

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**In the Matter of**

**The Battery Recycling Company, Inc.**

**Respondent.**

Proceeding under Section 325(c) of Title III  
of the Superfund Amendments and Reauthorization Act

**CONSENT AGREEMENT**  
**AND**  
**FINAL ORDER**

**DOCKET NUMBER**  
**EPCRA-02-2011-4301**

2012 DEC 21 A 11:28  
REGIONAL HEARING  
CLERK

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II

**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. §11001 *et seq.* [also known as the Emergency Planning and Community Right-to-Know Act of 1986 (hereinafter, "EPCRA")].

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA"), issued a Complaint and Notice of Opportunity to Request a Hearing against The Battery Recycling Company, Inc. ("Respondent") on March 1, 2011. The Complaint was amended on August 26, 2011.

The Amended Complaint alleged seven violations of EPCRA Section 313, 42 U.S.C. § 11023, and regulations promulgated pursuant to that Section, 40 C.F.R. Part 372.

**EPA'S FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

1. Respondent is The Battery Recycling Company, Inc. (TRIS Facility ID: 00612BTTRYRD2KM).
2. At all times relevant hereto, Respondent has owned and operated a facility located at Bo. Cambalache, Rd. #2, Km. 72.2, Arecibo, PR 00613-1016 (hereinafter, "Respondent's Facility").
3. Respondent is a "person" within the meaning of EPCRA Section 329(7), 42 U.S.C. § 11049(7).
4. Respondent is an owner of a "facility" within the meaning of EPCRA Section 329(4), 42 U.S.C. § 11049(4), and by 40 C.F.R. § 372.3.
5. Respondent's Facility is subject to the requirements of EPCRA Section 313(b), 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22.
6. On or about October 28, 2008, duly authorized EPA representatives conducted an inspection of Respondent's Facility to assess its compliance with the Toxic Chemical Release Reporting Requirements.
7. On or about June 21, 2011, duly authorized EPA representatives sent Respondent a request for additional information to follow-up with Respondent's compliance, to wit Respondent replied on July 14, 2011.
8. Based on the inspection, Respondent's reply, and additional information gathered, duly authorized EPA representatives determined that Respondent failed to submit and/or failed to submit in a timely manner, to the Administrator of EPA and to the Commonwealth of Puerto Rico, complete and accurate Form R reports with respect to lead and/or antimony it processed and/or transferred for each of calendar years 2005, 2006, 2007, 2008, 2009, and 2010.
9. Respondent's failure to submit, in a timely manner, a complete and accurate Form R report for lead for the 2005 calendar year constitutes a failure or refusal to comply with EPCRA Section 313, 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.
10. Respondent's failure to submit, in a timely manner, a complete and accurate Form R report for lead for the 2006 calendar year constitutes a failure or refusal to comply with EPCRA Section 313, 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

11. Respondent's failure to submit, in a timely manner, a complete and accurate Form R report for antimony for the 2006 calendar year constitutes a failure or refusal to comply with EPCRA Section 313, 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

12. Respondent's failure to submit, in a timely manner, a complete and accurate Form R report for lead for the 2007 calendar year constitutes a failure or refusal to comply with EPCRA Section 313, 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

13. Respondent's failure to submit, in a timely manner, a complete and accurate Form R report for antimony for the 2007 calendar year constitutes a failure or refusal to comply with EPCRA Section 313, 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

14. Respondent's failure to submit, in a timely manner, a complete and accurate Form R report for lead for the 2008 calendar year constitutes a failure or refusal to comply with EPCRA Section 313, 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

15. Respondent's failure to submit, in a timely manner, a complete and accurate Form R report for lead for the 2009 calendar year constitutes a failure or refusal to comply with EPCRA Section 313, 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

16. Respondent's failure to submit, in a timely manner, a complete and accurate Form R report for lead for the 2010 calendar year, which EPA determined after the Amended Complaint was filed, constitutes a failure or refusal to comply with EPCRA Section 313, 42 U.S.C. § 11023, and with 40 C.F.R. Part 372.

17. EPA and Respondent have engaged in settlement discussions with respect to the violations alleged in the Amended Complaint. As part of such, Respondent has submitted documentary evidence in support of its inability to pay position, has corrected the above-referenced EPCRA Section 313 violations, is in compliance with EPCRA 313 and with 40 C.F.R. Part 372 Form R reporting requirements for the two most recent years for which such reports were due, and because of other constraints and obligations Respondent faces, the dollar amount for which the parties have agreed to resolve this matter is appropriate for purposes of settling this EPCRA proceeding under all such attendant circumstances.

18. EPA and Respondent have decided that settlement of this matter on the terms set forth in this Consent Agreement and Final Order is an appropriate means of resolving the claims alleged against Respondent without further litigation.

