

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2**

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 U.S. Environmental Protection Agency

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 In the Matter of :
 :
 Caribbean All Metal Recyclers Corp. :
 :
 Respondent. :
 :
 Proceeding under Section 3008 :
 of the Solid Waste Disposal Act, :
 as amended. :
 -----x

**CONSENT AGREEMENT AND
FINAL ORDER**

**Docket No.
RCRA-02-2016-7103**

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This administrative proceeding for the assessment of a civil penalty and for compliance was commenced pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6901 *et seq.* (collectively referred to as "RCRA" or the "Act"). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency"), *inter alia*, to "issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both..." On September 30, 2016, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, EPA, Region 2, issued a Complaint and Notice of Opportunity for Hearing, bearing docket number RCRA-02-2016-7103 ("Complaint"), to Respondent, Caribbean All Metal Recyclers Corp. The Complaint alleges two separate counts against Respondent: (a) the unlawful export of hazardous waste (spent lead acid batteries) in 2015 to China, and (b) the unlawful export of hazardous waste (spent lead acid batteries) in 2015 to South Korea. Respondent timely served its answer on or about December 12, 2016.

This Consent Agreement and Final Order ("CA/FO") is being entered into by the parties pursuant to 40 C.F.R. § 22.18(b) following their February 15, 2017 settlement conference. No formal findings of fact or conclusions of law have been made by an administrative or judicial tribunal. The following constitute EPA's findings of fact and conclusions of law, and Respondent neither admits nor denies such findings or conclusions.

EPA FINDINGS OF FACT

1. Respondent is Caribbean All Metal Recycling Corp., a for-profit Puerto Rico corporation existing since 2008, that engages in commercial recycling activities including scrap metal recycling. As part of Respondent's business operations, it has collected and stored spent

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lead acid batteries for export to foreign countries for reclamation.

2. Respondent has owned and operated a facility located at Carr. 848, Km. 2.9, San Anton Ward, in Carolina, Puerto Rico ("Respondent's facility").

3. Following an inspection by representatives of Puerto Rico's Environmental Quality Board in October 2010, EPA assigned Identification Number PRN008023376 to Respondent's facility for tracking purposes. On or about June 3, 2015, a duly designated representative of EPA conducted an inspection under authority of Section 3007 of RCRA, 42 U.S.C. § 6927, of Respondent's facility to ascertain Respondent's compliance with RCRA and its implementing regulations, with a follow-up inspection conducted on July 10, 2015. At the time EPA conducted its inspections of Respondent's facility, Respondent conducted its business there.

4. EPA, pursuant to the authority granted it under Section 3007 of RCRA, 42 U.S.C. § 6927, sent Respondent on or about May 6, 2016, an information request letter (IRL) to ascertain whether Respondent's exports of spent lead acid batteries complied with applicable RCRA requirements. On or about June 10, 2016, Respondent replied to said IRL.

J.A.F.
5. In May and June 2015, Respondent exported through the port of San Juan, Puerto Rico, 23 shipments of spent lead acid batteries to the Republic of Korea (South Korea) for recovery operations (*i.e.* reclamation).

6. South Korea is listed in 40 C.F.R. § 262.58(a)(1) as a designated member of the Organization for Economic Cooperation and Development (OECD).

7. Respondent exported the spent lead acid batteries to South Korea without having provided written notification (or without having a third-party provide such notification on its behalf) to EPA as required by 40 C.F.R. 262.83(b)(1)(i).

8. In June 2015, Respondent exported through the port of San Juan, Puerto Rico, seven shipments of spent lead acid batteries to China for reclamation.

9. China is not a listed member country of the OECD.

10. Respondent's export to China of the spent lead acid batteries occurred without Respondent (or a third-party acting on Respondent's behalf): (a) having provided the written notification required pursuant to 40 C.F.R. §§ 262.52(a) and 266.80, and (b) having a copy of the EPA Acknowledgment of Consent accompany the hazardous waste shipments as required by 40 C.F.R. §§ 262.52(c) and 266.80.

11. Respondent, or a third-party acting on Respondent's behalf, failed to provide notification to EPA prior to exporting the spent lead acid batteries to China as required pursuant to 40 C.F.R. §§ 262.53 and 266.80.

