UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
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December 30, 2020
10:30 AM
Received by
EPA Region VIII
Hearing Clerk

DOCKET NO.: ~~CWA-08-2021-0007~~ RCRA-08-2021-0001 mmh 12/30/2020

IN THE MATTER OF:	)	
	)	
METECH RECYCLING, INC.	)	**FINAL ORDER**
	)	
	)	
	)	
	)	
RESPONDENT	)	

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon filing this Consent Agreement and Final Order.

SO ORDERED THIS 30th **DAY OF** December**, 2020.**

KATHERIN HALL
Digitally signed by KATHERIN HALL
Date: 2020.12.30 10:29:01 -07'00'

Katherin Hall
Regional Judicial Officer

December 30, 2020
10:30 AM
Received by
EPA Region VIII
Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF: METech Recycling, Inc. 2350 West Bridger Road Salt Lake City, Utah 84104 Respondent.	)	Docket No. ~~CWA-08-2021-0007~~ RCRA-08-2021-0001 mmk 12/30/2020 CONSENT AGREEMENT

I. INTRODUCTION

1. This is an administrative penalty assessment proceeding pursuant to sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice), as codified at 40 C.F.R. part 22.

2. METech Recycling, Inc., a Delaware corporation, (Respondent) owns and operates a waste recycling facility located at 2350 West Bridger Road, Salt Lake City, Utah (Facility).

3. EPA and Respondent, having agreed settlement of this action is in the public interest, consent to the entry of this consent agreement (Agreement) without adjudication of any issues of law or fact herein, and Respondent agrees to comply with the terms of this Agreement.

II. JURISDICTION

4. This Agreement is issued under the authority vested in the Administrator of the EPA by section 3008 of the Solid Waste Disposal Act (Act), as amended by, *inter alia*, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6928 (RCRA). The undersigned EPA official has been duly authorized to institute this action.

5. The Regional Judicial Officer is authorized to approve this Agreement with a final order. 40 C.F.R. §§ 22.4(b) and 22.18(b).

6. The final order approving this Agreement simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).

III. GOVERNING LAW

7. The State of Utah (State) has been authorized under section 3006(b) of the Act, 42 U.S.C. § 6926(b), to administer a hazardous waste program in lieu of the federal hazardous waste program in Utah. The Utah Department of Environmental Quality (UDEQ) is the state agency charged with implementing the state and federal hazardous waste programs in the State.

8. The requirements of the State's authorized program are found at R315 Utah Administrative Code (Utah Admin. Code) Parts 260 and 261. Citations herein, therefore, are to the Utah Admin. Code.

9. EPA retains jurisdiction and authority to initiate an enforcement action in the State under section 3008 of the Act. 42 U.S.C. § 6928. *See* section 3008(a)(2) of the Act, 42 U.S.C. § 6928(a)(2).

10. EPA has given notice of this action to UDEQ as required by section 3008(a)(2) of the Act, 42 U.S.C. § 6928(a)(2).

11. The term "operator" means the person responsible for the overall operation of a facility. 40 C.F.R. § 260.10, incorporated by reference at Utah Admin. Code R315-1-1(b).

12. The term "owner" means the person who owns a facility or part of a facility. 40 C.F.R. § 260.10, incorporated by reference at Utah Admin. Code R315-1-1(b).

13. A "person" is defined as an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States. 7 U.S.C. § 6903(15).

14. The term "facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. 40 CFR § 260.10 incorporated by reference at Utah Admin. Code R315-1-1(b).

15. The term "disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters. 40 C.F.R. § 260.10, incorporated by reference at Utah Admin. Code R315-1-1(b).

16. The term "storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere. Utah Admin. Code R315-1-1(b).

17. The term "solid waste" means any discarded material that is not excluded by subsection Utah Admin. Code R315-2-4(a) or that is not excluded by variance granted under Utah Admin. Code R315-2-18 and Utah Admin. Code R315-2-19. Utah Admin. Code R315-2-2(a)(1).

