Dust SOP Manual).

55. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.545(b) requires the Fugitive Dust SOP Manual (prepared by the owner or operator of a secondary lead smelter), required by § 63.545(a), to be submitted to the EPA or delegated authority for review and approval.

56. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.545(c) and (c)(2) requires the controls for the battery breaking area to include, at a minimum, a partial enclosure of storage piles, wet suppression applied to storage piles with pavement cleaning twice per day; or total enclosure of the battery breaking area.

57. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.548(a) requires owners and operators of secondary lead smelters to prepare, and at all times operate according to, a standard operating procedures manual that describes in detail procedures for inspection, maintenance, and bag leak detection and corrective action plans for all baghouses (fabric filters) that are used to control process, process fugitive, or fugitive dust emissions from any source subject to the lead emission standards in 40 C.F.R. §§ 63.543, 63.544, and 63.545, including those used to control emissions from building ventilation (Monitoring SOP Manual).

58. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.548(b) requires the Monitoring SOP Manual, required by § 63.548(a) to be submitted to EPA or delegated authority for review and approval.

59. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.549(a) requires each owner or operator of a secondary lead smelter to comply with all of the notification requirements of the NESHAP General Provisions at 40 C.F.R. § 63.9.

60. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.549(b) requires each owner or operator of a secondary lead smelter to submit the Fugitive Dust SOP Manual and the Monitoring SOP Manual for baghouses to EPA or delegated authority along with a notification that the smelter is seeking review and approval of these plans and procedures.

61. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.550(a) and (a)(1) requires each owner or operator of a secondary lead smelter to maintain for a period of 5 years, records of, among other things, an identification of the date and time of all bag

leak detection system alarms, their cause, and an explanation of the corrective actions taken.

62. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.550(b) requires each owner or operator of a secondary lead smelter to comply with all of the reporting requirements under 40 C.F.R. § 63.10 of the NESHAP General Provisions. It also states that the submittals of reports are required to be no less frequent than specified under 40 C.F.R. § 63.10(e)(3) and that once a source reports a violation of the standard or excess emissions, the source is required to follow the reporting format required under 40 C.F.R. § 63.10(e)(3) and submit reports semiannually until a request to reduce reporting frequency is approved.

63. The Secondary Lead Smelting MACT at 40 C.F.R. § 63.550(c) requires the owner or operator to include, in its semiannual report required under 40 C.F.R. §§ 63.10(e)(3) and 63.550(b), records of all alarms from the bag leak detection system specified in § 63.548(e).

FINDINGS OF FACTS

64. Respondent has owned and operated the Facility, a vehicle battery recycling plant, since 1996.

65. At Respondent's Facility, used vehicle batteries are recycled in the following manner: the batteries are first placed in a shredder where they are broken and crushed, and then broken plastic is separated from the lead and lead oxides. The lead and lead oxides are then loaded into reverberatory furnace. The lead is then

further refined in one of three cupola furnaces. Each reverberatory furnace can smelt ten (10) tons of lead per production run. The plant produces about 66.67 tons of elemental lead per day.

66. The plant employs two (2) baghouses as emission control devices, at which particulates from the furnaces are captured. The baghouses have eight (8) compartments each.

67. Respondent also utilizes an enclosure hood to capture fugitive emissions from the smelting process. The emissions captured in the enclosure hoods are vented through the baghouses.

68. Respondent commenced construction at the Facility, and in May 2003 began operating, a secondary lead smelting process. During this initial smelting process, Respondent used a reverberatory furnace (hereinafter "First Furnace"). Respondent replaced the First Furnace in 2007 with a second reverberatory furnace (hereinafter "Second Furnace").

69. In June 2010, Respondent installed and began operating the Third Furnace at its Facility.

70. In April 2011, an EPA duly authorized inspector conducted a series of inspections at the Facility and a review of the Facility records.

71. An EPA duly authorized inspector also performed a review of EPA records (EPA File Review).

72. The Inspections and file review indicated that:

a) The Second Furnace was connected to a new baghouse with eight (8) compartments in February 2010.

b) Respondent did not notify EPA of its intention to reconstruct the Second Furnace (an affected source) as required by 40 C.F.R. §§ 60.7(a)(1), 63.5(b)(4), 63.9(b)(5)(i) and 63.549(a).

c) For the Second Furnace, in February 2010, Respondent conducted a performance test for emissions of lead compounds, opacity and particulate matter (PM) from the associated air pollution control device as required by 40 C.F.R. §§ 60.8(a) and 63.7(a)(2).

d) Respondent did not notify EPA of its intention to conduct the performance tests of the air pollution control device associated with the Second Furnace as required by 40 C.F.R. §§ 60.7(a)(6), 60.8(d) and 63.7(b)(1).