EPA CONCLUSIONS OF LAW

1. Respondent has been since 2008, and continues to be, a "person" within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10.
2. Respondent has been since 2008, and continues to be, the "owner" and "operator" of Respondent's facility within the meaning of 40 C.F.R. § 260.10, and such facility constitutes a "facility" and a "new facility" within the meaning of 40 C.F.R. § 260.10.
3. Section 3008(a)(1) of RCRA, 42 U.S.C. § 6928(a)(1), provides, in relevant part, that "whenever on the basis of any information the Administrator [of EPA] determines that any person has violated or is in violation of any requirement of this subchapter [Subchapter III of the Act, 42 U.S.C. §§ 6921-6939e], the Administrator 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...."
4. A violation of a requirement set forth in any regulation(s) codified at, *inter alia*, 40 C.F.R. Part 262 and/or Part 266 constitutes a "violation of any requirement of this subchapter" within the meaning of Section 3008(a)(1) of the Act, 42 U.S.C. § 6928(a)(1). J.A.F.
5. The spent lead acid batteries Respondent exported to South Korea and China constitute "solid waste" within the meaning of Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and 40 C.F.R. § 261.2, and "hazardous waste" within the meaning of Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and 40 C.F.R. § 261.3.
6. As a consequence of Respondent's export of the spent lead acid batteries to South Korea and China, Respondent is subject to the provisions of item number "6" in the table set forth in 40 C.F.R. § 266.80(a).
7. Pursuant to item number 6 in the table found at 40 C.F.R. § 266.80 (Subpart G of 40 C.F.R. Part 266), a person exporting spent lead acid batteries to one of the OECD countries specified in 40 C.F.R. § 262.58(a)(1) must comply with, *inter alia*, 40 C.F.R. Part 262, subpart H.
8. The regulation codified at 40 C.F.R. § 262.80(a) states, "The requirements of this subpart [Subpart H of 40 C.F.R. Part 262] apply to imports and exports of wastes that are considered hazardous under U.S. national procedures and are destined for recovery operations in the countries listed in [40 C.F.R.] § 262.58(a)(1)." A waste is considered hazardous under U.S. national procedures if it meets the federal definition of hazardous waste under 40 C.F.R. § 261.3 and, *inter alia*, is subject to the export requirements in the spent lead acid battery management standards set forth in 40 C.F.R. Part 266.
9. The notification requirement set forth in 40 C.F.R. § 262.83(b)(1) provides, in relevant part, that "[a]t least forty-five (45) days prior to commencement of each transboundary movement, the exporter must provide written notification in English of the proposed

transboundary movement to [EPA's] Office of Enforcement and Compliance Assurance" in Washington, DC. Respondent was the "exporter" of the spent lead acid batteries exported to South Korea within the meaning of such provision.

10. As a consequence of the Respondent's aforementioned (§ 7 of the "EPA Findings of Fact," above) failure to provide the requisite notification, Respondent's export of the 23 shipments of spent lead acid batteries to South Korea (§ 5 of the "EPA Findings of Fact," above): (a) was prohibited pursuant to 40 C.F.R. § 262.83(b) and 40 C.F.R. § 266.80(a), which incorporates by reference 40 C.F.R. § 262.83, and (b) constitutes a violation of each of 40 C.F.R. § 262.83, and (b) 40 C.F.R. § 266.80, which incorporates by reference 40 C.F.R. § 262.83.

11. Pursuant to item number 6 in the table found at 40 C.F.R. § 266.80 (Subpart G of 40 C.F.R. Part 266), a person exporting spent lead acid batteries to a country that is not a member of the Organization for Economic Cooperation and Development (OECD), *i.e.* that is not listed in 40 C.F.R. § 262.58(a)(1), must comply with the requirements applicable to a primary exporter in 40 C.F.R. § 262.53 and must, in accordance with item number 6 in said table, "[e]xport these batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in subpart E of [40 C.F.R.] part 262 of this chapter; and [] [p]rovide a copy of the EPA Acknowledgment of Consent for the shipment to the transporter transporting the shipment for export."