18. A "discarded material" is any material that is abandoned, recycled, or inherently waste-like. Utah Admin. Code R315-2-2(a)(2).

19. Materials are solid waste if they are abandoned by being disposed of, burned, or incinerated, or accumulated, stored, or treated, but not recycled, before or in lieu of being abandoned by being disposed of, burned, or incinerated. Utah Admin. Code R315-2-2(b).

20. A solid waste as defined in Utah Admin. Code R315-2-2 is a "hazardous waste" if it is not excluded from regulation as a hazardous waste under subsection Utah Admin. Code R315-2-4(b); and it is listed in Utah Admin. Code R315-2-10 or R315-2-11, or it exhibits any of the characteristics of hazardous waste (ignitibility, corrosivity, reactivity, or toxicity). Utah Admin. Code R315-2-3(a).

21. A waste is a hazardous waste for exhibiting the characteristic of toxicity if a representative sample contains a contaminant at a level greater than a maximum concentration allowed using the test known as the is Toxicity Characteristic Leaching Test (TCLP). Utah Admin. Code R315-2-9(g).

22. The term "cathode ray tube" or "CRT" is defined as a vacuum tube, composed primarily of glass which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released. Utah Admin. Code R315-260-10.

23. The regulation at Utah Admin. Code R315-261-4(a), identifies materials that are not solid wastes for purposes of Part 261. Specifically, Utah Admin. Code R315-261-4(a)(22) states:

> (i) used, intact CRTs, as defined in Section R315-260-10, are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in Subsection R315-261-1(c)(8) by CRT collectors or glass processors.
>
> (ii) used, intact CRTs, as defined in Section R315-260-10, are not solid wastes when exported for recycling provided that they meet the requirements of Section R315-261-40.
>
> (iii) Used, broken CRTs, as defined in Section R315-260-10, are not solid wastes provided that they meet the requirements of Section R315-261-39.
>
> (iv) glass removed from CRTs is not a solid waste provided that it meets the requirements of Section R315-261-39(c).

24. The conditional exclusion for used, broken CRTs and processed CRT glass undergoing recycling is found at Utah Admin. Code R315-261-39(a)(4), specifically the limitations on speculative accumulation as defined in Utah Admin. Code R315-261-1(c)(8).

25. A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that during the calendar year, commencing on January 1, the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials shall be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period shall be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type, e.g., slags from a single smelting process, that is recycled in the same way, i.e., from which the same material is recovered or that is used in the same

way. Materials accumulating in units that would be exempt from regulation under Subsection R315-261-4(c) are not to be included in making the calculation. Materials that are already defined as solid wastes also are not to be included in making the calculation. Materials are no longer in this category once they are removed from accumulation for recycling, however. Utah Admin. Code R315-261-1(c)(8).

26. Glass from used CRTs that is used in a manner constituting disposal, must comply with the requirements of as defined in Utah Admin. Code R315-266-20 through 23, instead of the conditional exclusion requirements of R315-261-39.

27. According to the preamble to the CRT rule, televisions and color computer monitors contain an average of four pounds of lead and studies show that CRTs leach lead at levels considerably above the toxicity characteristic regulatory level used to classify lead-containing wastes as hazardous (40 C.F.R. § 261.24(b)). In addition, CRTs often contain mercury, cadmium, and arsenic in very low concentrations that are unlikely to exceed the toxicity characteristic levels. *See* 71 Fed. Reg. 42930-42931 (July 28, 2006).

28. The TCLP regulatory limit for lead is 5 mg/L, as found in subpart C of Part 261, Utah Admin. Code R315-261-24(b).

29. Universal wastes under Utah Admin. Code R315-261-9 include batteries, pesticides, mercury containing equipment, lamps, antifreeze, and aerosol cans, and are subject to regulations set forth under Utah. Admin. Code R315-273.

30. A "large quantity handler of universal waste" means a universal waste handler, as defined in section R315-273-9, who accumulates 5,000 kilograms or more total of universal waste; batteries, pesticides, mercury-containing equipment, lamps, or any other universal waste regulated in Rule R315-273, calculated collectively at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which the 5,000 kilogram limit is met or exceeded. Utah. Admin. Code R 315-279-9(j).