e) Respondent did not submit to EPA a notification of the actual date of startup of the Second Furnace, delivered or postmarked within 15 calendar days after that date, as required by 40 C.F.R. §§ 60.7(a)(3), 63.9(b)(5)(ii) and 63.549.

f) The performance tests conducted by Respondent on its Second Furnace demonstrated compliance for lead, opacity and PM.

g) Respondent failed to submit to EPA the results of the performance tests as required by 40 C.F.R. § 63.7(g)(1) and the Notification of Compliance Status required by 40 C.F.R. §§ 63.9(h)(2) and 63.549 within sixty (60) days after completion of the performance tests conducted on the air pollution control device associated with the Second Furnace.

h) On December 23, 2009, Respondent notified EPA in writing of its intention to construct an additional furnace (Third Furnace) and refining kettles. In June 2010, Respondent installed and began operating the Third Furnace connected to the existing baghouse at its Facility. The existing baghouse was modified to add two (2) compartments for a total of eight (8) compartments.

i) For the Third Furnace, in June 2010, Respondent conducted an initial performance test for emissions of lead compounds, opacity and PM from the associated air pollution control device as required by 40 C.F.R. §§ 60.8(a), and 63.7(a)(2).

j) Respondent did not notify EPA of its intention to conduct the performance tests of the air pollution control device associated with the Third Furnace as required by 40 C.F.R. §§ 60.7(a)(6), 60.8(d) and 63.7(b)(1).

k) Respondent did not submit to EPA a notification of the actual date of startup of the Third Furnace, delivered or postmarked within 15 calendar days after that date, as required by 40 C.F.R. §§ 60.7(a)(3), 63.9(b)(5)(ii) and 63.549.

l) The performance tests conducted by Respondent on its Third Furnace demonstrated compliance for lead, opacity and PM.

m) Respondent did not submit to EPA the results of the performance tests as required by 40 C.F.R. § 63.7(g)(1) and the Notification of Compliance Status required by 40 C.F.R. §§ 63.9(h)(2) and 63.549 within sixty (60) days after completion of the performance tests conducted on the air pollution control device associated with the Third Furnace.

n) Respondent did not notify EPA of the physical and operational changes it intended to implement at the Facility that would increase the Facility's lead emission rate prior to implementing such changes as required by 40 C.F.R. § 60.7(a)(4).

o) In June 2010, Respondent conducted tests on its fugitive emission enclosure hoods to determine compliance with the face velocity requirements, provided in 40 C.F.R. §§ 63.544(a), (b)(1) and (2), and (c), as required by 40 C.F.R. §§ 60.8(a) and 63.7(a)(2).

p) Respondent did not notify EPA of its intention to conduct such tests as required by 40 C.F.R. §§ 60.7(a)(6), 60.8(d) and 63.7(b)(1).

q) Respondent did not modify its SSM Plan, dated June 2009, to incorporate specifications for the new furnace, baghouse and refining kettles, as well as the modifications made to the Second Furnace and existing baghouse to minimize emissions as required by 40 C.F.R. §§ 60.11(d), 63.6(e)(1)(i), 63.6(e)(3)(i), 63.6(e)(3)(i)(A) and 63.6(e)(3)(v) and (viii).

r) Respondent did not modify and submit to EPA or PREQB its Fugitive Dust SOP Manual, dated June 2009, to incorporate reference to the new furnace, baghouse and refining kettles, as well as the modifications made to the Second Furnace and existing baghouse as required by 40 C.F.R. § 63.545.

s) Respondent did not modify and submit to EPA or PREQB its Monitoring SOP Manual, dated June 2009, to incorporate reference to the new furnace, baghouse and refining kettles, as well as the modifications made to the Second Furnace and existing baghouse as required by 40 C.F.R. § 63.548.

t) Respondent did not properly monitor, record and provide to EPA or PREQB the following reports as follows:

(1) From July 2009 through at least the date of the EPA Inspections issuance of this compliance order, Respondent did not keep any records of, and/or record any alarms of the Facility's bag leak detection system, as required by 40 C.F.R. § 63.550(a)(1).

(2) From July 2009 through the date of issuance of this compliance order, Respondent did not submit to EPA any excess semi-annual lead emissions reports or summary reports regarding operations at the Facility, as required by 40 C.F.R. §§ 63.10(e) and 63.550(c).