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12. Forty C.F.R. § 262.52 provides, in relevant part, that "[e]xports of hazardous waste are prohibited except in compliance with the applicable requirements of this subpart and [40 C.F.R.] part 263. Exports of hazardous waste are prohibited unless: (a) Notification in accordance with § 262.53 has been provided; (b) The receiving country has consented to accept the hazardous waste; (c) A copy of the EPA Acknowledgement of Consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest... [and] (d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA Acknowledgment of Consent."

13. In relevant part, 40 C.F.R. § 262.53(a) provides that "[a] primary exporter of hazardous waste must notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification should be submitted sixty (60) days before the initial shipment is intended to be shipped off site[,] and such notification of intent must be submitted to EPA's Office of Enforcement and Compliance Assurance in Washington, DC.

14. Respondent was required to comply with the 40 C.F.R. § 262.53 requirements applicable to a "primary exporter" in order to lawfully export the spent lead acid batteries to China.

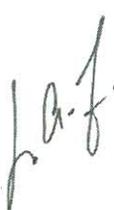
15. As a consequence of Respondent's export of spent lead acid batteries to China without the notification as required by 40 C.F.R. §§ 262.52(a) and 266.80 having been provided (as set forth in paragraphs 8 and 10 of the "EPA Findings of Fact," above), Respondent's export of the seven shipments of spent lead acid batteries to China was prohibited pursuant to said provisions, and said failure to provide such notice constitutes a violation of said regulatory provisions.

16. As a consequence of Respondent's export of spent lead acid batteries to China without the EPA Acknowledgment of Consent as required by 40 C.F.R. §§ 262.52(c) and 266.80 having accompanied the shipments (as set forth in paragraph 10 of the "EPA Findings of Fact," above), Respondent's export of the seven shipments of spent lead acid batteries to China was prohibited pursuant to said provisions, and such failure to have included the EPA Acknowledgment of Consent with the shipments constitutes a violation of said regulatory provisions.

17. As a consequence of the Respondent's failure to provide the notification required by 40 C.F.R. §§ 262.53 and 266.80 (as set forth in paragraph 11 of the "EPA Findings of Fact," above), Respondent's export of the seven shipments of spent lead acid batteries to China was prohibited pursuant to: (a) 40 C.F.R. § 262.53, and (b) 40 C.F.R. § 266.80(a), which incorporates the substantive obligations set out in 40 C.F.R. § 262.53, and said failure constitutes a violation of said regulatory provisions.

18. Each of the following constitutes a requirement of Subchapter III of the Act, 42 U.S.C. §§ 6921-6939e: (a) 40 C.F.R. § 262.52(a); (b) 40 C.F.R. § 262.52(c); (c) 40 C.F.R. § 262.53; (d) 40 C.F.R. § 262.83; and (e) 40 C.F.R. § 266.80.

AGREEMENT ON CONSENT

 Based upon the foregoing, and pursuant to Section 3008(a) of RCRA, as amended, 42 U.S.C. § 6928(a), 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 Respondent, and voluntarily accepted by Respondent, that, 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, Respondent: (a) admits EPA, Region 2, has jurisdiction under RCRA to prosecute this proceeding; (b) neither admits nor denies the "EPA Findings of Fact" or "EPA Conclusions of Law" as set forth in this document; (c) consents to the assessment of the civil penalty as set forth below; (d) consents to the issuance of the Final Order accompanying this Consent Agreement; and (e) waives any right it might possess to obtain judicial review of, or otherwise contest, said Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed Consent Agreement and accompanying Final Order ("CA/FO") shall become effective and binding when filed with the Regional Hearing Clerk of the 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. By entering this Consent Agreement, Respondent hereby certifies to the best of the knowledge and information of the person executing this Consent Agreement on behalf of Respondent, that the operations at Respondent's facility comply with the RCRA export regulatory requirements, as applicable, as set forth in, *inter alia*, 40 C.F.R. Parts 262 and 266.

2. Respondent shall pay a civil penalty to EPA in the amount of **SIXTEEN THOUSAND (\$16,000.00) DOLLARS**, for the violations EPA has alleged. Said amount must be received by EPA (at the address or account specified below) within 30 calendar days (all subsequent references to "days" mean "calendar days") of the date the Regional Judicial Officer of EPA, Region 2, executes the Final Order accompanying this Consent Agreement (the date by which payment must be received is henceforth referred to as the "due date").