IV. ALLEGED FACTS

31. Respondent is a "person" as defined in section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

32. Respondent is the "owner" and "operator" of a facility used for the recycling of solid waste located at 2350 West Bridger Road, Salt Lake City, Utah 84104 (Facility), as defined in Utah Admin. Code R315-1-1(b).

33. The Facility is a "facility" as defined in 40 C.F.R. § 260.10, incorporated by reference at Utah Admin. Code R315-1-1(b).

34. Basic functions performed at, or from, the Facility include storage and preparation of hazardous waste and universal waste for off-site recycling of hazardous and universal waste.

35. On June 12, 2019, inspectors with EPA conducted a RCRA Compliance Evaluation Inspection at the Facility (Inspection).

36. On or about August 16, 2019, EPA provided an inspection report to Respondent summarizing EPA's findings (Inspection Report).

37. The inspector requested documentation to ascertain whether the leaded CRT glass was being speculatively accumulated pursuant to 40 C.F.R. § 261.39(b)(l) referencing 40 C.F.R. §§ 261.39(a)(4) and 261.l(c)(8).

38. EPA's observations and findings from the Inspection included the following:

    a. The Facility's 2018 percent recycled estimates are less than the required 75 percent recycling rate to avoid speculative accumulation under Utah Admin. Code 315-261-1(c)(8). Therefore, the CRT glass is solid waste.

    b. The Facility had approximately 2,093,798 pounds (lbs) (949,731 kilograms (kgs)) of CRT glass at the Facility. The CRT containers did not contain a label with the words "Hazardous Waste" or an indication of the hazards of the contents (e.g., "toxic").

    c. The aisle space between containers at the Facility was not adequate to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, or decontamination equipment.

    d. Review of the inventory spreadsheet provided by Respondent at the time of the inspection indicated that there were 53,324 lbs (24,187 kgs) of spent batteries at the Facility.

    e. Review of the inventory spreadsheet provided by Respondent at the time of the inspection indicated that there were 1,944 lbs (882 kgs) of spent fluorescent light bulbs at the Facility.

    f. Respondent stored approximately 55,268 lbs (25,069 kgs) of universal waste at the Facility. Labels from some of the containers of spent batteries and spent light bulbs show that they have been on site since July 2017 for batteries and October 2017 for light bulbs.

    g. Respondent did not notify UDEQ of its status as a large quantity handler of universal waste as required by Utah Admin. Code R315-273-32 and Respondent is exceeding the accumulation time limits in Utah Admin. Code R315-273-35 for storing of waste batteries and lamps.

39. On September 30, 2019, Respondent submitted a response to EPA describing efforts to address concerns identified in the Inspection Report (September Response).

40. The CRT glass at the Facility meets the definition of "used, broken CRT" in Utah Admin. Code R315-260-10 because the vacuum on each CRT is broken during disassembly.

41. The CRT glass accumulated at the Facility is subject to UAC R315-261-39(a)(4), which provides that used, broken CRTs are subject to the limitations on speculative accumulation as defined in Utah Admin. Code R315-261-1(c)(8).

42. According to the CRT glass inventory in the September Response, between January 1, 2019, and December 31, 2019, Respondent's CRT glass recycling rate for CRTs accepted in 2018 was approximately 7 percent.

43. Respondent's CRT glass recycling rate for 2018 was less than the 75 percent annual recycling rate required to avoid speculative accumulation.

44. According to the CRT glass inventory in the September Response, Respondent's anticipated recycling rate for 2019 was less than the 75 percent annual recycling rate required to avoid speculative accumulation.

45. Respondent is speculatively accumulating CRT glass, and therefore not meeting the exclusion from the definition of "solid waste" for used, broken CRTs in Utah Admin. Code R315-261-39.

46. The CRT glass located at the Facility is a solid waste.

47. Respondent did not make a hazardous waste determination on the used, broken CRT glass. Utah Admin. Code R315-262-11.

48. Due to the amount of lead contained in funnel glass, CRTs marked for disposal are considered hazardous waste under RCRA.