(3) During weekends or holidays, Respondent did not keep and/or record the baghouses' operation data as required by 40 C.F.R. § 63.550.

u) The bag leak detection system operating at the Facility was not capable of detecting particulate matter as required by 40 C.F.R. § 63.548(e).

v) A lead monitoring station adjacent to the Facility reported eight (8) instances of exceedances of the lead standard between January – June 2010.

w) One of the revolving doors of the baghouse to the Third Furnace was not 100 % functional (could not be completely shut closed) potentially allowing fugitive dust to gain access outside of the baghouse area.

CONCLUSIONS OF LAW

73. Respondent is the owner and/or operator of reverberatory furnaces (including Furnace 2 and 3) which are "affected facilities," within the meaning of 40 C.F.R. § 60.120(a), and "affected facilities," within the meaning of 40 C.F.R. § 60.2.

Therefore, Respondent is subject to the NSPS General Provisions and the Secondary Lead Smelter NSPS.

74. Respondent is the owner and/or operator of reverberatory furnaces (including Furnace 2 and 3) and refining kettles, which are "affected sources," within the meaning 40 C.F.R. § 63.541(a). Therefore, Respondent is subject to the Secondary Lead Smelting MACT and the NESHAP General Provisions specified in the Secondary Lead Smelting MACT.

75. Respondent's Facility is a "secondary lead smelter" within the meaning of 40 C.F.R. §§ 63.542.

76. Respondent violated the NSPS General Provisions, the Secondary Lead Smelting MACT and the NESHAP General Provisions specified in the Secondary Lead Smelting MACT by failing to:

a) notify EPA of its intention to reconstruct the Second Furnace as required by 40 C.F.R. §§ 60.7(a)(1), 63.5(b)(4), 63.9(b)(5)(i) and 63.549(a);

b) notify EPA of its intention to conduct the performance tests for emissions of lead compounds, opacity and PM of the air pollution control device associated with the Second Furnace as required by 40 C.F.R. §§ 60.7(a)(6), 60.8(d) and 63.7(b)(1);

c) submit to EPA a notification of the actual date of startup of the Second Furnace, delivered or postmarked within 15 calendar days after that date, as required by 40 C.F.R. §§ 60.7(a)(3), 63.9(b)(5)(ii) and 63.549;

d) submit to EPA the results of the performance tests as required by 40 C.F.R. § 63.7(g)(1) and the Notification of Compliance Status required by 40 C.F.R. §§ 63.9(h)(2) and 63.549 within sixty (60) days after completion of the performance tests conducted on the air pollution control device associated with the Second Furnace;

e) notify EPA of its intention to conduct the performance tests for emissions of lead compounds, opacity and PM of the air pollution control device

associated with the Third Furnace as required by 40 C.F.R. §§ 60.7(a)(6), 60.8(d) and 63.7(b)(1);

f) submit to EPA a notification of the actual date of startup of the Third Furnace, delivered or postmarked within 15 calendar days after that date, as required by 40 C.F.R. §§ 60.7(a)(3), 63.9(b)(5)(ii) and 63.549;

g) submit to EPA the results of the performance tests as required by 40 C.F.R. § 63.7(g)(1) and the Notification of Compliance Status required by 40 C.F.R. §§ 63.9(h)(2) and 63.549 within sixty (60) days after completion of the performance tests conducted on the air pollution control device associated with the Third Furnace;

h) notify EPA of the physical and operational changes it intended to implement at the Facility that would increase the Facility's lead emission rate prior to implementing such changes as required by 40 C.F.R § 60.7(a)(4);

i) notify EPA of its intention to conduct such tests as required by 40 C.F.R. §§ 60.7(a)(6), 60.8(d) and 63.7(b)(1);

j) modify its SSM Plan, dated June 2009, to incorporate specifications for the new furnace, baghouse and refining kettles, as well as the modifications made to the Second Furnace and existing baghouse to minimize emissions as required by 40 C.F.R. §§ 60.11(d), 63.6(e)(1)(i), 63.6(e)(3)(i), 63.6(e)(3)(i)(A) and 63.6(e)(3)(v) and (viii).

k) modify and submit to EPA or PREQB its Fugitive Dust SOP Manual, dated June 2009, to incorporate reference to the new furnace, baghouse and refining kettles, as well as the modifications made to the Second Furnace and existing baghouse as required by 40 C.F.R. § 63.545;

l) modify and submit to EPA or PREQB its Monitoring SOP Manual, dated June 2009, to incorporate reference to the new furnace, baghouse and refining kettles, as well as the modifications made to the Second Furnace and existing baghouse as required by 40 C.F.R. § 63.545.

m) maintain records, report and/or record as follows:

(1) From July 2009 through the date of issuance of this compliance order, Respondent did not keep any records of, and/or record any alarms of the Facility's bag leak detection system, as required by 40 C.F.R. §§ 63.550(a)(2);

(2) From July 2009 through the date of issuance of this compliance order, Respondent did not submit to EPA any excess semi-annual lead emissions reports or summary reports regarding operations at the Facility, as required by 40 C.F.R. §§ 63.550(c) and 63.10(e); and

(3) During weekends and holidays, Respondent did not keep and/or record the baghouses' operation data as required by 40 C.F.R. § 63.550 and report this information as required by 40 C.F.R. § 63.10.

n) operate the bag leak detection system at the Facility in a manner capable of detecting particulate matter as required by 40 C.F.R. § 63.548(e).