## CONSENT AGREEMENT

Based on the foregoing, and pursuant to EPCRA Section 325(c), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. § 22.18 (hereinafter, "Rules of Practice"), it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees as follows:

1. Respondent certifies herein that any and all EPA Toxic Chemical Release Inventory Forms submitted to correct the above-described violations comply with the requirements of EPCRA Section 313 and the regulations set forth at 40 C.F.R. Part 372.
2. For the purpose of this proceeding, Respondent: (a) admits the jurisdictional allegations of this Consent Agreement as applied to the Facility as set forth in paragraphs 1 through 16, inclusive, and (b) neither admits nor denies the EPA's Findings of Fact and Conclusions of Law section, above.
3. Pursuant to EPCRA Section 313, the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of FIVE THOUSAND DOLLARS (\$5,000.00).
4. Respondent shall pay the penalty of FIVE THOUSAND DOLLARS (\$5,000.00) in two installment payments, as follows:
  - a. an initial payment of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) shall be made within ninety (90) calendar days from the effective date of the Final Order at the end of this document; and
  - b. a second and final payment of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) shall be made within one hundred and eighty (180) calendar days from the effective date of the Final Order at the end of this document.
5. The date by which each payment must be received shall hereafter be referred to as the "due date". Payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT).
6. If payment 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 Respondent's name: **The Battery Recycling Company, Inc.**, and Docket No. EPCRA-02-2011-4301. 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

7. Alternatively, if Respondent chooses to make payment by EFT, Respondent shall then provide the following information to its remitter bank when payment is made:

- a. Amount of Payment(s);
- b. SWIFT address: FRNUS33, 33 Liberty Street, New York, New York 10045;
- c. Account Code for Federal Reserve Bank of New York: 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: **The Battery Recycling Company, Inc.**; and
- g. Docket Number: **EPCRA-02-2011-4301**.

8. Payment instructions:

a. Payment shall be made in accordance with the instructions set forth in Paragraphs 3–7 of this Section. If Respondent makes the 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 the payment by the EFT method, then the EFT shall be received on or before the date specified.

b. Whether Respondent makes payment by cashier's check, certified check or by the EFT method, Respondent shall promptly after such payment has been made, furnish reasonable proof that it has been made, and such proof shall be furnished to:

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, New York 10007;

Roberto M. Durango, Esq.  
U.S. EPA, Office of Regional Counsel, Region 2  
City View Plaza II–Suite 7000  
#48 RD. 65 km 1.2  
Guaynabo, Puerto Rico 00968-8069;

and

John Gorman, Chief  
Pesticides and Toxic Substances Branch  
U.S. Environmental Protection Agency, Region 2  
2890 Woodbridge Avenue (MS-105)  
Edison, NJ 08837.

c. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of Treasury for collection or other appropriate action.

d. Furthermore, if each payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 1317, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.

e. A 6% per annum penalty will also be applied on any principal amount not paid within ninety (90) days of its due date. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid.

f. Pursuant to 40 C.F.R. § 22.31(b), the effective date of this Consent Agreement and Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. E.P.A. Region 2, New York, New York.

9. The civil penalty provided for in this Section constitutes a penalty within the meaning of 26 U.S.C. § 162(f), and is not a deductible expenditure for purposes of federal law.

10. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of all civil liabilities under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 *et seq.*) and the regulations promulgated thereunder, 40 C.F.R. Part 372, that attach or might have attached as a result of the Findings of Fact and Conclusions of Law set out above.

11. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

12. Respondent has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and to abide by its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

13. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

14. Respondent waives its right to appeal this Consent Agreement and the accompanying Final Order.

15. This Consent Agreement and Final Order does not waive, extinguish, or otherwise affect respondent's obligation to comply with all applicable provisions of EPCRA and the regulations promulgated thereunder.

16. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

17. Each party hereto agrees to bear its own costs and fees in this matter.

18. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

**FOR THE BATTERY RECYCLING COMPANY, INC.:**

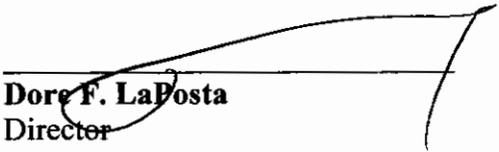
BY: \_\_\_\_\_

**Mr. Luis Figueroa**  
Owner and President  
The Battery Recycling Company, Inc.  
Bo. Cambalache, Road # 2 KM 72.2  
Arecibo, Puerto Rico 00613-1016

DATE: \_\_\_\_\_

*Dec. 17, 2012*

**FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

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

DATE: DECEMBER 22, 2012

**FINAL ORDER**

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as a Final Order. The effective date of this Final Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.



**Helen S. Ferrara**  
Regional Judicial Officer  
U.S. Environmental Protection  
Agency – Region 2  
290 Broadway, 26th Floor  
New York, New York 10007

DATE: December 21, 2012

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of

The Battery Recycling Company, Inc.

Respondent.

DOCKET NUMBER  
EPCRA-02-2011-4301

CERTIFICATE OF SERVICE

I hereby certify that, on the date noted below, the foregoing **Consent Agreement and Final Order** was sent in the following manner to the addresses listed below:

Original and Copy by Hand:

**Karen Maples**  
Regional Hearing Clerk  
U.S. EPA, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

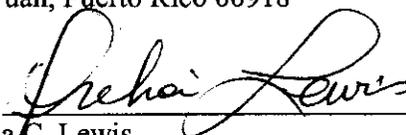
Copy by PDF and Overnight:

**The Honorable Susan L. Biro**  
Chief Administrative Law Judge  
U.S. Environmental Protection Agency  
1099 14th Street, N.W., Suite 350  
Washington, DC 20005

Copy by PDF:

**Carlos Colón-Franceschi, Esq.**  
Toro, Colón, Mullet, Rivera & Sifre, P.S.C.  
Attorneys for Respondent,  
The Battery Recycling Company, Inc.  
416 Ponce de León Avenue  
Union Plaza Suite 311  
San Juan, Puerto Rico 00918

Dated: 12-21-12

  
\_\_\_\_\_  
Orelia C. Lewis  
Office of Regional Counsel, Region 2