49. Based on the amount of hazardous waste CRT glass speculatively accumulated at the Facility as of January 1, 2019, Respondent is a large quantity generator of hazardous waste and must manage the CRT glass according to Utah Admin. Code R315-262-17.

50. At the time of the Inspection, Respondent accumulated at least 1,636,260 lbs of hazardous waste CRT glass at the Facility for more than 90 days, and failed to satisfy the conditional exclusion in Utah Admin. Code R315-262-17(a).

51. At the time of the Inspection, at least one container of CRT glass was marked with an accumulation start date of August 3, 2015, nearly four years before the date of the EPA Inspection.

52. At the time of the Inspection, the containers holding CRT glass at the Facility did not have labels with the words "Hazardous Waste," and did not indicate the hazards of the contents, and failed to satisfy the conditional exclusion in Utah Admin. Code R315-262-17(a)(5)(i).

53. At the time of the EPA Inspection, the containers holding CRT glass did not have adequate aisle space between them to allow the unobstructed movement of personnel or equipment in an emergency, and failed to satisfy the conditional exclusion in Utah Admin. Code R315-262-255.

V. ALLEGED VIOLATIONS OF LAW

54. The EPA (Complainant) hereby states and alleges that Respondent has violated RCRA and the federal and State regulations promulgated thereunder, as follows:

Count 1. Owning or Operating a Treatment, Storage or Disposal Facility Without a RCRA Permit or RCRA Interim Status

55. The Complainant hereby incorporates the allegations contained in Paragraphs 1 through 53, above, as fully set forth herein.

56. Pursuant to Utah Admin. Code R315-3-1-1.1(a), no person shall own, construct, modify, or operate any facility for the purpose of treating, storing, or disposing of hazardous waste without first submitting, and receiving the approval of the State Executive Secretary for, a hazardous waste permit for that facility.

57. Respondent is the owner and operator of the Facility.

58. Respondent was speculatively accumulating CRT glass at the Facility.

59. Beginning in 2018, Respondent failed to comply with the exemption to the definition of solid waste for CRT glass at the Facility.

60. CRT glass contains lead exceeding the hazardous waste toxicity characteristic level at 40 C.F.R. § 261.24.

61. Beginning in 2018, Respondent failed meet several of the conditions in Utah Admin. Code R315-262-17 to store hazardous waste without a permit.

62. At no time has EPA or the Utah issued a RCRA permit to Respondent to own or operate a treatment, storage or disposal facility at the Facility.

63. Respondent did not meet the conditions required to operate without a permit or interim status, in violation of Utah Admin. Code R315-270-1(c).

64. Respondent is not authorized to own a hazardous waste storage treatment, storage or disposal facility at the Facility, and therefore is an owner of a hazardous waste treatment, storage or disposal facility without a permit in violation of Section 3005 of RCRA, 42 U.S.C. § 6925, and the implementing regulations found Utah Admin. Code R315-124, R315-262 through 268, and R315-270.

Count 2. Failure to Notify as a Large Quantity Handler of Universal Waste

65. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 53, above, as if fully set forth herein.

66. Pursuant to Utah Admin. Code R315-273-32(a)(1), except as provided in subsections R315-273-32(a)(2) and (3), a large quantity handler of universal waste shall have sent written notification of universal waste management to the Director of the UDEQ, and received an EPA Identification Number, before meeting or exceeding the 5,000 kg storage limit.

67. At the time of the Inspection, Respondent owned and operated the Facility.

68. At the time of the Inspection, Respondent stored approximately of 24,187 kgs (53,324 lbs) of universal waste batteries and 882 kgs (1,944 lbs) of universal waste lamps at the Facility, totaling 25,069 kgs (55,268 lbs) of collective universal waste at the Facility.

69. At the time of the Inspection, Respondent was a large quantity handler of universal waste.

70. Respondent's storage of at least 25,069 kgs of universal waste at the Facility, without notifying UDEQ as a large quantity handler of universal waste, constitutes a violation of Utah Admin. Code R315-273-32(a)(1).