Payment in accordance with the terms and schedule of this Consent Agreement shall be made by cashier's check, certified check or by electronic funds transfer (EFT). If payments is made by cashier's check or by certified check, such check shall be made payable to the "Treasurer, United States of America," and shall be identified with a notation thereon listing the following: *In re Caribbean All Metal Recyclers Corp., Docket Number RCRA-02-2016-7103*. If payment is made by either form of check, such 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 payment by EFT, Respondent shall then provide the following information to its remitter bank when such payment in accordance with this paragraph is being made:

- 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: **Caribbean All Metal Recyclers Corp.**
- g. Case docket number: **RCRA-02-2016-7103**

3. Payment instructions:

- a. Payment shall be in accordance with the instructions set forth in this paragraph. If Respondent makes payment by cashier's check or certified check, then such check shall be *received* at the above-listed address on or before the date specified. If Respondent makes payment by the EFT method, then such EFT shall be *received* on or before the date specified.
- b. Failure to pay the specified amount in full 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.

- c. Furthermore, if the required payment is not received on or before the date when such payment is made due under the terms of this document, interest therefor 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 such payment was to have been made through the date such payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) day period or any portion thereof, following the date any such payment was to have been received, 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 ninety (90) days of the date for which such payment was required hereto to have been made.

4. The civil penalty provided for in this section (including any payment for interest and late handling charge that become due) constitutes a penalty within the meaning of 26 U.S.C. § 162(f) and thus does not constitute a deductible expenditure for purposes of federal law.

5. Complainant shall mail to Respondent (to the representative designated below) a copy of the fully executed consent agreement and accompanying executed final order: Carlos Colon-Franceschi, Esq., Toro, Colon, Mullet, Rivera & Sifre, P.S.C., Union Plaza, Suite 311, 416 Ponce de Leon Avenue, San Juan, Puerto Rico 00918-3430. Receipt of the fully executed Consent Agreement/Final Order by said designated representative shall constitute Respondent's receipt and acceptance of said Consent Agreement/Final Order.

6. Respondent consents to service upon the representative set forth in paragraph 5 of this section, above, by an employee of EPA other than the Regional Hearing Clerk of EPA, Region 2.

7. Except as the parties may otherwise in writing agree, all documentation and information required to be submitted in accordance with the provisions of this Consent Agreement shall be sent to:

Sam Kerns, Environmental Engineer
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, and

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

Unless the EPA contacts listed above in this paragraph are subsequently notified in writing, EPA

shall address any future written communications relating to this matter (including any correspondence related to payment of the penalty) to Respondent at the following address:

Carlos Colon-Franceschi, Esq.
Toro, Colon, Mullet, Rivera & Sifre, P.S.C.
Union Plaza, Suite 311
416 Ponce de Leon Avenue
San Juan, Puerto Rico 00918-3430

8. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement. Respondent further consents to making payment of the civil penalty in accordance with the provisions set forth above.

9. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, Commonwealth of Puerto Rico and local law and regulations, nor is it intended or to be construed to be a ruling on or determination of any issue related to any federal, Commonwealth or local permit. Payment of the civil penalty in full as provided herein, together with any late payment for interest or handling charge, shall not nullify, abrogate or otherwise render nugatory Respondent's obligation to comply with applicable RCRA export requirements.

J.A.B.
10. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve the allegations set forth in the Complaint. Respondent making full payment of the penalty amount set forth above (*i.e.* \$ 16,000.00) in accordance with the provisions of this Consent Agreement (as well as any interest or late payment handling charges that accrue) shall only resolve Respondent's liability for federal civil penalties for the facts and violations alleged in the Complaint. Notwithstanding the above, nothing herein shall affect the authority of EPA or the United States on behalf of EPA to pursue appropriate injunctive or otherwise seek equitable relief or criminal sanctions for any violation(s) of law. 40 C.F.R. § 22.31(a).