ORDER

In concurrence with the Findings of Fact and Conclusions of Law above, pursuant to Sections 113(a)(3) and 114 of the Act, 42 U.S.C. §§ 7413(a)(3) and 7414, IT IS DETERMINED AND ORDERED that:

I.

The provisions of the Order shall apply to Respondent and to its officers, agents, servants, employees, successors and to all persons, firms and corporations acting under, through or for Respondent.

II.

Respondent shall immediately and thereafter implement all necessary corrective actions to properly operate the bag leak detection system alarm as required by 40 C.F.R. § 63.548(e). The corrective actions shall include, at a minimum, the procedures used to determine and record the time and cause of the alarm as well

as the corrective actions taken to correct any control device malfunction or minimize emissions in accordance with 40 C.F.R. § 63.548(f)(1) and (2).

III.

Respondent shall immediately and thereafter implement monitoring and work practice requirements at each baghouse at all times, including the weekends and holidays, as required by 40 C.F.R. § 63.548(c).

IV.

Respondent shall immediately comply with and maintain compliance with record keeping and reporting requirements at each baghouse at all times, including the weekends and holidays, as required by 40 C.F.R. §§ 63.10 and 63.550(a).

V.

Within 10 days from the effective date of this Order, Respondent shall submit to EPA the results of the 2010 performance tests conducted on the air pollution control devices associated with the Second and Third Furnaces required by 40 C.F.R. § 63.7(g)(1) and the Notification of Compliance Status required by 40 C.F.R. §§ 63.9(h)(2) and 63.549.

VI.

Within 10 days from the effective date of this Order, Respondent shall submit to EPA the results of the 2010 tests conducted on its fugitive emission enclosure hoods to determine compliance with the face velocity requirements provided in 40 C.F.R. § 63.544(a), (b)(1) and (2), and (c), which are required by 40 C.F.R. §§ 60.8(a) and 63.7(a)(2).

VII.

Within 45 days from the effective date of this Order, Respondent shall modify and submit to EPA an updated SSM Plan incorporating specifications for the new furnace, baghouse and refining kettles, as well as the modifications made to the Second Furnace and existing baghouse to minimize emissions required by 40 C.F.R. §§ 60.11(d), 63.6(e)(1)(i), 63.6(e)(3)(i), 63.6(e)(3)(i)(A) and 63.6(e)(3)(v) and (viii) as required by 40 C.F.R. § 63.6(e)(3)(vii) and this Order. Upon EPA approval, Respondent shall utilize the updated SSM Plan.

VIII.

Within 45 days from the effective date of this Order, Respondent shall modify and submit to EPA for review and approval an updated Fugitive Dust SOP Manual incorporating references to the new furnace, baghouse and refining kettles, as well as the modifications made to the Second Furnace and existing baghouse as required by 40 C.F.R. § 63.545. Upon EPA approval, Respondent shall implement the updated Fugitive Dust SOP Manual.

IX.

Within 45 days from the effective date of this Order, Respondent shall modify and submit to EPA for review and approval an updated Monitoring SOP Manual incorporating references to the new furnace, baghouse and refining kettles, as well as the modifications made to the Second Furnace and existing baghouse as required by 40 C.F.R. § 63.548(a) and (b). Upon EPA approval, Respondent shall implement the updated Monitoring SOP Manual.

X.

Within 10 days from the effective date of this Order, Respondent shall submit to EPA and PREQB the bag leak detection alarm logs for July 2009 through the effective date of this Order as required by 40 C.F.R. § 63.550.

XI.

Within 45 days from the effective date of this Order, Respondent shall submit to EPA any excess semiannual lead emission reports or summary reports regarding operations at the Facility for the period of July 2009 through the effective date of this Order as required by 40 C.F.R. §§ 63.10(e)(3)(vi) and 63.550(c).

XII.

All reports and notices required by the Order shall be submitted to:

Mrs. Teresita Rodríguez, Chief
Multimedia Permits and Compliance Branch
Caribbean Environmental Protection Division
Environmental Protection Agency - Region 2
1492 Ponce de Leon Ave. Suite 417
San Juan, Puerto Rico 00910-4127.