Count 3. Accumulation of Universal Waste for Longer than One Year

71. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 53, above, as if fully set forth herein.

72. Pursuant to Utah Admin. Code R315-273-35(a), a large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of Subsection R315-273-35(b) are met.

73. At the time of the Inspection, Respondent had accumulated approximately of 24,187 kgs (53,324 lbs) of universal waste batteries and 882 kgs (1,944 lbs) of universal waste lamps, for a total of 25,069 kgs (55,268 lbs) of universal waste at the Facility.

74. At the time of the Inspection, Respondent was a large quantity handler of universal waste.

75. At the time of the Inspection, at least one box of universal waste batteries was marked with the accumulation start date of July 12, 2017, and at least one box of universal waste lamps was dated October 27, 2017. As a result, Respondent stored at least two boxes of universal waste at the Facility more than one year at the time of the EPA Inspection in violation of Utah Admin. Code R315-273-35(a).

VI. TERMS OF CONSENT AGREEMENT

76. For the purpose of this proceeding, Respondent:

    a. admits the jurisdictional allegations in section II of this Agreement;

    b. neither admits nor denies the legal allegations stated in section IV of this Agreement;

    c. neither admits nor denies the factual allegations stated in section IV of this Agreement;

    d. consents to the assessment of a civil penalty as stated below;

    e. acknowledges this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

    f. waives any right to contest any final order approving this Agreement; and

    g. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action.

VII. CONDITIONS

77. Respondent certifies that 3,743,754 lbs of CRT glass received and stored at the Facility on or before January 1, 2020, has been shipped to a legitimate recycler as defined at 40 C.F.R. § 260.43.

78. Respondent shall establish an inventory and tracking system to ensure that all CRT glass shipments are tracked, by shipment or gaylord box number, by the date received at the Facility and the date shipped offsite. The tracking system must be searchable and include a calculation of the recycling rate on an annual basis. A draft report evidencing the tracking system must be submitted to EPA for review and approval within thirty (30) days of the effective date of the Final Order.

79. Respondent shall develop a training program for all current and future employees whose job responsibilities are related to the management of used, broken CRTs at the Facility, including key components for compliance with the Section R315-262-17(a)(7)(i) that pertain to the management of CRTs. The training program shall also include a review of Utah Admin. Code R315-261-39 (Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling). The training program must be submitted to EPA for review and approval within thirty (30) days of the effective date of the Final Order.

80. Respondent shall implement the training program developed and approved pursuant to Paragraph 79 and must certify completion of the approved training program by employees, including name and job title, within six months of the effective date of the Final Order.

81. Respondent shall establish an inventory and tracking system to ensure that all universal waste shipments are tracked by the date received at the Facility and the date the universal waste is shipped off site. The system must track accumulation time for universal waste in accordance with Utah Admin. Code R315-273-35.

82. Prior to the Facility accumulating 5,000 kgs or more total of universal waste regulated in Utah Admin. Code R315-273, Respondent shall notify the State of Utah as a large quantity handler of universal waste pursuant to Utah Admin. Code R315-273-32(a)(1) and submit a copy of the notification form to EPA within fourteen (14) days of submission.

83. Respondent agrees to allow EPA and the State and/or their contractors access to the Facility in order to observe work performed pursuant to this Consent Agreement.

84. Within sixty (60) days of the final shipment of CRT glass accepted at the Facility in 2019 or earlier, Respondent shall submit to EPA a Completion Report that includes all of the following:

    a. A list of the date and manifest number and/or bill of lading for each shipment of hazardous waste, special waste, or CRT glass recycled, if any.

    b. A legible copy of all hazardous waste manifests or bills of lading not previously provided for shipments of hazardous waste, special waste, or CRT glass recycled, if any.

    c. A summary of the total amount of hazardous waste and CRT glass recycled, if any.

    d. A summary of the actual total cost of Respondent's performance of the actions described in the Completion Report. These costs should be supported by legible copies of all invoices, bills, and receipts along with documentation that all costs have been paid by Respondent. Respondent may make a claim of Confidential Business Information pursuant to 40 C.F.R. Part 2. This submission may be submitted as a separate document.