11. Pursuant to 40 C.F.R. § 22.18(b)(2), Respondent, in entering this Consent Agreement, waives any right it might possess to obtain judicial review under RCRA, the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*, or other applicable law, and waives any right it might possess to obtain an administrative or judicial hearing on the claims set forth in or arising from the allegations in the Complaint, on the "EPA Findings of Fact" and/or the "EPA Conclusions of Law" sections of this document, and on the terms and conditions set forth in the "Agreement on Consent" section of this Consent Agreement.

12. Respondent agrees not to contest the validity or any term of this Consent Agreement and Final Order in any action, suit or proceeding brought by EPA or the United States on behalf of EPA: (a) to enforce this Consent Agreement or Final Order; or b) to enforce a judgment relating to this Consent Agreement and Final Order.

13. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit

or proceeding to enforce any of the terms and conditions of this Consent Agreement and its accompanying Final Order.

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

15. The undersigned signatories hereto certify that they are duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and to bind the parties on behalf of which each signatory has executed this Consent Agreement.

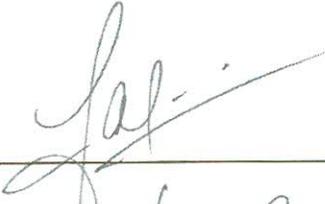
16. This Consent Agreement and its accompanying Final Order shall be fully binding upon the parties and their respective officers, directors, employees, successors and/or assigns.

17. Pursuant to 40 C.F.R. § 22.31(b), the Final Order accompanying this Consent Agreement shall ratify same, and said Final Order shall become effective as of the date of its filing with the Regional Hearing Clerk of EPA, Region 2.

L.A.F.

In re Caribbean All Metal Recyclers Corp.
Docket Number RCRA-02-2016-7103

RESPONDENT:

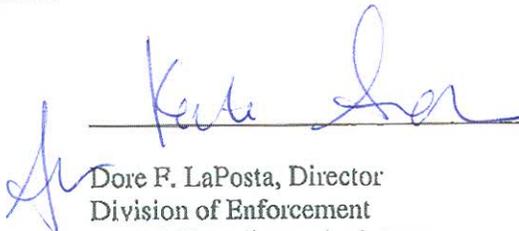
BY: 
(Signature)

NAME: Luis A. Figueroa
(Please Print)

TITLE: President

DATE: 7/18/2017

COMPLAINANT:



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

DATE: 7/18/17

In re Caribbean All Metal Recyclers Corp.
Docket Number RCRA-02-2016-7103

FINAL ORDER

The Regional Judicial Officer of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of Caribbean All Metal Recyclers Corp.*, bearing Docket Number RCRA-02-2016-7103. 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).

DATED: July 20, 2017
New York, New York



HELEN FERRARA
Regional Judicial Officer
United States Environmental Protection Agency --
Region 2

In re Caribbean All Metal Recyclers Corp.
Docket No. RCRA-02-2016-7103

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing "CONSENT AGREEMENT AND FINAL ORDER," said Final Order having been executed by the Region Judicial Officer of the United States Environmental Protection Agency, Region 2, on July 20, 2017, in the above-referenced administrative enforcement proceeding in the following manner to the addressee listed below:

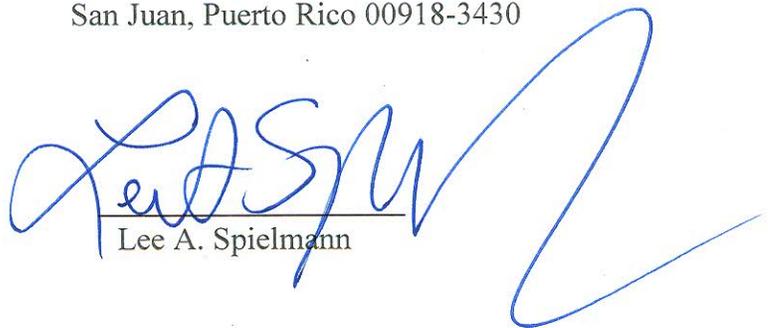
Original and One Copy
By Inter-Office Mail:

Office of Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by First Class Mail:

Carlos Colon-Franceschi, Esq.
Toro, Colon, Mullet, Rivera & Sifre, P.S.C.
Union Plaza, Suite 311
416 Ponce de Leon Avenue
San Juan, Puerto Rico 00918-3430

Dated: July 24, 2017
New York, New York



Lee A. Spielmann