Copies of the reports and notices are also required to be submitted to:

Mr. Luis Sierra, Director
Air Quality Area
Puerto Rico Environmental Quality Board
P. O. Box 11488
Santurce, Puerto Rico 00910.

BUSINESS CONFIDENTIALITY

Respondent may assert a business confidentiality claim covering part or all of the information this Compliance Order requires only to the extent and in the manner described in 40 C.F.R. § 2.203. EPA will disclose information submitted under a confidentiality claim only as provided in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a confidentiality claim, EPA may make the information available to the public by EPA without further notice to Respondent.

ENFORCEMENT

Section 113(a)(3) of the Act authorizes EPA to take any of the following actions in response to Respondent's violation of the NSPS or failure to comply with the above Order:

- issue an administrative penalty order, for penalties up to $25,000 per day pursuant to Section 113(d) of the Act and adjust the maximum penalty provided by the Act up to $27,500 per day for each violation that occurs from January 30, 1997 through March 15, 2004, $32,500 per day for each violation that occurs after March 15, 2004, $32,500 for violations that occurred after March 15, 2004 through January 12, 2009, and up to $37,500 for violations that occurred after January 12, 2009 in accordance with the Debt Collection Improvement Act, 31 U.S.C. § 3701 et seq., (DCIA), and 40 C.F.R. Part 19, promulgated pursuant to the DCIA; or
- bring a civil action pursuant to Section 113(b) of the Act for injunctive relief and/or civil penalties and adjust these penalties for inflation in accordance with the DCIA and 40 C.F.R. Part 19.

Failure to comply with this Compliance Order may result in an administrative or civil action for appropriate relief as provided in Section 113 of the Act. EPA retains full authority to enforce the requirements of the Act, and nothing in this Compliance Order shall be construed to limit that authority. Furthermore, the United States may seek fines and/or imprisonment of any party who knowingly violates the Act or an Order issued pursuant to Section 113 of the Act. Upon conviction, any facility owned by such party may be declared ineligible for federal contracts, grants or loans, (42 U.S.C. § 7606, 40 C.F.R. Part 15).

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act states that if a penalty is assessed pursuant to Section 113 or Section 304(a) of the Act, the Administrator or the court, as appropriate, shall consider the following factors in determining the amount of penalty to be assessed: the size of the violator's business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence, the payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation and other factors as justice may require.

Section 113(e)(2) of the Act allows the Administrator or the Court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, EPA will consider a violation to continue from the date the violation began until the date the Respondent establishes that it has achieved continuous compliance. If Respondents prove that there was an intermittent day of compliance or that the violation was not continuous in nature, then EPA will reduce the penalty accordingly.

EFFECTIVE DATE AND OPPORTUNITY FOR CONFERENCE

Pursuant to Section 113(a)(4) of the Act, Respondent may request a conference with EPA concerning the violations alleged in this Compliance Order. Respondent may present evidence bearing on the finding of violations, the nature of the violations, and on any efforts Respondent may have taken or propose to take to achieve compliance. Respondent may arrange to have legal representation at the conference, at its own

expense.

Within ten (10) days from receipt of this Compliance Order, Respondent may request, and confirm in writing, a conference to be held no later than thirty (30) days from receipt of this Compliance Order. If the requested conference is held, this Compliance Order shall become effective five (5) days after the conference is held. If Respondent does not meet with EPA, this Compliance Order shall become effective after ten (10) days from its receipt.

A request for a conference or other inquiries concerning this Compliance Order shall be made in writing, directed to:

Héctor L. Vélez Cruz, Esq.
Office of Regional Counsel, Caribbean Team
U.S. Environmental Protection Agency - Region 2
Caribbean Environmental Protection Division
1492 Ponce de León Ave. Suite 417
San Juan, Puerto Rico 00907
(787) 977-5850
(787) 729-7748 (Fax).

Notwithstanding the effective date and opportunity for conference discussed above, Respondents must comply with all applicable requirements of the Act.

Issued:

Carl Axel P. Soderberg, Director
U.S. Environmental Protection Agency-Region 2
Caribbean Environmental Protection Division
1492 Ponce de León Ave. Suite 417
San Juan, Puerto Rico 00907

August 9, 2011
Date

bcc: T. Rodríguez, 2CEPD-MPCB
F. Claudio, 2CEPD- MPCB
H. Vélez, 2ORC-CT
K. Eng, 2DECA-ACB
G. LaVigna, 2DECA-ACB
F. Mills, 2ORC-AB
ORC-AIR Chronological File