    e. A certification from Respondent as to the accuracy of the Completion Report. The certification shall read:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

85. By March 1, 2022, Respondent shall submit a Final Report to EPA summarizing the management of CRTs during the 2021 calendar year, commencing on January 1, 2021, including an annual inventory, tracking information, and total inbound and outbound amounts. If CRTs accepted on or before December 31, 2020, were managed during 2021, the annual recycling rate must be included in the report. Respondent must certify the accuracy of the report by including the certification statement from Paragraph 84.e. above.

86. Respondent shall submit all documentation generated to comply with the requirements as set forth in Paragraphs 77-85 above to the following address:

If by U.S. mail, Federal Express, or overnight delivery:
Kristin McNeill, 8ENF-RO-R
US EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
If by email: mcneill.kristin@epa.gov

VIII. CIVIL PENALTY

87. Section 3008(a) of the Act authorizes EPA to assess a civil penalty in this matter.

88. In determining the amount of the penalty to be assessed, EPA considered the seriousness of the violations and any good faith efforts to comply with applicable requirements, in accordance with section 3008(a).

89. Based on the Alleged Violations of Law, and after consideration of the statutory factors in Paragraph 88 above, EPA has determined a civil penalty of $10,675 is appropriate to settle this matter.

90. Penalty Payment. Respondent agrees to:

a. pay a civil penalty in the amount of $10,675 within thirty (30) days of the effective date of the Final Order;

b. pay the civil penalty using any method provided on the following website https://www.epa.gov/financial/makepayment;

c. identify each and every payment with the docket number that appears on the final order,

d. within 24 hours of payment, email proof of payment to Kristin McNeill and Laurianne Jackson at mcneill.kristin@epa.gov and jackson.laurianne@epa.gov ("proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment,

confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate payment has been made according to EPA requirements, in the amount due, and identified with the docket number that appears on the final order).

91. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, EPA may:

    a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); and the United States' enforcement expenses;

    b. refer the debt to a credit reporting agency or a collection agency, 40 C.F.R. §§ 13.13, 13.14, and 13.33;

    c. collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. part 13, subparts C and H; and

    d. suspend or revoke Respondents' licenses or other privileges or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

92. Consistent with section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

93. This Agreement applies to Respondent and its officers, directors, employees, agents, trustees, authorized representatives, successors, and assigns. Respondent must give written notice and a copy of this Agreement to any successors-in-interest prior to transfer of any interest in the Facility. Any change in ownership or corporate control of Respondent, including but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.

94. The undersigned representative of Respondent certifies he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind the party he or she represents to this Agreement.

95. Except as qualified by Paragraph 91, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding.

IX. EFFECT OF CONSENT AGREEMENT

96. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Agreement resolves only Respondent's liability for federal civil penalties for the violations specifically alleged above.

97. The terms, conditions, and compliance requirements of this Agreement may not be modified or amended except upon the written agreement of both parties, and approval of the Environmental Appeals Board/ Regional Judicial Officer, or other delegatee.

98. Any violation of this Agreement, and subsequently issued final order approving this Agreement, may result in a civil judicial action for an injunction or civil penalties of up to $60,039 per day per

violation, or both, as provided in section 3008 of the Act and adjusted for inflation pursuant to 40 C.F.R. part 19. EPA may use any information submitted under this Agreement in an administrative, civil judicial, or criminal action.

99. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the Act and other federal, state, or local laws, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

100. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

101. If and to the extent EPA finds, after signing this Agreement, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to EPA, EPA reserves any and all of its legal and equitable rights.

102. Respondent and Complainant consent to electronic service this Agreement and the Final Order by e-mail at the following email addresses: rcheng@metechrecycling.com and jackson.laurianne@epa.gov.

X. EFFECTIVE DATE

103. This Consent Agreement shall be effective upon filing of the Final Order by the Regional Hearing Clerk for EPA, Region 8. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

XI. RESERVATION OF RIGHTS

104. This Consent Agreement shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Consent Agreement does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and regulations promulgated thereunder.

105. Notwithstanding any other provision of this Consent Agreement, EPA reserves the right to enforce the terms of this Consent Agreement by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928.

106. Nothing in this Consent Agreement prohibits or impacts Respondent's rights and remedies to pursue any party for contribution or cost recovery pursuant to common law or any statutory authority including sections 7002 and 7003 of RCRA, 42 U.S.C. §§ 6972 and 6973.

107. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth below for failure to comply with the requirements of this Consent Agreement, unless excused as a force majeure. "Compliance" by Respondent shall include completion of the activities under this Consent Agreement in accordance with all applicable requirements of law and this Consent Agreement and within the specified time schedules established by and approved under this Consent Agreement.

108. Stipulated Penalties. The following stipulated penalties shall accrue per violation per day for failure to substantially comply with and timely submit the reports and deliverables required by Section VII (Conditions) above:

    a. Day 1-30 of delay $750/day

    b. Day 2-60 of delay $1,000/day

    c. Day 61 and beyond $1,250/day

109. All stipulated penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the work required under this Consent Agreement. All stipulated penalties shall be due within thirty (30) days of receipt of a notification of noncompliance. Such notification shall describe the noncompliance, indicate the amount of stipulated penalties due, and provide payment information.

110. Respondent agrees to perform all requirements of this Consent Agreement within the time limits established under this Consent Agreement, unless the performance is delayed by a force majeure. For purposes of this Consent Agreement, a force majeure is defined as any event arising from causes beyond the control Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Consent Agreement despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance. If any event occurs that may delay the performance of any obligation under this Consent Agreement, whether or not caused by a force majeure event, Respondent shall notify EPA orally within 48 hours of when Respondent first knew that the event might cause a delay. Within seven (7) working days thereafter, Respondent shall notify EPA in writing identifying: 1) the cause of any delay or other condition which may prevent compliance with this Consent Agreement; 2) the anticipated duration of the delay and time to comply; 3) such other information as EPA may reasonably request; and 4) a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations, which may include the delayed event and subsequent obligations, under this Consent Agreement that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

111. Except as expressly provided herein, nothing in this Consent Agreement shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

112. Notwithstanding any other provisions of the Consent Agreement, an enforcement action may be brought pursuant to section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at the Facility may present an imminent and substantial endangerment to human health and the environment.

113. The headings in this Consent Agreement are for convenience of reference only and shall not affect interpretation of this Consent Agreement.

114. The provisions of this Consent Agreement shall be deemed satisfied and terminated upon Complainant's written determination, in response to Respondent's submission of a Completion Report, that Respondent has fully implemented the actions required in the Final Order.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 8,
Complainant.

Date: December 15,2020 By: JANICE PEARSON Digitally signed by JANICE PEARSON Date: 2020.12.15 11:32:56 -07'00'

Janice Pearson, RCRA Branch Chief
Enforcement and Compliance Assurance Division

METech Recycling, Inc.,
Respondent.

Date: 12/14/2020 By:

Mr. Rex Cheng, President

CERTIFICATE OF SERVICE

The undersigned certifies that the attached **CONSENT AGREEMENT** and the **FINAL ORDER** in the matter of **METECH RECYCLING, INC.; DOCKET NO.: CWA-08-2021-0007** was filed with the Regional Hearing Clerk on December 30, 2020.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Laurianne Jackson, Enforcement Attorney, and sent via certified receipt email on December 30, 2020, to:

Respondent

Rex Chang, President
METech Recycling, Inc.
rcheng@metechrecycling.com

EPA Financial Center

Jessica Chalifoux
U. S. Environmental Protection Agency
Cincinnati Finance Center
Chalifoux.Jessica@epa.gov

December 30, 2020

MELISSA HANIEWICZ
Digitally signed by MELISSA HANIEWICZ
Date: 2020.12.30 10:31:19 -07'00'

Melissa Haniewicz
Regional Hearing Clerk